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Vol. 63 No. 172
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Federal Register

Friday
September 4, 1998

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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.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–30]

RIN 0579–AA83

Karnal Bunt; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations to add three alternative treatments for seed that originates from a regulated area and that will be planted within a regulated area. We made this change based on new data that demonstrates that these treatments are comparable in effectiveness to the other treatments authorized. This action reduced the regulatory burden on wheat growers and other affected persons in the regulated area.

EFFECTIVE DATE: The interim rule was effective on November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective on November 28, 1997, and published in the **Federal Register** on December 5, 1997 (62 FR 64263–64265, Docket No. 96–016–27), we amended the Karnal bunt regulations in § 301.89–13 by adding three alternative treatments for seed originating from a regulated area that will be planted within a regulated area.

Comments on the interim rule were required to be received on or before February 3, 1998. We did not receive any comments by that date. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the Karnal bunt regulations by adding three alternative treatments for seed originating from a regulated area that will be planted within a regulated area. We made this change based on new data that demonstrates that these treatments are sufficient to prevent the spread of Karnal bunt through planted seed. This action reduces the regulatory burden on wheat growers and other affected persons in the regulated area.

Wheat growers stand to benefit from this change in two ways. First, it offers them more and less costly treatment options: The cost of chemicals for each of the three new treatment options for 100 pounds of seed is listed below:

1. 6.8 fl. oz. of Carboxin thiram (10% + 10%, 0.91 + 0.91 lb. ai./gal.)	$1.60
2. 4.0 fl. oz. of Carboxin thiram (1.67 + 1.67 lb. ai./gal.)	1.25
3. 3.0 fl. oz. of pentachloronitrobenzene (2.23 lb. ai./gal.)	0.50

Prior to the effective date of the interim rule, growers had only two treatment options: either a combination of options 1 and 3 or a combination of options 2 and 3.

The interim rule thus has the potential to save growers as much as $1.60 or as little as $0.50 per 100 pounds of seed. However, grower savings are likely to be no more than $0.85 per 100 pounds of seed, since typically, growers used a combination of options 1 and 3 before the effective date of the interim rule, and have used option 2 since then because they believe it is the most effective single treatment option. The $0.85 in calculated savings is based on the cost of chemicals only; it does not take into account grower costs for labor or equipment. Any changes in labor or equipment costs which result from the interim rule are expected to be minimal, at most.

Second, the interim rule may improve growers' seed germination. Research shows that double treated seed may germinate in some cases at a lower rate than untreated seed. We anticipate that single treated seeds may in some cases have germination rates slightly lower than untreated seeds and slightly higher than double treated seeds. It should be noted that many factors affect germination, and it is not possible to attribute increase or decrease in germination only to seed treatments.

There are an estimated 373 wheat growers in the four States containing regulated areas (248 in Arizona, 21 in California, 23 in New Mexico, and 81 in Texas). This grower estimate is based on data for the 1997–98 planting season. However, the full impact of the interim rule will not be felt until the 1998–99 planting season, because some of the seed planted for this year's crop was treated with a double fungicide. That seed was planted before the interim rule became effective on November 28, 1997.

We anticipate that the number of wheat growers within the regulated area will increase by approximately 100 (to an estimated total of 473) during the 1998–99 planting season due to reduced regulatory restrictions. Presumably, most of these wheat growers currently have gross receipts of less than $0.5 million, the U.S. Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the impact of the interim rule will largely be on small entities.

It is estimated that during the 1998–99 planting season, 24,683,550 pounds of seed from the regulated area will be treated with a single fungicide prior to planting that seed in the regulated area. This is an average of 52,185 pounds of seed per grower, assuming 473 growers. Based on savings of $0.85 per 100 pounds of seed, calculated above, it is estimated that growers will save up $444 each year as a result of the interim rule. This savings, although positive, represents only 1 percent of the average wheat grower's annual sales.

This $444 in cost savings is in addition to any benefits that might accompany potentially higher seed germination rates. If seed germination rates improve as anticipated, grower yield and sales may increase by as much as 2 percent.

Thus, the economic impact of the interim rule on small entities will be positive, but relatively insignificant, equivalent to no more than 3 percent of the annual sales for the average wheat grower.

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 62 FR 64263–64265 on December 5, 1997.

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

Done in Washington, DC, this 28th day of August, 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–23905 Filed 9–3–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 93–076–10]

RIN 0579–AA59

Animal Welfare; Marine Mammals, Swim-With-the-Dolphin Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare regulations to establish standards for ''swim-with-the-dolphin'' interactive programs. These standards are being promulgated under the authority of the Animal Welfare Act and are necessary to ensure that the marine mammals used in these programs are handled and cared for in a humane manner.

EFFECTIVE DATE: October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (AWA), Congress authorized the Department of Agriculture to promulgate regulations and standards for the humane handling, care, treatment, and transportation of captive marine mammals by regulated entities. The AWA regulations are contained in title 9 of the Code of Federal Regulations, chapter I, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of terms used in parts 2 and 3. Part 2 is designated as ''Regulations,'' and part 3 is designated as ''Standards'' for the humane handling, care, treatment, and transportation of covered animals by regulated entities. Subpart E of part 3 contains the standards applicable to marine mammals.

On January 23, 1995, we published in the **Federal Register** (60 FR 4383–4389, Docket No. 93–076–2) a proposal to amend the regulations by establishing standards for ''swim-with-the-dolphin'' (SWTD) programs in a new § 3.111.

We solicited comments concerning our proposal for an initial comment period of 30 days ending February 22, 1995, followed by three extensions ending March 24, 1995 (see 60 FR 10810, Docket No. 93–076–4; 60 FR 12908, Docket No. 93–076–5; and 60 FR 15524–15525, Docket No. 93–076–6).

Comments Received on the SWTD Proposed Rule

From January 23, 1995, the date the comment period on proposed rule Docket No. 93–076–2 opened, until March 24, 1995, the final close of the comment period, we received a total of 22 comments. They came from exhibitors, exhibitor associations, animal protection organizations, Federal agencies, and other members of the public. The comments are discussed below by topic.

In this final rule, we are establishing regulations and standards for the humane handling, care, and treatment of cetaceans used in SWTD programs. These regulations and standards address space requirements, veterinary care, personnel and handling requirements, and recordkeeping.

We are amending the definition we proposed for ''Swim-with-the dolphin (SWTD) program'' to substitute the word ''cetacean'' for ''dolphin'' in the first sentence and throughout this final rule, except in the generally accepted name of these interactive programs. We consider the term cetacean to more accurately describe the types of marine mammals that may be used in SWTD programs. For consistency's sake, in the preamble of this final rule, we use the term cetacean in discussing the comments submitted by the public. We consider such use to be consistent with the intent of the issues raised.

Opposition to SWTD Programs

One commenter opposed SWTD programs because of what the commenter saw as the risk of zoonotic diseases being transmitted to the cetaceans from humans. The commenter stated that because cetaceans tend to mask signs of illness, they do not lend themselves to efficient diagnosis, and, therefore, are unsuited to captivity.

The issues raised by the commenter, those of whether cetaceans should be used in SWTD programs, and whether cetaceans should be kept in captivity at all, transcend the scope of the proposed rule. The rule as proposed was predicated on the assumption that marine mammals will continue to be used in interactive programs. The proposed provisions were intended to address the regulatory needs of the specialized captive display SWTD programs, so that the animals used in the programs are treated in a humane manner. The statement that cetaceans tend to mask signs of illness as long as possible can be made for many species. However, competent use of behavioral and feeding observations, and preventive and therapeutic veterinary medical programs of care, can and do provide adequate information and a strong basis for efficient medical diagnosis and treatment. Therefore, we are making no changes to the final rule based on this comment.

One commenter stated that no new SWTD programs should be approved until APHIS has independent, trained observers conduct a long-term continuous study on all aspects of human/cetacean interaction.

Prior to the reauthorization of the Marine Mammal Protection Act (MMPA) and the cessation of SWTD program oversight by the National Marine Fisheries Service (NMFS), U.S. Department of Commerce, NMFS commissioned an independent study of the SWTD programs operating at that time. The results of that study, submitted to NMFS in 1994, and

published in the journal *Marine Mammal Science,*[1] were considered in the development of the proposed rule. APHIS has concluded that commissioning another such study would be duplicative and not cost efficient, and would pose an unnecessary delay in the development of the rule. Therefore, we are making no changes to the final rule based on this comment.

One commenter recommended that SWTD programs be classified as ''experimental'' until review of current and future information warrants the designation of permanent status. The commenter stated that this approach could include setting specific dates for future programmatic review and reconsideration of permanent status.

The granting of ''experimental'' or temporary licenses is outside the authority of APHIS under the AWA, and we are making no changes to the final rule based on this comment.

Public Involvement in Development of the Proposed Rule

One commenter stated that it was ''offensive and inequitable'' that no input was sought from animal welfare groups in the development of the proposed rule. Another commenter objected to what the commenter termed ''industry conflict of interest'' because our proposal stated that the proposed minimum space requirements were developed ''in conjunction with professional industry organizations.''

APHIS has conducted this rulemaking in accordance with the Administrative Procedure Act (APA) and other applicable laws and executive orders. As stated in the preamble of the proposed rule, APHIS developed the proposed rule using several sources of information. This information was in APHIS's possession at the time the proposed rule was developed. Comments were not solicited from specific groups or organizations during development of the proposal. Following publication of the proposed rule, APHIS provided for an adequate public comment period to provide all interested parties the opportunity to support, oppose, recommend changes, or to otherwise comment on the proposed rule.

One commenter recommended that APHIS publish an interim rule establishing SWTD regulations until a final rule could be published. APHIS examined the possibility of publishing an interim rule. However, it was determined that this would not be the best regulatory approach. As noted above, by conducting proposed rulemaking rather than publishing an interim rule, APHIS provided the public an opportunity to comment on and recommend changes to the SWTD standards prior to their being made effective.

Need for SWTD Regulations

One commenter stated that, unless APHIS can show that the current regulations are harming animals, the Agency should not say in the preamble of its proposed rule that the rule is necessary to ensure the humane care of program animals.

Until this final rule becomes effective, APHIS does not have in place specific standards that address the special considerations of SWTD programs. The reference in the proposed rule to the need for standards was not intended as a judgment concerning the currently operating programs. However, it was intended to emphasize the need to implement regulatory provisions that specifically address AWA issues with regard to these specialized captive display facilities.

Several commenters stated that establishing regulations specifically for SWTD programs, in addition to those regulations already established regarding marine mammals, was arbitrary and redundant. One commenter stated that standards for SWTD programs should be the same as for any marine mammal facility, except in what the commenter termed ''rare'' instances where SWTD facilities are necessarily different from other facilities. Several commenters stated that facilities with existing SWTD programs have already established standards for those programs and, therefore, that specific U.S. Department of Agriculture (USDA) standards for such programs are unnecessary.

We consider the special circumstances of SWTD programs, both for the cetaceans involved and the people who participate in them, to require specific regulatory language. The regulations promulgated in this final rule address the humane care and maintenance of marine mammals used in these specialized programs, and we consider them necessary to ensure the marine mammals' continued well-being.

SWTD Program Definitions

A number of commenters commented on the proposed definition of *swim-with-the-dolphin (SWTD) program* that was set forth in § 1.1 of the proposed rule.

One commenter expressed concern that the proposed definition of SWTD programs excluded those programs where members of an audience participate as a minor segment of an educational show. The commenter said the meaning of ''minor'' was unclear, and that whenever members of the public enter the water with the ability to ''swim'' with marine mammals, the activity should be regulated.

The use of audience participation as a segment of any presentation, educational or otherwise, is an integral component of the presentations at many regulated marine mammal facilities. The proposed rule was not meant to include such presentations where a member of the public enters the primary enclosure to pet, feed, or issue a behavioral command to the animal(s) as part of such a performance. Since presentations vary greatly from facility to facility, it would be inappropriate to strictly define ''minor,'' and we do not do so in this final rule. SWTD programs are programs that have been designed with the primary purpose of having members of the public interact with the animals in the water by swimming (this includes wading, scuba diving, and snorkeling). This rule has been developed to address the special needs of such programs.

One commenter stated that no facility that conducts shows or performances of any kind should be allowed to conduct SWTD sessions, because such shows cause additional unnecessary stress for cetaceans.

APHIS is unaware of any valid scientific research or other information that documents or supports that performances, as referred to above, cause additional unnecessary stress for the animals. We are not aware of any scientific or other reason to restrict such a program, and we are making no changes to the final rule based on this comment.

Several commenters recommended that the proposed definition of *swim-with-the-dolphin (SWTD) program* be revised to mean [*with the commenters' suggested additions italicized; suggested deletions bracketed*] any human-cetacean interactive program in which a member of the public enters the primary enclosure in which *an SWTD designated* cetacean is housed [to interact with the animal] *for the purpose of swimming, snorkeling, or scuba diving with the cetacean.* The commenters recommended that this exclude, *but such exclusion not be limited to,* feeding and petting pools and the participation of any member(s) of the public audience as a [minor] segment of [an educational] *a presentation of a* show. The commenter

[1] Amy Samuels and Trevor R. Spradlin, ''Quantitative Behavioral Study of Bottlenose Dolphins in Swim-with-the-Dolphin Programs in the United States,'' *Marine Mammal Science,* 11(4), 1995, pp. 520–544.

stated that this revision would make clear that ''swimming'' with the animal is the key to an SWTD session. According to the commenter, removing the words ''minor'' and ''educational'' in describing exclusions to the definition, and referring only to SWTD-designated cetaceans, would clarify the scope of the programs regulated. Another commenter recommended that ''swim'' be clarified to mean ''immersed in water.''

Our intent was to make the definition of SWTD programs as clear as possible without being so restrictive that future activities that would need to be regulated as SWTD programs are excluded. After reviewing the comments on the definition of SWTD programs, APHIS has incorporated language that we believe addresses the concerns raised by the commenters without being unduly narrow in definition. Accordingly, we are defining *swim-with-the-dolphin (SWTD) program* to mean any human-cetacean interactive program in which a member of the public enters the primary enclosure in which an SWTD designated cetacean is housed to interact with the animal. This interaction includes, but such inclusion is not limited to, wading, swimming, snorkeling, or scuba diving in the enclosure. This interaction excludes, but such exclusion is not limited to, feeding and petting pools, and participation of any member(s) of the public audience as a minor segment of an educational presentation or performance of a show.

One commenter recommended that the definition of *swim-with-the-dolphin (SWTD) program* be expanded to specify that the regulations apply to all programs involving swim encounters with cetaceans, including ''therapy'' programs.

The regulations and standards apply to all facilities that engage in activities for which a license or registration is required under the AWA. At present there may be private therapy programs that are not licensed or registered under the AWA. APHIS cannot enforce AWA regulations and standards at facilities that are not required to be licensed or registered under the AWA. Any SWTD programs that engage in activities for which a license or registration is required under the AWA are subject to this final rule.

In various places in the proposed regulations, we used the word ''interactive'' to describe sessions or areas where SWTD activities are carried out. Several commenters recommended that the term ''interactive'' be replaced with ''swim-with-the-dolphin'' to avoid confusion with other programs referred to as ''interactive.''

We do not agree that there would be confusion over the use of the term ''interactive.'' In reviewing its use throughout the rule, we do not find an instance where switching to the term ''swim-with-the-dolphin'' would clarify the meaning. The terms ''interactive area'' and ''interactive session'' are defined in § 1.1. Additionally, § 3.111 is entitled ''Swim-with-the-dolphin programs.'' There should be no reasonable confusion over the terminology used. Therefore, we are making no changes to the final rule based on this comment.

Types of Cetaceans Used in SWTD Programs

Under § 3.111(d), APHIS proposed that only *Tursiops truncatus* may be used in SWTD programs. Several commenters objected to this provision, stating that there is no scientific justification for limiting SWTD programs to *Tursiops truncatus,* and that experience has shown that other cetaceans can be trained and conditioned to take part in such interactive swimming programs.

At the time the proposed rule was published, APHIS believed that the only animals in use in SWTD programs in the United States were *Tursiops truncatus.* This information was incorrect and, therefore, this final rule addresses the use of varied species of cetaceans in SWTD programs. Of the approximately 88 species of cetacea, 35 species have been or currently are being maintained in U.S. aquaria and zoos. While many species may never be considered for inclusion in SWTD programs, based on temperament, difficulty in maintaining them in captivity, conservation and breeding considerations, etc., individual representatives of a species may be suitable for inclusion in a SWTD program.

We are amending § 3.111(d) to read: *Program animals:* Only cetaceans that meet the requirements of § 3.111(e)(2) and (3) may be used in SWTD programs. We believe that this provision will provide safeguards on the animals used in SWTD programs, while providing flexibility to facilities in choosing which animals to use. As long as a cetacean is adequately trained and conditioned in human interaction, and is in good health, it may be used in an SWTD program. All program animals are subject to removal (temporary or permanent) from a SWTD program if they exhibit unsatisfactory, undesirable, or unsafe behaviors (§ 3.111(e)(8) in this final rule). Section 3.111(e)(3) is a new section added to clarify that all animals used in SWTD programs shall be in good health.

Several commenters took issue with the statement in our proposal that industry experience has demonstrated that *Tursiops truncatus* can be adequately trained and conditioned to interact safely with humans, stating that this conclusion has not been definitively proven by any report issued to date. The commenters stated that injuries have occurred in both petting pools and hands-on interactive sessions.

The statement in the preamble of the proposed rule concerning the training and conditioning of *Tursiops truncatus* to interact safely with humans was not meant to imply that no injuries had ever occurred, only that the incidence of injuries in SWTD programs has been low. According to NMFS statistics during the years of their oversight (1989 to April, 1994) of these programs, there were approximately 14 reported injuries during 166,615 encounters (individuals participating in SWTD sessions). Using these statistics, the overall injury rate was less than 0.01 percent, with yearly rates varying between 0 percent and 0.03 percent. It can be inferred that injuries caused by human-cetacean interaction during SWTD sessions occur at an extremely low rate, and that these interactions are relatively safe.

Several commenters recommended that the animals used in SWTD programs be limited to those that are ''captive-born,'' stating that sufficient numbers of *Tursiops* breed in captivity, and that captive-born animals are more tractable.

It is beyond the scope of the AWA to restrict the activities of a licensee or registrant who is in compliance with the AWA and the regulations and standards. In addition, we believe that the final rule contains adequate safeguards that will ensure that animals which are aggressive or display inappropriate behavior will not be used in SWTD programs. We are not making any changes to the final rule based on this comment.

Handling Requirements and SWTD Enclosure Areas

Proposed § 3.111(a) provided that the primary enclosure for SWTD cetaceans must contain an interactive area, a buffer area, and a sanctuary area, and that movement of cetaceans into the buffer or sanctuary area must not be restricted. Several commenters expressed their support for this requirement. Several commenters recommended that the regulations also provide that there be no verbal or nonverbal reprimands to cetaceans going to the buffer area, that there be

full rations in timely fashion even to cetaceans choosing not to take part in the programs, and that, in general, stronger language be added to make clear that movement into or use by the cetaceans of the buffer or sanctuary area shall not be restricted in any way. Another commenter recommended that the regulations specifically state that the buffer or sanctuary areas may not be intentionally or inadvertently uninviting to program cetaceans.

Handling requirements for all animals are found in § 2.131. Specifically, in § 2.131(a)(2)(ii), the issues of withholding of food are addressed. This regulation prohibits deprivation of food or water in training, working, or other handling. However, the regulations allow for the short-term withholding of food or water from animals by exhibitors, as long as each of the animals affected *receives its full dietary and nutrition requirements each day. (emphasis added).* Because a regulation addressing the issue of full rations for all animals is already in effect, it is not necessary to promulgate additional language in this final rule.

In the Supplementary Information section of the proposed rule, the issue of unrestricted movement by the cetaceans into the buffer and/or sanctuary area, as well as the intent of the rule to provide that the designated enclosure areas are not made intentionally uninviting to the animals, was addressed. APHIS wishes to clarify the use of the word ''uninviting'' as used in this rule. ''Uninviting'' means that the area is less attractive to the animal for whatever reason. Examples of conditions that may make a certain area ''uninviting'' to a program animal include, but are not limited to, loud background or other noise, unappealing substrate, different lighting patterns, or uncomfortable water temperature. In this final rule, we are adding language to clarify this intent, by amending § 3.111(a) to provide, in part, that the primary enclosure for SWTD cetaceans must contain an interactive area, a buffer area, and a sanctuary area, that none of these areas shall be made uninviting to the animals, and that movement of the cetaceans into the buffer or sanctuary area must not be restricted in any way.

The intent of the proposed regulations, among other things, was to provide for a sanctuary area that the program animals may choose to use at any time. The buffer area was not intended to be used as an extra sanctuary area. We consider it acceptable for the program animals to be recalled from the buffer area. However, the cetaceans must have the option of either returning to the interactive area or ignoring the recall command, by staying in the buffer area or moving to the sanctuary area. To emphasize that the animals are not to be recalled from the sanctuary area during an interactive session, we are amending § 3.111(e)(6) as proposed (redesignated as paragraph (e)(7) in this final rule) to provide, in part that each SWTD program must limit interaction between cetaceans and humans so that the interaction does not harm the cetaceans; does not remove the element of choice from the cetaceans by actions such as, but not limited to, recalling the animal from the sanctuary area; and does not elicit unsatisfactory, undesirable, or unsafe responses from the cetaceans.

One commenter stated that the regulations should specify that cetaceans that are ''resting'' should not be kept in isolation from their conspecifics (members of the same species). Another commenter recommended that facilities be required to have at least two cetaceans resting at the same time.

It is the intent of the standards set forth in § 3.109 of the current regulations that no marine mammal be kept in isolation without medical or compatibility justifications. Under the proposed rule, given the restrictions on public interaction times and the requirement for enclosure design and availability of all areas (interactive, buffer, and sanctuary) to program animals at all times, it seems highly unlikely that any active program animal will be kept in isolation from conspecifics for other than justifiable medical reasons. Therefore, we do not consider it necessary to make any changes to the final rule based on these comments.

Two commenters recommended that the regulations include language that states: ''Construction and configuration of the interactive, buffer, and sanctuary areas should be similar in design and consistent in location. Redesign or reconfiguration of these areas should not be undertaken without prior authorization by the Administrator.'' The commenters stated that such requirements would help ensure that cetaceans would be equally comfortable in the sanctuary area and the interactive area.

The proposed rule included the requirements that the buffer and sanctuary area each offer at least as much space as the interactive area, that movement be unrestricted, and that the animals not be recalled from the sanctuary area during an interactive session. We consider the revision to § 3.111(a) in this final rule, discussed above in response to concerns about space requirements, to adequately address the issues raised by the commenters. We do not consider it necessary to oversee enclosure changes that comply with the regulations.

A number of commenters supported the proposed requirements for the three areas and for their minimum size. Several commenters objected to the requirement for a buffer area in an SWTD program. One commenter stated that forcing an existing facility to divide one interactive area into three areas may be impracticable, would result in a small area for interaction, and would penalize those facilities that do not use food to lure cetaceans. One commenter recommended that, in place of a buffer zone, a 2:1 human participant-to-cetacean ratio be established, and space requirements be based on the following calculations: Program cetaceans would be provided with over half the available surface area that is not within 2 meters of any swimming human (assuming that all swimmers are maximally dispersed—i.e., not within 2 meters of each other).

The intent of the buffer area is to allow the animals to leave the interactive area, but still be recalled, as well as provide a buffer zone from human contact during sessions. Because the rule requires the interactive sessions to be controlled swims, the animals will be under the direction of the trained personnel, and it will be up to the behaviorists to determine if food or other reinforcement measures are used to reward the animals.

With regard to calculating required space (surface area) as recommended by the commenter in lieu of a buffer zone, we consider the method recommended by the commenter to be unduly complicated, and subject to the hypothetical placement of humans during a session. In addition, no justification for or advantages of this proposed method were offered. Therefore, we are making no changes to the final rule based on this comment.

One commenter supported the concept of requiring a buffer zone between the interactive area and the sanctuary area, but objected to the requirement that it be the same size as the sanctuary area. The commenter stated that, with the buffer zone and the sanctuary area being the same size, two-thirds of the pool would be a cetaceans-only area. Conversely, several other commenters stated that, although captive cetaceans may swim away from human swimmers in designated refuge areas, humans still remain in close proximity to them. To help reduce the stress to cetaceans, the commenters

recommended that the buffer and sanctuary areas be at least three times larger than the interactive area.

The need for three areas within the enclosure for SWTD cetaceans has been discussed above, as has the rationale for requiring the areas to be equivalent in size and acceptability to the cetaceans. Requiring a sanctuary and buffer area to be at least three times the interactive area would place an undue burden on the facilities, and would require some existing programs to terminate sessions for lack of required space. Further, no documented evidence of the necessity for such expansive sanctuary or buffer areas has been presented to APHIS. Therefore, we are making no changes to the final rule based on this comment.

One commenter stated that, in addition to the three areas proposed, each SWTD facility should have a fourth area for cetaceans that are resting, to keep the cetaceans from the interactive area during their resting period. The commenter recommended that the resting area have the same minimum requirements as the other three areas, in case it is used for cetacean retraining.

Because the sanctuary area will provide the cetaceans with an area from which they cannot be recalled during an interactive session, we consider a fourth area of equal proportion to be duplicative and to place an unnecessary space burden on the facility, and are not requiring such an area in this rule. There are more economical means available at most facilities housing marine mammals (*i.e.*, holding pools, other enclosures, etc.) To handle animals that should not be participating in a given session.

Swimmer-to-Cetacean and Swimmer to Attendant Ratios

In § 3.111(e)(3) as proposed (redesignated in this final rule as paragraph (e)(4)), we provided that neither the ratio of human participants to cetaceans in an SWTD session, nor the ratio of human participants to attendants, may exceed 3:1. In the explanatory information to our proposal, we stated that these ratios were based on permit requirements established by NMFS as part of its regulation of SWTD programs.

A number of commenters opposed the proposed 3:1 ratio for both swimmers to cetaceans and human participants to attendants. Several commenters stated that the ratio of swimmers to cetaceans set forth in the NMFS regulations was 2:1, and supported that ratio. Several commenters recommended that the allowable ratio of swimmers to cetaceans be 1:1. One of these commenters stated that at a 2:1 ratio, high risk behaviors were observed during SWTD programs. Several commenters stated that, if only controlled swims (discussed below) are allowed, the maximum ratio of swimmers to cetaceans should be 4:1.

One commenter stated that NMFS did not specify a required human participant-to-attendant ratio, but that under NMFS regulations, all sessions had to be supervised by at least two attendants. One commenter stated that there should be at least one attendant for each two participating swimmers. Another commenter recommended no more than a 1:1 ratio for human participants to attendants in the water, attendants in the water to cetaceans, and attendants in the water to human participant-cetacean pairs.

We consider that the two 3:1 ratios proposed allow for adequate supervision of SWTD sessions under normal circumstances, without imposing an undue burden on SWTD facilities, and are, therefore, making no changes to the final rule based on these comments. Although we stated in the explanatory information of the proposed rule that the proposal was based on pre-existing NMFS permit conditions for programs prior to April 1994, we did not intend to imply that the precise permit conditions were set forth in the proposed rule. We regret any confusion the explanatory wording may have caused.

One commenter stated that, if cetaceans enter the buffer area or the sanctuary area for an extended period of time, human participants should be removed from the interactive area to maintain the allowable human-to-cetacean ratio.

To achieve compliance with the required human participant-to-cetacean ratio, a facility may need to address what measures would be taken to assure that the maximum ratio will not be exceeded if a cetacean leaves the interactive area. Although this contingency may have been implied in the proposed rule, we believe there is merit in including specific language in the final rule. The methods of complying with the handling requirements are left to the discretion of the facility. Therefore, we are amending § 3.111(e)(7) (redesignated as paragraph (e)(8) in this final rule), which specified the information that an SWTD facility must provide in a description of the program, to include the protocol for maintaining compliance with the required human participant-to-cetacean ratio if an animal is removed from or leaves the interactive and buffer area during an interactive session.

SWTD Personnel Requirements

In proposed § 3.111(c), we set forth proposed minimum requirements for personnel at an SWTD program. We proposed that each program must have at least a licensee or manager, a primary behaviorist, a supervising attendant, and an attending veterinarian, and we described the minimum qualifications for each position. One commenter recommended that the regulations require an SWTD program to have at least one attendant for every two cetaceans. The commenter also recommended that the supervising attendant should have at least 3 years experience with SWTD programs and the operant conditioning of cetacean in such programs.

The proposed rule required at least one attendant for every three human participants in an interactive session. It also required at least two attendants per session. Compliance with each of these requirements would ensure that the commenter's recommended ratio of at least one attendant per two cetaceans will be met and exceeded. Allowing only one attendant per two cetaceans would mean that one attendant would need to supervise two areas of activity and up to six humans. We do not consider this to be in the best interests of safety for the animals or the human participants. In light of the training and experience requirements for other personnel, we do not consider it necessary to require comparable training experience for the supervising attendant. Therefore, we are making no changes to the final rule based on this comment.

One commenter stated that because proposed § 3.111(e)(5) (redesignated as paragraph (e)(6) of this final rule) requires each session to have at least two attendants, such a personnel requirement should be included along with the other personnel requirements in § 3.111(c)(3).

Handling requirements are found in § 3.111(e) as proposed. We consider it appropriate to include with the handling requirements the requirement that at least two attendants be present during an interactive session. We do not consider it necessary or appropriate to include that requirement in § 3.111(c), cited by the commenter, because that paragraph deals with personnel qualifications and overall staff requirements.

One commenter stated that the regulations should require that the supervising attendant have 3 years experience within the past 5 years. Another commenter, while opposing the inclusion of specific personnel

qualifications in the regulations, recommended that, if qualifications are included, they should include a recent time frame within which a person must have had experience that qualifies them for a given personnel designation. The commenter recommended that the following personnel requirements be added to the regulations in place of those proposed:

Experienced head trainer: At least one full-time staff member with at least 6 years experience in training cetaceans for SWTD behaviors, or with an equivalent amount of experience involving in-water training of cetaceans, who serves as the head trainer for the SWTD program. The required experience must have been obtained within the last 10 years.

Experienced qualified trainer: At least one full-time staff member with at least 3 years experience involving human/cetacean interactions. The required experience must have been obtained within the last 5 years.

Attendants or employees: The experienced qualified trainer, in consultation with the experienced head trainer and/or licensee or manager, may designate other adequately trained attendants or employees from the licensee's staff to conduct and monitor individual SWTD program sessions consistent with the regulations.

Attending veterinarian: At least one staff or consulting veterinarian who was graduated from an accredited college of veterinary medicine and is licensed to practice veterinary medicine.

As proposed, § 3.111(c), ''Employees and Attendants,'' sets forth minimum experience requirements for SWTD personnel. We agree that the names recommended by the commenter represent titles more consistent with those used elsewhere in the industry, without affecting the intent or implementation of this rule. For the purposes of this document, the required positions will be referred to as licensee/manager, head trainer/behaviorist, trainer/supervising attendant, attendant, and attending veterinarian.

We agree that the key personnel position of head trainer/behaviorist must be held by an individual knowledgeable of up-to-date training and handling techniques and behavioral training theories. This person will hold major responsibility for the training programs for the animals and the implementation of the SWTD program, and will have supervisory responsibilities over the other trainers and attendants. This final rule will require that the 6 years of experience required of the head trainer/behaviorist have been obtained within the previous 10 years. With this provision, we do not consider it necessary to specify the time period for the experience for the licensee/manager, trainer/supervising attendant, and attendants, as long as these personnel meet the experience and training requirements set forth in this rule.

We agree that including a requirement for the training of the attendants will serve to clarify the intent of the regulations, that of providing adequately and appropriately trained staff participating in interactive sessions and providing for the safety of the cetaceans and the human participants within reasonably expected limits. Therefore, we are adding such a requirement at § 3.111(c)(4).

With respect to the criteria recommended by the commenter for the attending veterinarian, the AWA is not intended to supersede any State Board of Veterinary Medicine. While requiring that the attending veterinarian be licensed to practice veterinary medicine is an acceptable clarification of the requirements, and we are adding such a clarification in this rule, most State licensing boards have provisions for licensing foreign graduates and/or graduates from non-accredited veterinary schools. We are, therefore, not including a requirement that the attending veterinarian have been graduated from an accredited college.

One commenter stated that, although proposed § 3.111(c)(4) would require the attending veterinarian at an SWTD facility to have had at least the equivalent of 2 years' full-time experience with cetacean medicine, the word ''equivalent'' is not defined. The commenter stated that the lack of such a definition makes the regulatory requirement virtually meaningless.

The requirement for ''at least the equivalent of 2 years full-time experience with cetacean medicine within the past 10 years'' was intended to mean that, although it is not required that the attending veterinarian work as a full-time marine mammal veterinarian for at least 2 years, he or she must have the equivalent in experience (at least 4,160 hours of actual marine mammal medicine work). We are, therefore, amending the definition of *attending veterinarian* to clarify this intent.

In this final rule, we are amending § 3.111(c) to require that each SWTD program have, at the minimum, the following personnel, with the following minimum backgrounds (each position must be held by a separate individual, with a sufficient number of attendants to comply with § 3.111(e)(4)). We are also amending § 3.111(c)(4) of this final rule to clarify our intent concerning the training of attendants.

1. The *licensee or manager* must be at least one full-time staff member, with at least 6 years experience in a professional or managerial position dealing with captive cetaceans.

2. The *head trainer/behaviorist* must be at least one full-time staff member with at least 6 years experience within the past 10 years in training cetaceans for SWTD behaviors, or an equivalent amount of experience involving in-water training of cetaceans, who serves as head trainer for the SWTD program.

3. The *trainer/supervising attendant* must be at least one full-time staff member with at least 3 years training and/or handling experience involving human/cetacean interaction programs.

4. An adequate number of *attendants* at a facility must be adequately trained in the care, behavior, and training of the program animals. Attendants shall be designated by the trainer, in consultation with the head trainer/behaviorist and licensee/manager to conduct and monitor interactive sessions in accordance with § 3.111(e).

5. The facility must have an *attending veterinarian,* who is at least one staff or consultant veterinarian with at least the equivalent of 2 years full-time experience (4,160 or more hours) with cetacean medicine within the past 10 years, and who is licensed to practice veterinary medicine.

One commenter recommended that the regulations require that the experienced head trainer or experienced qualified trainer be on-site at all times while in-water SWTD program sessions are in progress.

We do not consider this recommended change to be necessary. If attendants are required to be adequately trained to conduct and monitor an SWTD session, as discussed above, and all other handling and personnel requirements are met, it should not be necessary to require that specific additional personnel be present during the session.

One commenter stated that it was not clear from the proposal whether only the facility personnel required by the regulations could conduct an SWTD program, or whether it would be required merely that one of the personnel be on-site during operation of all SWTD sessions. The commenter recommended the latter. The commenter also recommended that the regulations allow the manager and primary behaviorist to be the same person.

The intent of the proposed rule was that only qualified personnel could conduct the sessions. Given the

requirements discussed above, this will include adequately trained attendants, as well as the designated trainers. It is not the intent of the rule to specify the work schedule of individual facilities. No evidence has been presented to support the need for all personnel to be available during a session.

The intent of requiring the manager and the head trainer/behaviorist to be separate people is to minimize the potential conflict of interest between the business aspect of the facility and the welfare of the animals. The designations and requirements were developed to provide safeguards for the protection of the animals. Therefore, we are making no changes to the requirement that these positions be kept separate.

One commenter recommended that the regulations require that all attendants have at least 3 years experience with SWTD programs. The commenter recommended that, to promote this goal, an apprenticeship program should be established that requires on-site supervision at all times by a qualified attendant of any attendant who does not have the required experience.

It is not within APHIS's jurisdiction to establish such an apprenticeship program, nor to require participation in such a program.

Several commenters recommended that the background requirements for supervising attendant under proposed § 3.111(c) be made more specific. One commenter stated that, overall, the proposed personnel requirements contain only general background, experience, and exposure elements. The commenter recommended that the regulations set forth certified job descriptions; explicit skill, knowledge, education, experience, and training levels; formal credential requirements; and valid performance tests to demonstrate the hands-on abilities of applicants.

We cannot tell from the comments what specific requirements the commenters had in mind with regard to supervising attendants. As noted above, we have amended proposed § 3.111(c) to clarify our intent regarding the background requirements for SWTD program personnel.

With regard to personnel requirements overall, we consider the personnel requirements as set forth in this final rule to provide adequate minimum standards for personnel engaged in SWTD programs. The requirements for uniform job descriptions recommended by the commenter could potentially impose an undue burden on the licensees.

One commenter stated that requirements for employees and attendants should specifically require knowledge and experience in ''operant conditioning'' of animals using positive reinforcement techniques.

At this time, we do not have sufficient supporting scientific evidence to warrant requiring a given training system, and are not including such a requirement in this final rule. The current animal handling regulations, set forth at § 2.131, already prohibit the use of physical abuse, deprivation of food or water, and handling techniques that cause behavioral distress, physical harm, or unnecessary discomfort.

Several commenters stated that requirements for employees and attendants already exist in the current regulations for marine mammals, and that any updating of employee requirements should be incorporated into those existing provisions. Another commenter stated that the requirements for SWTD personnel should be the same ''performance-based'' requirements as those under the general marine mammal regulations in § 3.108. The commenter also stated that having a certain number of ''years of experience'' does not necessarily qualify an individual for a position.

As indicated in the Supplementary Information section of the proposed rule, we consider SWTD programs to require more specialized regulations and standards than are set forth in the current regulations regarding marine mammals, due to the intense interactive nature of these programs. Although we agree that a person's ability can not always be gauged by a given number of years of experience, we do consider length of experience to be a measurable, minimum initial standard.

Several commenters objected to the inclusion in the proposed rule of minimum requirements for a licensee or manager. The commenters stated that the definitions in 9 CFR 1.1 already contain a definition of *licensee*, and one commenter stated that the proposed requirements for an SWTD licensee or manager are unduly specific when compared to the broad discretion given to research facilities in § 2.32(a) of the existing regulations.

We do not consider the regulations for research facilities, set forth in § 2.32(a), to be applicable to SWTD facilities. If the requirements of § 2.32(a) were applied to SWTD programs, it would fall on the licensee or manager of the SWTD program to determine whether he or she was qualified for the position. This would represent a substantial conflict of interest. APHIS maintains its position that SWTD programs require additional requirements, beyond those promulgated to date for public display facilities, and that providing training and experience requirements for all personnel directly responsible for the well-being of the cetaceans is necessary to meet this objective. The definition of licensee (§ 1.1) does not preclude the application of additional training and experience requirements to specific subparts of the regulations as necessary. Therefore, we are making no changes based on these comments.

Restrictions on Cetacean Interaction Time

A number of commenters addressed the requirement set forth in proposed § 3.111(e)(1) that interaction time for each cetacean not exceed 2 hours per day, and that each program cetacean have at least one period in each 24 hours of at least 10 continuous hours without public interaction. Several commenters stated that the interaction time for each cetacean should not exceed 1 hour per day. One of these commenters stated that the recommended 1 hour of interaction time should be divided into two 30-minute sessions per day, with a rest period of at least 2 hours between sessions. The other commenter stated that, in addition to being limited to 1 hour of interaction time per day, any cetacean exposed to human swimmers for 30 consecutive minutes should have at least 4 subsequent uninterrupted hours to rest. Another commenter stated that no animal should interact with more than 16 human participants per week.

One commenter recommended that interactive time for each cetacean be limited to no more than 2 hours per day, divided into no fewer than 4 interactive sessions of 30 minutes each, with at least 90 minutes separating each of these sessions, even if any of the sessions do not run a full 30 minutes. Another commenter stated that each cetacean should average no more than four interactive encounters per day, with no cetacean having more than six of these sessions per day. The commenter recommended that the mean length of these sessions should be no more than 15 minutes each, with none lasting more than 20 minutes.

We consider the minimum handling requirements regarding cetacean interaction time in § 3.111(e)(1) of this final rule, in combination with other handling requirements in this final rule, as well as those in the existing regulations, to be adequate to provide sufficient safeguards to protect the well-being of the program animals. In addition to the requirements of § 3.111(e)(1), the other handling

requirements include (1) the general handling requirements of § 2.131 (handling may not cause, among other things, trauma, behavioral stress, physical harm, or unnecessary discomfort); (2) the handling requirements of § 3.111(e)(6) (redesignated as paragraph (e)(7) in this final rule) to allow the freedom of choice for participation by the cetacean; and (3) § 3.111(e)(7) (redesignated as paragraph (e)(8) in this final rule), which requires the removal of an animal from the session and/or termination of the session if unsatisfactory behaviors occur.

Although we share the commenters' concern that adequate rest periods be provided for SWTD cetaceans, we do not believe that evidence has been presented indicating that the proposed interaction and rest times are not sufficient to protect the health and well-being of the animals. Without such evidence, further restriction of the interaction times or the number of human participants a cetacean may interact with would place an undue burden on the facility, by either requiring the addition of animals to the program in order to maintain current interaction levels, or forcing the facility to sustain a potentially high economic burden in loss of income due to the increased restrictions on interactive sessions. The requirements in this rule pertaining to the enclosure areas, along with a prohibition on the recall of any animal from the sanctuary area during a session, provide each SWTD cetacean the option of avoiding interactive sessions. Therefore, we are making no changes based on these comments.

One commenter opposed the proposed requirement that each program cetacean have at least one period in each 24 hours of at least 10 continuous hours without public interaction. The commenter said that 10 hours of continuous rest would be on the extreme low side, and that the commenter knew of no existing program that had less than 16 hours of continuous rest.

Given the above restrictions on the number of hours of public interaction for program animals (2 hours per day), the required minimum of at least one 10-hour continuous rest period is, in fact, not the only rest period that will be required for program animals. There is no public interaction allowed for 22 of the 24 hours. Requiring at least one of the rest periods to be at least 10 continuous hours does not imply that the animals cannot be rested for longer periods. We see no indication or reason for currently existing facilities to alter their operations to lessen their established rest periods. By circumstance (business hours), most, if not all, facilities will likely exceed the 10-hour rest period overnight. No compelling, scientifically validated data or other material was supplied to support the above recommendation. Therefore, we are not making any change to the final rule based on this comment.

One commenter recommended that, in addition to 10 consecutive hours of rest in each 24-hour period, each cetacean should have no less than two full, nonconsecutive days of rest in each 7-day period, or no more than 2 days of work followed by 1 day of rest. Another commenter stated that each SWTD cetacean should have 3 full days off per week, and that, therefore, according to the commenter, no animal should take part in interactive sessions more than 4 hours a week.

The restrictions recommended by the commenters were not imposed under the original NMFS permits for the ''experimental'' programs, and no adverse affects attributed to overwork of animals were reported or documented. No scientifically valid data or other material was supplied to support the commenters' recommendations, and we are not aware of such data or material. Therefore, we are making no changes based on these comments.

One commenter recommended that the provisions regarding the number of hours of cetacean participation per day, and the number of rest hours per day, be more flexible. The commenter, an SWTD facility, stated that it had sometimes altered its normal schedule of sessions per day to accommodate bad weather or peak seasons, with no visible ill effects on program cetaceans.

We are making no changes based on this comment. We consider the provisions regarding the time limits for participation of cetaceans in the interactive sessions to be the minimum requirements necessary for the well-being of the animals affected.

One commenter requested that the regulations clarify that the 2-hour restriction on sessions set forth in proposed § 3.111 apply to the actual swim time with the animal, and not to activities such as introductory explanations by the staff.

The commenter's recommendation is consistent with the intent of the regulation. To clarify this intent, we are amending § 3.111(e)(1) in this final rule to state that interaction time (which we describe as designated interactive swim sessions) for each cetacean shall not exceed 2 hours per day.

One commenter stated that time constraints for human/cetacean interaction should either be established for all marine mammals or for none. The commenter stated that activities such as training and feeding currently require more than 2 hours at a time throughout the day, with no negative effects to either animals or humans.

The intent of the proposed rule was to provide regulations and standards for SWTD programs, not for all marine mammals. Program animals are, like their non-SWTD counterparts, subject to the training and handling necessary for marine mammal care and well-being. However, the SWTD programs place additional interactive time commitments on the animals. It is this additional interactive activity that this rule is designed to regulate. Therefore, we are making no changes based on this comment.

Training and Behavior of Cetaceans

Proposed § 3.111(e)(2) provided that all cetaceans used in an interactive session must be adequately trained and conditioned in human interaction so that they respond in the session to the attendants with appropriate behavior for safe interaction. One commenter stated that the term ''appropriate behavior'' was open to broad interpretation and should be precisely defined. One commenter stated that the regulations should specify that, before being used in an SWTD program, cetaceans must be well-trained for ''stationing,'' as well as for immediate ''recall'' under a wide variety of circumstances. Several commenters recommended that ''gate-training'' of cetaceans be specifically required.

Several commenters recommended a specified minimum period of training for cetaceans before participation in SWTD programs, ranging from 6 months to 1 year. Several other commenters recommended that, before being used in an SWTD program, cetaceans should have to demonstrate competency for a variety of husbandry/medical behaviors that would be useful for veterinary examinations without inducing excessive stress to cetaceans. One commenter stated that the proposed regulations did not define ''adequately trained,'' and that such an omission would give too much leeway to operators.

We are not making any changes to the final rule regarding the training of program animals. However, in this final rule, § 3.111(e)(7) and (e)(8) (paragraphs (e)(6) and (e)(7) in our proposed rule) are reworded to clarify our intent regarding what constitutes ''inappropriate'' behavior. We are adding the terms unsatisfactory, undesirable, or unsafe to describe such

behavior. An exhaustive list of ''appropriate'' behavior would vary in different situations, depending on the facility and program design, and not all behaviors will be necessary in all situations. Such a list is variable, depending on the facility and program design.

Under the requirements set forth in § 3.111(g), semi-annual medical examinations of program animals by the attending veterinarian are required. In order to comply with this requirement, and at the same time meet the general requirement of § 2.131 that handling be conducted so as to minimize stress to the animals, it will be necessary for facilities (management, trainers, and attending veterinarian) to establish a workable veterinary/husbandry protocol that minimizes stress on program animals. This will likely include trained husbandry and veterinary behaviors, but other methods may be developed as well.

Innate animal characteristics, trainability, and temperament, as well as training techniques, training schedule, and prior trained behaviors, will all influence the length of time needed to train an animal to participate safely in an SWTD program. It would not be practical to impose a specific time limit on the training of a program animal. The regulations in § 3.111(f) as proposed required, among other things, that prospective SWTD programs provide APHIS with a description of the training each animal has undergone or will undergo prior to participation in the program. One commenter requested that we require this description to include the number of hours of training for each animal and its responsiveness to the training.

We intended the number of hours of training to be included in the description of training. To clarify this intent, we are requiring at § 3.111(f)(1)(v) of this final rule ''a description of the training, including actual or expected number of hours, each cetacean has undergone or will undergo prior to participation in the program.'' This requirement will give APHIS an overview of each facility's training program. We do not consider a mere description of the animal's responsiveness to training necessary to improve the animal's well-being and are not adding such a requirement to the regulations.

One commenter recommended that cetaceans being trained undergo no greater exposure to humans during each 24-hour period than that allowed for cetaceans already participating in a program.

The proposed rule did not limit cetacean/trainer interaction time, only public interaction time during designated SWTD sessions. It is not the intent of this rule to restrict cetacean/trainer interactions, which are necessary to maintain desirable behaviors, and we are making no changes based on this comment.

Positioning of Attendants

Under the handling requirements proposed at § 3.111(e)(5) (redesignated as paragraph (e)(6) in this final rule), we set forth the requirement that all interactive sessions must have at least two attendants. We proposed further that at least one of the attendants must be positioned in the water, except in cases where at least one attendant is positioned so as to be able to intervene in the session as quickly as if positioned in the water. We proposed, however, that, if a program has had more than two incidents during interactive sessions that have been dangerous or harmful to either a cetacean or a human, at least one attendant must be positioned in the water.

Several commenters opposed the requirement that one attendant be positioned in the water, stating that each attendant would have a better view and be able to respond better if positioned out of the water. Further, the commenters stated that an attendant positioned in the water may distract SWTD cetaceans, and, additionally, might have to continuously tread water at facilities where there is no shoreline or shallow water. Conversely, several commenters stated that there should be no exceptions to the requirement that one attendant be positioned in the water during SWTD sessions. One of these commenters stated that requiring an attendant in the water if there have been more than two dangerous incidents implies that it is safer to do so; therefore, an attendant should be required in the water at all times. Another commenter recommended that the regulations require that one staff member be positioned in the water within 5 feet of each human participant/cetacean pair, and that one attendant be positioned pool side for every two human participant/cetacean pairs.

The proposed provisions regarding how many, if any, attendants need to be in the water were based on the premise that an attendant in the water could observe more easily and react more quickly to a situation where either a cetacean or a human was behaving in a potentially harmful way. The proposed provision that an attendant be required to be in the water at a facility where two or more incidents harmful to a cetacean or human have taken place, but not necessarily at other facilities, was predicated on the premise that, at a facility where such incidents do not take place, the attendants are adequately positioned out of the water to forestall any such incidents.

We consider the commenters' observations that attendants not positioned in the water have a better view overall, and that an in-water attendant recognized by the cetaceans may be distracting to the cetaceans, to be valid ones, and are addressing the commenters' concerns by revising the final rule as set forth in the following paragraph.

Additionally, we can see why the dual standard we proposed with regard to positioning of attendants might be confusing to readers. In the proposed rule, no limit on the time period during which the two incidents may have occurred was defined. As proposed, the rule would cover the lifetime of the facility. This does not seem reasonable, and it was not the intent of the proposed rule to impose such a restriction. Therefore, we are including in this final rule a 1-year time frame regarding the two incidents that have been dangerous or harmful to either a cetacean or a human. As modified, § 3.111(e)(6) will provide that all interactive sessions must have at least two attendants. At least one attendant must be positioned out of the water. One or more attendants may be positioned in the water. If a facility has more than two incidents during interactive sessions within a year's time span that have been dangerous or harmful to either a cetacean or a human, APHIS, in consultation with the head trainer/behaviorist, will determine if changes in attendant positions are needed.

With regard to the commenter's recommendation that one attendant be required to be in the water for each human participant/cetacean pair, § 3.111(e)(4) of this final rule addresses the minimum number of attendants required for each interactive session by requiring that the ratio of human participants to attendants not exceed 3:1. We consider this requirement to provide an adequate number of attendants and are making no changes to the ratio.

Dangerous or Harmful Incidents

One commenter recommended that any SWTD program that experiences two or more dangerous or harmful incidents in any 6-month period should be forced to close permanently. Another commenter stated that if a program experiences more than two dangerous incidents, interactive sessions should be

suspended until APHIS has reexamined the program.

Formal disciplinary proceedings initiated by APHIS are subject to the AWA and the Administrative Procedure Act's statutory due process requirements. The AWA currently allows the Secretary to impose a 21-day summary license suspension, and any additional license suspension, revocation, or civil penalty can only be imposed after notice and an opportunity for a hearing. If a dangerous or harmful incident occurs at an SWTD facility, APHIS will determine if noncompliance with the regulations contributed to or was responsible for the incident. If such a finding is made, appropriate enforcement action will be taken. This may include letters of warning, stipulations, license suspensions, license revocations, or civil penalties. Due process will be afforded by APHIS to each respondent. Therefore, we are making no changes to the final rule based on these comments.

Space Requirements

In § 3.111(a) of our proposed rule, we proposed requirements for the amount of space that must be provided to cetaceans in SWTD programs. A number of commenters addressed those provisions. One commenter stated the current space requirements for marine mammals in subpart E of the regulations should be expanded, which the commenter stated would eliminate the need to establish space requirements unique to SWTD programs. Several commenters said the SWTD calculations should be extended to all facilities, not just SWTD facilities.

We are in the process of reviewing and considering revisions to the current space requirements for marine mammals, as set forth in § 3.104, and consider it beyond the scope of this rulemaking to address the general space requirements here.

One commenter stated that, even though the proposed space provisions for SWTD cetaceans exceed those in the current regulations, the increases are so marginal as to be inconsequential. The commenter stated that the regulations should promote what the commenter termed one of the primary principles of captive animal containment—i.e., ''space to move in any direction that is normal to the species without being unduly cramped or confined.'' One commenter stated that the minimum surface area requirement and the minimum volume requirement for each animal in the interactive area should be tripled.

We do not agree that the proposed increases in space requirements for SWTD cetaceans are ''marginal.'' For example, under current § 3.104, the minimum horizontal dimension (MHD) for *Tursiops truncatus* is 24 feet; the proposed SWTD MHD was 81 feet (an increase of over 300 percent). Likewise, the proposed depth requirement is 50 percent greater than that found in § 3.104. The surface area requirement in the proposed rule was 572.26 ft^2 for each area, compared with 95.38 ft^2 for nonprogram animals under § 3.104. We consider the proposed space requirements for SWTD programs to be sufficient to allow the animals to move freely in all three dimensions. Therefore, we are making no changes to the final rule based on these comments.

Several commenters stated that the regulations should include language to make clear that the proposed space requirements relate only to marine mammals designated for SWTD programs, and that standards for other marine mammals are contained elsewhere in the regulations.

We consider our intent to apply the provisions of this rule to SWTD animals to be clearly stated in the provisions as written, and are making no changes based on the comment.

One commenter stated that the regulations should specify that the space requirements promulgated for SWTD cetaceans shall be calculated on the basis of the maximum number of SWTD cetaceans participating per session within each primary enclosure for SWTD programs.

As written, the space requirements for an SWTD enclosure are to be calculated based on the number of animals in the enclosure (sanctuary, buffer, and interactive areas). We do not consider it necessary to revise the wording as proposed.

A number of commenters addressing the proposed space requirements for SWTD programs submitted specific recommended calculations. Several commenters stated that the minimum horizontal dimension should be 10 to 12 times the average *Tursiops truncatus* adult body length.

The commenters did not support their recommendations with scientific justification or other evidence. We believe that implementing the standards recommended by the commenters would place an undue economic burden on each licensee, perhaps unnecessarily forcing most, if not all, operations out of business, due either to the cost of expansion or to the inability to obtain the space needed for such expansion. In the absence of evidence that the recommended standards are necessary, we are making no changes to the final rule based on these comments.

Several commenters recommended that the proposed minimum horizontal dimension (MHD) for each of the three areas in SWTD programs should be increased to take into account additional space for each human participant in the water. Several commenters recommended adding 67 inches to the MHD for each person in the water; another commenter recommended adding 7–8 feet for each swimmer. Several commenters recommended that the minimum surface area for one cetacean plus swimmers be based on the following formula:

$$SA = \frac{(10 \times \text{L of cetaceans}) + (2^{*} \times \text{L of human})^2}{2} \times 3.14$$

* Assuming a swimmer-to-cetacean ratio of 2:1.

Commenters also recommended that, at a minimum, the surface area formula for each additional cetacean in excess of one should be:

$$SA = \frac{(3 \times \text{L of cetaceans}) + (2 \times \text{L of human})^2}{2} \times 3.14$$

Because the interactive session time per animal is restricted to 2 hours per day (approximately 8 percent of the time), and the public interaction is restricted to the interactive area, we do not consider it practical or necessary to increase the space requirements for the interactive area or the entire enclosure.

One commenter recommended adding an additional shallow section of at least 8′ × 12′ to accommodate participants who are only wading.

Each SWTD program has the choice to provide certain interactive facilities. It is beyond the scope of APHIS authority to require a facility to allow wading. Space requirements for interactive areas with wading sections are discussed below.

In our proposed rule, we proposed to require a minimum average depth of 9 feet in each of the three SWTD areas. Several commenters said that the minimum average depth for each area should be 3 to 4 times the length of the average cetacean.

At this time, we consider the 9-feet average depth requirement to provide sufficient space for the average cetacean that is currently being used in SWTD programs. This requirement will enable the average cetacean currently being used in SWTD programs to pass under or around the average human participant in the water. Therefore, we are making no changes based on this comment. APHIS will, however, closely monitor this issue to ensure that cetaceans used in SWTD programs are provided adequate space. If the need for any modifications to the average depth requirement or any other requirement becomes necessary in the future, APHIS will address such modifications in a subsequent rulemaking.

One commenter stated that basing required depth on an average minimum of 9 feet is not sufficient, given that mean low tides of open ocean facilities can differ dramatically from, and be significantly less than, their average depth. The commenter said that because sufficient depth is necessary to accommodate inter-specific (cetacean-with-cetacean) interactions, the regulations should include a mean low depth requirement of more than 9 feet.

In natural seawater (sea pen) facilities, the depth requirements in § 3.104 and § 3.111(a)(3) mean that the water depth at low tide must meet or exceed the minimum depth required by each regulatory section. The use of the term ''average depth'' in § 3.111(a)(3) means that the area depth profile must average at least 9 feet (at low tide). We recognize that not all programs will advocate or require all public participants to be fully immersed in the water and actually swim with the cetaceans. Some facilities will provide the opportunity for wading with the animals or interacting with the animals from a dock or similar structure. Wading areas, obviously, would not be 9 feet in depth. Including such areas in space requirement calculations would likely require other parts of the enclosure to have areas significantly deeper that 9 feet. This was not the intent of the rule. Consistent with our enforcement of general space requirements for marine mammals in the current regulations (§ 3.104), only those areas that are used in calculating the average depth may be used in calculating whether the area meets the minimum requirements for MHD, surface area, and volume—*i.e.*, other sections may be shallower, and not be included in determining the average depth of the entire area, but may not contribute to meeting other minimum space requirements.

To clarify our intent with regard to calculating the average depth of an interactive area, we are revising § 3.111(a)(3) to provide that although the average depth for each of the enclosure's areas at low tide must be at least 9 feet, a portion of each area (e.g., wading areas) may be excluded when calculating the average depth. However, the excluded portion may not be used in calculating whether the area meets the minimum requirements for MHD, surface area, and volume. In addition, proposed § 3.111(a)(3) contained an inadvertent oversight of depth requirements for non-ocean pen enclosures. Therefore, in this final rule, § 3.111(a)(3) requires that all pools not subject to tidal action shall have an average depth of at least 9 feet.

One commenter stated that one-on-one patient therapy sessions require much less space than other types of interactions.

The space required for an interactive session was not the basis for the space requirements. Rather, the space requirements were developed to provide as stress-free an environment as possible for SWTD animals involved in these types of programs. Interactions with members of the public are the same, whether general open sessions or therapy sessions.

Water Clarity

In § 3.111(b) of our proposal, we proposed that sufficient water clarity must be maintained so that attendants are able to observe cetaceans and humans at all times while within the interactive area. We proposed that if the water clarity does not allow these observations, the interactive sessions must be canceled until the required clarity is provided.

The introductory heading to proposed § 3.111(b) read ''*Water quality*.'' One commenter stated that the heading was a misnomer, because proposed § 3.111(b) was concerned only with ''in-water visibility'' in the interactive area.

We agree that the heading to the paragraph in question could be confusing. To clarify our intent, we are revising the heading of § 3.111(b) as proposed to read ''*Water clarity*.''

One commenter, while supporting the proposed water clarity provisions, stated that the regulations should require some quantified degree of clarity that makes proprietors totally accountable in the event of any harm to animals or people. Another commenter recommended that the regulations provide that, at facilities with reduced water clarity, swimmers be required to remain at the surface and cetaceans be maintained under direct trainer control.

We are making no changes based on these comments. There exists no recognized or generally accepted quantitative marker of acceptable water clarity. Establishing a quantitative requirement for acceptable water clarity would place an increased recordkeeping and reporting burden on the facility, without recognizable benefit to the animals. If attendants can see the animals and human participants in the session, the water clarity is sufficient. The intent of provisions regarding water clarity is to ensure that attendants maintain visual contact with all session participants. If this is not possible, the session must be terminated. This rule already requires the cetaceans to be under the direct control of the attendants.

Several commenters stated that the same water quality standards should be applied to the sanctuary and buffer areas as are applied to the interactive area. One commenter stated that the existing water quality criteria under § 3.106 (for indoor and outdoor facilities) should be applied to SWTD programs. One commenter, who recommended that the regulations allow only controlled swims (discussed below), said that if all SWTD swims are controlled, it would be necessary to observe SWTD program cetaceans only when in direct contact with participating humans in the interactive area. The commenter stated that proposed § 3.111(b) should therefore either be removed or be revised to reflect the need for limited observation of the cetaceans.

Because SWTD attendants are unlikely to know exactly where program cetaceans and swimmers will move in the interactive area, it is not feasible to provide for only limited application to

the water clarity standards in that area. The same degree of clarity, however, will not always be necessary in the buffer and sanctuary areas. The introductory text to § 3.111 as proposed specified that SWTD programs must comply with both the provisions of § 3.111 and with all other requirements of subpart E pertaining to cetaceans. This includes all water quality requirements found in § 3.106. Under § 3.106(a), the primary enclosure may not contain water that would be detrimental to the health of the marine mammals contained in the enclosure. We consider the wording of §§ 3.106 and 3.111(b) adequate and necessary to provide the water quality and clarity needed for the health of the animals and the safe conduct of SWTD sessions, and are making no changes based on these comments.

One commenter stated that consideration should be given to broadening the required water quality testing to ensure adequate cetacean and human health. The commenter stated that existing standards assume that natural seawater pens do not have the potential for water quality problems except for coliform bacteria.

All general water quality parameters, including any special requirements for natural seawater facilities, will be addressed in a proposed revision of subpart E, currently under development, and are beyond the scope of this rule.

Instructions to the Public

Several commenters specifically supported the proposed provision in § 3.111(e)(4) (redesignated as paragraph (e)(5) in this final rule) that, prior to participating in an SWTD interactive session, members of the public must be provided with written rules and instructions for the session, and that members of the public must agree, in writing, to abide by the rules and instructions. However, the commenters each recommended that the regulations also require that the rules and instructions be presented orally.

Those SWTD programs that are currently operating hold oral orientation sessions prior to the interactive session. APHIS supports this practice, and considers it appropriate to include such a requirement in the regulations. Therefore, we are adding language at the introduction to § 3.111(e)(5) of this final rule to require that prior to participating in an SWTD interaction session, members of the public be provided with oral and written rules and instructions for the session.

Several commenters recommended that customers be informed of the potential risk of injury or disease transmission, and be warned that, except for staff or program negligence, they participate at their own risk.

There is no documented evidence of any significant zoonotic (disease transmission between cetaceans and humans) risk to date, and we do not consider it appropriate to require that the public be provided with undocumented information. Therefore, we are making no change in response to these comments.

Controlled Sessions

A number of commenters recommended that all SWTD interactive sessions be required to be ''controlled.'' One commenter requested that APHIS acknowledge a 1994 report to NMFS by Amy Samuels, which the commenter stated concluded that controlled SWTD sessions do not pose any significant risk to cetacean or human participants. Several commenters suggested definitions of ''controlled swim.'' Central to each definition was the provision that professional animal trainers or attendants must directly control each human/cetacean interaction. One commenter requested that the regulations include an outline of a typical or anticipated interactive session that demonstrates the trainers' method and degree of control over interactions.

We do not consider it necessary or appropriate to include in the regulations an outline of a typical interactive session. Such an outline could be unnecessarily restrictive and potentially inaccurate, since each facility is allowed to develop its own program within the framework of this rule. However, the intent of the proposed rule was to require head trainer/behaviorist, trainer/supervising attendant, or attendant control of the SWTD interactive sessions. We are amending § 3.111(e)(2) as proposed to clarify this intent, adding the provision that the head trainer/behaviorist, trainer/supervising attendant, or attendant must at all times control the nature and extent of the cetacean interaction with the public during a session, using the trained responses of the program animal.

Inappropriate Behavior

Proposed § 3.111(e)(6) (redesignated as paragraph (e)(7) in this final rule) provided that each SWTD program must limit interaction between cetaceans and humans so that the interaction does not harm the cetaceans, does not remove the element of choice from cetaceans, and does not elicit undesirable responses from cetaceans.

Several commenters requested that the regulations include definitions of ''harm'' and ''undesirable responses.'' Another commenter stated that ''harm'' should include, among other things, any action causing the cetaceans to flee, flinch, spontaneously breach, or exhibit other abrupt behavior.

We are making no changes based on these comments. The definitions set forth in § 1.1 of the regulations apply to all sections of the regulations. Because the term ''harm'' is already used throughout the regulations and standards, it is beyond the scope of this regulatory action to develop a definition that would apply to all regulated entities and species. The use of the term ''harm'' in § 3.111 is consistent with use of this term throughout the rest of the regulations. The term ''undesirable behaviors'' is discussed later in this document. As with the term ''harm,'' because of the number of different animals and activities regulated under the AWA, and the fact that definitions set forth in § 1.1 apply throughout the regulations, we consider it more practicable to address the term ''undesirable behavior'' in the provisions relating to SWTD programs than to include a definition of the term in the definitions sections. As previously noted, § 3.111(e)(7) and (e)(8) of this final rule clarify what constitutes inappropriate behavior. We are using the terms unsatisfactory, undesirable, or unsafe to describe such behavior.

Proposed § 3.111(e)(6) also provided that SWTD programs must prohibit grasping or holding of the cetacean's body, unless under the direct and explicit instruction of an attendant eliciting a specific cetacean behavior. A small number of commenters addressed this proposed provision as it would apply to ''dorsal towing.'' One commenter opposed any ban on dorsal towing. Another cited studies that the commenter said indicated some cetaceans actually seek certain types of SWTD interactions. The commenter also cited the study commissioned by NMFS that the commenter said indicated dorsal towing is not associated with any type of problematic cetacean-swimmer interaction. One commenter stated the proposed regulations seemed to imply that the decision whether to allow dorsal towing would be left to each facility. The commenter expressed concern that this would give an economic advantage to facilities that allow such towing.

The language used in proposed § 3.111(e)(6) concerning the grasping or holding of any cetacean body part unless under the direct and explicit instruction of the attendant eliciting a specific cetacean behavior was intended to apply to activities such as, but not

limited to, dorsal towing. As indicated in one of the comments, dorsal towing, in and of itself, is not specifically associated with problematic interactive behaviors. However, we consider the restrictions of proposed § 3.111(e)(6) necessary to protect other sensitive body areas on the cetacean, such as the blowhole and the eyes. The behaviors elicited during an interactive session are determined by the head trainer and management, and are reviewed by APHIS under § 3.111(f). With regard to any economic advantage that might be gained from allowing dorsal towing, data available to us regarding current SWTD programs does not indicate a disparity between programs that allow dorsal towing and those that prohibit it.

One commenter stated that because touching of cetaceans in sensitive places has been associated with triggering antagonistic cetacean behavior, human participants who restrain, pull, or grab at cetaceans should immediately be removed from the swim session and not permitted to return. Another commenter stated that the following behaviors by human participants should be considered high-risk: Hitting, chasing, flinching or screaming, slapping of water, grabbing, and a rapid or abrupt approach.

The proposed rule did not include an exhaustive list of specific ''high-risk'' behaviors by human participants, and we do not consider it appropriate to include such a list in this final rule. Each facility will develop its own list of instructions and rules, which must be submitted to APHIS for review. Grasping or holding the cetacean's body (this would include grabbing, restraining, or pulling, etc.) is prohibited under § 3.111(e)(7). As such, it must appear in the written and oral rules presented to the public. In § 3.111, paragraph (e)(5) requires anyone who violates these rules to be removed by the facility from the session.

Proposed § 3.111(e)(7) (redesignated as paragraph (e)(8) in this final rule) provided that, in cases where cetaceans used in an interactive session exhibit unsatisfactory behaviors, such as charging, biting, mouthing, or sexual contact with humans, either those cetaceans must be removed from the interactive area or the session must be terminated. The regulations as proposed also provided that written criteria must be developed and submitted to APHIS regarding conditions and procedures for the termination of a session when removal of a cetacean is not possible.

A number of commenters addressed these proposed provisions. One commenter requested that the regulations include definitions of behavior that is ''inappropriate, undesirable, unsatisfactory, or harmful'' for participating cetaceans and swimmers. Where we proposed to provide examples of undesirable behavior by saying ''such as charging, biting, mouthing, or sexual contact with humans,'' several commenters stated that the ''such as'' should be replaced by ''including but not limited to.''

We do not consider it practicable or appropriate to provide an exhaustive list of all exhibited behaviors that might be unsatisfactory, undesirable, or unsafe during an interactive session. Each situation or set of circumstances is unique, and the array of cetacean behaviors is extensive. To clarify that the list of behaviors included in § 3.111(e)(8) of this final rule is not exhaustive, we are adopting the commenter's recommendation to preface the examples provided with the words ''including, but not limited to.'' In addition, we are amending § 3.111(e)(7) and (8) to include the words ''unsatisfactory,'' ''undesirable,'' or ''unsafe'' to describe such types of behaviors. In the absence of a specific regulatory definition, terms used are considered to have their common meaning in ordinary usage.

Several commenters considered the list of examples of undesirable behaviors to be imprecise and over-inclusive. One commenter stated that ''charging'' and ''mouthing'' should be considered unsatisfactory only if done in a manner deemed unsatisfactory in the judgment of the trainers present. One commenter stated that the regulations should distinguish between aggressive mouthing and gentle mouthing, the latter of which the commenter said may be an attempt by a cetacean to be affectionate toward a human swimmer. Another commenter stated that rubbing up against humans by the animals that is not of a sexual nature should be allowed to continue.

Although it is possible that, in some circumstances, mouthing may not be an inappropriate behavior during an interactive session, charging cannot be considered innocuous at any time. For the safety of the humans, and to decrease the risk of retaliatory behavior in the event the human participant provokes the cetacean through responses to these behaviors, these types of behaviors will not be tolerated during an interactive session. Therefore, we are making no further changes to § 3.111(e)(8) of this final rule, other than those changes discussed above. Several commenters recommended expansion of the list of what we would consider ''undesirable behavior'' on the part of cetaceans to include behaviors likely to result in harm to a swimmer or indicative of risk to a cetacean. The commenter suggested such things as biting, hitting, ramming, body-slams, forceful pushing, chasing, open-mouth threats, head-jerk threats, jaw clap threats, fleeing, flinching, mounting, thrusting, genital insertion, erection, repetitive genital rubbing, beak-to-genital propulsion, abrupt turning or circling, quick approaches, leaping, and breaching. One commenter suggested that we additionally include ''porpoising'' and ''slapping water.''

As stated above, we do not consider it necessary to amend the proposed language other than as noted. The list of ''undesirable behaviors'' recommended by the commenters is very specific and includes behaviors (such as leaping, breaching, and circling) that, when exhibited under the direction of the trainer/attendant, may not be inappropriate.

One commenter stated that swimmers should be notified of what undesirable behavior on the part of cetaceans is, in case the attendant fails to observe it. Another commenter stated that swimmers should be warned that cetaceans can be aggressive and dangerous, and be instructed to call the local APHIS office if they are injured in an interactive program.

Although we recognize the commenter's rationale for informing the SWTD participants what constitutes undesirable behavior, such a list is extensive, and can be greatly influenced by circumstances. We consider it adequate to include in the pre-encounter instructions the appropriate rules and instructions, as well as restrictions on types of physical contact with the cetaceans (as set forth in § 3.111(f)(1)(iii) of this rule).

We agree that it would be helpful for participants to know how to contact an APHIS office in the case of injuries or complaints, and are adding such information to § 3.111(e)(5) of this final rule. To help ensure that the public knows whom to contact in case of injury, § 3.111(e)(5) of this final rule will require that the oral and written information provided to human participants include telephone and FAX numbers for APHIS, Animal Care, for reporting injuries or complaints.

Several commenters recommended that the regulations require removal of the participating humans, rather than the cetaceans, in cases where cetaceans exhibit unsatisfactory behaviors. One commenter stated that the return of swimmers to the water should be dependent on the decision of the primary behaviorist. Several commenters recommended the removal

of both the human participant and the cetacean in such situations. Two commenters stated that, when removing cetaceans or swimmers, it will be necessary to maintain the swimmer/cetacean ratio at the allowable level.

Under § 3.111(e)(8) of this final rule, the facility must develop, and submit to APHIS for approval, written criteria that address termination and resumption of a session. As noted above, if an incident is the fault of the human participant not adhering to the rules, under § 3.111(e)(5)of this final rule, that participant must be removed. In all cases, the human participant/cetacean ratio specified in § 3.111(e)(4) of this final rule must be observed, which may require removing public members from the session if a cetacean is removed. We consider the language of this final rule to be sufficient to cover these issues. If the cetacean cannot be removed from the interactive area, § 3.111(e)(8) of this final rule requires that the session be terminated.

One commenter stated that mildly aggressive behavior merely demonstrates momentary annoyance on the part of the cetacean, and that extremely aggressive behavior by cetaceans is very rare and occurs only when the human is acting aggressively. The commenter recommended that if a cetacean is repeatedly severely aggressive, or is observed to be severely aggressive without provocation, that animal should be removed from the SWTD program and be returned only at the discretion of the primary attendant. One commenter recommended that cetaceans exhibiting aggressive behavior be removed from the program for at least 24 hours, and also recommended that the conditions under which the animals could be returned be specified in the regulations. Some commenters stated generally that provision should be made for reintroducing the cetaceans to an SWTD program after they are retrained. Several commenters stated that the regulations should require the submission of plans for either retraining and reintroducing the cetaceans to an SWTD program, or transferring the animals to a standard public display facility.

In § 3.111(e)(7) as proposed (redesignated as paragraph (e)(8) in this final rule), we set forth the requirement for a written protocol addressing program animals that exhibit potentially unsafe behaviors, as well as a protocol for ending a session when an animal exhibiting unsatisfactory behaviors cannot be removed from the interactive area. In order to clarify our intent with regard to the issues raised by the commenters, we are adding language to § 3.111(e)(8) of this final rule to require that the written protocol address how animals exhibiting potential unsatisfactory, undesirable, or unsafe behaviors will be handled, including, but not limited to, such things as retraining protocols, time off from program, and what the facility will do with animals that can no longer participate safely in the program.

Several commenters recommended that, in addition to being removed from an SWTD session, cetaceans exhibiting undesirable behavior should be permanently banned from SWTD programs and be set free after successfully completing a readaption and release program.

We believe that this final rule provides safeguards on animals that exhibit inappropriate behavior. We are making no changes based on these comments. It is not within the jurisdiction or authority of APHIS to require that animals not usable in an SWTD session be released into the wild.

One commenter recommended that APHIS consult with the professional marine mammal trainer community to determine the following: (1) Conditions under which cetaceans must be permanently removed from SWTD programs; (2) conditions under which cetaceans must be removed temporarily from SWTD programs for retraining; (3) what form retraining will take; and (4) what housing conditions and social environments are appropriate for cetaceans removed temporarily or long-term from SWTD programs.

Because the regulations in this final rule require the facility to develop a plan and submit it to APHIS for the handling of problem animals in the SWTD program, we do not consider it necessary to consult with the International Marine Animal Trainer's Association or a similar organization at this time. If a concern arises regarding a specific protocol submitted, APHIS will determine the acceptability of the protocol.

One commenter stated that criteria for termination of a session should be developed by APHIS, not by the SWTD facility, and that the decision whether to implement the termination procedures should be left to the behaviorist or supervising attendant. Conversely, one commenter stated that protocols for removing cetaceans or terminating sessions should not have to be submitted to APHIS, but rather, should be developed by and be maintained at the facility for review upon request.

We consider the language in § 3.111(e)(8) of this final rule regarding unsatisfactory, undesirable, or unsafe cetacean behavior, discussed above, to provide for the necessary APHIS oversight on the issue of session termination. Therefore, we are making no changes based on these comments.

Proposed § 3.111(e)(7) (redesignated as paragraph (e)(8) in this final rule) provided that the primary behaviorist shall determine when operations will be terminated, and when they may resume. We proposed, further, that in the absence of the primary behaviorist, these determinations shall be made by the supervising attendant.

One commenter recommended that the decision whether to terminate a session be made by the ''experienced head trainer,'' and that, in cases where SWTD cetaceans exhibit unsatisfactory behaviors during a session, direct contact between participating cetaceans and humans be terminated until the experienced head trainer, experienced qualified trainer, or designated attendant determines that the unsatisfactory behavior has been ameliorated through operant conditioning.

As noted above, the requirements of § 3.111(e)(8) of this rule include submission to APHIS of a written protocol for responding to instances of inappropriate behavior by program animals. This allows the facility to designate the chain of responsibility for making the decision to remove the animal and/or terminate the session. APHIS will be responsible for reviewing and approving all such protocols. However, we consider it to be in the best interest of the animals and the SWTD program to allow only the head trainer/behaviorist to determine when a session may be resumed, and such a provision is included in § 3.111(e)(8) of this final rule.

With regard to the commenter's reference to amelioration of unsatisfactory behavior through ''operant conditioning,'' we have discussed earlier our policy of not requiring any specific training method, as long as the training methods used are not in violation of the AWA.

One commenter expressed concern that the proposed rule did not include requirements governing how long offending cetaceans must be kept out of the program and under what conditions they may be returned.

Because each animal and the circumstances for its removal from the program will be unique, it would not be advisable to mandate one protocol for determining how the behavioral infraction and retraining must be handled. We consider the language as proposed for § 3.111(e)(7) and as modified for § 3.111(e)(8) of this final rule, as discussed above, to be adequate

to address the concerns and issues raised in these comments.

One commenter expressed concern that the requirements in proposed § 3.111(e)(7) did not require separate gated holding area(s) for cetaceans that must be removed, either temporarily or permanently, from swim activities.

The requirements under proposed § 3.111(e)(7) (as amended above as paragraph (e)(8)) include submission of written protocols to APHIS for approval, and termination of a session if the offending cetacean cannot be removed from the interactive area. These provisions will require the facility to determine and to set forth how it will handle an animal that must be removed from the program for an extended period of time, and such protocols will be subject to APHIS approval. We do not consider it necessary or practical to require facilities to maintain a primary enclosure that may never be needed.

Reporting and Recordkeeping

In § 3.111(f) of the proposed rule, we set forth requirements for reporting and recordkeeping that would have to be met by SWTD facilities. Several commenters expressed general opposition to any reporting and recordkeeping requirements that are not applicable to all marine mammals under the regulations. One commenter recommended that the only additional recordkeeping required for SWTD programs should be a log of cetacean/human interaction times and a listing of cetacean participants in the programs.

Due to the nature of the SWTD programs, which may place participating animals at an increased risk of stress and injury compared to other marine mammal exhibits, we consider the recordkeeping requirements specific to SWTD programs to be necessary in enforcing the SWTD regulations and in protecting the well-being of the program animals. In the following paragraphs, we discuss specific proposed recordkeeping requirements as addressed by commenters.

We proposed in § 3.111(f)(1) that prospective SWTD programs must submit to APHIS specified descriptive information about their program at least 30 days prior to the proposed initiation of the program, and that existing facilities must submit such information within 30 days of the effective date of the final rule.

Commenters stated that the regulations should require that descriptions of SWTD programs must be received by APHIS at least 120 days prior to the proposed initiation of a program, rather than 30 days as required by the proposed rule, so that APHIS can give notice of the request for approval in the **Federal Register** and accept comments on the request. One commenter recommended that APHIS also forward the notice of intent to the Marine Mammal Commission for comment.

We are making no changes based on these comments. Under the AWA, a person meeting the regulations and standards of the AWA will be issued a license. The AWA, and the regulations promulgated under the AWA, do not require publication of a notice in the **Federal Register** prior to the issuance of a license. Such a requirement would be inconsistent with all other licensing procedures under the AWA, and we consider it unnecessary in the licensing of facilities that comply with the regulations and standards.

One commenter requested that the regulations state that a new SWTD program may not begin operations until any deficiencies noted by APHIS in its pre-approval inspection have been corrected. Another commenter stated that the regulations should set forth or cite the processes and procedures for revoking or denying licenses.

New facilities are subject to all licensing requirements promulgated under the AWA, including being in compliance with the AWA during a pre-licensing inspection (§§ 2.1 through 2.11). Currently licensed facilities that wish to add an SWTD program would be subject to the requirements of § 3.111, including APHIS evaluation of the plans and facility prior to the start of the program.

The process for revoking a license is found in the AWA (7 U.S.C. 2149), and we do not consider it necessary to include it in the regulations. Denial of a license is addressed in § 2.11. All facilities must comply with all AWA regulations that apply to their regulated activity.

Several commenters specifically opposed a number of the reporting and recordkeeping requirements in proposed § 3.111(f), and certain of the proposed veterinary requirements in § 3.111(g). The proposed provisions in question, the commenter's concerns and recommendations, and our responses, are as follows.

One commenter opposed the provision in proposed § 3.111(f)(1)(i) that the Administrator could require that a description of program cetaceans include more than each animal's name and/or number, sex, and age.

We consider this provision necessary to allow APHIS to require further identifying information or techniques if more specific and permanent identification is necessary to trace animals in or between SWTD programs. For example, instances may arise where an animal that shows a pattern of inappropriate behavior changes ownership and location. In such a case, APHIS may require that information be available in order to trace the animal's ownership and history. Therefore, we are retaining the provision in question in this final rule.

One commenter opposed the requirement in proposed § 3.111(f)(1)(ii) for the reporting of the duration of encounters per cetacean per day, stating that, because the regulations require that interaction time not exceed 2 hours per day, the average duration of encounters is not relevant.

We consider the reporting of the duration of interactive periods for each cetacean necessary in enforcing the 2-hour daily interaction limit, and are making no changes based on the comment.

One commenter opposed the requirement for a description of the educational content of interactive sessions, stating that such a requirement was outside the scope of APHIS's regulatory authority. Conversely, several commenters stated that APHIS should conduct a formal, in-depth review of the educational content of proposed programs, with the Administrator retaining the right to deny a permit to a facility whose educational content is misleading or inadequate.

We disagree that requiring a description of educational content is beyond APHIS's authority. Prior to APHIS's being mandated to regulate SWTD programs, NMFS regulated the educational content of SWTD programs under special permit conditions. APHIS was granted sole jurisdiction for SWTD programs in 1994. The educational material presented to participants may directly impact the well-being of the cetaceans, by presenting information regarding what is ''acceptable'' treatment of cetaceans, both in captivity and in the wild. With regard to denying a permit based on review by APHIS of an educational program, APHIS does not grant permits under the AWA, and, therefore, cannot deny such a permit. As discussed above, we designed this rule to provide protection of the animals under the AWA, without placing an undue burden on licensees. Therefore, if a person applies for a license, is determined to be in compliance with all appropriate regulations and standards under the AWA, and pays the appropriate licensing fee, that person will be licensed. Under § 3.111(f)(2), APHIS will inform the facility of any

deficiencies found in the submitted recordkeeping documents.

With regard to the commenter recommendation that APHIS conduct a ''formal, in-depth'' review of the educational content of proposed programs, it is not clear to us from the comments exactly what form of review the commenters were recommending. As discussed above, APHIS will officially review the content of each educational program.

As part of the information required to be submitted to APHIS under proposed § 3.111, we proposed under § 3.111(f)(1)(iii) that an SWTD facility must provide APHIS with the content and method of pre-encounter orientation, rules, and instructions, including restrictions on types of physical contact with the cetaceans. One commenter stated that the restrictions on physical contact should be determined by APHIS.

The regulations as proposed and as set forth in this final rule include prohibition of certain forms of contact. However, beyond what is specifically prohibited by the regulations, different facilities may wish to establish additional rules concerning what program content may be safe and appropriate for that facility. For example, whether a facility includes behavior such as kissing or presenting of tail may depend on the level of expertise and training of its staff. APHIS will review each program and may request clarification or justification of a given proposed behavior, and will determine if the proposed program is in accordance with § 3.111(e)(7) of this final rule.

One commenter stated that it would be more appropriate to keep at the facility the information regarding pre-encounter instruction required under § 3.111(f)(1)(iii), than to submit it to APHIS as required under the proposed provisions.

Submission to APHIS of the information in question is necessary to allow the Animal Care Staff Officer responsible for APHIS oversight of SWTD programs, in conjunction with APHIS regional and field personnel, to evaluate as needed the records in question. This oversight is necessary to provide consistent and uniform enforcement.

One commenter objected to the requirement in proposed § 3.111(f)(1)(iv) that a description of the SWTD facility include housing at the facility other than the primary enclosure, stating that such a requirement was outside the scope of the regulations. Another commenter said that the regulations should specify that operations may not commence until a site visit by APHIS inspectors has confirmed that the description of the program and facility is accurate and that the facility meets all the requirements of the regulations.

It appears from the comments that we should clarify the intent of this requirement. The information that must be submitted under § 3.111(f)(1)(iv) includes a description of the primary enclosure and other housing facilities utilized by SWTD cetaceans. These include, but are not limited to, holding or training enclosures and medical facilities. To clarify this intent, we are requiring at § 3.111(f)(1)(iv) of this rule ''a description of the SWTD facility, including the primary enclosure and other SWTD animal housing or holding enclosures at the facility.'' (The licensee must also comply with any other applicable regulations in subpart E, ''Marine Mammals.'') All new (previously unlicensed) facilities will, by regulation, be required to undergo the regular prelicensing protocols as set forth in part 2 of the AWA regulations and standards. Currently licensed facilities that may wish to begin an SWTD program will be subject to inspection as deemed necessary by APHIS. This is consistent with APHIS enforcement of the AWA in other areas of animal care.

One commenter opposed the requirement in proposed § 3.111(f)(1)(vi) for a reporting of the *curriculum vitae* of all staff involved in the handling, care, and maintenance of cetaceans in the program, stating that such a requirement was burdensome, unnecessary, and not consistent with other APHIS requirements. The commenter recommended that the regulations require instead only a summary of the background of the licensee, the experienced head trainer, and the experienced qualified trainer.

The proposed language requiring submission of a *curriculum vitae* for all staff involved in the handling, care, and maintenance of the program animals was intended to provide documentation of compliance with § 3.111(c) and to verify that the persons involved in the care of the cetaceans have adequate training and experience. We believe that at least part of the perceived burden of this requirement was due to our use of the term *curriculum vitae,* which to some people implies a rigid, lengthy format. To clarify our intent, we are removing the reference to *curriculum vitae* in § 3.111(f)(1)(vi) and are replacing it with the requirement that a ''resume'' be submitted for each of the employees in question. In ordinary common usage, a resume allows for a more flexible format than does a *curriculum vitae.*

One commenter stated that, along with a *curriculum vitae,* the regulations should require a description of how the staff positions were established and filled through the use of validated, professional personnel protocols.

Beyond assuring the use of adequately trained and experienced personnel, we consider it inappropriate to dictate the personnel or resource management practices of private enterprises.

One commenter stated that, in addition to requiring proof of each animal's physical health, the regulations at § 3.111(f)(1)(vii) should require that every cetacean that is a candidate for an SWTD program must first pass a thorough behavioral evaluation conducted by the attending veterinarian.

We are making no changes based on this comment. Although a number of experienced marine mammal veterinarians may have exposure to or experience in the area of marine mammal behavior, we do not consider a behavioral evaluation by an attending veterinarian a necessity. We consider it most appropriate for a trained behaviorist to evaluate the suitability of a cetacean for an SWTD program and to conduct its subsequent training.

One commenter recommended deletion of the proposed requirement in § 3.111(f)(1)(viii) that a written program of veterinary care (APHIS form 7002), including protocols and schedules of professional visits, be submitted to APHIS. The commenter stated that APHIS should apply its standard approach with regard to veterinary care.

The regulations regarding SWTD programs set forth at § 3.111 are designed to address issues and areas where additional requirements or clarification appear necessary to address the special needs of a given program or species. As stated previously in this document, SWTD programs may potentially pose a higher risk of injury and stress to the animals than do standard marine mammal facilities. To address this possibility, more detailed veterinary care requirements are set forth at § 3.111(g). However, after review of the comments received, we have reassessed the need for submission of a written program of veterinary care at all facilities, and have determined that a written protocol is not necessary if the facility employs a full-time veterinarian or consultant. We continue to believe that a written program of veterinary care is necessary at facilities that do not have a full-time attending veterinarian or consultant, and are including language in this final rule to clarify that intent. Therefore, § 3.111(f)(1)(viii) of this final

rule will require the submission of, ''for facilities that employ a part-time attending veterinarian or consultant arrangements, a written program of veterinary care (APHIS form 7002), including protocols and schedules of professional visits.''

We proposed in § 3.111(f)(1)(ix) to require a detailed description of the monitoring program to be used to detect and identify changes in the behavior and health of SWTD cetaceans. One commenter stated that such a monitoring program should be developed and prescribed by APHIS.

Because each facility will be developing its own program, we do not consider it practical to impose a strict, standardized monitoring system that may be inappropriate for a facility and its personnel. Because documentation of each monitoring program must be submitted to APHIS for evaluation, we will have adequate opportunity to clarify any issues concerning each program and to work with each facility in developing an appropriate program.

One commenter stated that it would be more appropriate to keep the information required in § 3.111(f)(1)(ix) on site for APHIS inspection than to require that it be submitted to APHIS.

As discussed above regarding the need to submit pre-encounter presentation and instruction to APHIS, the intent of § 3.111(f) is to allow APHIS to evaluate in a consistent manner proposed programs for compliance with the regulations. Because this evaluation will be carried out at APHIS Animal Care headquarters, the necessary information must be submitted to APHIS.

We provided in proposed § 3.111(f)(2) that, in the case of a new or existing SWTD program that APHIS finds deficient in any respect, the facility will be notified of the deficiencies and be provided the opportunity to make corrections. One commenter opposed this provision, stating that APHIS should deny or revoke operating licenses if the regulations are not complied with.

The procedures for denying a license and revocation of a license have been previously discussed. However, in order to clarify our intent in the proposed rule, § 3.111(f)(2) of this final rule will require that all SWTD programs comply in all respects with the regulations and standards set forth in parts 2 and 3 of the AWA regulations. Correction dates are only given by APHIS to licensees or registrants to facilitate compliance with the AWA and the regulations and standards. Licensees and registrants are still liable for violations at the time they are identified by APHIS, even though they may subsequently be corrected.

One commenter recommended that the requirement in proposed § 3.111(f)(3) that individual animal veterinary records be kept at the SWTD site for 5 years be changed to follow what the commenter called ''general APHIS requirements''— *i.e.*, retention of records on-site for 1 year, retention of necropsy reports for 3 years, and availability of such records for inspection at the facility.

The potential long-term medical and stress effects of SWTD programs have not been documented to date. In order to assess any chronic problems that may be associated with these programs, medical records of longer than 1 year are necessary. For example, any changes in the reproductive cycle of program animals would require examination of records of more than 1 year. However, after review of comments received, we consider retention of records for 3 years, instead of 5 years, to be sufficient to document long-term effects on program animals. Accordingly, we are amending the requirement for veterinary recordkeeping at § 3.111(f)(3) to require that such records be retained for 3 years and be made available to an APHIS official upon request during inspection. We are also clarifying the recordkeeping requirements at § 3.111(f)(5) and (g)(5) to state that the records that must be kept at the facility regarding participation in the SWTD program and water quality must be made available to an APHIS official upon request during inspection.

One commenter expressed concern that the individual animal veterinary records required under proposed § 3.111(f)(3) would not be required to be submitted to APHIS.

We are making no changes based on this comment. The regulations promulgated under the AWA have never required that medical records, including necropsy records, be submitted to APHIS. Rather, the records are required to be maintained at the regulated facility for APHIS's inspection. We have found this requirement adequate for effective enforcement of the regulations, and do not consider the additional reporting burden of submitting such records to APHIS to be justified. APHIS may acquire copies of these records during an investigation.

Several commenters suggested that complete reports of necropsies conducted on SWTD cetaceans should be submitted to APHIS as a matter of course, rather than only ''during facility inspections, or as required by APHIS,'' as was proposed. One commenter recommended that the regulations include the name and telephone number of an APHIS contact. Several commenters recommended that the regulations require that a copy of the necropsy results be submitted to NMFS as well as to APHIS.

As noted above, the requirement that necropsy reports be retained at the facility and be made available to APHIS for inspection is consistent with all other species requirements under the AWA regulations. This requirement has been sufficient for APHIS enforcement of those regulations. Therefore, we are making no changes to the final rule based on these comments.

In § 3.111(g)(6) of our proposed rule, we set forth the requirement that, in the event of the death of a cetacean, complete necropsy results, including all appropriate histopathology, must be recorded in the cetacean's individual file and be made available to APHIS officials during facility inspections, or as requested by APHIS. Several commenters recommended that APHIS delineate, comprehensively and in detail, what would be required in a ''complete necropsy.'' Additionally, a commenter recommended that, prior to cetaceans being necropsied, still photographs should be made of the cetaceans, and also that necropsies of cetaceans should be videotaped.

As discussed above, the intent of this rule is not to define or regulate the practice of veterinary medicine. We consider § 3.111(g)(6) of this final rule to be adequate for APHIS enforcement of the regulations.

Several commenters opposed the requirement in proposed § 3.111(f)(5) that a copy of statistical reports regarding participation by cetaceans and humans, and a report of any changes in the SWTD program, be submitted to APHIS on a semi-annual basis. The commenter stated that ''general APHIS requirements'' should be followed. One commenter recommended that the submission of such reports be required more often than every 6 months. Several commenters recommended that the statistical summary include the number of minutes per day that each cetacean participated in an SWTD session, rather than both that information and the number of hours each week that a program animal participated in an interactive session.

We assume that, by ''general APHIS requirements,'' the commenter was referring to requirements elsewhere in the regulations that the information be kept on hand and available at the facility for inspection by an APHIS official. We agree that maintaining at the facility records of the number of minutes of cetacean interaction per day,

rather than both that information and the number of hours per week, is acceptable with regard to the required statistical analysis. Therefore, this final rule does not require semi-annual submission of records of the number of hours of participation per week. However, it does require that the number of minutes of each animal's participation per day be kept at the facility. Further, we continue to consider it necessary that changes in an SWTD program be documented and submitted to APHIS on a semi-annual basis, in order to allow for APHIS evaluation of the program content. We do not consider semi-annual reporting of program changes to be excessive, and we believe it provides sufficient and necessary oversight of program changes and compliance.

One commenter opposed the requirement at proposed § 3.111(f)(6) for the reporting of all incidents resulting in injury to either cetaceans or humans participating in an interactive session. The commenter recommended that the regulations require instead the reporting only of injurious incidents that result from direct contact between participating animals and humans and that require treatment by either a veterinarian or a physician. The commenter also recommended that APHIS provide a voice mail number and a FAX number to SWTD operators to facilitate compliance with the reporting requirements.

In order to enforce the safe operation of SWTD programs, APHIS needs to be made aware of all injuries resulting from the interactive sessions, both to humans and cetaceans. This information will be used, not only in the enforcement of the current regulations and standards, but as a tool to evaluate the need for regulatory changes to prevent future injuries. There are many types or degrees of injuries that would not require intervention by a veterinarian or physician, but that may be preventable in the future. Therefore, we are retaining the requirement that all incidents involving injury to human or cetacean SWTD participants be reported to APHIS.

Because of the danger of telephone and FAX numbers in the regulations becoming outdated, we do not consider it advisable to publish such information in the Code of Federal Regulations. However, we will provide to each SWTD facility information on available means of communication.

One commenter recommended that the regulations require that, in addition to the reporting of injuries, incidence of disease transmission to cetaceans and/or humans be reported to APHIS on a timely basis.

Because there has been no reported disease transmission between cetaceans and humans in the U.S. public display industry, there does not appear to be a need to require such reporting. Therefore, we are not making any changes to the final rule based on this comment.

One commenter recommended that the regulations specifically require consistency and thoroughness in both immediate and quarterly reports.

All records will be examined during routine, unannounced inspections by APHIS personnel. Any problems or discrepancies will be addressed at that time. As long as the required information is available in an understandable form, APHIS does not require, at this time, that a specific format be used.

Veterinary Evaluations

Among other things, proposed § 3.111(g) contained the requirements that the attending veterinarian at an SWTD program conduct on-site evaluations of each cetacean at least once a month, observe an interactive swim session at the SWTD site at least once each month, and conduct a complete physical examination of each cetacean at least once every 6 months. One commenter recommended that the regulations require instead that the attending veterinarian conduct an on-site evaluation of each cetacean every 2 weeks, that a fully qualified veterinarian with proven marine mammal competence be physically present pool side during each commercial human/cetacean interaction, and that the attending veterinarian physically examine each cetacean every 3 months instead of every 6 months.

Requiring a physical examination of the program animals by the attending veterinarian every 6 months is consistent with currently accepted practices for marine mammal veterinary medicine.

There is neither historical nor current information to support the recommendation that the attending veterinarian must be on-site during every interactive session. Because most current SWTD facilities employ a part-time veterinarian, such a regulation would place an undue burden on the facilities and the attending veterinarians.

The comments received included no evidence of the advantages of requiring biweekly, rather than monthly, visits to the program by the attending veterinarian. In the absence of data demonstrating the benefits of such a requirement, relative to the burden and costs it would entail, we do not consider it appropriate or necessary to impose such a requirement.

One commenter objected to the proposed requirement that each cetacean be physically examined every 6 months. The commenter stated that conducting such an examination could potentially harm a cetacean, by making it necessary that it be netted. The commenter stated that netting would be necessary for programs in a natural environment where cetaceans could not be trained to beach themselves for examination. Additionally, the commenter questioned the need for physical examinations of cetaceans that are maintained in a stress-free environment.

Because program animals are required to be trained and under the control of the trainers/attendants during sessions, we do not agree that requiring semi-annual examinations is unreasonable. All animals should be trained in husbandry behaviors that facilitate the required examinations. Regular preventive medicine check-ups represent the current state of accepted and adequate veterinary medical care programs. The goal is to prevent problems, rather than have to deal with emergencies or very sick animals. Additionally, although we can try to reduce unnecessary stress, we are not aware of any stress-free environment. Further, stress is not the only factor that can affect the health and well-being of an animal.

Several commenters stated that requirements relating to veterinary evaluations of the cetaceans participating in SWTD programs should be incorporated into and be consistent with ''general'' APHIS requirements. Additionally, the commenter took issue with our statement in the explanatory information of the proposed rule that the proposed veterinary monitoring is necessary to help prevent the spread of zoonotic diseases. The commenter stated that APHIS inspections have produced no evidence of such diseases, and that the scientific literature does not contain such evidence. Another commenter stated that the reference in our explanatory information to veterinary standards developed at an NMFS-sponsored workshop refers to temporary standards developed for a specific study.

The nature of the SWTD program, with much more diverse human interaction than other programs of public display of marine mammals, necessitates a focused monitoring of the health and well-being of these animals.

As noted above, we are aware of no scientific documentation demonstrating a risk of zoonotic disease transmission between human and cetaceans. It was not the intent of the proposed rule to imply that such data exists. Perhaps our intent would have been better conveyed by the statement that ''this regular monitoring will be a beneficial tool in the prevention of the spread of potentially zoonotic diseases during the program.'' Therefore, we are making no changes to the final rule based on these comments.

Animals Adversely Affected

One commenter recommended that the regulations should use the wording developed by NMFS to require the following: (1) That animals that respond adversely to encounters be removed from the program until such time as their health is restored and/or their behavior poses no risk to humans involved in the program; (2) that cetaceans be removed from swims with members of the public while on medication for infectious illness or a debilitating condition; and (3) that the program be suspended immediately if a cetacean shows signs of program-related health problems or undesirable behavior as a result of the SWTD program.

The issues of when, behaviorally, an animal must be removed from and may be returned to the interactive program sessions have been addressed above and are set forth in § 3.111(e)(8) of this final rule. We do not consider it necessary to require cessation of a session if the offending animal can be removed from the area. Although we agree there is potential value in including specific language concerning the health status of animals used during a session, we are aware of no medical reason to require the removal of all animals that may be on medication. (Medication for an infectious or chronic illness may be administered well beyond any infectious or dangerous stage.) To clarify our intent, § 3.111(e)(3) of this final rule provides that all cetaceans used in interactive sessions must be in good health, including, but not limited to, not being infectious, and that cetaceans undergoing veterinary treatment may be used in interactive sessions only with the approval of the attending veterinarian.

Several commenters stated that the proposed regulations included no course of action for cetaceans found to be sick or injured. One commenter expressed concern that the proposed regulations did not require isolation pools for sick animals.

Regulations concerning the use of medical or isolation pools for sick animals are found in the general marine mammal regulations of 9 CFR part 3, subpart E. The regulations in § 3.111 deal with situations and concerns specific to SWTD programs.

Nutritional and Reproductive Status of SWTD Cetaceans

In § 3.111(g)(4) of our proposed rule, we set forth the requirement that the attending veterinarian record the nutritional and reproductive status of each cetacean. One commenter stated that the regulations should specify that the attending veterinarian must determine and record the nutritional and reproductive status of each cetacean every 3 months.

Our intent was that the information required in § 3.111(g)(4) be recorded during each monthly visit to the facility. Therefore, we are rewording proposed § 3.111(g)(4) to clarify this intent. In this final rule, § 3.111(g)(4) will read: ''The attending veterinarian, during the monthly site visit, shall record the nutritional and reproductive status of each cetacean (i.e., whether in active breeding program, pregnant, or nursing).''

Health and Safety Precautions

One commenter recommended that the rules of each program require human participants to shower with soap and water before and after interactive sessions. Another commenter stated that each human participant should be informed that facilities for showering with soap and water before and after swim sessions are available, and that showering is recommended.

Because we do not, under the AWA, require trainers and attendants at facilities other than SWTD facilities to shower, we are leaving this decision to the facility and to State and local health ordinances to dictate. Because it would not be in the best interest of facilities to risk the health of their animals, we believe that facilities, through the issuance of their own rules for the program (which are subject to APHIS evaluation) will address these issues in the most appropriate manner for each facility.

One commenter stated that the regulations should require that all human participants in an SWTD session be ''disease-free''—*i.e.*, no one should be allowed to swim with cetaceans if he or she has any known conditions. The same commenter stated that SWTD facilities should be used only for recreational swims, not for therapy.

We are making no changes based on this comment. All SWTD activities held at USDA licensed facilities, including therapy sessions, will be subject to this final rule. It is beyond the scope of this rule to restrict licensed facilities from participating in therapy sessions. We consider it appropriate to allow each facility to establish the health rules that apply to the human participants in the interactive sessions, in accordance with all State, local, and public health ordinances.

One commenter recommended that each SWTD facility be required to develop a contingency plan for storms, to deal with the potential escape of cetaceans. The commenter stated that such a contingency plan should include a strategy for marking each cetacean so that ''escaped'' cetaceans can be distinguished from wild animals, and therefore be more easily recognized and captured.

The need for contingency plans is addressed in the general marine mammal regulations in § 3.101. Any changes to those provisions will be addressed in future rulemaking.

One commenter expressed concern that the proposed regulations included no provision for or discussion of human safety with regard to an SWTD pool being a swimming pool—e.g., with regard to lifeguard and cardio-pulmonary resuscitation training.

Our authority under the AWA extends to the humane handling, care, and treatment of animals covered by that Act. However, the AWA and duly promulgated regulations and standards do not preclude a facility from adhering to all appropriate State and local laws and ordinances. If a facility is located in a community that requires lifeguards, etc., at the facility, it is the responsibility of the facility to comply with such a requirement.

One commenter stated that SWTD program rules should specifically prohibit the feeding of cetaceans by customers.

Under the current regulations, feeding of marine mammals is acceptable under certain conditions (§ 3.105(c)). As discussed above, it is up to the facility, subject to APHIS evaluation of program parameters, to determine which behaviors and activities it will include in its interactive sessions.

One commenter stated that more research regarding human/cetacean interactions should be done before additional SWTD programs are created.

Four NMFS-permitted SWTD programs have already been studied (see footnote 1, above). Further program analysis cannot be done without more programs to study. We consider there to be sufficient historical and study data to conclude that no justifiable reason exists to prohibit the operations of SWTD programs. APHIS does not have

the authority to allow some facilities to operate an SWTD program, while prohibiting others that meet the requirements under the AWA from operating.

One commenter expressed concern that the proposed rule did not restrict the participation of small children in an SWTD program. The commenter stated that the lack of such a restriction would increase the risk of injury to human participants and, as a result, could have an adverse effect on program cetaceans.

At this time, we consider the issue of the age of human participants to be most appropriately left to the facility. While it seems obvious that facilities' whose program involves swimming in deep water must require their customers to be able to swim, facilities that also offer programs for wading or participation from a dock may require the same degree of swimming ability. At this time, no evidence has been presented to us that would support a strict age limit on human participation in these programs. APHIS will reevaluate this position if injury data and/or animal medical records indicate a change is necessary.

Miscellaneous

We are also making nonsubstantive changes in this final rule for conformity and clarity.

Therefore, based on the information set forth in the proposed rule and in this final rule, we are adopting the provisions of the proposal as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The analyses required by Executive Order 12866 and the Regulatory Flexibility Act are set forth below.

We are issuing this rule in accordance with our authority under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*). The AWA requires that the Secretary of Agriculture promulgate standards to govern the humane handling, care, treatment and transportation of animals by dealers, exhibitors, research facilities, and carriers and intermediate handlers.

This final rule establishes regulations and standards for the humane handling, care, and treatment of cetaceans used in SWTD programs. These regulations and standards address space requirements, veterinary care, personnel and handling requirements, and recordkeeping. Until this final rule becomes effective, APHIS does not have in place specific standards that address the special considerations of SWTD programs. The provisions of this final rule are necessary to address those considerations, so that the animals used in the program are treated in a humane manner.

Under this rule, operators of SWTD programs will be required to meet specified standards for those programs. These standards will include requirements for handling, facility design, reporting, and recordkeeping.

Currently, close to 135 exhibitors in the United States are licensed by APHIS to hold marine mammals. Of this number, at least six operate SWTD programs. At least four of these six exhibitors already meet the standards we are establishing in this final rule. The remaining exhibitors may have to make certain design changes and provide for additional training to comply with the standards. The cost of the additional training requirements would be approximately $15,000 per facility. The estimated costs of materials to complete the design changes would be approximately $1,000 per facility. Based on information provided by the industry concerning the average annual gross revenue of SWTD programs, the additional costs involved in complying with the standards should not pose a significant economic burden on SWTD exhibitors, all of whom are considered small entities.

Through this final rule, benefits will accrue to society by the public's knowing that animals in future, as well as in existing SWTD programs, will be cared and handled in a humane manner. The value of these social benefits are subject to personal preferences and concerns and cannot be directly compared with the costs to affected entities.

In development of this rule, we examined and rejected the alternative options of (1) foregoing AWA regulations in favor of industry self-regulation, and (2) developing regulations more stringent than those set forth in this rule.

We did not consider it feasible to choose the option of foregoing regulation of SWTD program facilities. The special needs and requirements of these programs are not conducive to self-regulation at this time, because we cannot be sure that all facilities that may become licensed will voluntarily accept the same standards.

Likewise, we did not consider the option of adopting even more stringent requirements to be warranted. Standards more restrictive than those set forth in this rule would require significant increases in expenses and recordkeeping, without a commensurate increase in the well-being of program animals.

A summary of our analysis of selected specific recommendations addressed in detail in the preamble that we consider to be unnecessarily costly include the following:

Space requirements in excess of those required by this rule: Commenters recommended that each SWTD facility have four areas, rather than three; that the sanctuary and buffer areas be three times the size of the interactive areas; and that space requirements be based on 10–12 times the average adult body length. We do not consider there to be documented benefits to program animals to justify these recommended requirements. Requiring an increase in the size of the enclosure beyond that required in this final rule, or requiring an additional enclosure area would potentially force five of the six currently operating facilities to close or to move and/or build new facilities. Recent pool construction of a new facility with one primary enclosure similar in size to those recommended cost approximately $10 million. If space were available for existing facilities to expand the size of their cetacean areas, small to medium pool enlargements could cost approximately $1 million per facility.

Increased personnel requirements: Commenters recommended that the regulations set forth certified job descriptions; that a fully qualified veterinarian with proven marine mammal competence be physically present at poolside during each commercial human/cetacean interaction; and that the attending veterinarian conduct an on-site evaluation of each cetacean every 2 weeks, rather than every month as required by this rule. We consider the regulations in this final rule to be adequate to protect the well-being of program animals and the additional cost that would be imposed by the commenter recommendations to be unnecessary. Creating uniform position descriptions would require meeting and negotiations among current facilities. We estimate such interaction would cost each facility approximately $10,000 in travel costs and time absent from duties at the facility. To require a full-time veterinarian to be present at all sessions would cost between $75,000 and $100,000 per year per facility. Requiring biweekly visits by the attending veterinarian would double the costs for such visits required by this rule, with the chance that some facilities would

not be able to retain their attending veterinarian due to excessive time requirements.

Increased cetacean rest periods: Several commenters recommended that the rest periods for each program animal be increased beyond that required by this rule. We consider the rest periods required by this rule to be adequate for the well-being of the animals, and consider increased rest periods to be unnecessarily costly with no documented benefit to the animals. If the requirements recommended by the commenters were implemented, facilities would either have to add animals to their programs or decrease the number of sessions per facility. Adding animals would require an estimated 25–100 percent increase in animal maintenance costs, in addition to the cost of acquiring the animals and possible increased personnel costs. If the number of allowable sessions per day were decreased by one beyond those allowed under this rule, each facility would suffer the loss of six to nine customers per session. At approximately $125 per session for each person, each facility would lose from $750–1,125 per day. Over a period of 350 to 365 operating days per year, the annual loss per facility would total from $262,500 to $410,625.

This final rule will require affected entities to comply with reporting and recordkeeping requirements. Each facility operating an SWTD program must submit written copies of the rules and instructions used in the introductory session, the procedures for terminating a session, a description of the SWTD program, and reports regarding participation in the program. Additionally, each facility will be required to maintain veterinary, feeding, and behavioral records for SWTD animals, as well as profile (animal identification) information, nutritional and reproductive status information, and a written assessment by the attending veterinarian. Facilities will be required to report to APHIS injuries sustained by cetaceans or human participants.

The estimated extent of the reporting and recordkeeping requirements is as follows:

Estimate of burden: The public reporting burden for this collection of information is estimated to average .16830 hours per response.

Respondents: Owners and operators of SWTD facilities.

Estimated annual number of respondents: 6.

Estimated annual number of responses: 30,344.

Estimated annual number of responses per respondent: 7,586.

Estimated total annual burden on respondents: 5,170 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

The Department has identified no Federal rules that duplicate, overlap, or conflict with this rule.

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0579–0036 and 0579–0115.

List of Subjects

9 CFR Part 1

Animal welfare, Animal housing, Dealers, Exhibitors, Humane animal handling, Research facilities.

9 CFR Part 3

Animal welfare, Humane animal handling, Pets, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR parts 1 and 3 are amended as follows:

PART 1—DEFINITION OF TERMS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. In § 1.1, definitions of *buffer area, interactive area, interactive session, sanctuary area,* and *swim-with-the-dolphin (SWTD) program* are added in alphabetical order, to read as follows:

§ 1.1 Definitions.

* * * * *

Buffer area means that area in a primary enclosure for a swim-with-the-dolphin program that is off-limits to members of the public and that directly abuts the interactive area.

* * * * *

Interactive area means that area in a primary enclosure for a swim-with-the-dolphin program where an interactive session takes place.

Interactive session means a swim-with-the-dolphin program session where members of the public enter a primary enclosure to interact with cetaceans.

* * * * *

Sanctuary area means that area in a primary enclosure for a swim-with-the-dolphin program that is off-limits to the public and that directly abuts the buffer area.

* * * * *

Swim-with-the-dolphin (SWTD) program means any human-cetacean interactive program in which a member of the public enters the primary enclosure in which an SWTD designated cetacean is housed to interact with the animal. This interaction includes, but such inclusions are not limited to, wading, swimming, snorkeling, or scuba diving in the enclosure. This interaction excludes, but such exclusions are not limited to, feeding and petting pools, and the participation of any member(s) of the public audience as a minor segment of an educational presentation or performance of a show.

* * * * *

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

4. In subpart E, § 3.104, paragraph (b)(4)(ii), footnote 9 is redesignated as footnote 10 and footnote 8 in § 3.104(b)(4)(i) is redesignated as footnote 9.

5. A new § 3.111 is added to read as follows:

§ 3.111 Swim-with-the-dolphin programs.

Swim-with-the-dolphin programs shall comply with the requirements in this section, as well as with all other applicable requirements of the regulations pertaining to marine mammals.

(a) *Space requirements.* The primary enclosure for SWTD cetaceans shall contain an interactive area, a buffer area, and a sanctuary area. None of these

areas shall be made uninviting to the animals. Movement of cetaceans into the buffer or sanctuary area shall not be restricted in any way. Notwithstanding the space requirements set forth in § 3.104, each of the three areas required for SWTD programs shall meet the following space requirements:

(1) The horizontal dimension for each area must be at least three times the average adult body length of the species of cetacean used in the program;

(2) The minimum surface area required for each area is calculated as follows:

(i) *Up to two cetaceans:*

$$\text{Surface Area (SA)} = \left(\frac{3 \times \text{average adult body length (L)}}{2}\right)^2 \times 3.14$$

(ii) *Three cetaceans:*

$$SA = \left(\frac{3 \times L}{2}\right)^2 \times 3.14 \times 2$$

(iii) *Additional SA for each animal in excess of three:*

$$SA = \left(\frac{2 \times L}{2}\right)^2 \times 3.14$$

(3) The average depth for sea pens, lagoons, and similar natural enclosures at low tide shall be at least 9 feet. The average depth for any manmade enclosure or other structure not subject to tidal action shall be at least 9 feet. A portion of each area may be excluded when calculating the average depth, but the excluded portion may not be used in calculating whether the interactive, buffer, and sanctuary area meet the requirements of paragraphs (a)(1), (a)(2), and (a)(4) of this section.

(4) The minimum volume required for each animal is calculated as follows:

Volume = SA × 9

(b) *Water clarity.* Sufficient water clarity shall be maintained so that attendants are able to observe cetaceans and humans at all times while within the interactive area. If water clarity does not allow these observations, the interactive sessions shall be canceled until the required clarity is provided.

(c) *Employees and attendants.* Each SWTD program shall have, at the minimum, the following personnel, with the following minimum backgrounds (each position shall be held by a separate individual, with a sufficient number of attendants to comply with § 3.111(e)(4)):

(1) Licensee or manager—at least one full-time staff member with at least 6 years experience in a professional or managerial position dealing with captive cetaceans;

(2) Head trainer/behaviorist—at least one full-time staff member with at least 6 years experience in training cetaceans for SWTD behaviors in the past 10 years, or an equivalent amount of experience involving in-water training of cetaceans, who serves as the head trainer for the SWTD program;

(3) Trainer/supervising attendant—at least one full-time staff member with at least 3 years training and/or handling experience involving human/cetacean interaction programs;

(4) Attendant—an adequate number of staff members who are adequately trained in the care, behavior, and training of the program animals. Attendants shall be designated by the trainer, in consultation with the head trainer/behaviorist and licensee/manager, to conduct and monitor interactive sessions in accordance with § 3.111(e); and

(5) Attending veterinarian—at least one staff or consultant veterinarian who has at least the equivalent of 2 years full-time experience (4,160 or more hours) with cetacean medicine within the past 10 years, and who is licensed to practice veterinary medicine.

(d) *Program animals.* Only cetaceans that meet the requirements of § 3.111(e)(2) and (3) may be used in SWTD programs.

(e) *Handling.* (1) Interaction time (*i.e.*, designated interactive swim sessions) for each cetacean shall not exceed 2 hours per day. Each program cetacean shall have at least one period in each 24 hours of at least 10 continuous hours without public interaction.

(2) All cetaceans used in an interactive session shall be adequately trained and conditioned in human interaction so that they respond in the session to the attendants with appropriate behavior for safe interaction. The head trainer/behaviorist, trainer/supervising attendant, or attendant shall, at all times, control the nature and extent of the cetacean interaction with the public during a session, using the trained responses of the program animal.

(3) All cetaceans used in interactive sessions shall be in good health, including, but not limited to, not being infectious. Cetaceans undergoing veterinary treatment may be used in interactive sessions only with the approval of the attending veterinarian.

(4) The ratio of human participants to cetaceans shall not exceed 3:1. The ratio of human participants to attendants or other authorized SWTD personnel (i.e., head trainer/behaviorist or trainer/supervising attendant) shall not exceed 3:1.

(5) Prior to participating in an SWTD interactive session, members of the public shall be provided with oral and written rules and instructions for the session, to include the telephone and FAX numbers for APHIS, Animal Care, for reporting injuries or complaints. Members of the public shall agree, in writing, to abide by the rules and instructions before being allowed to participate in the session. Any participant who fails to follow the rules or instructions shall be removed from the session by the facility.

(6) All interactive sessions shall have at least two attendants or other authorized SWTD personnel (i.e., head trainer/behaviorist or trainer/supervising attendant). At least one attendant shall be positioned out of the water. One or more attendants or other authorized SWTD personnel may be positioned in the water. If a facility has more than two incidents during interactive sessions within a year's time span that have been dangerous or harmful to either a cetacean or a human, APHIS, in consultation with the head trainer/behaviorist, will determine if changes in attendant positions are needed.

(7) All SWTD programs shall limit interaction between cetaceans and humans so that the interaction does not harm the cetaceans, does not remove the element of choice from the cetaceans by actions such as, but not limited to, recalling the animal from the sanctuary area, and does not elicit unsatisfactory, undesirable, or unsafe behaviors from the cetaceans. All SWTD programs shall prohibit grasping or holding of the cetacean's body, unless under the direct and explicit instruction of an attendant eliciting a specific cetacean behavior, and shall prevent the chasing or other harassment of the cetaceans.

(8) In cases where cetaceans used in an interactive session exhibit unsatisfactory, undesirable, or unsafe behaviors, including, but not limited to, charging, biting, mouthing, or sexual contact with humans, such cetaceans shall either be removed from the interactive area or the session shall be terminated. Written criteria shall be developed by each SWTD program, and shall be submitted to and approved by APHIS [11] regarding conditions and procedures for maintaining compliance with paragraph (e)(4) of this section; for the termination of a session when removal of a cetacean is not possible; and regarding criteria and protocols for handling program animal(s) exhibiting unsatisfactory, undesirable, or unsafe behaviors, including retraining time and techniques, and removal from the program and/or facility, if appropriate. The head trainer/behaviorist shall determine when operations will be terminated, and when they may resume. In the absence of the head trainer/behaviorist, the determination to terminate a session shall be made by the trainer/supervising attendant. Only the head trainer/behaviorist may determine when a session may be resumed.

(f) *Recordkeeping.* (1) Each facility shall provide APHIS [12] with a description of its program at least 30 days prior to initiation of the program, or in the case of any program in place before September 4, 1998, not later than October 5, 1998. The description shall include at least the following:

(i) Identification of each cetacean in the program, by means of name and/or number, sex, age, and any other means the Administrator determines to be necessary to adequately identify the cetacean;

(ii) A description of the educational content and agenda of planned interactive sessions, and the anticipated average and maximum frequency and duration of encounters per cetacean per day;

(iii) The content and method of pre-encounter orientation, rules, and instructions, including restrictions on types of physical contact with the cetaceans;

(iv) A description of the SWTD facility, including the primary enclosure and other SWTD animal housing or holding enclosures at the facility;

(v) A description of the training, including actual or expected number of hours each cetacean has undergone or will undergo prior to participation in the program;

(vi) The resume of the licensee and/or manager, the head trainer/behaviorist, the trainer/supervising attendant, any other attendants, and the attending veterinarian;

(vii) The current behavior patterns and health of each cetacean, to be assessed and submitted by the attending veterinarian;

(viii) For facilities that employ a part-time attending veterinarian or consultant arrangements, a written program of veterinary care (APHIS form 7002), including protocols and schedules of professional visits; and

(ix) A detailed description of the monitoring program to be used to detect and identify changes in the behavior and health of the cetaceans.

(2) All SWTD programs shall comply in all respects with the regulations and standards set forth in parts 2 and 3 of this subchapter.

(3) Individual animal veterinary records, including all examinations, laboratory reports, treatments, and necropsy reports shall be kept at the SWTD site for at least 3 years and shall be made available to an APHIS official upon request during inspection.

(4) The following records shall be kept at the SWTD site for at least 3 years and shall be made available to an APHIS official upon request during inspection:

(i) Individual cetacean feeding records; and

(ii) Individual cetacean behavioral records.

(5) The following reports shall be kept at the SWTD site for at least 3 years and shall be made available to an APHIS official upon request during inspection:

(i) Statistical summaries of the number of minutes per day that each animal participated in an interactive session;

(ii) A statistical summary of the number of human participants per month in the SWTD program; and

(6) A description of any changes made in the SWTD program, which shall be submitted to APHIS [13] on a semi-annual basis.

(7) All incidents resulting in injury to either cetaceans or humans participating in an interactive session, which shall be reported to APHIS within 24 hours of the incident.[14] Within 7 days of any such incident, a written report shall be submitted to the Administrator.[15] The report shall provide a detailed description of the incident and shall establish a plan of action for the prevention of further occurrences.

(g) *Veterinary care.* (1) The attending veterinarian shall conduct on-site evaluations of each cetacean at least once a month. The evaluation shall include a visual inspection of the animal; examination of the behavioral, feeding, and medical records of the animal; and a discussion of each animal with an animal care staff member familiar with the animal.

(2) The attending veterinarian shall observe an interactive swim session at the SWTD site at least once each month.

(3) The attending veterinarian shall conduct a complete physical examination of each cetacean at least once every 6 months. The examination shall include a profile of the cetacean, including the cetacean's identification (name and/or number, sex, and age), weight,[16] length, axillary girth, appetite, and behavior. The attending veterinarian shall also conduct a general examination to evaluate body condition, skin, eyes, mouth, blow hole and cardio-

[11] Send to Administrator, c/o Animal and Plant Health Inspection Service, Animal Care, 4700 River Road Unit 84, Riverdale, Maryland 20737–1234.

[12] See footnote 11 in § 3.111(e)(8).

[13] See footnote 11 in § 3.111(e)(8).

[14] Telephone numbers for APHIS, Animal Care, regional offices can be found in local telephone books.

[15] See footnote 11 in § 3.111(e)(8).

[16] Weight may be measured either by scale or calculated using the following formulae:

Females: Natural log of body mass = −8.44 + 1.34(natural log of girth) + 1.28(natural log of standard length).

Males: Natural log of body mass= −10.3 + 1.62(natural log of girth) + 1.38(natural log of standard length).

respiratory system, genitalia, and feces (gastrointestinal status). The examination shall also include a complete blood count and serum chemistry analysis. Fecal and blow hole smears shall be obtained for cytology and parasite evaluation.

(4) The attending veterinarian, during the monthly site visit, shall record the nutritional and reproductive status of each cetacean (*i.e.*, whether in an active breeding program, pregnant, or nursing).

(5) The attending veterinarian shall examine water quality records and provide a written assessment, to remain at the SWTD site for at least 3 years, of the overall water quality during the preceding month. Such records shall be made available to an APHIS official upon request during inspection.

(6) In the event that a cetacean dies, complete necropsy results, including all appropriate histopathology, shall be recorded in the cetacean's individual file and shall be made available to APHIS officials during facility inspections, or as requested by APHIS. The necropsy shall be performed within 48 hours of the cetacean's death, by a veterinarian experienced in marine mammal necropsies. If the necropsy is not to be performed within 3 hours of the discovery of the cetacean's death, the cetacean shall be refrigerated until necropsy. Written results of the necropsy shall be available in the cetacean's individual file within 7 days after death for gross pathology and within 45 days after death for histopathology.

(Approved by the Office of Management and Budget under control numbers 0579–0036 and 0579–0115)

Done in Washington, DC, this 31st day of August 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–23789 Filed 9–3–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–35]

Revision of Class D Airspace; San Antonio, Kelly AFB, TX

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D airspace at San Antonio, Kelly AFB, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 36838 is effective 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 8, 1998 (63 FR 36838). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on August 27, 1998.

JoEllen Casilio,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–23783 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–33]

Establishment of Class E Airspace; Johnson City, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Johnson City, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 36845 is effective 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 8, 1998 (63 FR 36845). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Forth Worth, TX, on August 27, 1998.

JoEllen Casillo,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–23785 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–34]

Revision of Class E Airspace; Refugio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Refugio, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 36844 is effective 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 8, 1998 (63 FR 36844). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a

written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on August 27, 1998.

JoEllen Casilio,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–23784 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–36]

Revision of Class E Airspace; Morgan City, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Morgan City, LA.

EFFECTIVE DATE: The direct final rule published at 63 FR 36843 is effective 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 8, 1998 (63 FR 36843). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on August 27, 1998.

JoEllen Casilio,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–23782 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–37]

Revision of Class E Airspace; Cameron, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Cameron, LA.

EFFECTIVE DATE: The direct final rule published at 63 FR 36841 is effective 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 8, 1998 (63 FR 36841). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on August 27, 1998.

JoEllen Casilio,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–23781, Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–38]

Revision of Class E Airspace; Pascagoula, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Pascagoula, MS.

EFFECTIVE DATE: The direct final rule published at 63 FR 36840 is effective 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 8, 1998 (63 FR 36840). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on August 27, 1998.

JoEllen Casilio,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–23780 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–39]

Establishment of Class E Airspace; Theodore, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Theodore, AL.

EFFECTIVE DATE: The direct final rule published at 63 FR 36839 is effective 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 8, 1998 (63 FR 36839). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on August 27, 1998.

JoEllen Casilio,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–23779 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–42]

Revision of Class E Airspace; Dallas-Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Dallas-Fort Worth, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 38233 is effective 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 22, 1998 (63 FR 38233). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 8, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on August 27, 1998.

JoEllen Casilio,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–23778 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–35]

Amendment to Class E Airspace Goodland, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Goodland Renner Field-Goodland Municipal Airport, Goodland, KS. A review of the Class E airspace for Goodland Renner Field-Goodland Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area is enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the Class E airspace areas are revised to indicate a minor revision to the Airport Reference Point (ARP) coordinates, and are included in this document. The Goodland Renner Field-Goodland Municipal Airport Localizer and coordinates are included in the Class E airspace designation. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), comply with the criteria of FAA Order 7400.2D, revise the ARP coordinates, and add the Goodland Renner Field-Goodland Municipal Airport Localizer and coordinates.

DATES: Effective date: 0901 UTC, December 3, 1998.

Comments for inclusion in the Rules Docket must be received on or before October 5, 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–35, 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 revises the Class E airspace at Goodland, KS. A review of the Class E airspace areas for Goodland Renner Field-Goodland Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

In addition, the Class E airspace areas are amended to indicate the revised ARP coordinates. The Goodland Renner Field-Goodland Municipal Airport Localizer and coordinates are included in the Class E airspace designation. The amendment at Goodland Renner Field-Goodland Municipal Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, comply with the criteria of FAA Order 7400.2D, revise the ARP coordinates and add the Goodland Renner Field-Goodland Municipal Airport Localizer and

coordinates. The areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 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 E airspace designations 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 and 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–35.'' 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 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ACE E2 KS Goodland, KS [Revised]

Goodland Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″N., long. 101°41′56″W.)

Within a 4.1-mile radius of Renner Field-Goodland Municipal Airport.

* * * * *

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

* * * * *

ACE KS E5 Goodland, KS [Revised]

Goodland Renner Field-Goodland Municipal Airport, KS
(Lat. 39°22′14″N., long. 101°41′56″W.)

Goodland VORTAC
(Lat. 39°23′16″N., long. 101°41′32″W.)

Goodland Renner Field—Goodland Municipal Localizer
(Lat. 39°22′39″N., long. 101°42′32″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Renner Field-Goodland Municipal Airport and within 4.4 miles each side of the 163° radial of the Goodland VORTAC extending from the 6.6-miles radius to 10.5 miles south of the VORTAC and within 3.1 miles each side of the Renner Field-Goodland Municipal localizer course extending from the 6.6-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on August 10, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–23777 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–10]

Correction to Class E Airspace; Akron, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on August 14, 1998, that inadvertently changed the coordinates of the Akron-Washington County Airport, Akron, CO. This action corrects the final rule by reflecting the proper coordinates.

EFFECTIVE DATE: 0901 UTC, December 03, 1998.

FOR FURTHER INFORMATION CONTACT:

Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–10, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: On August 14, 1998, the FAA published a final rule that amended the Akron, CO, Class E2 and Class E5 airspace designation (63 FR 43618). However, that action provided an inadvertent error to the coordinates of the Akron-Washington County Airport, CO. This action corrects the final rule by reflecting the proper coordinates.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Class E airspace description at Akron, CO, as published in the **Federal Register** on August 14, 1998 (63 FR 43618), (**Federal Register** Document No. 98–21864) is corrected as follows:

§ 71.1 [Corrected]

On page 43618, in the third column, in the first airspace description, line 3, and in the second airspace description, line 3, correct the geographical coordinates of the Akron-Washington County Airport by removing ''(Lat. 40°10′32″ N, long. 103°13′20″ W)'' in its place.

Issued in Seattle, Washington, on August 27, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–23896 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

15 CFR Part 14

[Docket No. 980422101–8101–01]

RIN 0605–AA09

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations

AGENCY: Department of Commerce (DoC).

ACTION: Interim Final Rule.

SUMMARY: This interim final rule implements the revisions to the Office of Management and Budget (OMB) Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'' which was published in the **Federal Register** on November 29, 1993. The revised Circular was developed by an interagency task force for governmentwide use in a model rule format to facilitate regulatory adoption by executive departments and agencies. In the published revised Circular, OMB specified as ''required action'' that Federal agencies responsible for awarding and administering grants and other agreements to recipients described therein, shall adopt the language of the Circular unless other provisions are required by Federal statute or exceptions or deviations are approved by OMB. This interim final rule adopts the provisions of the Circular and its language to the maximum extent feasible. However, minor changes were made to update the procedures, clarify the language, and make the language apply specifically to the DoC and its operating units. No changes are intended to deviate from the substance of Circular A–110. The Circular covers both grants and cooperative agreements made by Federal agencies and subawards, unless sections of the Circular specifically exclude subrecipients from coverage. Consistent with guidance provided in the Circular, DoC will apply its provisions to grants and agreements with institutions of higher education, hospitals, other nonprofit, and commercial organizations. The provisions of the interim final rule will also apply to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations when appropriate.

DATES: This regulation is effective October 1, 1998. Written and signed comments must be received on or before November 3, 1998.

ADDRESSES: Interested persons should submit written and signed comments to Docket No. 980422101–8101–01, U.S. Department of Commerce, Office of Executive Assistance Management, Room 6020, 14th and Constitution Avenue, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: John J. Phelan, III, Director, Office of Executive Assistance Management, Telephone Number 202–482–4115.

SUPPLEMENTARY INFORMATION: This interim final rule incorporates and reflects the provisions of the OMB issuance of the revised OMB Circular A–110, published at 58 FR 62992, to be codified at 15 CFR part 14 of the DoC regulatory requirements for financial assistance awards. OMB Circular A–110 was originally issued by OMB in 1976, and except for a minor revision in 1987 it remained unchanged until this revision was issued. The standards it contained were structured into 15 attachments lettered A through O. An interagency task force also reviewed the circular in 1987 and recommended that it be combined with OMB Circular A–102, ''Uniform Requirements for Grants and Agreements with State and Local Governments,'' as a consolidated ''common rule.'' In November 1988, a proposed consolidated ''common rule'' was published in the **Federal Register** (53 FR 44716) but, due to adverse concerns by some university groups and Federal agencies, it was not finalized and issued by OMB. In November 1990, another interagency task force was convened to review Circular A–110 and a revision in a ''common rule'' format was proposed and developed. This revision was published for comment in the **Federal Register** (57 FR 39018) in August 1992 and over 200 comments were received by OMB from many sources. All comments were considered in developing the final revision of Circular A–110 which was issued for governmentwide use in the **Federal Register** on November 29, 1993. Consequently, this rule is published as an interim final rule because of the previous request for comment process used in the development of the Circular, the large number of comments already received and considered by OMB and the Federal agencies, and the limited flexibility to revise the requirements prescribed by OMB. This interim final rule contains the following updates to procedures and clarifying language:

- Foreign governments, organizations under the jurisdiction of foreign governments, and international

organizations will be covered by this interim final rule.

- Taxpayer identification numbers will be required of applicants in accordance with the provisions of the Debt Collection Improvement Act of 1996.
- Federal payments to recipients shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996, unless waived in accordance with the provisions of the Act.
- The recipient may not transfer funds among direct cost categories or programs, functions and activities for construction or nonconstruction awards in which the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Grants Officer. This restriction applies to all awards, regardless of the amount of Federal funding, and it does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget.
- Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the requirements contained in the Single Audit Act Amendments of 1996 and OMB Circular A–133. Subrecipients that are state and local governments shall also be subject to the requirements contained in the Single Audit Act Amendments of 1996 and OMB Circular A–133. Commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations shall be subject to the audit requirements as stipulated in the award document.
- If there is a residual inventory of supplies exceeding $5000 in total aggregate value upon termination or completion of a project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federally sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its cost share. This encompasses a residual inventory of both used and unused supplies exceeding $5000 in total aggregate value.
- The small purchase threshold (previously $25,000) fixed at 41 U.S.C. 403 (11) reflects the simplified acquisition threshold (currently $100,000) established at 41 U.S.C. 4031 (11) by the Federal Acquisition Streamlining Act of 1994.

For purposes of this interim final rule, ''DoC'' is a term referring to the Department of Commerce collectively. For purposes of decision making or actions affecting outside entities, ''DoC'' is also an eclectic term which refers to the organizational entity exercising authority in the specific subject matter under discussion. Within the language of the rule, when the Economic Development Administration (EDA) enters into awards under which it is contemplated that the recipient will dispose of real property improved with Federal funds, EDA may impose conditions for its approval of such disposition.

Executive Orders 12866 and 12875

This interim final rule has been determined to be ''significant'' for purposes of Executive Order 12866, ''Regulatory Planning and Review.'' In addition, it has been determined that, consistent with the requirements of Executive Order 12875, ''Enhancing Intergovernmental Partnership,'' this interim final rule will not impose any unfunded mandates upon State, local, and tribal governments.

Administrative Procedure Act and Regulatory Flexibility Act

Because notice and comment is not required under 5 U.S.C. 553, or any other law, for this rule relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this interim final rule. As stated above, this rule is based on the revised OMB Circular A–110 that was developed by an interagency task force and received extensive public comment. The revised Circular specifies that Federal agencies responsible for awarding and administering grants and other agreements to recipients described therein, shall adopt the language in the Circular unless different provisions are required by Federal statute or are approved by OMB. This interim final rule essentially adopts the provisions of the Circular word-for-word to the maximum extent feasible.

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in Executive Order 12612. The rule primarily applies to organizations other than State and local governments, but for some programs State or local governments are required to pass on these requirements to subrecipients covered by this rule. The rule was drafted to be as consistent as possible with requirements imposed on State and local governments. Accordingly, it has been determined that this proposal does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Paperwork Reduction Act

These regulatory actions do not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Reporting and recordkeeping requirements in 15 CFR Part 14 are those required by OMB Circular A–110 and have already been cleared by OMB.

Catalog of Federal Domestic Assistance

This rule affects all of the grant and cooperative agreement programs with institutions of higher education, hospitals, other non-profit, and commercial organizations administered by DoC.

List of Subjects in 15 CFR Part 14

Accounting, Administrative practice and procedure, Colleges and universities, Grants administration, Grant programs—economic development, Grant programs—oceans and atmosphere, Grant programs—minority businesses, Grant programs—travel and tourism, Grant programs—technology, Grant programs—telecommunications, Grant programs—international, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Issued this 19th day of August, 1998, at Washington, D.C.

John J. Phelan,

Director for Executive Assistance Management.

Accordingly, 15 CFR subtitle A is amended by adding part 14 to read as follows:

PART 14—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT, AND COMMERCIAL ORGANIZATIONS

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Appendix A to Part 14—Contract Provisions

Authority: 5 U.S.C. 301.

Subpart A—General

§ 14.1 Purpose.

This Part establishes uniform administrative requirements for Department of Commerce (DoC) grants and agreements awarded to institutions of higher education, hospitals, other non-profit, and commercial organizations. The Grants Officer shall incorporate this Part by reference into financial assistance awards made to organizations to which it will be applied. The DoC shall not impose additional or inconsistent requirements, except as provided in §§ 14.4, and 14.14 or unless specifically required by Federal statute or executive order. This part applies to grants and agreements awarded to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer after coordination with the appropriate program officials. Uniform requirements for State, local, and tribal governments are in 15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 14.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by electronic funds transfer, Treasury check, or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Assistant Secretary* means the DoC Chief Financial Officer and Assistant Secretary for Administration who has been delegated by the Secretary of Commerce the responsibility for developing and implementing policies, standards, and procedures for the administration of financial assistance programs of the DoC.

(f) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(g) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(h) *Closeout* means the process by which the Grants Officer determines that all applicable administrative actions and all required work of the award have been completed by the recipient and the DoC.

(i) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(j) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(k) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(l) *Disallowed costs* means those charges to an award that the Grants Officer determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *DoC operating unit* means an organizational unit of the Department that has the authority to fund financial assistance awards.

(n) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(o) *Excess property* means property under the control of the DoC that, as determined by the Grants Officer after

coordination with the authorized property official, is no longer required for DoC needs or the discharge of its responsibilities.

(p) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the DoC has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(q) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(r) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(s) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(t) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(u) *Grants Officer* means the DoC official with the delegated authority to award, amend, administer, closeout, suspend, and/or terminate grants and cooperative agreements and make related determinations and findings.

(v) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(w) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(x) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(y) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(z) *Prior approval* means written approval by an authorized official evidencing prior consent.

(aa) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 14.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in DoC regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(bb) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(cc) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(dd) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(ee) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(ff) *Recipient* means an organization receiving financial assistance directly from the DoC to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the DoC. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(gg) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, other non-profit, and commercial institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(hh) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

(ii) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in paragraph (f) of this section.

(jj) *Subrecipient* means the legal entity to which a subaward is made and which

is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the DoC.

(kk) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(ll) *Suspension* means an action taken by the Grants Officer after coordination with the DoC operating unit that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Grants Officer. Suspension of an award is a separate action from suspension under DoC regulations at 15 CFR Part 26 implementing E.O.s 12549 and 12689, ''Debarment and Suspension.''

(mm) *Termination* means the cancellation by the Grants Officer of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(nn) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(oo) *Unliquidated obligations,* for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(pp) *Unobligated balance* means the portion of the funds authorized by the DoC that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(qq) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(rr) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 14.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 14.4.

§ 14.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. The Assistant Secretary may apply more restrictive requirements to a class of recipients when approved by OMB. The Assistant Secretary may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Assistant Secretary. An exception made on a case-by-case basis will apply to a single award.

§ 14.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit, or commercial organizations. This part also applies to subrecipients performing work under awards if the subrecipients are foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' (15 CFR Part 24).

§ 14.6 Availability of OMB circulars.

OMB circulars cited in this part are available from the Office of Management and Budget (OMB) by writing to the Executive Office of the President, Publications Service, 725 17th Street, NW, Suite 200, Washington DC 20503.

Subpart B—Pre-Award Requirements

§ 14.10 Purpose.

Sections 14.11 through 14.18 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 14.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Grants Officer after coordination with the DoC operating unit shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* The DoC operating units shall notify the public of their intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute. At a minimum, public notices shall be published in the **Federal Register**.

§ 14.12 Forms for applying for Federal assistance.

(a) The DoC operating units shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the DoC operating units in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the DoC.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC).

The name and address of the SPOC for a particular State can be obtained from the DoC or the *Catalog of Federal Domestic Assistance.* The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) DoC operating units that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 14.13 Debarment and suspension.

The DoC and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, ''Debarment and Suspension,'' which is implemented by DoC at 15 CFR Part 26. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 14.14 High risk special award conditions.

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the Grants Officer may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 14.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. The DoC shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs.''

§ 14.16 Resource Conservation and Recovery Act (RCRA).

Under RCRA (Pub. L. 94–580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, non-profit, and commercial organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 14.17 Certifications and representations.

Unless prohibited by statute or codified regulation, Grants Officers may allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. When authorized, annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

§ 14.18 Taxpayer identification number.

In accordance with the provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 7701), the taxpayer identifying number will be required from applicants for grants and cooperative agreements funded by the DoC. This number may be used for purposes of collecting and reporting on any delinquent amounts arising from awards made under this part.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 14.20 Purpose of financial and program management.

Sections 14.21 through 14.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, conducting audits, determining allowability of cost, and establishing fund availability.

§ 14.21 Standards for financial management systems.

(a) The Grants Officer shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 14.52. If the Grants Officer requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the DoC guarantees or insures the repayment of money borrowed by the recipient, the Grants Officer may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Grants Officer may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 14.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205. Federal payments to recipients shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996, unless waived in accordance with the provisions of this Act.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in § 14.21. Advances of funds to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of advances of funds shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances may be consolidated to cover anticipated cash needs for all awards made by the DoC operating unit to the recipient.

(1) Advance payment mechanisms include, but are not limited to, electronic funds transfer and Treasury check when the electronic funds transfer requirement is waived.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients may submit requests for advances and reimbursements on a monthly basis.

(d) Requests for advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special DoC instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. The Grants Officer may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the DoC shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients are authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Grants Officer after coordination with the operating unit has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Grants Officer may authorize payment on a working capital advance basis. Under this procedure, the Grants Officer shall provide for advancing funds to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, payments shall be provided by reimbursing the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional payments.

(h) Unless otherwise required by statute, Grants Officers shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, the Grants Officer may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, the DoC shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraph (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to

Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Grants Officer, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Grants Officers shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. DoC has adopted the SF–270 as a standard form for all nonconstruction programs when predetermined advance methods are not used. The Grants Officer, however, may waive the requirement to use the SF–270 for requesting funds under grants and cooperative agreements. Grants Officers have the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. DoC has adopted the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, the Grants Officer may substitute the SF–270 when the Grants Officer determines that the SF–270 provides adequate information to meet Federal needs.

§ 14.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Grants Officer.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If DoC authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2).

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Grants Officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section applies.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Grants Officer has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 14.24 Program income.

(a) The standards set forth in this section shall apply in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with DoC regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the DoC and recipient and used to further eligible project objectives.

(2) Used to finance the non-Federal share of the project.

(3) Deducted from the total project allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the DoC does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(1) of this section shall apply automatically to all projects or programs.

(e) Unless DoC regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 14.30 through 14.37).

(h) Unless DoC regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 14.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon DoC requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from the Grants Officer for one or more of the following program or budget related reasons. Approvals will be provided in writing by the Grants Officer.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the DoC.

(6) The inclusion, unless waived by the DoC, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Educational Institutions,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' 45 CFR part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) For nonconstruction awards, no other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the Grants Officer may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Grants Officer after coordination with the DoC operating unit. All pre-award costs are incurred at the recipient's risk (i.e., the DoC is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Grants Officer in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the DoC provides otherwise in the award or in the DoC regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The recipient may not transfer funds among direct cost categories or programs, functions and activities for construction or nonconstruction awards in which the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Grants Officer. This does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. No transfers are permitted that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from the Grants Officer for budget revisions whenever paragraph (h) (1), (2) or (3) apply.

Approvals will be provided in writing by the Grants Officer.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 14.27.

(i) For construction awards, no other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When the DoC makes an award that provides support for both construction and nonconstruction work, the Grants Officer may require the recipient to request prior approval from the Grants Officer before making any fund or budget transfers between the two types of work supported. Approvals will be provided in writing by the Grants Officer.

(k) For both construction and nonconstruction awards, the DoC shall require recipients to notify the Grants Officer in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Grants Officer indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, DoC shall review the request and the Grants Officer shall notify the recipient in writing whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Grants Officer shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 14.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements as stipulated in the award document.

(d) Commercial and other organizations not covered by paragraph (a), (b), or (c) of this section shall be subject to the audit requirements as stipulated in the award document or the prime recipient as stipulated in the sub-award document.

§ 14.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 14.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Grants Officer.

Property Standards

§ 14.30 Purpose of property standards.

Sections 14.31 through 14.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. The DoC shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 14.31 through 14.37.

§ 14.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 14.32 Real property.

The DoC award shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed, provided that, in lieu of title, with the approval of the Grants Officer, the recipient may hold a leasehold or other interest in the property appropriate to the project purpose. The recipient shall not dispose of or encumber the property or any interest therein without approval of the Grants Officer.

(b) The recipient shall obtain written approval by the Grants Officer for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the DoC.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the DoC or its successor Federal awarding agency. The responsible Federal agency shall observe one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair

market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Grants Officer and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 14.33 Federally-owned and exempt property.

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the DoC operating unit. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the DoC operating unit for further Federal agency utilization.

(2) If the DoC operating unit has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the DoC has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by the Grants Officer.

(b) *Exempt property.* When statutory authority exists, the DoC has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the DoC considers appropriate. Such property is ''exempt property.'' Should the DoC not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 14.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the DoC. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the DoC operating unit which funded the original project;

(2) Activities sponsored by other DoC operating units; then

(3) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the DoC operating unit that financed the equipment; second preference shall be given to projects or programs sponsored by other DoC operating units, and third preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Grants Officer after coordination with the DoC operating unit. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Grants Officer after coordination with the DoC operating unit.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the DoC for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Grants Officer.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in

accordance with the following standards. Equipment with a current per-unit fair market value of less than $5000 may be retained, sold, or otherwise disposed of with no further obligation to the awarding agency. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the DoC operating unit or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Grants Officer. The Grants Officer shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Grants Officer to determine whether a requirement for the equipment exists in other Federal agencies. The Grants Officer shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the DoC an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the DoC for such costs incurred in its disposition.

(h) The DoC reserves the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards:

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(2) The Grants Officer shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Grants Officer fails to issue written disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(3) When the DoC exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 14.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 14.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The DoC reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the DoC at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by the DoC, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without written approval from the Grants Officer. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 14.34(g).

§ 14.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Grants Officer may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 14.40 Purpose of procurement standards.

Sections 14.41 through 14.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the DoC upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 14.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the DoC, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into

in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 14.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 14.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 14.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items;

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the DoC's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension,'' as implemented by DoC regulations at 15 CFR Part 26.

(e) Recipients shall, on request, make available for the Grants Officer, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or

increases the contract amount by more than the amount of the small purchase threshold.

§ 14.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 14.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

§ 14.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 14.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts:

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the DoC may accept the bonding policy and requirements of the recipient, provided the Grants Officer has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described in this part, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the DoC, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Reports and Records

§ 14.50 Purpose of reports and records.

Sections 14.51 through 14.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 14.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 14.26.

(b) The Grants Officer after coordination with the DoC operating unit shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Grants Officer may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the DoC operating unit of developments that have a significant impact on the award-supported activities. Also,

notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) The DoC may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 14.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each DoC award shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. The DoC, however, has the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The DoC shall prescribe whether the report shall be on a cash or accrual basis. If the DoC requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The DoC shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The DoC shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Grants Officer upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the DoC shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The DoC shall use this report to monitor funds advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The DoC may require forecasts of Federal funds requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, the DoC may require recipients to report in the ''Remarks'' section the amount of advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Grants Officer may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) The Grants Officer may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Grants Officer's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the DoC needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, the Grants Officer shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When the DoC determines that a recipient's accounting system does not meet the standards in § 14.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The DoC, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Grants Officers are encouraged to shade out any line item on any report if not necessary.

(4) The DoC may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The DoC may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 14.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The DoC shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the DoC. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoC, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the DoC.

(d) The Grants Officer after coordination with the DoC operating unit shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a DoC operating unit or Grants Officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The DoC, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable

access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no DoC operating unit shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoC operating unit can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the DoC operating unit.

(g) Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If the recipient submits to the Federal awarding agency responsible for negotiating the recipient's indirect cost rate or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If the recipient is not required to submit to the cognizant Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 14.60 Purpose of termination and enforcement.

Sections 14.61 and 14.62 set forth uniform suspension, termination and enforcement procedures.

§ 14.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2) or (3) apply.

(1) By the Grants Officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Grants Officer with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Grants Officer determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a)(1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 14.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 14.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Grants Officer may, in addition to imposing any of the special conditions outlined in § 14.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold payments of funds pending correction of the deficiency by the recipient or more severe enforcement action by the Grants Officer after coordination with the DoC operating unit.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the DoC implementing regulations (see § 14.13) at 15 CFR Part 26.

Subpart D—After-the-Award Requirements

§ 14.70 Purpose.

Sections 14.71 through 14.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 14.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Grants Officer may approve extensions when requested by the recipient.

(b) Unless the Grants Officer authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Grants Officer shall authorize and the DoC shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated funds that the DoC has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Grants

Officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 14.31 through 14.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the DoC shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 14.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the DoC to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 14.26.

(4) Property management requirements in §§ 14.31 through 14.37.

(5) Records retention as required in § 14.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the DoC and the recipient, provided the responsibilities of the recipient referred to in § 14.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 14.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Grants Officer may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the recipient; or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the DoC shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

Appendix A to Part 14—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the DoC operating unit.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the DoC operating unit.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.*) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the DoC operating unit and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension'' as implemented by DoC regulations at 15 CFR Part 26. This list contains the names of parties debarred, suspended, or otherwise excluded by

agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8781]

RIN 1545–AV95

Center Employee Stock Ownership Plans; Section 411(d)(6) Protected Benefits (Taxpayer Relief Act of 1997); Qualified Retirement Plan Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations providing for changes to the rules regarding qualified retirement plan benefits that are protected from reduction by plan amendment, that have been made necessary by the Taxpayer Relief Act of 1997 (TRA '97). The temporary regulations change the existing regulations to conform with the TRA '97 rules regarding in-kind distribution requirements for certain employee stock ownership plans, and specify the time period during which certain plan amendments for which relief has been granted by TRA '97 may be made without violating the prohibition against plan amendments that reduce accrued benefits. These temporary regulations affect sponsors of qualified retirement plans, employers that maintain qualified retirement plans, and qualified retirement plan participants. The final regulations amend the existing final regulations to cross-reference the temporary regulations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Linda S.F. Marshall, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 411(d)(6). These temporary regulations change the rules under section 411(d)(6) regarding qualified retirement plan benefits that are protected from reduction by plan amendment, to take into account amendments made by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105–34, 111 Stat. 788 (1997). Specifically, these temporary regulations change the existing regulations to conform to the TRA '97 amendments to section 409 regarding the general requirement that employee stock ownership plans offer distributions in the form of employer securities. In addition, these temporary regulations specify the time period during which certain plan amendments for which relief has been granted by TRA '97 may be made without violating section 411(d)(6).

Explanation of Provisions

Section 411(d)(6) provides that a plan is not treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Under section 411(d)(6)(B), a plan amendment that eliminates an optional form of benefit is treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. Sections 1.411(d)–4, Q&A–1(b)(1) and 1.401(a)(4)–4(e) specify that different optional forms of benefit within the meaning of section 411(d)(6)(B) result from differences in the medium of a distribution (e.g., cash or in-kind) from a plan. Section 411(d)(6)(C) provides that any tax credit employee stock ownership plan or any employee stock ownership plan is not treated as failing to meet the requirements of section 411(d)(6) merely because it modifies distribution options in a nondiscriminatory manner.

Special Rules Regarding Medium of Distribution From ESOPs

Section 409(h) contains requirements relating to distributions from tax credit employee stock ownership plans. Section 4975(e)(7) extends the requirements of section 409(h) to other employee stock ownership plans as well, and section 401(a)(23) extends the requirements of section 409(h) to qualified plans that are stock bonus plans. Under section 409(h)(1)(A), an employee stock ownership plan or other stock bonus plan generally is required to make distributions available in the form of employer securities. Prior to its amendment by TRA '97, section 409(h)(2) provided an exception to this rule in the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a).

Under section 1361, certain small business corporations that do not have more than 75 shareholders are eligible to elect treatment as S corporations whose tax attributes generally flow through to shareholders in accordance with the rules of subchapter S of chapter 1 of subtitle A of the Internal Revenue Code. Prior to the Small Business Job Protection Act of 1996 (SBJPA), Public Law 104–188, 110 Stat. 1755 (1996), an S corporation could not maintain an employee stock ownership plan because an S corporation could not have a qualified trust described in section 401(a) as a shareholder. SBJPA amended the requirements for S corporations, effective for tax years beginning after December 31, 1996, to permit certain tax-exempt organizations, including qualified trusts described in section 401(a), to be S corporation shareholders.

TRA '97 made an additional change to the rules governing qualified plans holding securities of an S corporation employer, to make it easier for S corporation employers to facilitate employee ownership of employer securities through qualified plans. Section 1506 of TRA '97 extends the exception of section 409(h)(2) to cover S corporations, effective for taxable years beginning after December 31, 1997. Pursuant to this change, tax credit employee stock ownership plans, employee stock ownership plans, and other stock bonus plans established and maintained by S corporation employers are not required to offer distributions in the form of employer securities.

Section 1.411(d)–4, Q&A–2(d)(2)(ii) provides an exception from the requirements of section 411(d)(6) for plan amendments that eliminate optional forms of benefit from a tax credit employee stock ownership plan, an employee stock ownership plan, or a stock bonus plan, for certain employers. Section 1.411(d)–4, Q&A–2(d)(2)(ii) applies to employers that become substantially employee-owned, if the employer otherwise meets the requirements of section 409(h)(2) with respect to restrictions on the ownership of outstanding employer stock. These temporary regulations expand this exception from the requirements of section 411(d)(6) to apply to S corporations as well, to reflect the TRA '97 changes to section 409(h).

Rules for Plan Amendments Pursuant to TRA '97

Section 1541 of TRA '97 contains provisions relating to plan amendments that are adopted as a result of TRA '97. If section 1541 applies to a plan amendment, section 1541(a) provides that the plan will be treated as operated in accordance with its terms and will not fail to satisfy the requirements of section 411(d)(6) by reason of the amendment. Section 1541 applies to a plan amendment that is made pursuant to a legislative change in the pension and employee benefit provisions of TRA '97, provided the following conditions are satisfied. First, the plan amendment must be adopted before the first day of the first plan year beginning on or after January 1, 1999 (2001, in the case of a governmental plan, as defined in section 414(d)). Second, the plan must be operated in accordance with the terms of the plan amendment, beginning on the date the legislative change takes effect, or, if the amendment is not required by the legislative change, the effective date of the amendment specified by the plan. Third, the plan amendment must be made retroactively effective.

The remedial amendment period for adopting plan amendments to which section 1541 of TRA '97 applies was extended pursuant to the rules of section 401(b) in Rev. Proc. 98–14 (1998–4 I.R.B. 22). To provide a uniform time for plan amendment, these temporary regulations extend the time for the section 411(d)(6) relief provided by section 1541 of TRA '97 to the end of the remedial amendment period for these plan amendments.

Other Section 411(d)(6) Issues

In Notice 98–29 (1998–22 I.R.B. 8), the IRS requested public comment regarding a number of possible methods of providing section 411(d)(6) relief, particularly for defined contribution plans. The IRS will also consider comments submitted pursuant to Notice 98–29 that propose other methods of providing section 411(d)(6) relief to address special concerns of employee stock ownership plans.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these regulations is Linda S.F. Marshall, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

§ 1.411(d)–4T also issued under 26 U.S.C. 411(d)(6). * * *

Par. 2. Section 1.411(d)–4 is amended by:

1. Removing the reference ''Q&A–5'' and adding Q&A–2'' in its place in the first sentence of Q&A–2(d)(1) introductory text.

2. Adding a sentence at the end of Q&A–2(d)(3) to read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

Q–2: * * *

A–2: * * *

(d) * * *

(3) * * * (For taxable years beginning after December 31, 1997, see § 1.411(d)–4T Q&A–2(d).)

* * * * *

Par. 3. Section 1.411(d)–4T is added to read as follows:

§ 1.411(d)–4T Section 411(d)(6) protected benefits (temporary).

Q&A–1: [Reserved]. For further information, see § 1.411(d)–4 Q&A–1.

Q–2: To what extent may section 411(d)(6) protected benefits under a plan be reduced or eliminated?

A–2: (a) through (c) [Reserved]. For further information, see § 1.411(d)–4 Q&A–2 (a) through (c).

(d) *ESOP and stock bonus plan exception*—(1) *In general.* Subject to the limitations in paragraph (d)(2) of this Q&A–2, a tax credit employee stock ownership plan (as defined in section 409(a)), an employee stock ownership plan (as defined in section 4975(e)(7)), or a stock bonus plan that is not an employee stock ownership plan will not be treated as violating the requirements of section 411(d)(6) merely because of the circumstances described in paragraph (d)(1)(ii) of this Q&A–2.

(i) [Reserved]. For further information, see § 1.411(d)–4 Q&A–2(d)(1)(i).

(ii) *Employer becomes substantially employee-owned or is an S corporation.* The employer eliminates, or retains the discretion to eliminate, with respect to all participants, optional forms of benefit by substituting cash distributions for distributions in the form of employer stock with respect to benefits subject to section 409(h) in the circumstances described in paragraph (d)(1)(ii)(A) or (B) of this Q&A–2, but only if the employer otherwise meets the requirements of section 409(h)(2)—

(A) The employer becomes substantially employee-owned; or

(B) For taxable years of the employer beginning after December 31, 1997, the employer is an S corporation as defined in section 1361.

(iii) and (iv) [Reserved]. For further information, see § 1.411(d)–4 Q&A–2(d)(1) (iii) and (iv).

(2) *Limitations on ESOP and stock bonus plan exceptions.* [Reserved]. For further information, see § 1.411(d)–4 Q&A–2(d)(2).

(3) *Effective date.* Paragraph (d) of this Q&A–2 applies for taxable years beginning after December 31, 1997. For taxable years beginning prior to January 1, 1998, see § 1.411(d)–4 Q&A–2(d).

(4) [Reserved]. For further information, see § 1.411(d)–4 Q&A–2(d)(4).

Q&A–3 through Q&A–10 [Reserved]. For further information, see § 1.411(d)–4 Q&A–3 through Q&A–10.

Q–11: To what extent may a plan amendment that is made pursuant to the Taxpayer Relief Act of 1997 (TRA '97) (Public Law 105–34, 111 Stat. 788) reduce or eliminate section 411(d)(6) protected benefits?

A–11: A plan amendment does not violate the requirements of section 411(d)(6) merely because the plan amendment reduces or eliminates section 411(d)(6) protected benefits as of the effective date of the plan amendment, provided that—

(a) The plan amendment is made pursuant to an amendment made by title XV, or subtitle H of title X, of TRA '97; and

(b) The plan amendment is adopted no later than the last day of any

remedial amendment period that applies to the plan pursuant to §§ 1.401(b)–1 and 1.401(b)–1T for changes under TRA '97.

Approved: July 24, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–23569 Filed 9–3–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–98–055]

Drawbridge Operation Regulations; Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulation governing the operation of the East Venetian Causeway Drawbridge across Biscayne Bay, between Miami and Miami Beach, at Miami Beach, Dade County, Florida. This deviation allows the drawbridge owner or operator to close the bridge from 5 p.m. until 8 a.m. daily. The draw will open each hour on the hour from 8 a.m. to 5 p.m., daily. The draw shall open at any time for public vessels of the United States, State and local vessels used in public safety, vessels in distress where a delay would endanger life or property, commercial vessels engaged in rescue or emergency salvage operations, and vessels seeking shelter from severe weather. This temporary deviation is issued to allow the bridge owner to safely conduct necessary repairs to the drawbridge.

DATES: This deviation is effective from 8 a.m. on August 21 until 5 p.m. on October 19, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Project Manager, Seventh Coast Guard District, Bridge Section at (305) 536–5117.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The East Venetian Causeway Drawbridge across Biscayne Bay between Miami and Miami Beach, has a vertical clearance of 5.8 feet above mean high water (MHW) and 8 feet above mean low water (MLW) measured at the fenders in the closed position. On August 12, 1998, the State of Florida Department of Transportation requested a deviation from the current operating schedule in 33 CFR 117.269. This temporary deviation was requested to allow necessary repairs to the drawbridge and relieve concerns by the Venetian Isle residents that the leafs of the drawbridge might get caught in the open-to-navigation position, thereby stranding residents on the islands while the West Venetian Drawbridge over the Intracoastal Waterway is being replaced. The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.269 governing the East Venetian Causeway Bridge across Biscayne Bay in accordance with the provisions of 33 CFR 117.35(a) for the purpose of conducting repairs to the drawbridge. Under this deviation, the East Venetian Causeway Drawbridge need open only on the hour from 8 a.m. to 5 p.m., daily. At all other times, the drawbridge may remain in the closed position. The deviation is effective for a period of 60 days beginning on August 21, 1998 and ending on October 19, 1998.

Dated: August 24, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–23899 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–98–012]

Drawbridge Operation Regulations; Sacramento River, Sacramento and Yolo Counties, CA, Union Pacific ''I'' Street Railroad Bridge

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of the Union Pacific ''I'' Street Railroad swing bridge over the Sacramento River in Sacramento, CA. The deviation specifies that the bridge need not open for vessels from 6 a.m. Monday, September 14 through 10 p.m. Wednesday, September 16, 1998. The purpose of this deviation is to allow the Union Pacific Railroad and its contractors to perform preventative maintenance on the hydraulic system on the bridge.

DATES: Effective period of the deviation is 6 a.m. Monday September 14, 1998 through 10 p.m. Wednesday September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Olmes, Bridge Administrator, Eleventh Coast Guard District, Building 50–6 Coast Guard Island, Alameda, CA 94501–5100, telephone (510) 437–3515.

SUPPLEMENTARY INFORMATION: The Coast Guard anticipates that the economic consequences of this deviation will be minimal. The Coast Guard has contacted local marine interests to determine dates when the 3-day closure would have less of an impact to the marine public. The Union Pacific Railroad initially wanted to close the bridge in late August, but a local cruise company requested the work be delayed until after Labor Day, when commercial and recreational activity is less. The Railroad agreed that while maintenance was needed, they would delay repairs until after Labor Day. With advance notice, vessel operators can plan their transits accordingly.

This deviation from the normal operating regulations in 33 CFR 117.189 is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: August 21, 1998.

Thomas H. Collins,

Vice Admiral, U.S. Coast Guard, Commander Eleventh Coast Guard District.

[FR Doc. 98–23898 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD003–3024a, MD025–3024a, MD066–3024a; FRL–6148–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Conditional Limited Approval of Major VOC Source RACT and Minor VOC Source Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is conditionally and limitedly approving State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions pertain to Maryland's major source volatile organic compound (VOC) reasonably available control technology (RACT) regulation and minor VOC source requirements. The RACT regulation applies to major VOC sources that are not covered by Maryland's category specific VOC RACT regulations. The minor source requirements apply to smaller VOC

sources that are not covered by RACT regulations.

DATES: This direct final rule is effective on November 3, 1998 without further notice, unless EPA receives adverse comment by October 5, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, at the EPA Region III address above, or via e-mail at pino.maria@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

Background—State Submittals

On April 5, 1991, the State of Maryland formally submitted amendments to its air quality regulations to EPA as a SIP revision. Among the amendments submitted were revisions to COMAR 26.11.06.06, Maryland's minor VOC source requirements. Also included in Maryland's April 5, 1991 SIP revision request was the addition of COMAR 26.11.19.02G, which requires RACT for major sources of VOC that are not covered by Maryland's category specific VOC RACT regulations. Throughout the remainder of this notice, COMAR 26.11.19.02G shall be termed Maryland's generic major source VOC RACT regulation. All other amendments submitted to EPA in Maryland's April 5, 1991 SIP revision request have been approved into Maryland's SIP through separate rulemaking actions. (See 58 FR 63085, 59 FR 60908 and 60 FR 2018.) This rulemaking action only pertains to the portion of Maryland's April 5, 1991 submittal related to the addition of COMAR 26.11.19.02G, Maryland's generic major VOC source RACT regulation, and revisions to COMAR 26.11.06.06, Maryland's minor VOC source requirements.

On June 8, 1993, the State of Maryland again submitted amendments to its air quality regulations to EPA as a SIP revision. The June 8, 1993 submittal establishes statewide applicability for Maryland's generic major source VOC RACT regulation and category specific VOC RACT regulations, lowers the applicability threshold for VOC RACT regulations, expands the geographic applicability of Maryland's minor VOC source requirements, and corrects deficiencies in Maryland's Stage I Vapor Recovery regulation. This rulemaking action pertains only to the amendments contained in Maryland's June 8, 1993 submittal related to its generic major VOC source RACT regulation and its minor VOC source regulations, COMAR 26.11.19.02G and COMAR 26.11.06.06, respectively. All other regulations contained in the June 8, 1993 submittal were the subject of a separate rulemaking action. (See 60 FR 2018.)

On July 12, 1995, the Maryland Department of the Environment submitted additional amendments to its air quality regulations to EPA as a SIP revision. The July 12, 1995 submittal contained amendments to the definition of the term ''major stationary source of VOC'' and Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.01B(4) and 26.11.19.02G, respectively. The revisions lowered the major source threshold for the Maryland portion of the Washington, DC ozone nonattainment area, Calvert, Charles, Frederick, Montgomery, and Prince George's Counties, and required RACT on these newly defined major sources.

As required by 40 CFR 51.102, the State of Maryland has certified that public hearings with regard to these proposed revisions were held in Maryland on October 11, 1990 in Annapolis, Maryland, on November 17, 18, and 20, 1992 in Frederick, Centreville, and Columbia, Maryland respectively, and on December 15, 1994 in Baltimore, Maryland.

EPA Rulemaking History

On March 1, 1996, EPA proposed conditional approval of Maryland's April 5, 1991 and June 8, 1993 revision submittals pertaining to COMAR 26.11.19.02G and COMAR 26.11.06.06 (61 FR 8009). Approval was conditioned on the State of Maryland certifying that it has determined and imposed RACT for all the major VOC sources covered by the VOC RACT regulation and submitted those enforceable RACT determinations to EPA as SIP revisions. That certification was to be made by the Maryland Department of the Environment by no later that one year from the date EPA promulgated final conditional approval of the SIP revision. If the State failed to do so, that final conditional approval would have converted to a disapproval. Because proposed conditional approval does not comply with EPA's generic RACT policy, described below, EPA must withdraw its March 1, 1996 proposed conditional approval. No public comments were received on this proposal. Therefore, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will withdraw its March 1, 1996 proposed conditional approval.

EPA's Generic RACT Policy

On November 7, 1996, Ms. Sally L. Shaver, Director of EPA's Air Quality Strategies & Standards Division signed a memorandum entitled, ''Approval Options for Generic RACT Rules Submitted to meet the non-CTG VOC RACT Requirement and Certain NOx RACT Requirements.'' This policy memorandum sets out the different options available to EPA for rulemaking on generic RACT SIPs, and circumstances under which each rulemaking option would be appropriate. According to this policy, full approval cannot be granted until the State has submitted and EPA has approved RACT rules for sources covering all but a de minimis level of emissions. When this is not the case, EPA's generic RACT policy provides that EPA should propose limited approval of the generic RACT rule because it strengthens the SIP and at the same time EPA should propose conditional approval based upon the State's commitment to (1) submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to the RACT requirements, and (2) certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to the State or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions. The rationale for the conditional limited approval is described in detail below.

EPA's Analysis of the SIP Revisions

Clean Air Act Requirements: To comply with the RACT provisions of the Act, Maryland was required to expand its RACT regulations to apply statewide. It had to adopt all RACT regulations for all VOC sources for which EPA has published a Control Techniques Guideline (CTG) and all major non-CTG

VOC sources (so-called generic VOC sources) with the potential to emit ≥ 25 tons per year (TPY) in Cecil County and the Baltimore nonattainment area and ≥ 50 TPY in the remainder of the State. These major non-CTG sources are subject to Maryland's generic major source VOC RACT regulation.

State Submittals: Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, was originally submitted to EPA on April 5, 1991 to comply with the RACT Fix-up requirements of section 182(a)(2) of the Act. COMAR 26.11.19.02G required RACT for sources in the Baltimore and the Maryland portion of pre-enactment Washington DC nonattainment areas with the potential to emit ≥ 100 TPY of VOC and which were not subject to COMAR 26.11.11, 26.11.13, or 26.11.19.03—.15, Maryland's category-specific VOC RACT regulations.

In its June 1993 submittal, Maryland revised its generic major source VOC RACT regulation to comply with the RACT Catch-up provisions of section 182(b)(2) of the Act. The regulation was revised to make it applicable statewide and to apply to ''major stationary sources of VOC'' rather than to VOC sources that have the potential to emit ≥ 100 TPY. The term ''major stationary source of VOC,'' COMAR 26.11.19.01B(4), is defined as any stationary source with the potential to emit: (a) 25 TPY of VOC or more in the City of Baltimore and Anne Arundel, Baltimore, Carroll, Cecil, Harford, and Howard Counties, and (b) 50 TPY in the remainder of the State. Approval of the addition of this term to Maryland's SIP was the subject of a separate rulemaking action. (See 60 FR 2018.)

Furthermore, Maryland revised COMAR 26.11.19.02G to require non-CTG generic VOC sources to notify Maryland by August 15, 1993 if they are major sources subject to RACT. Under Maryland's regulation, these sources were required to submit a written RACT proposal and schedule for compliance by November 15, 1993. These sources must comply with RACT, as determined by Maryland, by no later than May 15, 1995. Upon Maryland's approval of a RACT proposal, the regulation requires the State to either amend the source's permit to operate to incorporate the RACT conditions, adopt a regulation that reflects the RACT requirement, or issue an order that includes the RACT requirement. Finally, COMAR 26.11.19.02G states that Maryland will submit all RACT determinations to EPA for approval via the federal rulemaking process for incorporation into the SIP.

With Maryland's July 1995 submittal, the major sources threshold for the Maryland portion of the Washington, DC ozone nonattainment area was lowered to 25 TPY of VOC. The term ''major stationary source of VOC,'' COMAR 26.11.19.01B(4), was revised to mean any stationary source with the potential to emit: (a) 25 TPY of VOC or more in the City of Baltimore and Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's Counties, and (b) 50 TPY in the remainder of the State.

In addition, Maryland revised COMAR 26.11.19.02G to require non-CTG generic VOC sources with potential emissions between 25 and 50 TPY in Calvert, Charles, Frederick, Montgomery, and Prince George's Counties to notify Maryland by January 20, 1995 if they are major sources subject to RACT. Under Maryland's regulation, these sources were required to submit a written RACT proposal and schedule for compliance by March 20, 1995. These sources were required to comply with RACT, as determined by Maryland, by no later than May 15, 1995.

On May 13, 1998 (63 FR 26462), EPA approved Maryland's July 12, 1995 revision to the definition of the term ''major stationary source of VOC,'' COMAR 26.11.19.01B(4), in a direct final rulemaking. This approval was effective on July 13, 1998.

Maryland's minor VOC source regulation, COMAR 26.11.06.06, was also submitted as part of Maryland's RACT Fix-ups. (See 58 FR 50307.) This regulation was applicable in the Baltimore and the Maryland portion of the pre-enactment Washington DC nonattainment areas. This regulation exempted sources which were subject to other VOC regulations, including RACT as established by Maryland pursuant to COMAR 26.11.19.02G.

Maryland amended COMAR 26.11.06.06A (Applicability) to expand the applicability of COMAR 26.11.06.06C-E (VOC-Water Separators, VOC Disposal, and Exceptions) statewide. Additionally, Maryland's minor source regulation, COMAR 26.11.06.06B (Control of VOC from Installations), was revised to add new requirements for sources located in Cecil County and the counties which were added to the Maryland portion of the Washington, DC nonattainment area, namely Calvert, Charles, and Frederick Counties. Sources in these newly regulated areas, Calvert, Cecil, Charles, and Frederick Counties, are required to reduce their VOC emissions by 85 percent overall. Finally, COMAR 26.11.06.06A was revised to exempt sources ''subject to the provisions of'' Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, from the requirements of COMAR 26.11.06.06. Thus, sources subject to COMAR 26.11.19.02G, which have not yet had a RACT determination approved by Maryland, are not subject to any VOC emission standard.

EPA's Evaluation: Through revisions made to Maryland's minor source VOC regulation, COMAR 26.11.06.06, its geographic applicability was expanded, resulting in the regulation of sources which were previously not regulated. However, other specific amendments to COMAR 26.11.06.06, found at 26.11.06.06A, narrowed the applicability of COMAR 26.11.06.06B such that certain sources in Maryland's pre-enactment nonattainment areas that were previously subject to COMAR 26.11.06.06B are no longer covered by any enforceable emissions limit until such time as Maryland approves RACT standards for them pursuant to the requirements its generic major VOC RACT regulation, COMAR 26.11.19.02G. This results in a lapse of coverage for previously regulated non-CTG generic sources major VOC sources in the State of Maryland.

Maryland's generic major source VOC RACT regulation, COMAR 26.11.19.02G, requires all case-by-case, category-specific or source-specific RACT requirements to be submitted as SIP revisions to EPA. It does not, itself, contain enforceable RACT standards for these major non-CTG VOC sources. Because COMAR 26.11.19.02G does not, in and of itself, fully satisfy the Act's requirements requiring for RACT on all major VOC sources, it is not unconditionally approvable. The Act's major source RACT requirements will be fully satisfied only when EPA approves, as SIP revisions, actual RACT standards for all subject sources in Maryland.

EPA's Rulemaking Determination

EPA has evaluated Maryland's generic major source VOC RACT regulation and its minor VOC source regulations for consistency with the Act and EPA regulations, and has found that they do not fully comply with the Act's major source RACT requirements. Therefore, EPA is conditionally approving the SIP revisions based upon Maryland meeting its commitment to submit case-by-case RACT SIP revisions to EPA, no later than twelve months from the effective date of EPA's final conditional approval of the Maryland generic major VOC source RACT regulation and its minor VOC source regulations, for all sources it has identified as being subject to the major source RACT requirements.

Maryland submitted its commitment in a letter to EPA dated February 7, 1996. Once the State has satisfied this condition, EPA shall remove the conditional status of its approval and the Maryland generic major VOC source RACT regulation and its minor VOC source regulations SIP revision will, for the time being, retain its limited approval status. EPA is limitedly approving the Maryland generic major VOC source RACT regulation and its minor VOC source regulations SIP revision on the basis that its approval will strengthen the SIP. The limited approval shall be converted to full approval once EPA has approved each of Maryland's case-by-case RACT proposals as SIP revisions. This conditional limited approval action is action that is being taken under section 110 of the Clean Air Act.

Terms of and Rationale for Conditional Approval

EPA's rulemaking includes conditional approval of Maryland's VOC regulations SIP revision, based upon the State's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to the RACT requirements currently known to MDE. The State submitted this commitment in a letter to EPA dated February 7, 1996. The case-by-case RACT proposals must be submitted by a date certain that is no later than 12 months after the effective date of EPA's final conditional approval.

Therefore, to fulfill the condition of this approval the State must, by no later than 12 months after the effective date of EPA's final conditional approval of the generic major source VOC RACT regulation and its minor VOC source regulations: (1) Certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to MDE; or (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined below. Once EPA has determined that the State has satisfied this condition, EPA shall remove the conditional nature of its approval and the Maryland VOC regulations SIP revision will, at that time, retain limited approval status. Should the State fail to meet the condition specified above, the final conditional limited approval of the Maryland VOC RACT regulation SIP revision shall convert to a disapproval.

Even after the conditional status of EPA's approval of the Maryland RACT regulation is removed, MDE must still continue to submit, and have EPA approve into the Maryland SIP, RACT requirements for the remaining de minimis amount of emissions. Therefore, removal of the conditional status to limited approval status in no way changes MDE's statutory obligation to implement RACT for all major sources.

Definition of De Minimis

For states with a generic major source VOC RACT regulation intended to regulate all non-CTG VOC sources, de minimis is determined by comparing the total 1990 emissions of all non-CTG VOC major sources in the State, where a CTG had not been issued at the time of the state submittal of the generic VOC RACT regulation with the total emissions of those non-CTG VOC sources subject to the generic RACT where these source-specific RACTs have not yet been approved by EPA. For example, while not applicable to the Maryland generic RACT submittal, since EPA has issued CTGs for shipbuilding and repair and wood furniture coatings in August 1996 and May 1996, respectively, EPA's de minimis procedure for a state submittal subsequent to August 1996 would require that all RACTs for those CTG category sources and for shipbuilding and repair and wood furniture coating be approved and that the de minimis procedure as described in this notice apply only to those VOC emissions from sources that are neither CTG sources or shipbuilding or wood furniture sources. The VOC emissions from these remaining major sources are still subject to the RACT requirement, but EPA can lift the conditional status of its approval of the state generic RACT rule prior to SIP approval for those sources that represent a de minimis amount of VOC emissions.

In Maryland's case, the generic major VOC source RACT regulation was originally submitted in April 1991. At that time, the regulation was applicable in the Baltimore and the Maryland portion of the pre-enactment Washington, DC, nonattainment areas. In June 1993, Maryland submitted revisions to the generic major VOC source RACT regulation to make it applicable statewide. No post-1990 CTGs were issued prior to June 1993. Therefore, the VOC emissions from all non-CTG source category are included in the pool of total VOC emissions used to determine whether the amount of emissions remaining is de minimis.

Rationale for Limited Approval

The current Maryland SIP does not contain a general requirement that all major sources must implement RACT, nor does it have a provision requiring sources in Calvert, Cecil, Charles, and Frederick Counties to reduce their VOC emissions by 85 percent overall. While EPA does not believe that the Maryland generic major source VOC RACT regulation and minor VOC source requirements satisfy the Act's RACT requirements as discussed previously in this notice, EPA is also granting limited approval of these VOC regulations on the basis that they strengthen the Maryland SIP. Once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval.

EPA's review of this material indicates that conditional limited approval is warranted. Further discussion and details of this rulemaking action can be found in the accompanying technical support document (TSD) prepared by EPA in support of this rulemaking. Copies of the TSD may be obtained, upon request, from the EPA Regional office listed in the **ADDRESSES** section of this notice. EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This rule will be effective November 3, 1998 without further notice unless the Agency receives adverse comments by October 5, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 3, 1998 and no further action will be taken on the proposed rule.

Final Action

EPA is conditionally and limitedly approving the Maryland major source VOC RACT regulation and minor source VOC regulations, COMAR 26.11.19.02G and COMAR 26.11.06.06 respectively. EPA is conditionally and limitedly approving these SIP revisions based upon the commitment made by Maryland to submit all the case-by-case RACT proposals for sources it is currently aware of as being subject to

the major source RACT regulations. On February 7, 1996, Maryland submitted a letter to EPA committing to: (1) complete submission of the SIP revisions required by COMAR 26.11.19.02G containing RACT determinations for the major VOC sources in the State that are subject to the RACT rule, and (2) provide a written statement to EPA that, to the best of its knowledge, it has completed submission of the SIP revisions described above within one year of the effective date of the final conditional limited approval of the Maryland generic major source VOC RACT regulation.

Note that through its July 1995 SIP revision, Maryland lowered the major source threshold for the Maryland portion of the Washington, DC ozone nonattainment area to 25 TPY from the Clean Air Act required threshold of 50 TPY. Thus, more sources are considered major in this nonattainment area than required under the Act. In serious ozone nonattainment areas such as the Washington, DC area, section 182 of the Act requires RACT on sources with the potential to emit 50 TPY or more. Therefore, when determining whether Maryland has met the conditions of this rule, only sources with the potential to emit 50 TPY or more in the Washington, DC area will be considered. However, in order for Maryland to take credit for emission reductions from RACT on any 25–50 TPY sources in the Washington, DC area to meet other requirements of the Act, RACT regulations for these sources must be submitted to EPA as SIP revisions and approved into Maryland's SIP.

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

Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review. The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, EPA's conditional limited approval of revisions to the Maryland State Implementation Plan pertaining to Maryland's major VOC source RACT and minor VOC source requirements, COMAR 26.11.19.02G and COMAR 26.11.06.06, must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: August 12, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c) (133), (134), and (135) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(133) Limited approval of revisions to the Maryland State Implementation Plan submitted on April 5, 1991 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 5, 1991 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Addition of COMAR 26.11.19.02G, Control of Major Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on March 9, 1991 and effective on May 8, 1991.

(ii) Additional Material.

(A) Remainder of the April 5, 1991 Maryland State submittal pertaining to COMAR 26.11.19.02G.

(134) Limited approval of revisions to the Maryland State Implementation Plan submitted on June 8, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 8, 1993 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revisions to COMAR 26.11.06.06, Volatile Organic Compounds, pertaining to minor source VOC requirements, adopted by the Secretary of the Environment on March 26, 1993, and effective on April 26, 1993.

(1) Amendments to COMAR 26.11.06.06A, Applicability.

(2) Amendments to COMAR 26.11.06.06B, Control of VOC from Installations.

(C) Revisions to COMAR 26.11.19.02G, Control of Major Stationary Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on March 26, 1993, and effective on April 26, 1993.

(ii) Additional Material.

(A) Remainder of the June 8, 1993 Maryland State submittal pertaining to COMAR 26.11.06.06A, COMAR 26.11.06.06B, and COMAR 26.11.19.02G.

(135) Limited approval of revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revisions to COMAR 26.11.19.02G, Control of Major Stationary Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on April 13, 1995, and effective on May 8, 1995.

(ii) Additional Material.

(A) Remainder of the July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.02G.

3. Section 52.1073 is amended by adding paragraph (e) to read as follows:

§ 52.1073 Approval status.

* * * * *

(e) Conditional limited approval of revisions to the Maryland State Implementation Plan, pertaining to Maryland's major VOC source RACT and minor VOC source requirements, COMAR 26.11.19.02G and COMAR 26.11.06.06, submitted on April 5, 1991, June 8, 1993, and July 12, 1995 by the Maryland Department of the Environment.

4. Section 52.1072 is amended by adding paragraph (d) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

(d) Revisions to the Maryland State Implementation Plan pertaining to Maryland's major VOC source RACT and minor VOC source requirements, COMAR 26.11.19.02G and COMAR 26.11.06.06, submitted on April 5, 1991, June 8, 1993, and July 12, 1995 by the Maryland Department of the Environment are conditionally approved. Maryland must meet the following conditions by no later than 12 months after the publication of the final conditional rulemaking. These conditions are: Maryland certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements; or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in the final rulemaking notice.

(i) Additional Material.

(A) Letter of February 7, 1996 from the Maryland Department of the Environment agreeing to meet certain conditions by no later than 12 months after the publication of the final conditional rulemaking. These conditions are: Maryland submit case-by-case RACT proposals for all sources subject to the RACT requirements; Maryland certify that, to the best of its knowledge, there are no other sources subject to the RACT requirements.

[FR Doc. 98–23504 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 20–7–0084a FRL–6138–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). The rules control particulate matter (PM) emissions from sources of open burning and visible emissions. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of

these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

DATES: This rule is effective on November 3, 1998 without further notice, unless EPA receives relevant adverse comments by October 5, 1998. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule did take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1903

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: BAAQMD Regulation 5, Open Burning, and Regulation 6, Visible Emissions. These rules were submitted by the California Air Resources Board to EPA on March 10, 1998 and May 13, 1991, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act, 43 FR 8964; 40 CFR Part 81). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). The San Francisco Bay Area Air Basin was not among the areas designated nonattainment for TSP or PM–10.

As part of updating the California SIP, the State of California submitted many PM–10 rules for incorporation into the California SIP on March 10, 1998 and May 13, 1991, including the rules being acted on in this document. This document addresses EPA's direct-final action for BAAQMD Regulation 5, Open Burning, and Regulation 6, Visible Emissions. BAAQMD adopted Regulation 5 on November 11, 1994 and Regulation 6 on December 19, 1990. These submitted rules were found to be complete on May 21, 1998 and July 10, 1991, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[2] and are being finalized for approval into the SIP.

Regulation 5 controls emissions from open burning and Regulation 6 is a generally applicable rule that controls visible emissions from a variety of sources. PM emissions can harm human health and the environment. This rule was originally adopted as part of BAAQMD's effort to maintain the National Ambient Air Quality Standard (NAAQS) for PM–10. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

On September 2, 1981, EPA approved into the SIP a version of Regulation 5, Open Burning and a version of Regulation 6, Visible Emissions, that had been adopted by BAAQMD on September 5, 1979. BAAQMD's submitted Regulation 5, Open Burning, includes the following significant changes from the current SIP:

- Modifies the definition of ''permissive burn day'' to exclude days when open burning is estimated to adversely affect ambient air quality or downwind population. This language replaces the SIP-approved rule's more vague language that a permissive burn is declared when air pollution caused by open burning may be minimized.
- Modifies the definition of hazardous material to include natural vegetation or native growth cleared to maintain a firebreak around any building to reduce risk of wildfire.
- Adds new requirements for agricultural fires set for the purpose of disposing grain stubble where both grain and vegetable crops are harvested during the same calendar year.
- Adds acreage burning allotment limitations on a daily basis for stubble fires and prohibits fires prior to 10:00 AM. Limits fire ignition techniques (to relatively clean techniques) unless field conditions do not lend themselves to these techniques. Adds a crackle moisture test requirement following rain. Requires a prior acreage burning allocation from the APCO before a stubble burn occurs. Adds a ''crackle'' test procedure for appraisal of field crop fuel moisture of stubble or straw.
- Allows fires for disposal of hazardous materials in compliance with Section 4291 of the Public Resources Code provided all of a series of additional conditions are satisfied.
- Limits the time of day wildlife management fires can be set and establishes acreage limitations for burning.
- Adds provisions to limit the amount of waste propellants, explosives and pyrotechnics that can be burned per facility, requires documentation of burns and requires installation of permitted on-site and off-site waste treatment systems by January 1, 1997. The submitted rule prohibits burning of waste propellants after January 1997.
- Adds a provision for burning to dispose of contraband requiring prior notification to the BAAQMD.
- Adds provisions for wildland vegetation management burning, filmmaking burning and civic event burning. The submitted rule requires prior approval of burn plans by the BAAQMD for these types of fires.
- Eliminates a reporting requirement to the District following a burn for written records indicating the location

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

of the fire, type of material burned and quantity burned.

- Adds a provision specifying prior notification requirements for the types of burns where notification is required (per the SIP-approved rule).

BAAQMD's submitted Regulation 6, Visible Emissions, includes the following significant changes from the current SIP:

- Adds exemptions for open outdoor fires (subject to BAAQMD Regulation 5) and temporary sandblasting operations (subject to BAAQMD Regulation 12, Rule 4).
- Adds a provision for diesel pile-driving hammers to require that a Ringlemann 1 (20% opacity) standard cannot be exceeded for more than four minutes during the driving of a single pile unless the operator uses kerosene, smoke suppressing fuel additives and synthetic lubricating oil. If these cleaner products are used, a Ringlemann 2 (40% opacity) limit applies which cannot be exceeded for more than four minutes during the driving of a single pile. Also, records must be maintained demonstrating use of the cleaner products. In reference to SIP-approved Regulation 6, diesel pile-driving hammers are included under a Ringlemann 2 standard which cannot be exceeded for more than three minutes an hour.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Regulation 5, Open Burning, and Regulation 6, Visible Emissions, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a).

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective November 3, 1998 without further notice unless the Agency receives relevant adverse comments by October 5, 1998.

If the EPA received such comments, then EPA will publish a timely withdrawal of the direct final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 3, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

C. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 23, 1998.

Clyde Morris,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(184)(i)(C)(*2*) and (254)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(C) * * *

(*2*) Regulation 6, adopted on December 19, 1990.

* * * * *

(254) * * *

(i) * * *

(F) Bay Area Air Quality Management District.

(*1*) Regulation 5, adopted on November 2, 1994.

[FR Doc. 98–23817 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 220

[Docket No. RSOR–12; Notice No. 5]

RIN 2130–AB19

Railroad Communications

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Railroad Administration (FRA) amends its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway workers; and to retitle this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio terminals and other forms of wireless communications used to convey emergency and need to know information.

This final rule is based upon recommendations from a rail industry and labor working group convened by FRA and upon review of comments received in response to the June 26, 1997 notice of proposed rulemaking (62 FR 34544).

DATE: *Effective Date:* This rule is effective January 4, 1999. *Compliance Dates:* Sections 220.9 and 220.11 are effective July 1, 1999 for each railroad that:

(1) provides commuter service in a metropolitan or suburban area;

(2) provides intercity passenger service; or

(3) had 400,000 or more annual employee work hours in 1997.

Sections 220.9 and 220.11 are applicable July 1, 2000 for each railroad that had fewer than 400,000 annual employee work hours in 1997.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to Ms. Renee Bridgers, Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Gene Cox, Operating Practices Specialist, Office of Safety, FRA, 400 Seventh Street S.W., Washington, D.C. 20590 (telephone: 202–493–6319); Dennis Yachechak, Operating Practices Specialist, Office of Safety, FRA, 400 Seventh Street S.W., Washington, D.C. 20590 (telephone: 202–493–6260); or Patricia V. Sun, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street S.W., Washington, D.C. 20590 (telephone: 202–493–6060).

SUPPLEMENTARY INFORMATION:

FRA's 1994 Report to Congress

FRA first issued railroad radio standards and procedures (49 CFR Part 220) in 1977. In 1992, in section 11 of the Rail Safety Enforcement and Review Act (RSERA), Pub. L. No. 102–365, 106 Stat. 972, Congress required the Secretary of Transportation to conduct an inquiry into Part 220 procedures. As part of its inquiry, FRA conducted a field investigation of current voice communications technology and practice, held three Roundtable discussions on advanced train control technologies, published a notice of special safety inquiry (59 FR 11847; March 11, 1994), conducted a public hearing on voice radio communications, contracted with the Department of Commerce's Institute for Telecommunications Sciences for a technical evaluation of advanced train control systems, and consulted with other agencies within DOT and with staff of the Federal Communications Commission.

In July 1994, FRA published its Report to Congress on Railroad Communications and Train Control. FRA concluded that railroad radio communications were generally good and had steadily improved since FRA's last major study in 1987. However, compliance with the standards and procedures in Part 220 was poor, and employees continued to report problems with radio equipment. (FRA's June 26, 1997 notice of proposed rulemaking, discussed below, details the technology application and utilization problems (62 FR 34544–45) uncovered during the inquiry.) Based on these findings, FRA committed to revising Part 220 to make the regulations more flexible.

Railroad Safety Advisory Committee's Review of Part 220

In 1996, FRA established the Railroad Safety Advisory Committee (RSAC or the Committee) to implement a more consensual approach to rulemaking. RSAC is comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and two associate non-voting representatives from Canada and Mexico. To address specific tasks, such as railroad communications, RSAC formed standing or temporary subcommittees, or working groups, comprised of knowledgeable persons from the organizations represented on RSAC. The Railroad Communications Working Group (Working Group or Group) was comprised of representatives from the following organizations:

American Public Transit Association (APTA)
The American Short Line Railroad Association (ASLRRA)
Association of American Railroads (AAR)
Brotherhood of Locomotive Engineers, American Train Dispatchers Department (BLE)
Brotherhood of Maintenance of Way Employes (BMWE)
Brotherhood of Railroad Signalmen
Burlington Northern Santa Fe
Canadian Pacific Rail System
Consolidated Rail Corporation (Conrail)
CSX Transportation, Inc.

FRA
International Brotherhood of Electrical Workers
National Railroad Passenger Corporation (AMTRAK)
Norfolk Southern Corporation (NS)
Railway Progress Institute
Transportation Communications International Union
United Transportation Union.

In its Task Statement (Task No. 96–3) to the Working Group, RSAC charged the Group to report back on the following issues:

1. all matters relating to revision of the existing standards, including data required for regulatory analysis;

2. communications needs in support of train operations;

3. communications needs in support of switching operations; and

4. the role of communications capability in emergency preparedness, including passenger service.

In a series of meetings, the Working Group examined extensive data, debated how to improve compliance with FRA radio standards and procedures, and considered whether to mandate radios and other forms of wireless communications to convey emergency and need to know information. In 1997, the Working Group achieved consensus on recommendations to amend Part 220, which the RSAC subsequently approved by formal ballot. On June 26, 1997, FRA published a notice of proposed rulemaking (NPRM) [62 FR 34544] based on the Working Group's recommendations.

Summary of Principal Communications Requirements in the NPRM

FRA proposed to vary communication equipment standards and implementation periods according to railroad size, providing small railroads more flexibility in recognition of their unique concerns. Small railroads were defined as those with fewer than 400,000 annual employee work hours (see the Regulatory Flexibility Act analysis below for further discussion of how small entities are defined in this part), and large railroads were defined as those with 400,000 or more annual employee work hours. This reporting cut-off is used in 49 CFR Parts 217 and 219 (Railroad Operating Rules and Control of Alcohol and Drug Use, respectively).

More communications equipment would be required on trains operated by large railroads than on those operated by small railroads. Large railroads would be required to equip each train with a working radio in each occupied controlling locomotive and with a means of redundant working wireless communications. A working radio is one that can communicate with the railroad's control center from any location within the rail system (through repeater stations, if necessary), with the exception of limited segments of territory where topography or transient weather conditions prevent effective communications. In the case of joint operations on another railroad, the radio must also be able to reach the control center of the host railroad. For small railroads, each train's communication equipment requirements would be determined by a variety of factors, including whether the train transports passengers, hauls hazardous materials, engages in joint operations with large railroads, or operates above specified speeds.

For roadway workers, communication equipment requirements would also vary according to the size of the railroad. Large railroads would be required to equip maintenance-of-way equipment operating without locomotive assistance with a working radio. If multiple units are traveling together, only one unit would need to be equipped. Each maintenance-of-way work group would also be required to have intra-group communications capability. Each employee designated by the railroad to provide on-track safety for a roadway work group, and each lone worker, would be required to have immediate access to a working radio.

Small railroads would have to provide each employee responsible for on-track safety and each lone worker with immediate access to working wireless communications unless railroads do not operate in excess of 25 miles per hour. A railroad, regardless of size, would be excepted from these roadway worker communication requirements whenever the roadway work location is inaccessible to trains or has no through traffic or traffic on adjacent tracks when roadway workers are present.

In addition to the proposed equipment requirements, FRA would require railroad employees to notify the railroad's control center, using the quickest means of communications available, of emergency conditions that could result in death or injury, damage to property, or serious disruption of railroad operations. FRA also proposed to require railroad employees to test radio and redundant wireless communication equipment as soon as practicable before the beginning of their work assignment, and to remove inoperative equipment from service upon detection. The NPRM also proposed a retention period for copies of mandatory directives.

Discussion of Comments

By August 25, 1997, the closing date for the comment period, FRA had received comments from the following parties, many of whom were represented in the Working Group:

APTA
ASLRRA
AAR
BLE
BLE, Local Chairman 112 (BLE 112)
BLE, General Committee of Adjustment, Southeastern Pennsylvania Transportation Authority (BLE SEPTA)
BMWE
Conrail
Duluth, Missabe and Iron Range Railway (DMIR)
Railtex
NS
Union Pacific Railroad Company (UP)

Comments that were addressed to specific sections of the NPRM are discussed in the section-by-section analysis. In reviewing the comments, five major issues emerged, which are discussed below.

(1) Coverage

The NPRM defined a working radio as one that can communicate with the railroad's control center from any location within the rail system (through repeater stations, if necessary), with the exception of limited segments of territory where topography or transient weather conditions temporarily prevent effective communications. In the case of joint operations on another railroad, the radio must also be able to reach the control center of the host railroad. FRA requested comments on whether the final rule should allow exclusions in communications coverage where the cost of placing additional repeater stations to prevent dead spots would be significant in relation to potential benefits.

FRA received the most comments on this issue. Coverage is a significant issue for many western railroads because of their greater territory and more diverse terrain.

BLE SEPTA commented that coverage exclusions should only be considered on territory without passenger or hazardous materials traffic, or on a case-by-case waiver basis. Factors such as installation cost, topography or frequency of use should not determine coverage limits, since quick communication is needed whenever a potential disaster strikes. BMWE also opposed allowing railroads subject to the NPRM to define additional coverage limits. BMWE commented that the safety risks associated with operating without communications capability remain the same regardless of

topography, and that cost issues had been adequately addressed by the NPRM's exclusion of railroads with fewer than 400,000 annual employee work hours and allowance for temporary fluctuations due to weather or terrain.

DMIR, on the other hand, commented that FRA needed to clarify what communications capability would be required for each piece of on-track equipment and for intra-group communication. While DMIR's present portable radios could communicate with other nearby radios, there were areas on its system where topography prevented these radios from being able to reach the dispatcher. DMIR estimated that providing each lone worker with a portable radio capable of reaching the dispatcher would cost the railroad approximately $200,000 (ten additional base stations, six towers and forty more portable radios).

UP commented that it would not be cost effective or practicable to design and implement a wide area system with 100% coverage all of the time. Instead, UP suggested that FRA define its coverage requirements using common terminology such as ''90% of the territory is covered 90% of the time'' since this would reduce future waiver applications. With respect to the proposed communications requirements for roadway workers in § 220.11, UP noted that portable radios do not provide the same coverage as locomotive radios because of differences in transmitted power, antenna height, and antenna efficiency and therefore could not be expected to communicate with the control center from anywhere on the right-of-way.

AAR commented that the preamble's implied requirement to construct and install new base stations was not agreed to by the Working Group, contained in the rule text or analyzed in the regulatory impact analysis. ASLRRA supported AAR, adding that it would be cost-prohibitive to require all railroads to install repeater stations to eliminate dead spots and provide complete radio coverage. ASLRRA also commented that the Working Group had never voted or reached consensus on this issue because of the unavailability of data demonstrating the safety benefits of full coverage.

The issue of ''coverage'' is separable into two dimensions. The first has to do with the ability of mobile radios (mounted semi-permanently within the cabs of locomotives, on-track equipment or trucks assigned to roadway workers) to transmit and receive from any place along the length of a railroad right-of-way. Major railroads maintain thousands of repeater stations that facilitate communication with control centers from such locations. However, even the most complete of the current repeater station arrays may be unable to receive from or transmit to mobile radios at isolated (localized) sites such as long tunnels, at the base of cliffs, or at certain locations within gorges. The working group did not discuss, and FRA did not intend to propose, that every such ''dead spot'' be remedied, since this could require the expenditure of large sums of money to place repeating stations where no commercial power is available in order to yield very modest increases in communication capability. The final rule requires that radio coverage of all territories be provided (as is generally the case today) with the following exceptions: (a) tunnels or other localized places of extreme topography; and (b) temporary lapses of coverage due to atmospheric or topographic conditions.

FRA also recognizes that certain existing ''dead spot'' locations may warrant further study for special treatment. Examples may include very long tunnels where an engine fire or derailment could create an immediate need for rescue by a relief train. One commentator in this proceeding, BLE Local 112, suggested that this final rule expressly mandate such coverage. However, this proceeding has focused on the equipping of trains and provision of communications capability to roadway workers, rather than the density of the communications infrastructure. Accordingly, FRA does not have available the data that would be needed to resolve these issues in this final rule. To the extent passenger operations are conducted through long tunnels, FRA will expect railroads to address communications needs in formulating plans under the new requirements for Passenger Train Emergency Preparedness (64 FR 24632; May 4, 1998).

As noted in the final rule, transient weather conditions (alone or in combination with topographic features) may also give rise to temporary coverage gaps over which the railroad will have no control. These interruptions are inherent to communications in the 160 MHZ band and cannot be effectively addressed through regulatory fiat.

The second dimension of the coverage issue involves those situations where roadway workers may find it necessary to work at some distance from trucks or on-track equipment equipped with mobile radios, in territory where only a mobile radio can be relied upon to communicate with the control center. In these situations, it is again unrealistic to require that repeater stations be installed in a pattern so dense that portable radios will always be capable of reaching the control center. Portable radios transmit at lower wattage than mobile radios, and their smaller antennas are less able to receive faint signals. Particularly in the Western States, adding repeater stations to accommodate communication with the control center using only portable radios could result in massive expenditures for additional radio infrastructure. FRA has reviewed this issue in light of the public comments and fashioned the following approach in this final rule:

- Those in charge of obtaining protection for roadway workers (including lone workers) must be provided with whatever radio equipment is needed to reach the control center from their work area, subject to the same localized and transient exceptions that apply to trains above. (Groups or lone workers traveling by rail will already have this capability in the form of a mobile radio, and trucks used by signal maintainers and other roadway workers must be similarly equipped unless portable radios are sufficient for the purpose of reaching the control center.)
- To the extent that it is not practicable for such workers to maintain immediate access to communications capability with the control center (because of the need to work at some distance from equipment on which mobile radios are mounted), portable radios must be provided. Portable radios will permit these workers to monitor local transmissions from trains, a major objective sought by representatives of these workers during the working group negotiation. In an emergency involving injury to a roadway worker, it may also be possible to relay information to the control center through crews of passing trains or through another roadway worker situated within earshot of the group's on-track equipment or truck.

FRA believes that the final rule upholds the intent of the working group to provide effective communications capability for trains and roadway workers while responding to the detailed comments on coverage received in response to the NPRM. FRA recognizes that standards for effective communication will continue to evolve as technology improves and the rail industry gains experience in the application of this final rule.

(2) Roadway Worker Protection

The NPRM proposed to require large railroads to provide each designated employee in charge, and each lone worker, with immediate access to a

working radio. Small railroads would have the option of providing immediate access to either a working radio or working wireless communications.

Several commentators raised issues concerning the NPRM and FRA's Roadway Worker Protection regulations (49 CFR Part 214, Subpart C). Referring to FRA's proposed lone worker definition, DMIR suggested that FRA substitute ''work group'' for ''work gang'' to be consistent with Part 214 terminology. FRA agrees and has substituted ''group'' for ''gang'' throughout this final rule. To further harmonize this part with Part 214, FRA substitutes ''employee responsible for on-track safety'' for ''designated employee in charge'' (a term used in the NPRM's preamble, but not the rule text) and ''employee in charge of on-track equipment'' to ensure consistent terminology, and amends § 220.61(b) to require the employee responsible for on-track safety to retain a copy of a mandatory directive while it is in effect, to parallel the retention requirements in § 214.321 (retention of mandatory directives is discussed in more detail elsewhere in this preamble).

NS expressed concerns about ''substantial'' duplication between the NPRM and Part 214. Additionally, AAR commented that the preamble had incorrectly stated that the Working Group's recommendations resulted from a decision to enhance roadway worker compliance with Part 214 and ability to communicate unsafe conditions. ASLRRA supported AAR's comments, adding that the preamble had misstated the tasks of the Working Group by implying that the Group had been tasked with equipping maintenance-of-way equipment and/or extending roadway worker requirements into the railroad communications rule.

After examining both rules, FRA finds them complementary, not conflicting or duplicative, since the communications requirements in this final rule reinforce compliance with on-track safety procedures by workers performing duties on or adjacent to live track. While there may not be agreement concerning the Group's reasons for amending Part 220, the changes contained in the NPRM were the product of consensus.

BMWE's comments are addressed in the section-by-section analysis.

(3) Non-Radio Wireless Communications Procedures

FRA asked for comments on whether non-radio wireless communications procedures paralleling the radio procedures in Subpart B should be adopted for cellular telephones and other wireless communications devices that would be covered under the NPRM. To focus on this issue, FRA inquired whether non-radio wireless communications had the same opportunities for misunderstanding as radio transmissions, and asked how such procedures would be enforced (e.g., ''over'' and ''out'' with cellular telephones where usually only one party to the conversation could be overheard).

BLE SEPTA recommended that FRA adopt certain sections of the current radio procedures for non-radio wireless communications, specifically identification (§ 220.27), statement of numbers and letters (§ 220.29), ending a transmission (§ 220.35), consistency with federal regulations and railroad operating rules (§ 220.43), complete communications (§ 220.45), and transmission of mandatory directives (§ 220.61). BLE SEPTA noted that while cellular telephones have less interference from other communications there is also no listener redundancy to detect errors. BMWE also supported adoption of non-radio wireless communications procedures to ensure the accurate transmittal and copying of information. In particular, BMWE advocated requiring all mandatory directives transmitted via non-radio wireless communications to be repeated back and verified before being acted upon. BLE Local 112 suggested that FRA require the dispatcher to have a separate telephone number for emergencies.

Conversely, UP commented that non-radio wireless communications procedures were unnecessary, and that railroads could combine ordinary telephone procedures with operating rules to govern such communications. APTA also commented that non-radio wireless communications procedures were unnecessary, since wireless communications other than radio would not involve heavy communications traffic on shared channels. With cellular telephones, for example, parties to a call would not be subject to interfering traffic so the potential for confusion would be diminished. APTA also believed that non-radio wireless communications procedures would be difficult to monitor, and consequently, both unenforceable and counterproductive.

After reviewing the comments, FRA has decided not to promulgate non-radio wireless communications procedures at this time, since the Working Group did not consider in depth how to ensure the accuracy and completeness of non-radio wireless communications. As proposed, in this final rule FRA addresses only the testing and failure of non-radio wireless communications equipment (in §§ 220.37 and 220.38 respectively).

FRA emphasizes, however, that the procedures in § 220.61(b) should be followed even when a cellular telephone or other form of wireless communication is used to transmit a mandatory directive, since there is a risk of miscommunication. Regardless of the means of transmission, an employee should not copy a mandatory directive while at the controls of moving equipment. Regardless of the means of transmission, FRA expects a mandatory directive to be copied in its entirety and retained for the duration of the work assignment, to ensure that those responsible for executing the directive understand (if train crew) or acknowledge (if roadway workers) it. While existing railroad operating rules will otherwise continue to govern non-radio communications, FRA will monitor compliance with § 220.61, and will revisit the issue of non-radio wireless communications procedures if necessary.

(4) Ending a Transmission

In the NPRM, FRA asked for comment on whether use of ''over'' and ''out'' at the end of each radio transmission should remain a requirement or become a recommended practice .

Comments in response to the NPRM were divided. BMWE was not opposed to retention of ''over'' and ''out'' provided that failure to end a transmission in this manner did not result in individual liability. Conrail supported changing ''over'' and ''out'' to a recommended practice, commenting that this requirement was unique to railroads. UP, also in favor of anti-retention, suggested that ''over'' and ''out'' be required only when necessary to ensure transmission quality. Finally, AAR and ASLRRA both favored allowing railroads to follow their own current radio practices, commenting that ''over'' and ''out'' had no special safety significance.

After reviewing these comments, FRA has decided to retain ''over and out'' in the final rule, except in yard switching operations, where radio congestion is a frequent problem and rapid delivery of information supports real time decisions that are crucial to safety. This exception is consistent with the latitude allowed under current FRA enforcement practice. Use of ''over'' and ''out'' makes clear to the conversants, and to any listeners monitoring and using that frequency, when a radio transmission is in progress and when it has concluded. Past audits demonstrate that overall compliance with radio rules improves whenever this requirement is strictly

enforced. Moreover, crews may act on incomplete information or overlapping transmissions without a standard procedure to indicate when a transmission is over.

(5) Copying and Retention of Mandatory Directives

In the NPRM, FRA clarified that § 220.61 has always required that the conductor and the engineer each have an individual copy of every mandatory directive transmitted by radio, since each is responsible for ensuring that all train crew members (with the exception of passenger and commuter train personnel not directly involved in the operation of the train) read and understand the directives before they are acted upon.

In its comments, NS suggested that a single copy of a mandatory directive in the possession of either the conductor or engineer could be used to ensure that both read and understand a mandatory directive before acting upon it, thus avoiding the copying and paperwork burden of duplicate copies. FRA disagrees and this final rule tracks the proposed rule; too much potential for misunderstanding exists when the engineer and conductor share a single copy of a mandatory directive, even if both have read it. DMIR, however, asked if a two-part form could be used to avoid possible transcription errors in making a duplicate written copy of the mandatory directive. FRA has no objections, so long as the engineer and conductor each retain a part of the form containing the complete mandatory directive.

For roadway groups, FRA proposed to require that a mandatory directive be ''acknowledged,'' instead of ''read and understood,'' by the designated employee in charge, who would then provide a detailed job briefing at the beginning of the assignment notifying the other roadway workers of the group's movement limitations, authorities, and other relevant information.

FRA received no comments on this proposal, and adopts it in this final rule.

FRA proposed requiring that fulfilled or canceled mandatory directives be marked with an ''X'' or in accordance with the railroad's operating rules to prevent later employee confusion as to which mandatory directives were applicable at any point of time, and that each employee responsible for executing a mandatory directive within a train crew or roadway group retain copies of those directives for the duration of his or her work assignment. FRA also solicited comments on the value of requiring retention of copies of mandatory directives for seven work days after completion of the work assignment as recommended in a recent FRA Safety Bulletin (61 FR 64191, August 26, 1996), and as already required on NORAC (the Northeast Operating Rules Advisory Committee) member railroads. This proposal would enable both railroads and FRA to enforce compliance with the copying requirement.

Commentators uniformly supported marking directives fulfilled or canceled. Commentators were divided on FRA's suggestion to retain copies until the end of the work assignment, and uniformly opposed retention for seven work days after completion of the work assignment. Railtex, for example, commented that a seven day retention period would be unenforceable, but supported retaining copies of mandatory directives for the duration of the crews' work assignment. AAR, ASLRRA, and BMWE, on the other hand, commented that retaining mandatory directives beyond their effective period could lead to confusion as to which directives had been fulfilled and which remained active, and that marking fulfilled directives with an ''X'' or in accordance with railroad operating rules would be sufficient. ASLRRA added that FRA's Roadway Worker Protection regulations require retention only until the directive has been fulfilled or canceled.

After considering this issue further, FRA continues to believe that those employees responsible for ensuring that mandatory directives are read and understood, namely engineers and conductors, should be required to retain their copies for the duration of the work assignment and mark copies of directives that have been fulfilled or canceled with an ''X'' or in accordance with the railroad's operating rules and this final rule so provides. Inspecting retained copies will enable railroads and FRA to monitor and ensure that all mandatory directives are correctly copied, read, and understood before being acted upon by those with a need to know.

FRA agrees, however, that these part's retention requirements should be consistent with those in Part 214 for employees responsible for on-track safety. To avoid potential confusion, in § 220.61(b)(5)(ii) the final rule requires the employee responsible for on-track safety to retain a copy of the mandatory directive while it is in effect, the same retention period required for a copy of authority for exclusive track occupancy under § 214.321. Copies of fulfilled or canceled directives need not be marked because of their anticipated short retention time.

Other comments

In addition, FRA received some comments that did not address specific sections of the NPRM or the five issues discussed above.

BLE suggested that each working radio should be equipped with a hand held microphone and speaker, to allow the engineer greater range of vision and movement while operating the controls of the locomotive, and to screen out interference and background noise. Communication equipment design specifications is a significant issue that was not considered by the Working Group, and consequently is not within the scope of the NPRM. FRA will therefore defer resolution of this issue to future rulemakings.

BLE SEPTA made several comments specific to SEPTA's predominantly short train operations. BLE SEPTA expressed concern that on two car trains any interference with the primary radio would also block the redundant radio because of the short distance between radios. Since SEPTA engineers often operate multiple unit cars with dual operating compartments separated by a passenger compartment, BLE SEPTA also suggested requiring the redundant working wireless communication to be located in the operating compartment of the controlling locomotive to ensure access by the engineer. While FRA believes that such equipment should be located in the back of the consist, where it would be better protected and available for emergency notification in the event of a frontal impact, the final rule does not specify where redundant communication equipment should be placed in a train. BLE SEPTA would also require voice tests for each radio frequency used during the train's tour and for each instance where a train proceeds after an interruption of power. Implicit in the working radio definition, however, is the presumption that the radio works on all relevant channels. This communications capability should not be affected by a change in radio frequency or an interruption of power.

BLE SEPTA also recommended that FRA prohibit the use of radio to transmit public service announcements and promotional information to the crew for conveyance to passengers. FRA agrees that radio channels should not be used for non-essential broadcasts, but has not included this prohibition since it is already included in many railroad operating rules, such as NORAC Rule 709, which prohibits broadcast of unnecessary, irrelevant, or unidentified information. An additional BLE SEPTA comment concerning incomplete

transmissions is discussed in § 220.45 below.

Finally, referring to appendix B's Recommended Pronunciation of Numerals, DMIR stated that the number ''0'' should be spoken as ''zero,'' not ''0;'' and that ''1600'' should be ''wun six hundred'' not ''wun six thousand.'' FRA appreciates DMIR noting these long-standing errors, and has corrected them in this rule.

Effective Dates

As proposed, this final rule becomes effective 120 days after publication to allow all railroads four months to implement the new streamlined procedures, which should not require extensive investment or retraining. Since the timetable for implementation is, of course, determined by the issuance date of this final rule, FRA is extending the proposed implementation dates for §§ 220.9 and 220.11 an additional nine months to allow both large and small railroads sufficient time for equipment purchase. Thus, §§ 220.9 and 220.11 apply July 1, 1999 for railroads providing commuter service in a metropolitan or suburban area, railroads providing intercity passenger service, and railroads with 400,000 or more annual employee work hours in 1997. Since small railroads are allowed an additional year for capital investment, §§ 220.9 and 220.11 apply July 1, 2000 for railroads with fewer than 400,000 annual employee work hours in 1997.

As mentioned above, this part is retitled to reflect its coverage of other means of wireless communications such as cellular telephones and data radio terminals. The section-by-section analysis discusses the remaining amendments to Part 220.

SECTION-BY-SECTION ANALYSIS

Subpart A-General

Section 220.1 Scope

As proposed, FRA expands the scope of this part to allow for newer forms of technology already in use. For this reason, FRA changes the phrase ''radio communications'' to ''wireless communications'' and adds definitions for ''working radio'' and ''working wireless communications'' to this part.

Section 220.2 Preemptive Effect

This new section parallels the preemption language in 49 U.S.C. § 20106.

Section 220.3 Application

This section is unchanged.

Section 220.5 Definitions

Throughout this rule, FRA substitutes ''locomotive,'' which also includes cab cars and MU units, wherever the term ''engine'' appeared. Also, as mentioned above, FRA changes the term ''gang'' to ''group'' when referring to roadway workers, to be consistent with FRA's Roadway Worker Protection regulations.

Unless otherwise noted, the following definitions are adopted as proposed.

Adjacent tracks. This definition, taken from FRA's Roadway Worker Protection regulations (see below), means two or more tracks with track centers spaced less than 25 feet apart.

Control center. By control center, FRA means the locations from which a railroad issues instructions governing its operations.

Employee. In 1992, the Rail Safety Enforcement and Review Act (RSERA) clarified that FRA's safety jurisdiction extends to all entities, including contractors and their employees, that may violate the railroad safety laws. FRA has therefore amended this definition to include contractors and their employees, and any individuals authorized by railroads who use radios, or any other form of wireless communications in connection with railroad operations.

Immediate access. This term, discussed in the preamble of the NPRM, is now added to the definitions section. Immediate access to a radio means that a radio is either on the employee's person, or sufficiently close to the employee to allow the employee to make and receive radio transmissions.

Joint operations. This term means rail operations conducted by more than one railroad on the tracks of a railroad with 400,000 or more annual employee work hours, except as necessary for the purposes of interchange.

Locomotive. This term is taken from FRA's Railroad Locomotive Safety Standards (49 CFR Part 229).

Lone worker. For consistency, this definition and terms that cross-reference roadway worker protection throughout this document are taken from the Roadway Worker Protection regulations.

Mandatory directive. In this part, FRA replaces the term ''train order'' with ''mandatory directive,'' which conveys the same meaning as the traditional train order, but refers specifically to speed restrictions and movement authorities such as track warrants, Form D's, and DTC (Direct Train Control) authorities. Excluded from this definition are verbal instructions that are advisory in nature and typically involve imminent conditions, such as verbal permission to: pass a block or interlocking signal indicating stop; open a main track switch and enter the main track in interlocking limits or in CTC (Centralized Traffic Control) territory; move with the current of traffic in Rule 251 territory; make a reverse movement within the limits of the same block, pass a stop sign or red flag and enter working limits; and obtain foul time. Verbal warnings of obstructions or trespassers on or along the right-of-way, or instructions to stop a train due to an imminent danger, are also excluded. All of these instructions must be repeated as prescribed in § 220.33(b), but need not be copied since the crew will shortly act upon the information conveyed. Copying requirements are addressed further in the discussion of § 220.33.

Railroad operation. This definition substitutes ''locomotive'' for ''engine,'' and makes an editorial change from ''single'' to ''singly.''

Roadway worker. This definition, taken from FRA's Roadway Worker Protection regulations, means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal, and communication systems, electrical traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and switchman/lookouts.

Train. Any railroad operation subject to the air brake testing requirements of FRA's regulations on Railroad Power Brakes and Drawbars (49 CFR Part 232) is considered a train for purposes of this rule. This includes transfer trains, but not switching operations, or the assembly and disassembly of rail cars within a railroad yard, since these operations do not require an air test.

Working radio. A working radio is one with an adequate power source, free of mechanical malfunctions, that can both transmit and receive communications to and from the railroad's control center from any location within the rail system (through repeater stations, if necessary), with certain exceptions noted below. In the case of joint operations on another railroad, the radio must also be able to reach the control center of the host railroad.

A radio satisfies this definition even if there are localized dead spots (such as a tunnel) within a territory and even *if temporary* fluctuations or interference from weather or terrain occur. (It should be noted, however, that under § 220.45 of this part, any communications which are not fully understood or properly completed may not be acted upon and must be treated as if not sent.) Railroads must maintain the communications

capability to broadcast in all territory over which they operate, however.

Working wireless communications. With the exceptions noted, the final rule requires communications redundancy to compensate for radio communication failures due to interference, equipment failure, transmission difficulties and other problems which will occur with even the most advanced equipment. This term means the capability to communicate with either a control center or emergency responder of the railroad through a radio, portable radio, cellular telephone, or other means of two-way communication from locations within the rail system. (Emergency responder in this part means a member of a police or fire department, or other organization involved with public safety charged with providing or coordinating emergency services, who responds to a passenger or freight train emergency. See FRA's Passenger Train Emergency Preparedness regulations for additional discussion of this term.)

Section 220.7 Penalty

As discussed above, the RSERA expanded coverage of FRA's regulations to include contractors and their employees. FRA therefore amends this section to clarify that this part applies not only to railroads but also to any other entity that may violate this part, including independent contractors who provide goods and services to railroads and the employees of such contractors. Thus, any person authorized by a railroad to use its wireless communications facilities must comply with Part 220 procedures, regardless of whether the person has a direct employment relationship with the railroad.

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410 194 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, April 26, 1996), required agencies to adjust the maximum civil monetary penalties within their jurisdiction for inflation. FRA determined the resulting $11,000 and $22,000 maximum penalties in this part by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws. Additionally, the minimum penalty for violations of this part is now $500, as required by the RSERA.

Section 220.8 Waivers

This new section adopts by reference the procedures in Subpart C of 49 CFR Part 211 (Rules of Practice) for petitioning for a waiver from compliance with the requirements of this part.

Section 220.9 Requirements for Trains

Paragraph (a): As discussed above in the section summarizing the communications equipment requirements for trains, large railroads must equip all trains with a working radio in the controlling locomotive and with a back-up means of wireless communications. This requirement applies to both freight and passenger operations.

The controlling locomotive must be equipped with a working radio only when the locomotive is occupied by an assigned train crew and the train is involved in railroad operations. To allow for possible radio failure en route, the train must also have a form of working wireless communications upon departure from a terminal. As required in §§ 220.37 and 220.38, all required communication devices must be tested prior to the commencement of a work assignment, and removed from service if found not to be functioning as intended. Wireless communications must be able to reach the railroad's control center or an emergency responder.

Paragraph (b): As discussed above, small railroads have to meet the same heightened communication equipment standards as large railroads when operating passenger trains. Thus, *all* passenger trains, regardless of the size of the operating railroad, have to be equipped with both a working radio in the occupied controlling locomotive and with redundant working wireless communication equipment.

For freight trains, the communication requirements are determined by two factors: train operating speed, and extent of joint operations. If a freight train operates at greater than 25 miles per hour, or engages in joint operations on track where the maximum authorized speed for freight trains is greater than 25 miles per hour, the train must be equipped with a working radio in the occupied controlling locomotive. Similarly, a freight train engaged in joint operations on track that is adjacent to and within 30 feet measured between track center lines of another track on which the maximum authorized speed for passenger trains is greater than 40 miles per hour, must also be equipped with a working radio in the occupied controlling locomotive. When any of the operating conditions described above are met, the freight train crew must have a working radio to enable them to communicate with the host railroad's control center and the other trains on the host railroad.

The term ''within 30 feet of another track center,'' a criteria used in FRA's exercise of jurisdiction over tourist railroads, and also in the excepted track definition in FRA's Track Safety Standards (49 CFR Part 213), defines when a railroad operates sufficiently close to passenger train operations to create the potential for interference. This requirement ensures that all freight trains operating in close parallel proximity to passenger trains are equipped with radios.

A train that engages in joint operations on track where the maximum authorized speed for freight trains is 25 miles per hour or less is required to have working wireless communications, but not a working radio in the occupied controlling locomotive. A train that transports hazardous materials must also have working wireless communications even if it does not transport passengers or engage in joint operations. *No* communication equipment is required if a train does not transport passengers or hazardous material, and does not engage in joint operations or operate at greater than 25 miles per hour.

Section 220.11 Requirements for Roadway Workers

As proposed, large railroads must provide a working radio on maintenance-of-way equipment moving to or from a work location, or between multiple work locations on the same day, to enable the roadway work group to contact the control center in the event of an emergency when traveling. A unit of equipment traveling alone must also be radio equipped. A small railroad is exempted if its trains do not operate in excess of 25 miles per hour. Several commentators noted areas in which the preamble discussion of this section differed from the proposed rule text; these are clarified below.

Paragraph (a)(1): BMWE alerted FRA that the preamble discussion of this paragraph could be read as being more encompassing than the proposed rule text. In the NPRM's preamble, FRA stated that ''[i]f several maintenance-of-way units are physically separated, only one unit would have to be equipped with a working radio, provided that all of the units are *under the control of the same employee* (emphasis added),'' while the rule text referred to multiple pieces of maintenance-of-way equipment traveling together *under the same movement authority.* As BMWE noted, the term ''under the control of the same employee'' could vary from railroad to railroad. FRA agrees that the preamble misstated the intent of the Working Group, which was to ensure

that multiple pieces of maintenance-of-way equipment traveling together *under the same movement authority* be able to communicate with the control center.

Additionally, AAR, APTA and UP all correctly pointed out that the preamble discussion of intra-group communications was overly restrictive when it twice referred to a requirement for maintenance-of-way intra-group *wireless* communications capability, since the proposed rule text only required maintenance-of-way equipment to have intra-group communications capability with each other. Under the final rule alternatives to wireless communications, such as horns, hand signals, and amplified voice systems are acceptable means of intra-group communications.

Paragraph (b): Access to a working radio is determined by function, with two categories of roadway workers, the employee responsible for on-track safety of a roadway work group, and the lone worker, required to have access to a working radio. Both categories have analogous communication needs, since in each case, the employee is responsible for providing protection, either for an entire roadway group, or for him or herself.

As discussed above, large railroads must provide each employee responsible for on-track safety and each lone worker with access to a working radio, and with a portable radio whenever immediate access to the working radio is unavailable. Small railroads have the option of providing access to either a working radio or working wireless communications.

Paragraph (c)(2): As proposed, a railroad, regardless of size, is not required to provide communication equipment whenever the work location of the roadway work group or lone worker is physically inaccessible to trains, *or* has no through or adjacent track traffic when roadway workers are present.

BMWE suggested narrowing this proposed exclusion by requiring the conditions in both (i) and (ii) to be present, to ensure communications capability whenever rail traffic is expected on tracks adjacent to work locations protected in accordance with the inaccessible track requirements of Part 214. By changing the underlined ''or'' to ''and,'' BMWE would require physically inaccessible locations to have communications capability to protect against traffic on adjacent tracks not within the limits described in § 220.11(c)(2)(i).

Although most short lines are single track operations, a double track railroad could not operate on either track if it wished to qualify for BMWE's proposed exclusion. To address BMWE's concerns and be compatible with FRA's Roadway Worker Protection regulations, FRA instead incorporates Part 214's adjacent tracks definition, two or more tracks with track centers spaced less than 25 feet apart, into § 220.11(c)(2)(ii). By doing so, FRA requires railroads not exempt under § 220.11(c)(1) to provide access to a working radio to a employee responsible for on-track safety or lone worker whenever there is adjacent traffic within 25 feet of their work location.

Section 220.13 Reporting Emergencies

Paragraphs (a)–(c): In this new section, FRA proposed to require an employee to use the quickest means of communications available to notify the control center before undertaking other forms of emergency response, such as medical treatment or evacuation, to ensure that properly trained and equipped personnel respond to the scene as quickly as possible. While agreeing that an employee should use the quickest means available to notify the railroad, BMWE suggested that the on-site employee should be allowed discretion to determine the priorities in an emergency (e.g., by choosing to render medical attention before notifying the railroad). Although FRA agrees that an emergency may occasionally require immediate action prior to notification, as a general rule, on-site employees should not undertake responsive action without sufficient information and proper training. Requiring notification to be the first priority facilitates the quick arrival of professional emergency response personnel in situations when the *right* actions and reactions are critical.

The employee should follow the emergency radio transmission procedures in § 220.47 of this part when using a radio, or the procedures specified in the railroad's timetable or timetable special instructions when using another means of wireless communications. This section also includes language on emergency procedures originally contained in § 220.47(a).

Paragraph (d): FRA adds this paragraph to require an alternative means of emergency reporting whenever railroad operations are conducted while the control center is unattended or unable to receive radio transmissions. For example, a railroad may provide its employees with cellular telephones or portable radios with a dedicated police channel in lieu of maintaining 24-hour control center staffing to handle after hours emergencies. In such scenarios, employees would then have the capability to inform the staffed operating center of another railroad or to contact emergency responders directly. FRA anticipates that this added flexibility will primarily benefit medium-sized railroads, since many small railroads already rely on cellular telephones for emergency notification and large railroads staff their control centers around the clock.

Subpart B—Radio and Wireless Communication Procedures

FRA retitles Subpart B to make clear that the definition for working wireless communications, like that for working radio, requires that communications equipment be tested and in working condition before a work assignment commences. Both wireless communication and radio equipment are covered by §§ 220.37 and 220.38; section titles in this Subpart that apply only to radio operations have accordingly been retitled to reflect that fact.

Section 220.21 Railroad Operating Rules; Radio Communications; Recordkeeping

FRA deletes the implementation dates from this section since these references are no longer necessary.

Paragraph (b): FRA received no comments on its proposed editorial changes, which are incorporated into this final rule.

Paragraph (c): FRA retains the carrier classifications (Class I, II, and III railroads) created by the former Interstate Commerce Commission (ICC) and retained unchanged by the ICC's successor, the Surface Transportation Board.

Section 220.23 Publication of Radio Information

FRA received no comments on its proposed editorial changes, which are incorporated into this final rule.

Section 220.25 Instruction and Operational Testing of Employees

Paragraph (c): This paragraph requires a railroad to test employees authorized to use a radio for railroad operations on the procedures in this part. The railroad shall administer radio procedure tests in accordance with its written program of operational tests and inspections filed under § 217.9 (Railroad Operating Rules, 49 CFR Part 217), and in conjunction with mandatory periodic operating rules tests.

Section 220.27 Identification

Paragraph (a): FRA combines paragraphs (a)(2) and (a)(3), and deletes

paragraph (a)(3)'s requirement for an employee (usually the dispatcher) to identify the location of the station from which the employee is broadcasting, for those railroads that use central or regional dispatching, with a uniquely designated station for each dispatching system. If a station does not have a unique designation, both the station's name and location should continue to be stated.

Paragraph (b): FRA received no comments on its proposed editorial changes, which are incorporated into this final rule.

Section 220.29 Statement of Letters and Numbers in Radio Communications

This section is retitled to limit its applicability to radio communications.

Paragraph (b): FRA received no comments on its proposed editorial changes, which are incorporated into this final rule.

Paragraph (c): This paragraph is amended to provide that a decimal point may also be indicated by the use of the words ''dot,'' or ''point,'' in addition to ''decimal.''

Section 220.31 Initiating a Radio Transmission

This section is retitled to limit its applicability to radio communications. FRA had asked for comment on whether to change its current order of identification, which requires the caller to identify him or herself before identifying the intended receiver, to the reverse order, with the caller first identifying who he or she seeks to contact, and then identifying him or herself. FRA received no comments on this proposal, and accordingly retains its current order of identification.

Section 220.33 Receiving a Radio Transmission

This section is retitled to limit its applicability to radio communications.

Paragraph (a): FRA adopts a proposed change which clarifies that an employee need not monitor the radio when other immediate duties intervene, but must resume monitoring once those circumstances are over.

Paragraphs (b) and (c): FRA deletes paragraph (b) since it is made redundant by paragraph (a), and redesignates current paragraph (c) as paragraph (b).

As discussed above, unless required by a railroad's operating rules, a railroad employee does not have to copy advisory instructions, since the train either already possesses authority to occupy the main track by signal indication, or through the railroad's operating rules. Similarly, advisory information on conditions ahead such as trespassers or debris on track also involves imminent conditions that often change by the time the next train passes by. While these short-term instructions must be repeated, they need not be copied since they will soon be acted upon. (In non-signaled territory, in contrast, occupying or fouling a main track typically requires written initial movement authority from the train dispatcher or control operator.)

On the other hand, copying is necessary when an order will be acted upon later, or is of a long-term nature. In such instances, FRA believes that an employee must have a written reference to avoid the risk that the employee may later rely on a faulty recollection of the instruction.

Paragraph (b)(1): FRA received no responses to its request for comments on whether to continue requiring communications to be repeated in switching operations. Therefore, FRA leaves this section unchanged. As before, communications involving yard switching operations do not have to be repeated back to the transmitting party, since switching in yards often requires the rapid exchange of information being acted upon in real time, and the higher volume of operations in yards contributes to greater congestion on yard channels.

Section 220.35 Ending a Radio Transmission

This section is retitled to limit its applicability to radio communications. As discussed above, use of ''over'' and ''out'' is no longer required in yard switching transmissions, because of their high volume and the need to keep phrasing as terse as possible in light of the real time decision making for which the information is employed. For all other radio transmissions, use of ''over'' and ''out'' continues to be required to ensure that employees act on complete information and do not inadvertently interrupt transmissions already in progress.

Section 220.37 Testing Radio and Wireless Communication Equipment

As discussed above, this section is retitled and expanded in scope to cover testing of all the communication equipment required by §§ 220.9 and 220.11.

Paragraph (a): As proposed, FRA substitutes ''as soon as practicable'' for ''at least once during each tour of duty,'' to require the crew to perform a voice test at the start of their tour rather than at any point during their trip, thus enabling the crew to learn before they first need to use the radio whether it works properly or needs to be replaced. BMWE noted that the NPRM preamble discussion implied that the requirement to perform such voice tests is limited to the engineer and conductor, when in fact the rule requires all employees who use wireless communications equipment to perform voice tests as soon as practicable.

DMIR, however, felt that requiring voice testing for ''all workers using radios'' is unnecessary and would also require recordkeeping. As mentioned above, FRA has always required voice testing; FRA is modifying and expanding this requirement to ensure that employees have access to working wireless communications equipment before beginning their work assignments. FRA has not previously required recordkeeping of voice tests, and does not do so in this rule.

Also as proposed, FRA deletes the phrase ''outside yard limits'' to ensure that a voice test is conducted even when a train does not leave yard limits, and the phrase ''where the train is made up'' to make clear that at each intermediate crew change point, the new crew must perform a voice test at the start of their tour.

Paragraphs (b) and (c): Existing paragraphs (b) and (c) are deleted, since these requirements would be covered in proposed § 220.38, discussed below. A new paragraph (b) is added requiring that the test of a radio shall consist of voice transmissions with another radio, with the employee receiving the transmission advising the employee conducting the test of the clarity of the transmission.

Section 220.38 Communication Equipment Failure

This new section addresses failure of the communication equipment required by §§ 220.9 and 220.11.

Paragraph (a): If a radio or wireless communication device failure occurs, the employee is required to notify the proper authorities. In addition, FRA now requires inoperative radios and inoperative mandatory wireless communication equipment to be removed from service upon discovery.

Paragraph (b): As proposed, if a radio or wireless communication device fails en route, the controlling locomotive may proceed until the earlier of the next calendar day inspection or the nearest repair point where the equipment could be repaired or replaced. The movements allowed for communication equipment repair in paragraph (b) are taken from § 229.9(b) of FRA's Railroad Locomotive Safety Standards, which specifies the movements allowed for repair of non-complying locomotives.

In the NPRM, FRA asked for comment on whether, to encourage prompt replacement of failed radios, the final rule should expressly provide that placement of one or more radios on locomotives at a particular location does not constitute that location as a ''repair point.'' Both UP and AAR agreed with this suggested guidance, which FRA will employ as a rule of reason to encourage railroads to replace failed radios as soon as feasible with a reasonable deployment of equipment. (FRA anticipates that failed radios will usually be replaced and not repaired, since the capability to repair these solid state units is normally available only at central shops or the manufacturer). Thus, FRA will not consider a location to be a designated repair point merely because the railroad voluntarily makes or has made repairs there.

Section 220.39 Continuous Radio Monitoring

This section is retitled to limit its applicability to radio communications. FRA received no comments on its proposed editorial changes, which are incorporated into this final rule.

Section 220.41 Notification on Failure of Radio

FRA removes and reserves this section since it is made redundant by § 220.38, discussed above, which also addresses radio and equipment failures. In its comments, Conrail correctly noted that the proposed removal of this section would require the removal of its corresponding penalty. Accordingly, FRA also removes the penalty for this section from the penalty schedule.

Section 220.43 Radio Communications Consistent With Federal Regulations and Railroad Operating Rules

This section is retitled to limit its applicability to radio communications, and reworded, to make clear that radio communications must be in compliance with this part, FCC regulations, and railroad operating rules.

Section 220.45 Radio Communications Shall Be Complete

This section is retitled to limit its applicability to radio communications, but is otherwise unchanged. BLE SEPTA suggested that employees should be required to comply with the more restrictive condition whenever an incomplete communication may contain a more restrictive operating condition, until communications have been reestablished. FRA believes that requiring employees not to act upon incomplete communications is safer practice than requiring employees to speculate and possibly make incorrect assumptions about the content of unfinished communications.

Section 220.47 Emergency Radio Transmissions

This section is retitled to limit its applicability to radio communications. As discussed above, since § 220.13(a) now addresses emergency notification, § 220.47(b) has been deleted. The revised section continues to require an *initial* emergency transmission to begin with the word ''emergency'' repeated three times.

Section 220.49 Radio Communication Used in Shoving, Backing or Pushing Movements

This section is retitled to limit its applicability to radio communications, and to make clear that the section applies to back-up moves only. In addition, the phrase ''in lieu of hand signals'' is deleted to emphasize that this section applies *whenever* a radio is used. To make the section easier to understand, FRA also makes several editorial changes simplifying its language.

Section 220.51 Radio Communications and Signal Indications

This section is retitled to limit its applicability to radio communications.

Paragraph (b): As proposed, FRA deletes the phrase ''in automatic block territory'' to emphasize that the prohibition against conveying signal indications applies to all types of territory. UP, however, asked for clarification on whether a dispatcher or control operator could advise a crew if the indication or aspect of a signal unexpectedly changed from proceed to stop. UP noted that such warnings have previously prevented emergencies by providing crews sufficient notice to stop their trains safely.

In emergency situations, FRA has always allowed signal indications or aspects to be conveyed on a need to know basis. FRA will continue to allow such radio communications when necessary to prevent imminent danger or accidents.

Section 220.61 Radio Transmission of Mandatory Directives

FRA substitutes ''mandatory directive'' for ''train order'' wherever that term appeared and integrates this section, which addresses the transmission of mandatory directives by radio, into Subpart B, which covers all radio procedures. The word ''radio'' has been added to the title of this section. Other than this change, the section is adopted as proposed with the addition of new retention requirements. For train crews, the conductor and engineer are required to retain copies of mandatory directives for the duration of their work assignments. For on-track equipment, the employee responsible for on-track safety must retain copies of mandatory directives while they are in effect.

Appendices

As discussed above, FRA amends appendix B to correct some longstanding errors in its recommended pronunciation of numerals, and amends appendix C to delete the penalty for § 220.41, which has been removed and reserved. FRA also amends appendix C to add penalties for failure to comply with the communications equipment standards contained in §§ 220.9 and 220.11. Also as discussed above, FRA amends the minimum and maximum penalties for this part in accordance with the RSERA and the Federal Civil Penalties Inflation Adjustment Act of 1990, respectively.

Environmental Impact

FRA has evaluated this rule for its potential environmental impacts, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related directives, and determined that it is a non-major action for environmental purposes.

Federalism Implications

FRA has analyzed this rule in accordance with the principles of Executive Order 12612 (''Federalism''), and determined that these amendments to Part 220 do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The fundamental policy decision providing that Federal regulations should govern aspects of service provided by municipal and public benefit corporations (or agencies) of State governments is embodied in the statute quoted above. To provide reasonable flexibility to State-level decision making, FRA included commuter authorities as full partners in the development of this rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and been determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the final rule. Document inspection and

copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

As part of the regulatory impact analysis FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the final rule. Over a twenty year period, the Net Present Value (NPV) of the estimated quantifiable societal benefits is $57.8 million, and the NPV of the estimated costs is $37.1 million.

The major costs anticipated from adopting this final rule include the installation of radios in some locomotives; the purchase of cellular telephones or other forms of wireless communication by smaller railroads; usage fees for cellular telephones; the installation of radios in some maintenance-of-way equipment; the purchase of additional portable radios for roadway work groups and lone workers; training on radio procedures; maintenance of locomotive and portable radios; and replacement cellular telephones.

The major benefits anticipated from adopting this final rule include a reduction in injuries and fatalities to roadway workers; a reduction in trespasser fatalities; a reduction in the severity of railroad worker injuries due to quicker emergency response; a reduction in grade crossing accidents; and a reduction in railroad accidents due to the improper usage of radios. Additionally, FRA anticipates other qualitative benefits accruing from this final rule which have not been factored into the quantified analysis. These include increased efficiency within the industry and a reduction in hazardous material spills.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of final rules to assess their impact on small entities. FRA's Regulatory Flexibility Assessment can be found in Appendix B of the final rule's Regulatory Impact Analysis, located in the docket.

After consultation with the Office of Advocacy of the Small Business Administration (SBA), FRA decided to use the delineation of fewer than 400,000 annual employee hours to define small entities. This grouping is one that FRA has used in the past (in 49 CFR Parts 217 (Railroad Operating Rules) and 219 (Control of Alcohol and Drug Use)) to define who is subject to reporting requirements. Typically, FRA uses the Surface Transportation Board's revenue-based classification of Class III railroads as being representative of small entities. Although many Class III railroads have fewer than 400,000 annual employee hours, using 400,000 annual employee hours as the line between small and large entities is preferable since FRA already maintains a database of information on railroads below this cut-off. Additionally, defining small railroads as those with fewer than 400,000 annual employee hours does not automatically exempt switching and terminal railroads, unlike the Class III distinction. By using this grouping for small railroads, FRA captures most small entities that would be defined by the SBA as small businesses.

FRA certifies that this rule is expected to have a significant economic impact on a substantial number of small entities. Approximately 435 small entities will be impacted. However, the actual burden on most of these railroads will vary because of their different operating characteristics. There are no small government jurisdictions affected by this regulation.

Entities that are not subject to this rule include railroads that do not operate on the ''general railroad system of transportation'' due to FRA's current exercise of its jurisdiction (*See* 49 CFR Part 209, Appendix A). FRA's jurisdictional approach greatly reduces the number of tourist, scenic, historic, and excursion railroads that are subject to this rule and its associated burdens. FRA estimates that approximately 180 small entities will be exempted from the final requirements of this regulation since they do not operate on the general system of transportation.

The communication requirements pertaining to locomotives, as set forth in § 220.9 of this rule, have been designed to minimize their impact on small railroads. While large railroads are required to have a working radio and wireless communication redundancy in every train, small railroads are only required to comply with this standard for trains used to transport passengers. A radio is required on a freight train operated by a small railroad only when the train operates at greater than 25 miles per hour or engages in joint operations on a large railroad where either the maximum authorized speed for freight trains exceeds 25 miles per hour on the track being used, or the train operates on track adjacent to and within 30 feet of another track on which the maximum speed for passenger trains exceeds 40 miles per hour. Any form of wireless communication device can be used on a freight train operated by a small railroad when the train is engaged in joint operations with a large railroad and the maximum authorized speed on the track being used is 25 miles per hour or less.

In addition, a wireless communications device is required when a freight train of a small railroad transports hazardous material that is required to be placarded under 49 CFR Part 172 (Hazardous Materials) and does not otherwise fit into one of the above mentioned categories requiring other types of communications equipment. The flexibility afforded to small railroads with these alternatives will lessen the costs imposed on these railroads.

The communications requirements pertaining to roadway workers, as set forth in § 220.11 of this rule, have been designed to minimize their impact on small railroads. Section 220.11(a)'s requirement to equip maintenance-of-way equipment with communications capability upon arriving at a work site does not apply to small railroads. Under § 220.11(b), large railroads must provide each employee responsible for on-track safety and each lone worker with immediate access to a working radio. However, small railroads can instead provide such employees with immediate access to working wireless communications. Small railroads may also be able to avoid any of the communication equipping requirements of § 220.11 if they meet the exceptions set forth in § 220.11(c).

Most small railroads will have a low enough volume and train frequency not to be impacted by the requirements of § 220.11, since § 220.11(c) exempts small railroads that meet certain specified conditions. To qualify for an exemption from § 220.11, a small railroad may not operate a large volume of traffic over a branch line. Generally, the ability of a railroad to perform track-related maintenance on track(s) that are taken out of service is inversely related to the volume and frequency of trains on its branch lines.

Paperwork Statement

The final rule contains new information collection requirements. The information collection requirements currently contained in 49 CFR 220 were approved by the Office of Management and Budget (OMB) under OMB approval numbers 2130–0035 and 2130–0524. These information collection requirements plus the new information collection requirements resulting from this rulemaking have been submitted to OMB for approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501

et seq. The sections containing new information collection requirements are listed below. All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
220.8—Waivers	680 railroads	2 letters	1 hour	2 hours	$50
220.13—Reporting emergencies	680 railroads	N/A	Usual & Customary Practice.	N/A	N/A
*220.21—Railroad operating rules; radio communication; recordkeeping.	680 railroads	N/A	Approved under #2130–0035.	N/A	N/A
220.23—Publication of radio information	680 railroads	N/A	Usual and Customary Procedure.	N/A	N/A
*220.25—Instruction and operational testing of employees.	N/A	N/A	Approved under #2130–0035.	N/A/	N/A
Instruction—1st Yr.	680 railroads	15,000 instr. sessions.	30 minutes	7,500 hours	187,500
Instruction—Subseq. Yrs.	680 railroads	1,000 instr. sessions.	30 minutes	500 hours	12,500
Periodic operational testing—new requirement.	680 railroads	33,333 tests	15 minutes	8,333 hours	208,325
220.27—Identification	N/A	N/A	Usual and Customary Procedure.	N/A	N/A
220.31—Initiating a radio transmission—identification.	N/A	N/A	Usual and Customary Procedure.	N/A	N/A
220.33—Receiving a radio transmission—acknowledgment.	N/A	N/A	Usual and Customary Procedure.	N/A	N/A
220.35—Ending a radio transmission	N/A	N/A	Usual and Customary Procedure.	N/A	N/A
220.37—Testing radio and wireless communication equipment.	680 railroads	780,000 tests	30 seconds	6,500 hours	162,500
220.38—Communication equipment failure—notification.	N/A	N/A	Usual and Customary Procedure.	N/A	N/A
220.47—Emergency radio transmission	N/A	N/A	Usual and Customary Procedure.	N/A	N/A
220.61—Transmission of mandatory directives.					
Copying and repeating of mandatory directive.	680 railroads	7,200,000 directives	1.5 minutes	180,000 hours	5,400,000
Train crews—marking with an X mandatory directives fulfilled or cancelled.	680 railroads	624,000 marks	15 seconds	2,600 hours	$65,000

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA will obtain current OMB control numbers for any information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The valid OMB control number for this information collection is 2130–0524.

List of Subjects in 49 CFR Part 220

Communications, Railroad.

Accordingly, for the reasons stated in the preamble, FRA revises 49 CFR part 220 to read as follows:

PART 220 —RAILROAD COMMUNICATIONS

Subpart A—General

Sec.
220.1 Scope.
220.2 Preemptive effect.
220.3 Application.
220.5 Definitions.
220.7 Penalty.
220.8 Waivers.
220.9 Requirements for trains.
220.11 Requirements for roadway workers.
220.13 Reporting emergencies.

Subpart B—Radio and Wireless Communication Procedures

220.21 Railroad operating rules; radio communications; recordkeeping.
220.23 Publication of radio information.
220.25 Instruction and operational testing of employees.
220.27 Identification.
220.29 Statement of letters and numbers in radio communications.
220.31 Initiating a radio transmission.
220.33 Receiving a radio transmission.
220.35 Ending a radio transmission.
220.37 Testing radio and wireless communication equipment.
220.38 Communication equipment failure.
220.39 Continuous radio monitoring.
220.41 [Reserved].
220.43 Radio communications consistent with federal regulations and railroad operating rules.
220.45 Radio communication shall be complete.
220.47 Emergency radio transmissions.
220.49 Radio communication used in shoving, backing or pushing movements.
220.51 Radio communications and signal indications.
220.61 Transmission of mandatory directives.
Appendix A to Part 220—Recommended Phonetic Alphabet
Appendix B to Part 220—Recommended Pronunciation of Numerals
Appendix C to Part 220—Schedule of Civil Penalties

(Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311 (1994); and 49 CFR 1.49.)

Subpart A—General

§ 220.1 Scope.

This part prescribes minimum requirements governing the use of wireless communications in connection with railroad operations. So long as these minimum requirements are met, railroads may adopt additional or more stringent requirements.

§ 220.2 Preemptive effect.

Under 49 U.S.C. 20106 (formerly section 205 of the Federal Railroad Safety Act of 1970, 45 U.S.C. 434), issuance of the regulations in this part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with this part and that does not unreasonably burden interstate commerce.

§ 220.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to railroads that operate trains or other rolling equipment on standard gage track which is part of the general railroad system of transportation.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

§ 220.5 Definitions.

As used in this part, the term:

Adjacent tracks means two or more tracks with track centers spaced less than 25 feet apart.

Control center means the locations on a railroad from which the railroad issues instructions governing railroad operations.

Division headquarters means the location designated by the railroad where a high-level operating manager (e.g., a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

Employee means an individual who is engaged or compensated by a railroad or by a contractor to a railroad, who is authorized by a railroad to use its wireless communications in connection with railroad operations.

Immediate access to a radio means a radio on the employee's person, or sufficiently close to the employee to allow the employee to make and receive radio transmissions.

Joint operations means rail operations conducted by more than one railroad on the track of a railroad subject to the requirements of § 220.9(a), except as necessary for the purpose of interchange.

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic, or both; or

(3) Without propelling motors but with one or more control stands.

Lone worker means an individual roadway worker who is not being afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker.

Mandatory directive means any movement authority or speed restriction that affects a railroad operation.

Railroad operation means any activity which affects the movement of a train, locomotive, on-track equipment, or track motor car, singly or in combination with other equipment, on the track of a railroad.

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts.

System headquarters means the location designated by the railroad as the general office for the railroad system.

Train means one or more locomotives coupled with or without cars, requiring an air brake test in accordance with 49 CFR part 232, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.

Working radio means a radio that can communicate with the control center of the railroad (through repeater stations, if necessary to reach the center) from any location within the rail system, except:

(1) Tunnels or other localized places of extreme topography, and

(2) Temporary lapses of coverage due to atmospheric or topographic conditions. In the case of joint operations on another railroad, the radio

must be able to reach the control center of the host railroad.

Working wireless communications means the capability to communicate with either a control center or the emergency responder of a railroad through such means as radio, portable radio, cellular telephone, or other means of two-way communication, from any location within the rail system, except:

(1) Tunnels or other localized places of extreme topography, and

(2) Temporary lapses of coverage due to atmospheric or topographic conditions. In the case of joint operations on another railroad, the radio must be able to reach the control center of the host railroad.

§ 220.7 Penalty.

Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. Each day a violation continues shall constitute a separate offense. (See appendix C to this part for a statement of agency civil penalty policy.)

§ 220.8 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 220.9 Requirements for trains.

(a) Except as provided for in paragraphs (b)(1) through (4) of this section, on and after July 1, 1999, each occupied controlling locomotive in a train shall have a working radio, and each train shall also have communications redundancy. For purposes of this section, ''communications redundancy'' means a working radio on another locomotive in the consist or other means of working wireless communications.

(b) On and after July 1, 2000, the following requirements apply to a railroad that has fewer than 400,000 annual employee work hours:

(1) Any train that transports passengers shall be equipped with a working radio in the occupied controlling locomotive and with redundant working wireless communications capability in the same manner as provided in paragraph (a) of this section.

(2) Any train that operates at greater than 25 miles per hour; or engages in joint operations on track where the maximum authorized speed for freight trains exceeds 25 miles per hour; or engages in joint operations on a track that is adjacent to and within 30 feet measured between track center lines of another track on which the maximum authorized speed for passenger trains exceeds 40 miles per hour, shall be equipped with a working radio in the occupied controlling locomotive.

(3) Any train that engages in joint operations, where the maximum authorized speed of the track is 25 miles per hour or less, shall be equipped with working wireless communications in the occupied controlling locomotive.

(4) Any train not described in paragraph (b) of this section that transports hazardous material required to be placarded under the provisions of part 172 of this title shall be equipped with working wireless communications in the occupied controlling locomotive.

§ 220.11 Requirements for roadway workers.

(a) On and after July 1, 1999, the following requirements apply to a railroad that has 400,000 or more annual employee work hours:

(1) Maintenance-of-way equipment operating without locomotive assistance between work locations shall have a working radio on at least one such unit in each multiple piece of maintenance-of-way equipment traveling together under the same movement authority. The operators of each additional piece of maintenance-of-way equipment shall have communications capability with each other.

(2) Each maintenance-of-way work group shall have intra-group communications capability upon arriving at a work site.

(b) On and after July 1, 1999, each employee designated by the employer to provide on-track safety for a roadway work group or groups, and each lone worker, shall be provided, and where practicable, shall maintain immediate access to a working radio. When immediate access to a working radio is not available, the employee responsible for on-track safety or lone worker shall be equipped with a radio capable of monitoring transmissions from train movements in the vicinity. A railroad with fewer than 400,000 annual employee work hours may provide immediate access to working wireless communications as an alternative to a working radio.

(c) This section does not apply to:

(1) Railroads which have fewer than 400,000 annual employee work hours, and which do not operate trains in excess of 25 miles per hour; or

(2) Railroad operations where the work location of the roadway work group or lone worker:

(i) Is physically inaccessible to trains; or

(ii) Has no through traffic or traffic on adjacent tracks during the period when roadway workers will be present.

§ 220.13 Reporting emergencies.

(a) Employees shall immediately report by the quickest means available derailments, collisions, storms, wash-outs, fires, obstructions to tracks, and other hazardous conditions which could result in death or injury, damage to property or serious disruption of railroad operations.

(b) In reporting emergencies, employees shall follow:

(1) The procedures of § 220.47 when using a radio; or

(2) The procedures specified for reporting emergencies in the railroad's timetables or timetable special instructions, when using another means of wireless communications.

(c) Employees shall describe as completely as possible the nature, degree and location of the hazard.

(d) An alternative means of communications capability shall be provided whenever the control center is unattended or unable to receive radio transmissions during a period in which railroad operations are conducted.

Subpart B—Radio and Wireless Communication Procedures

§ 220.21 Railroad operating rules; radio communications; recordkeeping.

(a) The operating rules of each railroad with respect to radio communications shall conform to the requirements of this part.

(b) Thirty days before commencing to use radio communications in connection with railroad operations each railroad shall retain one copy of its current operating rules with respect to radio communications at the locations prescribed in paragraphs (b) (1) and (b)(2) of this section. Each amendment to these operating rules shall be filed at such locations within 30 days after it is issued. These records shall be made available to representatives of the Federal Railroad Administration for inspection and photocopying during normal business hours.

(1) Each Class I railroad, each Class II railroad, each railroad providing intercity rail passenger service, and each railroad providing commuter service in a metropolitan or suburban area shall retain such rules at each of its division headquarters and at its system headquarters; and (2) Each Class III railroad and any other railroad subject to this part but not subject to paragraph (b)(1) of this section shall retain such rules at the system headquarters of the railroad.

(c) For purposes of this section, the terms Class I railroad, Class II railroad, and Class III railroad have the meaning given these terms in 49 CFR Part 1201.

§ 220.23 Publication of radio information.

Each railroad shall designate where radio base stations are installed, where wayside stations may be contacted, and the appropriate radio channels used by these stations in connection with railroad operations by publishing them in a timetable or special instruction. The publication shall indicate the periods during which base and wayside radio stations are operational.

§ 220.25 Instruction and operational testing of employees.

Each employee who a railroad authorizes to use a radio in connection with a railroad operation, shall be:

(a) Provided with a copy of the railroad's operating rules governing the use of radio communication in a railroad operation;

(b) Instructed in the proper use of radio communication as part of the program of instruction prescribed in § 217.11 of this chapter; and

(c) Periodically tested under the operational testing requirements in § 217.9 of this chapter.

§ 220.27 Identification.

(a) Except as provided in paragraph (c) of this section, the identification of each wayside, base or yard station shall include at least the following minimum elements, stated in the order listed:

(1) Name of railroad. An abbreviated name or initial letters of the railroad may be used where the name or initials are in general usage and are understood in the railroad industry; and

(2) Name and location of office or other unique designation.

(b) Except as provided in paragraph (c) of this section, the identification of each mobile station shall consist of the following elements, stated in the order listed:

(1) Name of railroad. An abbreviated name or initial letters of the railroad may be used where the name or initial letters are in general usage and are understood in the railroad industry;

(2) Train name (number), if one has been assigned, or other appropriate unit designation; and

(3) When necessary, the word ''locomotive'', ''motorcar'', or other unique identifier which indicates to the listener the precise mobile transmitting station.

(c) If positive identification is achieved in connection with switching, classification, and similar operations wholly within a yard, fixed and mobile units may use short identification after the initial transmission and acknowledgment consistent with applicable Federal Communications Commission regulations governing ''Station Identification''.

§ 220.29 Statement of letters and numbers in radio communications.

(a) If necessary for clarity, a phonetic alphabet shall be used to pronounce any letter used as an initial, except initial letters of railroads. See appendix A of this part for the recommended phonetic alphabet.

(b) A word which needs to be spelled for clarity, such as a station name, shall first be pronounced, and then spelled. If necessary, the word shall be spelled again, using a phonetic alphabet.

(c) Numbers shall be spoken by digit, except that exact multiples of hundreds and thousands may be stated as such. A decimal point shall be indicated by the words ''decimal,'' ''dot,'' or ''point.'' (See appendix B to this part, for a recommended guide to the pronunciation of numbers.)

§ 220.31 Initiating a radio transmission.

Before transmitting by radio, an employee shall:

(a) Listen to ensure that the channel on which the employee intends to transmit is not already in use;

(b) Identify the employee's station in accordance with the requirements of § 220.27; and

(c) Verify that the employee has made radio contact with the person or station with whom the employee intends to communicate by listening for an acknowledgment. If the station acknowledging the employee's transmission fails to identify itself properly, the employee shall require a proper identification before proceeding with the transmission.

§ 220.33 Receiving a radio transmission.

(a) Upon receiving a radio call, an employee shall promptly acknowledge the call, identifying the employee's station in accordance with the requirements of § 220.27 and stand by to receive. An employee need not attend the radio during the time that this would interfere with other immediate duties relating to the safety of railroad operations.

(b) An employee who receives a transmission shall repeat it to the transmitting party unless the communication:

(1) Relates to yard switching operations;

(2) Is a recorded message from an automatic alarm device; or

(3) Is general in nature and does not contain any information, instruction or advice which could affect the safety of a railroad operation.

§ 220.35 Ending a radio transmission.

(a) Except for transmissions relating to yard switching operations, at the close of each transmission to which a response is expected, the transmitting employee shall say ''over'' to indicate to the receiving employee that the transmission is ended.

(b) Except for transmissions relating to yard switching operations, at the close of each transmission to which no response is expected, the transmitting employee shall state the employee's identification followed by the word ''out'' to indicate to the receiving employee that the exchange of transmissions is complete.

§ 220.37 Testing radio and wireless communication equipment.

(a) Each radio, and all primary and redundant wireless communication equipment used under §§ 220.9 and 220.11, shall be tested as soon as practicable to ensure that the equipment

functions as intended prior to the commencement of the work assignment.

(b) The test of a radio shall consist of an exchange of voice transmissions with another radio. The employee receiving the transmission shall advise the employee conducting the test of the clarity of the transmission.

§ 220.38 Communication equipment failure.

(a) Any radio or wireless communication device found not to be functioning as intended when tested pursuant to § 220.37 shall be removed from service and the dispatcher or other employee designated by the railroad shall be so notified as soon as practicable.

(b) If a radio or wireless communication device fails on the controlling locomotive en route, the train may continue until the earlier of—

(1) The next calendar day inspection, or

(2) The nearest forward point where the radio or wireless communication device can be repaired or replaced.

§ 220.39 Continuous radio monitoring.

Each radio used in a railroad operation shall be turned on to the appropriate channel as designated in § 220.23 and adjusted to receive communications.

§ 220.41 [Reserved]

§ 220.43 Radio communications consistent with federal regulations and railroad operating rules.

Radio communication shall not be used in connection with a railroad operation in a manner which conflicts with the requirements of this part, Federal Communication Commission regulations, or the railroad's operating rules. The use of citizen band radios for railroad operating purposes is prohibited.

§ 220.45 Radio communication shall be complete.

Any radio communication which is not fully understood or completed in accordance with the requirements of this part and the operating rules of the railroad, shall not be acted upon and shall be treated as though not sent.

§ 220.47 Emergency radio transmissions.

An initial emergency radio transmission shall be preceded by the word ''emergency,'' repeated three times. An emergency transmission shall have priority over all other transmissions and the frequency or channel shall be kept clear of non-emergency traffic for the duration of the emergency communication.

§ 220.49 Radio communication used in shoving, backing or pushing movements.

When radio communication is used in connection with the shoving, backing or pushing of a train, locomotive, car, or on-track equipment, the employee directing the movement shall specify the distance of the movement, and the movement shall stop in one-half the remaining distance unless additional instructions are received. If the instructions are not understood, the movement shall be stopped immediately and may not be resumed until the misunderstanding has been resolved, radio contact has been restored, or communication has been achieved by hand signals or other procedures in accordance with the operating rules of the railroad.

§ 220.51 Radio communications and signal indications.

(a) No information may be given by radio to a train or engine crew about the position or aspect displayed by a fixed signal. However, a radio may be used by a train crew member to communicate information about the position or aspect displayed by a fixed signal to other members of the same crew.

(b) Except as provided in the railroad's operating rules, radio communication shall not be used to convey instructions which would have the effect of overriding the indication of a fixed signal.

§ 220.61 Radio transmission of mandatory directives.

(a) Each mandatory directive may be transmitted by radio only when authorized by the railroad's operating rules. The directive shall be transmitted in accordance with the railroad's operating rules and the requirements of this part.

(b) The procedure for transmission of a mandatory directive is as follows:

(1) The train dispatcher or operator shall call the addressees of the mandatory directive and state the intention to transmit the mandatory directive.

(2) Before the mandatory directive is transmitted, the employee to receive and copy shall state the employee's name, identification, location, and readiness to receive and copy. An employee operating the controls of moving equipment shall not receive and copy mandatory directives. A mandatory directive shall not be transmitted to employees on moving equipment, if such directive cannot be received and copied without impairing safe operation of the equipment.

(3) A mandatory directive shall be copied in writing by the receiving employee in the format prescribed in the railroad's operating rules.

(4) After the mandatory directive has been received and copied, it shall be immediately repeated in its entirety. After verifying the accuracy of the repeated mandatory directive, the train dispatcher or operator shall then state the time and name of the employee designated by the railroad who is authorized to issue mandatory directives. An employee copying a mandatory directive shall then acknowledge by repeating the time and name of the employee so designated by the railroad.

(5)(i) For train crews, before a mandatory directive is acted upon, the conductor and engineer shall each have a written copy of the mandatory directive and make certain that the mandatory directive is read and understood by all members of the crew who are responsible for the operation of the train. Mandatory directives which have been fulfilled or canceled shall be marked with an ''X'' or in accordance with the railroad's operating rules, and retained for the duration of the train crew's work assignment.

(ii) For on-track equipment, before a mandatory directive is acted upon, the employee responsible for on-track safety shall have a written copy of the mandatory directive, and make certain that the mandatory directive is acknowledged by all employees who are responsible for executing that mandatory directive. The employee responsible for on-track safety shall retain a copy of the mandatory directive while it is in effect.

(6) A mandatory directive which has not been completed or which does not comply with the requirements of the railroad's operating rules and this part, may not be acted upon and shall be treated as though not sent. Information contained in a mandatory directive may not be acted upon by persons other than those to whom the mandatory directive is addressed.

Appendix A to Part 220—Recommended Phonetic Alphabet

A—ALFA
B—BRAVO
C—CHARLIE
D—DELTA
E—ECHO
F—FOXTROT
G—GOLF
H—HOTEL
I—INDIA
J—JULIET
K—KILO
L—LIMA
M—MIKE
N—NOVEMBER
O—OSCAR
P—PAPA

Q—QUEBEC
R—ROMEO
S—SIERRA
T—TANGO
U—UNIFORM
V—VICTOR
W—WHISKEY
X—XRAY
Y—YANKEE
Z—ZULU

The letter ''ZULU'' should be written as ''Z'' to distinguish it from the numeral ''2''.

Appendix B to Part 220—Recommended Pronunciation of Numerals

To distinguish numbers from similar sounding words, the word ''figures''should be used preceding such numbers. Numbers should be pronounced as follows:

Number	Spoken
0	ZERO.
1	WUN.
2	TOO.
3	THUH-REE-.
4	FO-WER.
5	FI-YIV.
6	SIX.
7	SEVEN.
8	ATE.
9	NINER.

(The figure ZERO should be written as ''0'' to distinguish it from the letter ''O''. The figure ONE should be underlined to distinguish it from the letter ''I''. When railroad rules require that numbers be spelled, these principles do not apply.)

The following examples illustrate the recommended pronunciation of numerals:

Number	Spoken
44	FO-WER FO-WER.
500	FI-YIV HUN-DRED.
1000	WUN THOU-SAND.
1600	WUN SIX HUN-DRED.
14899	WUN FO-WER ATE NINER NINER.
20.3	TOO ZERO DECIMAL THUH-REE.

Appendix C to Part 220—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
220.9 Requirements for trains	$5,000	$7,500
220.11 Requirements for roadway workers	5,000	7,500
220.21 Railroad Operating rules; radio communications.		
(a)	5,000	7,500
(b)	2,500	5,000
220.23 Publication of radio information	2,500	5,000
220.25 Instruction of employees	5,000	7,500
220.27 Identification	1,000	2,000
220.29 Statement of letters and numbers	1,000	2,000
220.31 Initiating a transmission	1,000	2,000
220.33 Receiving a transmission	1,000	2,000
220.35 Ending a transmission	1,000	2,000
220.37 Voice test	5,000	7,500
220.39 Continuous monitoring	2,500	5,000
220.41 [Reserved] .		
220.43 Communication consistent with the rules	2,500	5,000
220.45 Complete communications	2,500	5,000
220.47 Emergencies	2,500	5,000
220.49 Switching, backing or pushing	5,000	7,500
220.51 Signal indications	5,000	7,500
220.61 Radio transmission of mandatory directives	5,000	7,500

[1] A penalty may be assessed against and only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Issued in Washington, D.C. on August 28, 1998.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 98–23697 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 63, No. 172
Friday, September 4, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–98–001]

Soybean Promotion and Research Program: Procedures To Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes procedures for soybean producers to request a referendum on the Soybean Promotion and Research Order (Order) as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). The Act provides that the Secretary, 5 years after the conduct of the initial referendum, will give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities would be provided the opportunity to request a referendum during a specified period announced by the Secretary of Agriculture (Secretary), at the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land.

DATES: Written comments must be received by October 5, 1998.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP–0251; 14th and Independence Avenue; SW.; Washington, DC 20250–0251. Comments will be available for public inspection during regular business hours in room 2606; South Agriculture Building; 14th and Independence Avenue, SW., Washington, DC. Comments on the information collection requirements contained in this proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for AMS, USDA.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

Executive Order 12866 and 12988 and the Regulatory Flexibility Act and the Paperwork Reduction Act

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

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary will rule on the petition. The statute provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision if a complaint for that purpose is filed not later than 20 days after the date of the entry of the Secretary's decision.

Further, § 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by the Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referendums conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 United States Code (U.S.C.) 601 et seq), the Administrator of AMS has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small business entities.

According to the most recent data available from the Department's National Agricultural Statistics Service (NASS), based on the 1992 Census of Agriculture, there are approximately 381,000 farms that grow soybeans that may be eligible to request a referendum. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration.

The requirements set forth in this rule are substantially similar to the rules that established the eligibility and participation requirements for a July 26, 1995, soybean producer poll published as a final rule on March 22, 1995 (60 FR 15027), in the **Federal Register**.

The procedures to request a referendum would not impose a substantial burden or have a significant impact on persons subject to the Order. Further, participation is not mandatory. Not all persons subject to the Order are expected to participate. The Department would determine producer eligibility.

In compliance with OMB regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act (PRA)[44 U.S.C. 3501 et seq], the information collection requirements contained in this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0093. The information collection requirements in this proposed rule include the following:

(1) Any eligible person who requests a referendum must legibly print his/her

name, or if applicable, the producer entity represented, address, telephone number, and county on the ''Request for a Soybean Referendum'' form (Form LS–51–1). Each person must read the Certification Statement on the form and sign it certifying that he/she or the producer entity represented meets the eligibility requirements. Form LS–51–1 shall be obtained in person, by mail, telephone or facsimile from the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. Form LS–51–1 may be returned by mail, by facsimile, or in person to the same county FSA office where the form was obtained. A producer or producer entity representative who obtains Form LS–51–1 in person during the Request for Referendum period from the appropriate county FSA office may complete Form LS–51–1 at that time. The estimated average time burden for completing the procedure is 5 minutes per person.

(2) Using information from each returned Form LS–51–1, county FSA personnel shall enter the producer's name, and if applicable, producer entity representative and the date received (and the postmarked date for mailed requests), and the method the form was received on the ''List of Soybean Producers Requesting a Referendum'' (Form LS–51–2). This information may be used for the purpose of challenging the eligibility of producers. Many county FSA offices will use more than one Form LS–51–2 depending on the number of producers requesting a referendum. Because only county FSA office personnel would be required to complete Form LS–51–2, the time required to complete this form is not included in the estimated average reporting burden for a producer.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of one percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and no later than 36 months after the issuance of the Order to determine whether the Order should be continued.

The initial referendum was conducted on February 9, 1994. On April 1, 1994, the Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order.

For all such referendums, if the Secretary determines that at least 10 percent of the U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, no referendum would be conducted.

For the purposes of the Request for Referendum, the Secretary would use the latest official numbers of U.S. soybean farms as reported by NASS as representing the total number of producers. The latest official data reported by NASS based on the 1992 Census of Agriculture shows that 381,000 farms produce soybeans.

The Act provides that producers shall have an opportunity to request a referendum during a period established by the Secretary. Eligible persons must certify on an official form that they were engaged in the growing of soybeans during a representative period specified by the Secretary, and indicate that they favor the conduct of a referendum. The Department proposes that the Request for Referendum period would be a 4-week period announced by the Secretary and that the representative period for which a producer was engaged in the growing of soybeans would be January 1, 1996, to December 31, 1998. The Act also provides that a Request for Referendum may be made in person or by mail-in request at county Cooperative Extension Service offices or county FSA offices. Providing producers an opportunity to request a referendum at county FSA offices will give producers the greatest opportunity to request a referendum.

The proposed rule sets forth procedures for producers to request a referendum as authorized under the Act, including definitions, eligibility, certification and request procedure, reporting results, and disposition of the forms and records. It is proposed that FSA of the Department would coordinate State and county FSA roles in conducting the Request for Referendum by (1) determining producer eligibility, (2) canvassing and counting requests, and (3) reporting the results.

A 30-day comment period is provided for interested persons to comment on this proposed rule. This comment period is deemed appropriate because the Act provides that the Secretary, 5 years after the conduct of the initial referendum, will give soybean producers the opportunity to request an additional referendum on the Order. A 30-day comment period will assist in timely implementation of this rule consistent with the provisions of the Act.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. In part 1220, subpart F is added to read as follows:

Subpart F—Procedures To Request a Referendum

Definitions

Sec.
1220.10 Act.
1220.11 Administrator, AMS.

1220.12 Administrator, FSA.
1220.13 Department.
1220.14 Farm Service Agency.
1220.15 Farm Service Agency County Committee.
1220.16 Farm Service Agency County Executive Director.
1220.17 Order.
1220.18 Person.
1220.19 Producer.
1220.20 Public notice.
1220.21 Representative period.
1220.22 Secretary.
1220.23 Soybeans.
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Procedures

1220.30 General.
1220.31 Supervision of the process for requesting a referendum.
1220.32 Eligibility.
1220.33 Time and place for requesting a referendum.
1220.34 Facilities.
1220.35 Certification and request form.
1220.36 Certification and request procedure.
1220.37 List of producers requesting a referendum.
1220.38 Challenge of eligibility.
1220.39 Canvassing.
1220.40 Counting requests.
1220.41 Public review.
1220.42 FSA county office report.
1220.43 FSA State office report.
1220.44 Reporting results.
1220.45 Disposition of records.
1220.46 Instructions and forms.

Definitions

§ 1220.10 Act.

The term Act means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

§ 1220.11 Administrator, AMS.

The term Administrator, AMS means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.12 Administrator, FSA.

The term Administrator, FSA means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.13 Department.

The term Department means the United States Department of Agriculture.

§ 1220.14 Farm Service Agency.

The term Farm Service Agency, also referred to as ''FSA,'' means the Farm Service Agency of the Department.

§ 1220.15 Farm Service Agency County Committee.

The term Farm Service Agency County Committee, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1220.16 Farm Service Agency County Executive Director.

The term Farm Service Agency County Executive Director, also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1220.17 Order.

The term Order means the Soybean Promotion and Research Order.

§ 1220.18 Person.

The term Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.19 Producer.

The term Producer means any person engaged in the growing of soybeans in the United States who owns, or shares the ownership and risk of loss of such soybeans.

§ 1220.20 Public notice.

The term Public Notice means a notice published in the **Federal Register**, not later than 60 days prior to the last day of the Request for Referendum period that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to, explanation of producers' rights; procedures to request a referendum, the purpose, dates of the Request for Referendum period, place for requesting a referendum, and eligibility requirements. Additionally, the Board is required to provide producers, in writing, the same information during the same time period. Other pertinent information shall also be provided, without advertising expense, through press releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletter, and the like.

§ 1220.21 Representative period.

The term Representative period means the period designated by the Secretary pursuant to section 1970 of the Act.

§ 1220.22 Secretary.

The term Secretary means the Secretary of Agriculture of the United States Department of Agriculture or any other officer or employee of the Department to whom there has been delegated or to whom there may be delegated the authority to act in the Secretary's stead.

§ 1220.23 Soybeans.

The term Soybeans means all varieties of Glycine max or Glycine soja.

§ 1220.24 State and United States.

The terms State and United States include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

Procedures

§ 1220.30 General.

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum, that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all producers have requested a referendum on the Order, a referendum would be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section were not met, a referendum would not be conducted.

(d) For purposes of paragraphs (b) and (c) of this section, the Department would use the latest official numbers of U.S. soybean farms as reported by the Department's National Agricultural Statistics Service as the total number of producers.

§ 1220.31 Supervision of the process for requesting a referendum.

The Administrator, AMS shall be responsible for supervising the process of permitting producers to request a referendum in accordance with this subpart.

§ 1220.32 Eligibility.

(a) *Eligible producers.* Each person who was a producer during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) *Proxy registration.* Proxy registration is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he/she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible producer separate from the group may request a referendum separately.

§ 1220.33 Time and place for requesting a referendum.

The opportunity to request a referendum shall be provided during a four (4) week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in § 1220.36 during the normal business hours of each county FSA office.

§ 1220.34 Facilities

Each county FSA office shall provide adequate facilities and space to permit producers to complete Form LS–51–1.

§ 1220.35 Certification and request form.

Form LS–51–1 shall be used to request a referendum and certify producer eligibility. The form does not require a ''yes'' or ''no.'' Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously registers, certifies eligibility and requests that a referendum be conducted.

§ 1220.36 Certification and request procedure.

(a) To request that a referendum be conducted, each eligible producer shall, during the *Request for Referendum* period, be provided the opportunity to request a referendum during a specified period announced by the Secretary, at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Each eligible producer shall be required to complete Form LS–51–1 in its entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on Form LS–51–1 and sign it certifying that he/she or the producer entity represented was a producer of soybeans during the representative period and is requesting a referendum. Only a completed and signed Form LS–51–1 shall be considered a valid request for a referendum.

(b) To request a referendum eligible producers may obtain Form LS–51–1 in person; by mail; by telephone; or by facsimile during the Request for Referendum period from the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Producers or producer entities may return Form LS–51–1 in person, by mail or facsimile. Form's LS–51–1 returned in person or by facsimile, must be received in the appropriate county FSA office no later than the last business day of the *Request for Referendum* period to be considered a valid request. However, Form's LS–51–1 mailed to the county FSA office must be postmarked no later than the last business day of the Request for Referendum period and be received in the county FSA office no later than ten business days after the last business day of the Request for Referendum period to be considered a valid request for a referendum.

(c) Eligible participants who obtain form LS–51–1 in person at the appropriate county office may complete, and return by hand the form the same day.

§ 1220.37 List of producers requesting a referendum.

(a) The county FSA personnel shall enter on the ''List of Soybean Producers Requesting a Referendum'' form (Form LS–51–2), the following information for each returned Form LS–51–1: name of individual soybean producer or other producer entity; name of producer entity representative; postmarked date of a mailed Form LS–51–1 and the date it was received in the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land; and the date Form LS–51–1 was received by facsimile or in person in the county FSA office where FSA maintains and processes the producer's administrative farm records or at the county FSA office serving the county where the producer owns or rents land. For any challenges of a producer's or producer entities' eligibility, the county FSA personnel would make a ''check mark'' in the space provided on Form LS–51–2 indicating a producer's or producer entities' eligibility has been challenged. After the challenge is resolved ''eligible'' or ''ineligible'' would be entered in the space provided on Form LS–51–2.

(b) County FSA offices shall, at all times, maintain control of the master (original) copy of Forms LS–51–1 and LS–51–2. A copy of each Form LS–51–2 shall be posted and made available for public inspection each day beginning on the first business day of the *Request for Referendum* period through the 11th business day following the last business day of the Request for Referendum period. Form LS–51–2 shall be posted in the county FSA office during normal business office hours in a conspicuous location.

§ 1220.38 Challenge of eligibility.

(a) *Who may challenge.* Any person may challenge a producer's or producer entity's eligibility to request a referendum. Each challenge must be in writing; include the full name of the individual or other producer entity being challenged; be made on a separate piece of paper; and be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(b) *Challenge period.* A challenge of a person's eligibility to request a referendum may be made on any business day during the 4-week Request for Referendum period through the 11th business day after the Request for Referendum period.

(c) *Challenged names.* Producers whose eligibility is challenged shall be so noted with a ''checkmark'' in the space provided on Form LS–51–2.

(d) *Determination of challenges.* The FSA County Committee (COC) or designee, acting on behalf of the Administrator, AMS, shall make a

determination concerning the challenge and shall notify challenged producers as soon as practicable, but no later than the 14th business day after the end of the request for referendum period. If the COC or designee is unable to determine whether a person was a producer during the representative period, the COC or designee may require the person challenged to submit records such as sales documents or similar documents to verify producer status during the representative period.

(e) *Appeal.* A person declared to be ineligible by the COC or designee, acting on behalf of the Administrator, AMS, may file an appeal at the county FSA office within three business days after notification by the county FSA office of its decision. Such person may be required to provide documentation such as sales documents or similar documents in order to demonstrate eligibility. An appeal shall be determined by the COC or designee as soon as practicable, but in all cases not later than the 18th business day after the last day of the Request for Referendum period. The determination of the COC or designee on an appeal shall be final.

(f) *Resolved challenges.* A challenge shall be determined to have been resolved if the determination of the COC or designee, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the COC or designee after an appeal. After the challenge has been resolved, the county FSA office shall write either ''eligible'' or ''ineligible'' in the space provided on Form LS–51–2.

§ 1220.39 Canvassing.

Canvassing of Forms LS–51–1 and LS–51–2 shall take place as soon as possible after the opening of county FSA offices on the 19th business day following the Request for Referendum period. Such canvassing shall be under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, who shall make a determination as to the number of valid or invalid requests for a referendum.

(a) *Invalid requests for a referendum.* An invalid request for a referendum may include the following:

(1) Form LS–51–1 is not signed and/or all required information has not been provided;

(2) Form LS–51–1 returned in person or by facsimile was not received by the last business day of the *Request for Referendum* period;

(3) Form LS–51–1 returned by mail was not postmarked by the last business day of the *Request for Referendum* period;

(4) Form LS–51–1 returned by mail was not received in the county FSA office by the 10th business day after the *Request for Referendum* period;

(5) Form LS–51–1 is mutilated or marked in such a way that any required information on the form is illegible; and/or

(6) From LS–51–1 not returned to the appropriate county FSA office.

(b) Any Form LS–51–1 determined invalid shall not be considered as a request for a referendum.

§ 1220.40 Counting requests.

The requests for a referendum shall be counted by the COC or designee on the 19th business day after the last business day of the *Request for Referendum* period. Requests for a referendum shall be counted as follows:

(a) Total number of producers registering to request a referendum;

(b) Number of eligible producers requesting a referendum;

(c) Number of challenged producers deemed ineligible;

(d) Number of challenged producers; and

(e) Number of invalid requests for a referendum.

§ 1220.41 Public review.

The public may witness the counting from an area designated by the CED or designee, acting on behalf of the Administrator, AMS, but may not interfere with the process.

§ 1220.42 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS. Such report shall include, the information listed in § 1220.39 and § 1220.40. The county FSA office shall notify the FSA State office of the results of the *Request for Referendum* on a form provided by the Administrator, FSA. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1220.43 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, a report summarizing the data contained in each of the reports from the county FSA office on a State report form provided by the Administrator, FSA. The State FSA office shall maintain one copy of the summary where it shall be available for public inspection upon request for a period of not less that 12 months after the results have been released.

§ 1220.44 Reporting results.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the *Request for Referendum*. The Department will issue an official press release announcing the results of the *Request for Referendum* and publish the same results in the **Federal Register**. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2606 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

§ 1220.45 Disposition of records.

Forms LS–51–1 and LS–51–2 and county reports shall be placed in sealed containers under the supervision of the CED or designee, acting on behalf of the Administrator, AMS, and such container shall be marked with ''Request for Soybean Referendum.'' Such records shall remain in the secured custody of the CED or designee for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period, the CED or designee shall destroy the records.

§ 1220.46 Instructions and forms.

The Administrator, AMS is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

Dated: September 1, 1998.

Barrry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 98–23904 Filed 9–3–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 236, 240, and 241

[INS NO. 1847–97; AG Order No. 2176–98]

RIN 1115–AE82

Surrender of Aliens Ordered Removed From the United States

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service regulations by requiring aliens subject to a final order of removal to surrender to the Service. This rule also establishes procedures for surrender, and bars persons violating these procedures from obtaining discretionary immigration benefits.

DATES: Written comments must be submitted on or before November 3, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 ''I'' Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1847–97 on all correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: William C. Birkett, Office of the General Counsel, Immigration and Naturalization Service, 425 ''I'' Street NW., Room 6100, Washington, DC 20536, telephone (202) 514–5001.

SUPPLEMENTARY INFORMATION: This proposed rule establishes procedures requiring aliens who have received a final order of removal to surrender to the Immigration and Naturalization Service (Service) for removal from the United States. Section 241(a) of the Immigration and Nationality Act (Act), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), generally requires the detention and removal of aliens subject to a final order of removal within 90 days. Some aliens, however, may not be in Service custody at the time that the order of removal becomes administratively final.

Although the Service may apprehend and detain an alien subject to a final order of removal at any time to enforce the order, the proposed rule is necessary to clarify that an alien not detained at the time that an order of removal becomes final has a legal obligation to surrender expeditiously thereafter for removal. Proposed § 241.13 requires surrender within specified periods after the removal order becomes final. The periods specified concern the alien's obligation to surrender, and in no way limit the Service's authority to enforce a final order of removal at any time. Generally, surrender will be to the Service district office with jurisdiction over the place where the immigration judge completed the removal proceeding, but the Service may, in its discretion, specify an alternate location or other term of surrender. Such alternative locations and terms may be necessary, for example, to expedite processing and removal (often by mutual agreement of the parties). When the Service changes the location and terms of surrender, the Service will notify the alien of the new terms of surrender in person or by regular mail at the last address the alien provided to the Service. This notice requirement, however, will not restrict the Service's authority under section 241(a) to arrest and remove the alien at any time.

In general, the proposed rule provides that the period of time for surrender will be 10 calendar days from the date of the final order from the Immigration Judge or the Board of Immigration Appeals. If the final day for surrender falls on a Saturday, Sunday, Federal holiday, or other day when the Service office designated for surrender is closed, the alien must surrender on the first business day thereafter. An alien who violates an order granting voluntary departure must surrender on the business day following the date the alternate order of removal becomes effective. These periods of time, as with other conditions of surrender, are subject to change in accordance with 8 CFR 241.13(h).

The Department welcomes, in particular, comments from bonding companies concerning the effect the proposed rule would have on their obligation to produce bonded aliens.

Proposed § 241.14 provides for notice of the duty to surrender in the Notice to Appear, and at various points during the removal proceeding. The duty to surrender attaches upon service of the Notice to Appear pursuant to section 239(a)(1) of the Act, and does not depend upon receipt of any of the subsequent notices. Proposed § 241.14(b)(2) provides that the immigration judge will notify the alien of the location to which the alien must surrender in the event that the alien becomes subject to a final order of removal.

Proposed § 241.15 bars an alien failing to comply with the duty to surrender from discretionary relief under sections 208, 212(h), 212(i), 240A, 240B, 245, 248 and 249 of the Act at any time while he or she is still in the United States, and for 10 years from the time of any subsequent departure. The Attorney General is authorized to exercise her broad discretion over immigration matters through rulemaking to resolve matters of general applicability. ''It is a well-established principle of administrative law that an agency to whom Congress grants discretion may elect between rulemaking and ad hoc adjudication to carry out its mandate.'' *Yang* v. *INS*, 79 F.3d 932, 936 (9th Cir. 1996) (citing *American Hosp. Assoc.* v. *NLRB*, 499 U.S. 606, 611–13 (1991)). Agencies may resolve matters of general applicability through the promulgation of rules ''even if a statutory scheme requires individualized determination * * * unless Congress has expressed an intent to withhold that authority.'' *American Hosp. Assoc.* v. *NLRB, supra.* This principle has been recognized by courts reviewing the Department's rulemaking under the Act. *Reno* v. *Flores*, 507 U.S. 292 (1993) (holding that promulgation of rule precluding the release of detained juveniles to anyone other than parents, close relatives, and guardians is a permissible exercise of Attorney General's discretion); *Yang, supra*, (holding that promulgation of rule denying asylum to aliens who were firmly resettled prior to arrival in the U.S. is a permissible exercise of Attorney General's discretion).

Denying discretionary forms of relief to aliens who fail to surrender for removal is a rational exercise of the Attorney General's discretion. Aliens subject to a final order who fail to surrender for removal as required by the Attorney General are fugitives from justice who frustrate her efforts to enforce the Act. *See, e.g, Bar-Levy* v. *INS*, 990 F.2d 33, 34 (2d Cir. 1993) (holding that court would exercise its discretion to dismiss appeal because petitioner, as an alien who failed to surrender for deportation, was a ''fugitive from justice''); *Ruiz-Rivera* v. *Moyer*, 70 F.3d 498, 500 (7th Cir. 1995) (noting, in action brought by bond obligor challenging INS decision to forfeit her bond, that court had denied emergency motion to stay deportation filed by the subject of the bond because after failing to surrender he became a ''fugitive'' undeserving of the resources of the court). The Attorney General expends considerable resources detecting and apprehending inadmissible and deportable aliens, and

provides extensive procedural protections to ensure that the claims of those contesting removal are properly adjudicated. By denying discretionary relief to aliens who fail to surrender for removal, the proposed rule will recognize the serious nature of their disregard for her authority, *see* § 243(a)(1) of the Act (providing criminal penalties in the form of fine or imprisonment for failing to surrender for removal as required by the Attorney General), as well as the Attorney General's interest in discouraging behavior that impedes her ability to enforce the Act effectively.

The proposed exercise of discretion is also consistent with the statutory bars to relief existing in the Act, as well as a precedent decision of the Board of Immigration Appeals. Section 240(b)(7) of the Act bars aliens who fail to appear for a removal proceeding from relief under sections 240A (cancellation of removal), 240B (voluntary departure), 245 (adjustment of status), 248 (change of status), and 249 (registry) of the Act for ten years after the date of entry of the final order of removal. Section 240B(d) of the Act bars aliens who fail to depart in the time specified under an order of voluntary departure from relief for ten years under the same sections of the Act. In *Matter of Barocio*, 19 I&N 255 (BIA 1985), the Board of Immigration Appeals held that aliens who fail to appear for deportation after notification by the Service do not merit the favorable exercise of discretion necessary to reopen deportation proceedings.

Section 241.15 also provides for a waiver of the bars to relief, in the discretion of the district director, upon demonstration that the failure to surrender was due to exceptional circumstances beyond the control of the alien. An alien who failed to surrender for removal whose case is subsequently reopened by an immigration judge or the Board of Immigration Appeals will not be subject to the bars to discretionary relief.

Proposed § 241.16 contains certain rules of construction. Nothing in this rule is intended to abrogate the Service's duty to stay removal where required by the Act, or as ordered by an immigration judge, the Board of Immigration Appeals, or a Federal Court. In addition, surrendering in compliance with this rule does not operate to disqualify an alien from any benefit to which he or she is otherwise entitled under the Act.

Revisions to four other sections of title 8 are necessary in order to implement fully the duty to surrender for removal. Proposed § 3.2(c)(5) generally precludes reopening removal proceedings by the Board of Immigration Appeals in the case of an alien who fails to surrender for removal. Proposed § 3.23(b)(5) generally precludes reopening proceedings by an immigration judge in the case of an alien who fails to surrender for removal. In each instance, a motion to reopen is not precluded if the alien demonstrates by clear and convincing evidence both that the failure to surrender was due to exceptional circumstances beyond the control of the alien, and that the alien surrendered for removal as soon as possible after the circumstance that prevented a timely surrender had passed. This is consistent with existing precedent of the Board of Immigration Appeals recognizing that aliens who violate a lawful order of deportation by failing to report for removal do not merit the favorable exercise of discretion required to reopen proceedings. Failing to surrender also does not preclude reopening if a district director waives the disabilities for doing so in accordance with proposed § 241.15(c).

Proposed § 236.1(a)(6) provides that no alien may be released from custody without agreeing to surrender for removal in accordance with this rule. This rule also proposes to amend § 240.26(a) to require that all aliens seeking voluntary departure agree to surrender for removal in accordance with § 241.13.

The regulations regarding surrender are critical to the removal process, but the initial design of these processes has involved complex logistical coordination both within the Service and between the Service and the Executive Office for Immigration Review (EOIR). As a consequence, the provisions contained in this proposed rule were not ready for publication with the interim rule implementing IIRIRA at 62 FR 10312, and are now being published as a separate proposed rule to ensure adequate opportunity for full public notice and comment.

Prior to the effective date of this rule, those failing to report for final orders of removal will be subject to existing law, including the precedent decisions of the Board of Immigration Appeals regarding limitations on discretionary relief for such persons. The procedures proposed by this rule will apply only to those issued a Notice to Appear on or after the final rule's effective date.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects legal obligations of individual aliens ordered removed from the United States, not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the application standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12612: Federalism

It is determined, in accordance with Executive Order 12612, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1226, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.2 is amended by adding new paragraph (c)(5) to read as follows:

§ 3.2 Reopening or Reconsideration before the Board of Immigration Appeals.

* * * * *

(c) * * *

(5) *Failure to surrender for removal.* A motion to reopen removal proceedings will not be granted in the case of an alien who failed to surrender for removal in accordance with § 241.13 of this chapter, unless:

(i) The district director waived the consequences for failing to surrender for removal in accordance with § 241.15(c) of this chapter; or

(ii) The alien presents documentary evidence that demonstrates, by clear and convincing evidence, that

(A) The failure to surrender for removal was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(B) The alien surrendered for removal as soon as possible after the circumstances that prevented a timely surrender had passed.

(iii) Nothing in paragraph (c)(5)(ii) of this section may be construed as providing the right to reopen a proceeding solely to consider whether an alien complied with the duty to surrender for removal, or whether exceptional circumstances excuse the alien's failure to do so.

* * * * *

3. Section 3.23 is amended by adding new paragraph (b)(5) to read as follows:

§ 3.23 Reopening for reconsideration before the Immigration Court.

* * * * *

(b) * * *

(5) *Failure to surrender for removal.* A motion to reopen removal proceedings will not be granted in the case of an alien who failed to surrender for removal in accordance with § 241.13 of this chapter, unless:

(i) The district director waived the consequences for failing to surrender for removal in accordance with § 241.15(c) of this chapter; or

(ii) The alien presents documentary evidence that demonstrates, by clear and convincing evidence, that

(A) The failure to surrender for removal was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(B) The alien surrendered for removal as soon as possible after the circumstances that prevented a timely surrender had passed.

(iii) Nothing in paragraph (b)(5)(ii) of this section may be construed as providing the right to reopen a proceeding solely to consider whether an alien complied with the duty to surrender for removal, or whether exceptional circumstances excuse the alien's failure to do so.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

4. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; 8 CFR part 2.

5. Section 236.1 is amended by redesignating paragraphs (c) (1), (2), (3), (4), and (5) as (c) (1), (2), (3), (4), (5), and (6) respectively, and by adding, after the heading ''Custody issues and release procedures'', the following new paragraph (c)(1), to read as follows:

§ 236.1 Apprehension, custody, and detention.

* * * * *

(c) * * *

(1) No alien may be released from custody unless the alien agrees to surrender for removal in accordance with § 241.13 of this chapter should the alien become subject to a final order of removal.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

6. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; 8 CFR part 2.

7. Section 240.26 is amended by adding a sentence at the end of paragraph (a), to read as follows:

§ 240.26 Voluntary departure—authority of the Executive Office for Immigration Review.

(a) * * * In addition, no alien may be granted voluntary departure unless the alien agrees to surrender for removal in accordance with § 241.13(c) of this chapter.

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

8. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

9. In part 241, subpart A, a new § 241.13 is added to read as follows:

§ 241.13 Duty to surrender.

Aliens subject to a final order of removal shall be taken into custody by the Service and removed. If not in the custody of the Service, however, aliens subject to a final order of removal must surrender for removal as provided in this section. Such surrenders must be made during regular business hours to the Service district office with jurisdiction over the place where the immigration judge completed the removal proceeding. Nothing in this part shall be construed as limiting the Service's authority to enforce a final order of removal at any time.

(a) *Immigration Judge.*—(1) *Aliens waiving appeal and aliens ordered removed in absentia.* Aliens served with an order of removal issued by an immigration judge who waive appeal of the order, and aliens who are ordered removed *in absentia*, must surrender for removal within 10 calendar days of date of the order.

(2) *Aliens reserving appeal.* Aliens who reserve appeal and are served with an order of removal issued by an immigration judge that becomes final due to expiration of the time to file an appeal must surrender for removal within 10 calendar days of the date that the appeal period expires. Aliens who reserve appeal and are served with an order of removal issued by an immigration judge that becomes final due to a subsequent waiver or withdrawal of appeal must surrender for removal within 10 calendar days of the date that the order becomes final.

(b) *Board of Immigration Appeals.* Aliens who are served with an order of removal, or an order dismissing an appeal from an order of removal, issued by the Board of Immigration Appeals must surrender for removal within 10 calendar days of the date of the order.

(c) *Voluntary departure.* Notwithstanding paragraphs (a) and (b) of this section, an alien granted voluntary departure who subsequently becomes subject to an alternate order of removal due to failure to depart as directed, failure to pay a bond in connection with voluntary departure, or failure to comply with any other required condition or term in connection with voluntary departure, must surrender for removal on the next business day thereafter.

(d) *Aliens in custody.* (1) An alien who becomes subject to a final order of removal while in Service custody is thereby relieved of the duty to surrender for removal under this section.

(2) An alien who becomes subject to a final order of removal while incarcerated in a local, State, or Federal facility must surrender for removal within 10 calendar days of the alien's release from that facility, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense, unless the alien is detained by the Service at the time he or she is released. If the alien is detained by the Service at the time of release from a local, State, or Federal facility, the alien is thereby relieved of the duty to surrender for removal pursuant to paragraph (d)(1) of this section.

(e) *Other orders of removal.* Subject to paragraph (d) of this section, aliens who are ordered removed, other than by an immigration judge or the Board of Immigration Appeals, must surrender for removal to the Service district office with jurisdiction over the place where the alien was ordered removed within 10 calendar days of the date that the order becomes final.

(f) *Requests for relief subsequent to final order of removal.* An application for discretionary or other relief, including a motion to reopen, submitted by an alien to the Service, an immigration judge, or the Board of Immigration Appeals will have no effect on an alien's duty to surrender unless the alien has been served, prior to the expiration of the period to surrender, with a response granting the requested relief. A request for modification of the surrender terms submitted by an alien to the Service will have no effect on an alien's duty to surrender unless the alien has been served, prior to the expiration of the period to surrender, with a response granting the requested relief. The filing of a petition for review or writ of habeas corpus will likewise have no effect on an alien's duty to surrender for removal.

(g) *Weekends and holidays.* If the last permissible day to surrender for removal falls on a Saturday, Sunday, Federal holiday, or other day when the Service office designated for surrender is closed, the alien must surrender for removal on the first business day thereafter.

(h) *Alternative surrender terms.* Nothing in this part may be construed as limiting the Service's authority, in its sole and unreviewable discretion, to impose surrender requirements in addition to or varying from those generally applicable under this section. Changes to the surrender requirements may be made by mutual consent of the parties or, if without the alien's consent, the Service shall notify the alien in person or by regular mail at the last address given to the Service by the alien. This notice requirement shall not affect the Service's ability to arrest and remove an alien described in section 241(a) of the Immigration and Nationality Act at any time.

10. In part 241, subpart A, a new § 241.14 is added to read as follows:

§ 241.14 Notice of duty to surrender.

(a) *Notice to Appear.* The Notice to Appear, Form I–862, will contain written notice of the duty to surrender.

(b) *Immigration judge.* (1) The immigration judge will inform the alien orally and in writing that if the alien fails to appear for a hearing, and thereby becomes subject to a final order of removal, the alien will be required to surrender for removal.

(2) In any case in which an immigration judge renders a decision, whether or not adverse to the alien, the immigration judge will inform the alien orally and in writing of the duty to surrender for removal and the location to which the alien must surrender in the event that the alien becomes subject to a final order of removal.

(c) *Board of Immigration Appeals.* Orders of removal, and orders dismissing an appeal from an order of removal, issued by the Board of Immigration Appeals will contain written notice of the duty to surrender for removal.

(d) *Upon release from custody.* As a condition of release from custody, whether under terms directed by the Service or subsequent to redetermination by an immigration judge or the Board of Immigration Appeals, the alien released must agree to surrender for removal if the alien becomes subject to a final order of removal. No alien will be released from custody without agreeing to surrender for removal as required by this part.

(e) *Upon grant of voluntary departure.* No alien may be granted voluntary departure, whether by an immigration judge or the Board of Immigration Appeals, unless the alien agrees to surrender for removal as provided under § 241.13(c) should the alien become subject to an alternate order of removal due to failure to depart as directed, failure to pay a bond in connection with voluntary departure, or failure to comply with any other required condition or term in connection with voluntary departure.

(f) *Duty to surrender not contingent upon notice.* The duty to surrender for removal attaches upon service of a Notice to Appear pursuant to the terms of section 239(a)(1) of the Act, and is not contingent upon receipt of any of the notices enumerated in this section. If the address of the Service district office to which the alien is required to surrender changes subsequent to issuance of the notice in § 241.14(b)(2), it is the alien's duty to determine the new address and surrender to that location.

11. In part 241, subpart A, a new § 241.15 is added to read as follows:

§ 241.15 Consequences of failure to surrender for removal; exception; waiver.

(a) *Consequences.* (1) An alien who fails to surrender for removal as required by this part, and who remains in the United States in violation of law, is:

(i) Subject to criminal prosecution under section 243 of the Act;

(ii) Subject to civil penalties under section 274D of the Act; and

(iii) Ineligible for discretionary relief under sections 208, 212(h), 212(i), 240A, 240B, 245, 248 and 249 of the Act.

(2) An alien who departs or is removed by the Service after failing to surrender for removal as required by this part is ineligible for the relief specified in paragraph (a)(1)(iii) of this section for 10 years after the alien's departure or removal.

(b) *Exception.* An alien who fails to surrender for removal as required by this part is not ineligible for the relief specified in paragraph (a)(1)(iii) of this section if the underlying proceeding was reopened by the Board of Immigration Appeals in accordance with § 3.2(c)(5) of this chapter or an immigration judge in accordance with § 3.23(b)(5) of this chapter, provided that the alien does not again fail to surrender for removal subsequent to reopening of the underlying proceeding.

(c) *Waiver.* The consequences of failing to surrender for removal may be waived, in the sole and unreviewable discretion of the district director, if:

(1)(i) The failure to surrender was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(ii) The alien surrenders for removal as soon as possible thereafter, and at that time presents documentary evidence that demonstrates, by clear and convincing evidence, the existence of exceptional circumstances.

12. In part 241, subpart A, a new § 241.16 is added to read as follows:

§ 241.16 Construction.

(a) *Order of removal.* For purposes of § 241.13, § 241.14, and § 241.15, the term *order of removal* shall apply to orders issued pursuant to the Act as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208.

(b) *Detainers.* Nothing in this part may be construed to relieve local, State, or Federal authorities from complying with the terms of a lawfully issued Service detainer.

(c) *Service.* For purposes of § 241.13, § 241.14, and § 241.15, in the case of an alien who is not personally served with an order of removal, service is sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with section 239(a)(1)(F) of the Act.

(d) *Effect on bonds.* Failure to surrender as required by this part shall not constitute breach of any outstanding immigration bond. Such bond shall remain in full force and effect, however, and the Service may issue a demand on the obligor to produce the alien for removal.

Dated: August 27, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–23906 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40386; File No. S7–25–98]

RIN 3235–AH53

Processing of Reorganization Events, Tender Offers, and Exchange Offers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment amendments to Rule 17Ad–14 under the Securities Exchange Act of 1934. Under the proposed amendments, registered transfer agents acting on behalf of issuers in connection with reorganization events would be required to set up accounts at securities depositories to receive securities by book-entry movements from depository participants. Also under the proposal, registered transfer agents acting as depositaries, exchange agents, or reorganization agents would not be permitted to require a securities depository to deliver securities certificates prior to the third business day following the expiration date of the tender offer, exchange offer, or reorganization event. The proposed amendments are designed to increase efficiency and certainty in the processing of reorganization events, tender offers, and exchange offers.

DATES: Comments should be received on or before November 3, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–25–98; this file number should be used on the subject line if E-mail is used. Comment letters will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Theodore R. Lazo, Attorney, at 202/942–4187, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Current Rules Governing the Processing of Securities Certificates in Tender Offers, Exchange Offers, and Reorganization Events

A. Tender Offers and Exchange Offers

In 1984, the Commission adopted Rule 17Ad–14 under the Securities Exchange Act of 1934 (''Exchange Act'')[1] to address inefficiencies in the processing of securities certificates in tender offers and exchange offers.[2] Rule 17Ad–14 requires any registered transfer agent acting as a depositary[3] in the case of a tender offer or as an exchange agent[4] in the case of an exchange offer to establish and maintain specially designated accounts at all qualified registered securities depositories[5] holding the subject company's[6] securities for purposes of (1) receiving tendered securities by book-entry movement and (2) returning securities that have been withdrawn from the offer by book-entry movement.

Before the adoption of Rule 17Ad–14, bidders could require the tender of securities certificates outside the depository system even though in many cases the delivering entities were depository participants and the securities themselves were eligible for processing by the depository.[7] This was an inefficient and time-consuming process, especially in large tender offers when severe time constraints existed.[8]

[1] 17 CFR 240.17Ad–14.

[2] Securities Exchange Act Release No. 20581 (January 19, 1984), 49 FR 3064.

[3] A ''depositary'' is an agent of a bidder that is appointed during a tender offer to receive and hold all securities tendered by security holders and to pay the security holders for the tendered shares. 17 CFR 240.17Ad–14(c)(5). A bidder is a person who makes a tender or exchange offer or on whose behalf a tender or exchange offer is made. 17 CFR 17Ad–14(c)(3).

[4] An ''exchange agent'' is an agent of a bidder that performs functions in a exchange offer similar to those performed by a depositary. 17 CFR 240.17Ad–14(c)(5).

[5] A ''qualified registered securities depository'' is a clearing agency registered under the Exchange Act that has rules and procedures approved by the Commission to enable book-entry movement of the securities of subject company to, and return of those securities from, the transfer agent through the facilities of that depository. 17 CFR 240.17Ad–14(c)(4). Currently, The Depository Trust Company (''DTC'') is the only qualified registered securities depository for corporate debt and equity securities.

Securities depositories carry out several specific functions in the clearance and settlement of securities transactions, *e.g.*: Accepting deposits of securities from their participants (which currently include broker-dealers, banks, and other financial institutions); crediting those securities to the participants' accounts; and carrying out book-entry deliveries of securities among participants pursuant to the participants' instructions. Securities depositories greatly aid in the Exchange Act's mandate that the Commission use its authority to end the physical movement of securities certificates in connection with the settlement of securities transactions. *See* Section 17A(e) of the Exchange Act, 15 U.S.C. 78q–1(e).

[6] The term ''subject company'' is defined in Rule 14d–1(e)(2) under the Exchange Act, 17 CFR 240.14d–1(e)(2), as the issuer of securities sought by a bidder pursuant to a tender offer.

[7] Securities eligible for deposit at a depository are securities that are eligible for deposit at any securities depository that is registered as a clearing agency under the Exchange Act. *See* 17 CFR 240.17Ad–1(j).

[8] In many cases, depository participants were required to withdraw securities certificates from the depository in order to participate in a tender or exchange offer. Because these certificates typically were held at the depository in nominee name rather than in the name of the beneficial owner, the nominee name certificates had to be sent to the transfer agent to have the record ownership of the securities changed to that of the beneficial owner and to have a new certificate issued before the beneficial owner could deliver the securities to the

Continued

At that time, securities depositories customarily suspended depository eligibility for securities that were subject to a large tender or exchange offer if the depositary or exchange agent did not establish a depository account. This was particularly true if an offer was for a significant percentage of the subject company's stock that was on deposit at the depository and when the subject company's transfer agent and the depository were located in different cities.[9]

The Commission acted to improve the process by requiring agents in tender or exchange offers to establish accounts at securities depositories to permit book-entry movement of securities in connection with the offer. Under Rule 17Ad–14, depository participants can tender their shares pursuant to such offers by forwarding transmittal instructions to securities depositories.[10] Securities depositories then debit tendering participants' accounts and simultaneously credit the accounts of the agent for the offer for the securities tendered. The agents accept book-entry delivery as a completed tender of shares. After a tender or exchange offer expires, the securities depositories make bulk deliveries of the securities certificates to the agent.

The adoption of Rule 17Ad-14 has resulted in a reduction in the amount of securities certificates that must be exchanged among securities depositories, their participants, transfer agents, and depositaries and exchange agents during tender or exchange offers. This reduction has led to an increase in the efficient and reliable processing of securities and a decrease in the risk of loss resulting from loss or theft of securities certificates or from manual processing errors. In addition, depositories no longer have to suspend eligibility for the services for issues subject to a tender or exchange offer.

B. Reorganization Events

Reorganization events typically include conversions, maturities, full or partial redemptions, calls, put option exercises, and warrants and rights exercises involving corporate and municipal securities. In recent years, there has been an increase in the volume and complexity of these reorganization events.[11]

The mechanical aspects of reorganization events closely resemble those of tender offers and exchange offers.[12] Under the current method of processing reorganization events, depository participants with positions in the subject securities that are on deposit at securities depositories submit instructions to the depositories to send the subject securities to the reorganization agent.[13] However, the legal documents containing the terms of reorganization events (*e.g.*, bond indentures) often are interpreted to require security holders to submit securities certificates in order to exercise their rights under the event. Similar conditions existed with respect to tender offers and exchange offers before the adoption of Rule 17Ad–14 in 1984. Changes in the law since 1984 have clarified even further that book-entry delivery satisfies legal requirements.[14]

Book-entry delivery is important for efficient securities processing during reorganization events. Depending upon the size and timing of the reorganization event, the securities depositories may have to make multiple deliveries of securities certificates before the expiration date of the reorganization event.[15] In order to control their certificate inventory during reorganization events, some securities depositories stop accepting deposits of and book-entry delivery instructions for the subject securities prior to the expiration date of the reorganization event.[16] If a depository participant wants to participate in a reorganization event after the depository's cutoff it must submit securities certificates to the reorganization agent on its own.[17]

II. Proposed Amendments to Rule 17Ad–14

DTC has requested that the Commission amend Rule 17Ad–14 to expand the scope of the rule to include reorganization events in addition to tender offers and exchange offers. DTC also has requested that Rule 17Ad–14 be amended so that qualified registered securities depositories would have three business days following the expiration of a tender offer, exchange offer, or reorganization event to deliver securities certificates that are due to depositaries, exchange agents, and reorganization agents.[18]

A. Establishment of Book-Entry Depository Accounts by Reorganization Agents in Connection With Reorganization Events

Under the proposed amendments to Rule 17Ad–14, reorganization events[19] would become subject to procedures similar to those currently governing tender offers and exchange offers. Specifically, Rule 17Ad–14 would be amended to state that no registered transfer agent may act as a reorganization agent[20] unless within

bidder. As a result, it was very difficult for securities depositories to manage their certificate inventory for issues that were subject to tender or exchange offers.

[9] For example, during the summer of 1981 DTC declared the securities of Conoco, Inc. (''Conoco'') ineligible for its services because of competing tender offers for control of Conoco by E.I. DuPont de Nemours, Joseph E. Seagram & Sons, Inc., and Mobil Corporation. DTC took this action because it could not process all of the requests that it was receiving for Conoco stock certificates.

[10] Transmittal letters and other delivery instructions are now commonly transmitted electronically instead of by paper to securities depositories.

[11] In 1997, DTC processed approximately 76,000 instructions submitted by its participants in connection with conversions and warrants, rights, and puts exercises. Conversions and warrants exercises accounted for the issuance of approximately 685 million shares of stock. The total value of all such conversions and exercises exceeded $46.7 billion. Letter from Carl H. Urist, Deputy General Councel and Vice President, DTC (February 5, 1998).

[12] For example, in a bond conversion security holders submit their bonds to a reorganization agent in exchange for another security of the issuer.

[13] Reorganization agents are usually issuers or their transfer agents.

[14] *See Revised Article 8 of the Uniform Commercial Code.*

[15] Securities depositories usually maintain in their vaults large denomination securities certificates representing aggregated participant positions in that issue of securities (''jumbo certificates''). The number of certificates in smaller denominations is often sufficient only to meet participants' routine withdrawal needs. As a result, each time a securities depository receives a request for certificates it must present jumbo certificates to the transfer agent to be broken down into certificates of smaller denominations. During a reorganization event in which depository facilities are not utilized, the timing and extent of demand for securities certificates can be unpredictable. Therefore, it can be difficult for securities depositories to make requested physical deliveries in the precise denominations required on an expedited basis.

[16] For example, DTC stops accepting deposits and book-entry delivery instructions in some securities up to five business days prior to the expiration date or payment date for the reorganization event. In the case of maturities or calls, DTC stops accepting deposits thirty days prior to the payment date. DTC stops accepting instructions from its participants regarding voluntary reorganizations activities (*e.g.*, conversions) early on the expiration date or one or two business days prior to the expiration date.

[17] Alternatively, a securities depository could wait to deliver cash or securities to its participants following a tender of securities in a reorganization event until the depository receives full credit for the securities or payment from the reorganization agent. However, the securities depository could then be subject to interest claims or contractual liability from its participants for failure to make deliveries according to the particular terms of the reorganization event.

[18] Letter from Carl H. Urist, Deputy General Counsel and Vice President, DTC (September 14, 1994).

[19] Under the proposed amendments, the term ''reorganization event'' would be defined to include conversions, maturities, full and partial redemptions, calls, put option exercises, and warrant and rights exercises involving corporate and municipal securities of an issuer.

[20] Under the proposed amendments, the term ''reorganization agent'' would be defined as an agent of an issuer receiving securities from tendering depository participants and performing

two business days after commencement of the reorganization event it establishes at all qualified registered securities depositories [21] specially designated accounts for purposes of receiving securities tendered to the reorganization agent in connection with the reorganization event.

Under the terms of the proposed amendments, after a reorganization agent establishes the required accounts with each qualified registered securities depository, participants electing to participate in or affected by the reorganization event would be able to deliver the subject securities to the reorganization agent by book-entry movement. After a securities depository received and verified a participant's reorganization instructions, it would debit the subject securities from the participant's securities account and would credit them to the reorganization agent's securities account. Upon receipt of the subject securities into its book-entry account, the reorganization agent would act upon the participants' reorganization instructions (*i.e.*, carry out the conversion, redemption, or other activity). The Commission believes that under the proposed amendments to Rule 17Ad–14, book-entry delivery of securities subject to a reorganization event would satisfy the delivery requirements under the terms of the event.

Requiring reorganization agents to maintain an account with each qualified registered securities depository during the course of a reorganization event would allow the delivery of securities by book-entry movement rather than by physical transfer. As a result, the need for delivery of securities certificates from multiple holders to reorganization agents outside the depository system should be greatly reduced and securities depositories should be able to accept book-entry delivery instructions closer to the expiration date of a reorganization event. Securities depositories also would be able to make bulk deliveries of securities certificates to reorganization agents which should reduce the likelihood of securities certificates being lost, stolen, or destroyed. In addition, the proposed amendments would further the Exchange Act's mandate that the Commission use its authority to end the physical movement of securities certificates in connection with the settlement of securities transactions.[22]

As noted above, in the context of tender and exchange offers Rule 17Ad–14 has reduced the amount of movements of securities certificates among depositaries and exchange agents, participants, and depositories and thereby has reduced the costs and risks associated with such physical transfers. Under the proposed amendments to Rule 17Ad–14, these benefits should also be realized for reorganization events.

B. Timing for Deliveries of Securities Certificates in Connection With Tender Offers, Exchange Offers, and Reorganization Events

The Commission is proposing to amend Rule 17Ad–14 to state that a registered transfer agent acting as a depositary, exchange agent, or reorganization agent may not require a qualified registered securities depository to deliver securities certificates prior to the third business day following the expiration date of a tender offer, exchange offer, or reorganization event, as the case may be.

The Commission understands that securities certificates generally are delivered to depositaries and exchange agents only as an administrative matter [23] because depositaries and exchange agents accept book-entry delivery of shares as a completed tender.[24] Under the proposed amendments, delivery of securities certificates to the reorganization agent after a reorganization event has expired also should become purely an administrative matter.

Rule 17Ad–14 currently does not specify when securities certificates must be delivered. Establishing a three-day period for delivery of securities certificates should ensure that securities depositories have the time necessary to properly account for the inventory of securities certificates to be delivered. In addition, the proposed amendments should establish a clear and uniform date by which securities depositories will deliver securities certificates in tender offers, exchange offers, and reorganization events.

The proposed amendments to Rule 17Ad–14 regarding delivery of securities certificates are not intended to affect or to alter current practice regarding tender and exchange offers or the obligations of depositaries and exchange agents. Portions of the rule have been reorganized in order to maintain certain distinctions between tender or exchange offers and reorganization events as well as to provide clarity. Other technical changes include the addition of the definition of ''reorganization agent'' and ''reorganization event'' to the rule and the amendment of the definition of ''qualified registered securities depository.''

III. Request for Comments

Any interested person wishing to submit comments on the proposed amendments to Rule 17Ad–14, as well as on other matters that might have an impact on the proposal, is requested to do so. The Commission specifically solicits comments as to whether requiring reorganization agents to establish accounts with registered securities depositories in connection with reorganization events presents any issues that are unique to reorganization events (*i.e.*, issues that are not present in the context of tender or exchange offers) or that will create an undue burden upon reorganization agents or others. The Commission seeks comment on whether any additional regulatory safeguards may be required in the context of reorganization events (*e.g.*, restrictions on depository policies that allow securities to be withdrawn from a securities depository in connection with reorganization events). The Commission also seeks comment on whether the term ''reorganization events'' should be defined to include either fewer or additional events or whether it should be defined more broadly to anticipate new types of reorganization events that may develop in the future.

While the Commission believes that permitting book-entry delivery of securities to reorganization agents is consistent with the delivery requirements under most states' laws, the Commission requests comment on whether any operative agreements governing reorganization events (*e.g.*, bond indentures) specifically require delivery of physical securities certificates.

The Commission also seeks comment on the effect of providing qualified registered securities depositories with three business days following the expiration of a tender offer, exchange offer, or reorganization event to deliver

payment or exchange functions with respect to those tendering participants as required by the particular reorganization event. The term ''issuer'' is defined in section 3(a)(8) of the Exchange Act, 15 U.S.C. 78c(a)(8)

[21] As noted above, the term ''qualified registered securities depository'' is defined in Rule 17Ad–14(c), 17 CFR 240.17Ad–14(c). Currently, Rule 17Ad–14(c) only requires a depository to provide book-entry services for a ''subject company'' in connection with a tender or exchange offer. Under the proposed amendments, the definition of ''qualified registered securities depository'' would be amended to reflect that each such depository also must be able to provide book-entry services for securities that are subject to a reorganization event.

[22] *See* Section 17A(e) of the Exchange Act, 15 U.S.C. 78q–1(e).

[23] For example, if a company carries out a tender offer for its own securities, it might want to receive securities certificates in order to cancel them.

[24] These understandings are based on conversations between Commission staff and DTC.

securities certificates. Would delivery of securities certificates three days after the expiration of a tender offer, exchange offer, or reorganization event have any negative effect on their operation? In addressing these issues, the Commission invites commenters to discuss the relevance of the book-entry transfer issues presented in *Pryor* v. *USX Corp*.[25] to the proposed rulemaking and whether it would be appropriate to impose a time limit within which securities certificates must ultimately be delivered.

IV. Costs and Benefits of the Rules and Their Effect on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act[26] requires the Commission, in adopting rules under the Exchange Act, to consider the impact any such rule would have on competition, and to not adopt any rule which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, section 3 of the Exchange Act[27] as amended by the National Securities Markets Improvement Act of 1996[28] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission is considering the proposed amendments to Rule 17Ad–14 in light of the standards cited in sections 3 and 23(a)(2) of the Exchange Act. For the reasons stated herein, the proposed amendments (i) should promote efficiency by ensuring that all securities transfers associated with reorganization events may be carried out by book-entry movement and by providing a reasonable and uniform amount of time for the delivery of securities certificates that are the subject of tender offers, exchange offers, and reorganization events, (ii) should not adversely affect capital formation because they should not increase issuer transaction costs, and (iii) should not impose any burden on competition because they will apply equally to all registered transfer agents that act as depositaries or reorganization agents.

The Commission does not anticipate that the proposed amendments would have a significant effect on competition or impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. Under the proposed amendments, all reorganization agents will be required to establish and maintain separate accounts for book-entry delivery of securities during reorganization events. In addition, the standards with respect to the time in which delivery of securities certificates must be made to depositaries, exchange agents, or reorganization agents will apply equally to all qualified registered securities depositories. However, in order to evaluate fully the effects on competition of the proposed amendments, the Commission requests commenters to provide their views and specific empirical data as to any effects on competition that might result from the Commission's proposed amendments to Rule 17Ad–14.

The Commission is considering the costs and the benefits of the proposed amendments to Rule 17Ad–14. The proposed amendments to Rule 17Ad–14 should provide specific benefits to U.S. investors, issuers, and other financial intermediaries. These benefits are not readily quantifiable in terms of dollar value. Providing for book-entry movements of securities that are subject to reorganization events should increase the efficiency of the processing of such events by reducing the need for delivery of securities certificates from multiple holders to reorganization agents. In addition, the proposed amendments to Rule 17Ad–14 should reduce the risk of loss of securities certificates because movements of securities in reorganization events will be carried out by book-entry movement rather than by multiple transfers of securities certificates.

By providing securities depositories with three business days after the expiration of a tender offer, exchange offer, or reorganization event to deliver securities certificates, the proposed amendments should create a clear and uniform standard for the delivery of securities certificates subject to such events. This standard should give securities depositories greater certainty in managing their certificate inventory after the expiration of a tender offer, exchange offer, or reorganization event.

The proposed amendments to Rule 17Ad–14 should not result in significant costs to any particular person or entity. The Commission estimates that there will be minimal cost to reorganization agents to establish and maintain a specially designated account at a securities depository and otherwise to comply with the proposed amendments.[29] A small number of entities that act as reorganization agents may incur some systems and communications costs but the Commission believes many of those entities already have the necessary systems in place because they provide book-entry services for tender and exchange offers and therefore any such costs should be insignificant. No entity should incur any additional cost because of the proposed amendments to Rule 17Ad–14 that would give securities depositories three days to deliver securities certificates associated with tender offers, exchange offers, and reorganization events. Therefore, the proposed amendments to Rule 17Ad–14 should not have any measurable aggregate cost.

The Commission requests comment on these estimates and invites commenters to submit their own estimates of the costs and benefits that would result from the proposed amendments to Rule 17Ad–14. In particular, the Commission requests comment on whether any entity will incur any additional cost as a result of the proposed amendments to Rule 17Ad–14 that would give securities depositories three days to deliver securities certificates associated with tender offers, exchange offers, and reorganization events. In order to evaluate fully the costs and benefits associated with the proposed amendments, the Commission requests that commenters' estimates of the costs and benefits of the proposed amendments be accompanied by specific empirical data supporting the estimates.

V. Summary of Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis

[25] 806 F. Supp. 460 (S.D.N.Y. 1992). *Pryor* involved a 1981 tender offer by United States Steel Corporation (''U.S. Steel'') for shares of Marathon Oil Company. The tender offer was oversubscribed, and the offering document provided that in the event of an oversubscription U.S. Steel would purchase the Marathon shares on a pro-rata basis prior to the proration date. Shareholders permitted to share at the tender offer price were to earn a significant premium on their shares. Thus, as the number of tenderers increased, the number of shares held by each tenderer that would be eligible for sale would decrease. Some tenderers initiated book-entry deliveries of securities prior to the proration date at DTC, but DTC delivered the certificates for these shares subsequent to the proration date. In denying the motions for summary judgment submitted by each of the plaintiff and defendant, the court did not resolve the issue as to whether book-entry delivery of securities prior to the proration date constituted good delivery even though DTC delivered the securities certificates after the proration date. Instead, the court set the matter for trail, but the case was settled.

[26] 15 U.S.C. 78w(a)(2).

[27] 15 U.S.C. 78c.

[28] 1Pub. L. No. 104–290, 110 Stat. 3416 (1996).

[29] DTC has informed the Commission staff that it does not charge a fee to establish and maintain a book-entry account.

(''IRFA'') in accordance with 5 U.S.C. 603(a) regarding the proposed amendments to Rule 17Ad–14. The IRFA states that the proposed amendments are intended to facilitate book-entry delivery of securities during reorganization events. In addition, the IRFA states that the proposed amendments are intended to establish a clear and uniform time frame for the delivery of securities certificates that are the subject of tender offers, exchange offers, and reorganization events. The IRFA sets forth the statutory basis for the proposed amendments.

The IRFA states that, for purposes of Commission rulemaking, paragraph (h) of Rule 0–10 under the Exchange Act [30] defines the term ''small business'' or ''small organization'' to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed ''small businesses'' or ''small organizations'' as defined in Rule 0–10 under the Exchange Act; (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization under Rule 0–10.[31] The IRFA states that, for purposes of Commission rulemaking, paragraph (d) of Rule 0–10 under the Exchange Act [32] defines the term ''small business'' or ''small organization'' to include any clearing agency that (1) compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter); (2) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. In addition, the IRFA states that paragraph (a) of Rule 0–10 under the Exchange Act [33] defines the term ''small business'' or ''small organization'' to include any person (*i.e.*, business) that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

The IRFA states that the Commission estimates that 180 transfer agents qualify as small entities. The IRFA further states that if the proposed amendments are adopted, it is possible that some registered transfer agents that act as reorganization agents will be small entities. In addition, the IRFA states that if the proposed amendments are adopted, it is possible that certain issuers of securities that are subject to reorganization events and some bidders that extend tender or exchange offers will be small entities. However, the IRFA states further that the Commission currently cannot predict how many of the affected issuers and bidders would be small entities.

The IRFA states that the proposed amendments would not impose any new reporting or recordkeeping requirements. The IRFA states further that if the proposed amendments are adopted, registered transfer agents acting as reorganization agents would be required to establish and maintain specially designated accounts at qualified registered securities depositories to provide for book-entry movements of the affected securities during the course of reorganization events. The IRFA states that the proposed amendments to Rule 17Ad–14 should not have a significant economic impact on a substantial number of small entities.

The IRFA states that as an alternative to the proposed amendments the Commission considered requesting that reorganization agents voluntarily accept book-entry delivery of securities affected by reorganization events. However, the IRFA states that it is the Commission's understanding that the agreements governing the terms of some reorganization events currently require or are interpreted to require delivery of securities certificates and that reorganization agents will not accept the affected securities by book-entry delivery in the absence of a Commission rule.

In addition, the IRFA states that the Commission believes that it is not feasible to further clarify, consolidate, or simplify the proposed amendments for small entities. The IRFA also states that the Commission believes that the use of performance standards rather than design standards is not applicable to the proposed amendments. The IRFA states that the Commission believes that creating an exemption from the requirements of the proposed amendments would not reduce the impact of the proposed amendments on small entities due to the minimal burden they are expected to impose on small entities. The IRFA states that the Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed alternative versions of the rule.

The IFRA contains information concerning the solicitation of comments with respect to the IRFA. In particular, the IRFA requests comment on whether the proposed amendments to Rule 17Ad–14 would have a significant economic impact on a substantial number of small entities and requests that any such comments be accompanied by specific empirical data. Cost-benefit information reflected in the ''Cost/Benefit Analysis'' section of this Release also is reflected in the IRFA. The IRFA states that in the absence of specific comments to the contrary, the Commission anticipates that if the proposed amendments are adopted it will certify that the proposed amendments will not have a significant economic impact on a substantial number of small entities and will not prepare a Final Regulatory Flexibility Analysis. A copy of the IRFA may be obtained by contacting Theodore R. Lazo, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 10–1, Washington, DC 20549.

VI. Statutory Bases

The amendments to Rule 17Ad–14 are being proposed pursuant to Sections 2, 11A(a)(1)(B), 14(d)(4), 15(c)(3), 15(c)(6), 17A(a), 17A(d)(1), and 23(a) of the Exchange Act [15 U.S.C. 78b, 78k–1(a)(1)(B), 78n(d)(4), 78o(c)(3), 78o(c)(6), 78q–1(a), 78q–1(d)(1) and 78w(a)].

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, the Commission proposes to amend part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

2. Section 240.17Ad–14 is revised to read as follows:

[30] 17 CFR 240.0–10(h).

[31] The Commission recently amended this definition. Securities Exchange Commission Release Nos. 33–7548, 34–40122, IC–23272, and IA–1727 (June 24, 1998), 63 FR 35508.

[32] 17 CFR 240.0–10(d).

[33] 17 CFR 240.0–10(a).

§ 240.17Ad–14 Tender and reorganization agents

(a) *Establishing book-entry depository accounts for tender or exchange offers and reorganization events.* (1) When securities of a subject company have been declared eligible by one or more qualified registered securities depositories for the services of those depositories at the time a tender or exchange offer is commenced, no registered transfer agent shall act on behalf of the bidder as a depositary, in the case of a tender offer, or an exchange agent, in the case of an exchange offer, in connection with a tender or exchange offer, unless that transfer agent has established, within two business days after commencement of the offer, specially designated accounts. These accounts shall be maintained throughout the duration of the offer, including protection periods, with all qualified registered securities depositories holding the subject company's securities, for purposes of receiving from depository participants securities being tendered to the bidder by book-entry delivery pursuant to transmittal letters and other documentation and for purposes of allowing depositaries to return to depository participants by book-entry movement securities withdrawn from the offer.

(2) When securities of an issuer have been declared eligible by one or more qualified registered securities depositories for the services of those depositories at the time a reorganization event is commenced, no registered transfer agent shall act as a reorganization agent on behalf of any issuer in connection with a reorganization event unless that registered transfer agent has established, within two business days after commencement of the reorganization event, specially designated accounts. These accounts shall be maintained with all qualified registered securities depositories holding the issuer's securities until the depository's close of business on the record date, expiration date, or payment date, as the case may be, including any protect periods, of the reorganization event for purposes of receiving from depository participants securities presented to registered transfer agents by book-entry delivery pursuant to proper documentation and for purposes of allowing reorganization agents to return securities to depository participants by book-entry movement in connection with the reorganization event.

(3) No registered transfer agent acting as a depositary, exchange agent, or reorganization agent shall require a qualified registered securities depository to deliver any physical security pursuant to a tender offer, exchange offer, or reorganization event prior to:

(i) In the case of a tender or exchange offer, the third business day following the qualified registered securities depository's close of business on the expiration date of a tender or exchange offer, including any protect periods or

(ii) In the case of a reorganization event, the third business day following the qualified registered securities depository's close of business on the record date, payment date, or expiration date, as applicable, including any protect periods, of the reorganization event.

(b) *Exclusions.* This section shall not apply to tender or exchange offers or reorganization events:

(1) That are made for a class of securities of a subject company or issuer that has fewer than:

(i) 500 security holders of record for that class; or

(ii) 500,000 shares of that class outstanding; or

(2) That are made exclusively to security holders of fewer than 100 shares of a class of securities.

(c) *Definitions.* For purposes of this section:

(1) The terms *bidder, subject company, business day, security holders,* and *transmittal letter* shall have the meanings provided in § 240.14d–1(e);

(2) Unless the context otherwise requires, a tender or exchange offer shall be deemed to have commenced as specified in § 240.14d–2;

(3) The term *qualified registered securities depository* shall mean a registered clearing agency having rules and procedures approved by the Commission pursuant to section 19 of the Act (15 U.S.C. 78s) to enable book-entry delivery of the securities of the subject company or issuer to, and return of those securities from, a transfer agent or reorganization agent, as the case may be, through the facilities of that registered clearing agency;

(4) The term *depositary* refers to that agent of the bidder receiving securities from tendering depository participants during a tender offer and paying those participants for shares tendered. The term *exchange agent* refers to the agent performing like functions in connection with an exchange offer. The term *reorganization agent* refers to the agent performing like functions in connection with a reorganization event; and

(5) The term *reorganization event* shall mean and include conversions, maturities, full and partial redemptions, calls, put option exercises, and warrant and rights exercises involving corporate and municipal securities of an issuer.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered transfer agent, reorganization agent, tender or exchange offer, class of tender or exchange offers, or reorganization event if the Commission determines that an exemption is consistent with the public interest, the protection of investors, the prompt and accurate clearance and settlement of securities transactions, the maintenance of fair and orderly markets, or the removal of impediments to a national clearance and settlement system.

Dated: August 31, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23880 Filed 9–3–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101363–98]

RIN 1545–AV94

Section 411(d)(6) Protected Benefits (Taxpayer Relief Act of 1997); Qualified Retirement Plan Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing for changes to the rules regarding qualified retirement plan benefits that are protected from reduction by plan amendment, that have been made necessary by the Taxpayer Relief Act of 1997. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by December 3, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–101363–98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–101363–98),

Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs/ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S. F. Marshall, (202) 622–6030 (not a toll-free call); concerning submissions, Michael Slaughter, (202) 622–7190 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 411(d)(6), to provide for changes that have been made necessary by the Taxpayer Relief Act of 1997 (TRA '97), Public Law 105–34, 111 Stat. 788 (1997). The temporary regulations change the existing regulations to conform with the TRA '97 rules regarding in-kind distribution requirements for certain employee stock ownership plans, and specify the time period during which certain plan amendments for which relief has been granted by TRA '97 may be made without violating the prohibition against plan amendments that reduce accrued benefits.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Linda S. F. Marshall, Office of the Associate Chief Counsel, Employee Benefits and Exempt Organizations. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.411(d)–4 is amended by:

1. Revising paragraph (d)(1)(ii) of Q&A–2.

2. Adding Q&A–11.

The addition and revisions read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

Q–2 * * *

(d)(1)(ii) [The text of proposed paragraph (d)(1)(ii) of Q&A–2 is the same as the text of § 1.411(d)–4T Q&A–2(d)(1)(ii) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Q&A–11 [The text of proposed Q&A–11 is the same as the text of § 1.411(d)–4T Q&A–11 published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–23570 Filed 9–3–98; 8:45 am]

BILLING CODE 4830–01–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 98–7]

Notice and Recordkeeping for Making and Distributing Phonorecords

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The Copyright Office of the Library of Congress is requesting comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works in the making and distribution of phonorecords. The Digital Performance Right in Sound Recordings Act of 1995 requires the Librarian of Congress to establish these regulations to ensure proper payment to copyright owners for the use of their works.

DATES: Comments are due October 19, 1998. Reply comments are due November 18, 1998.

ADDRESSES: If sent by mail, an original and ten copies of the comments, or the reply comments, should be addressed to: David Carson, General Counsel, Copyright GC/I&R, PO. Box 70400, Southwest Station, Washington, DC 20024. If hand delivered, an original and ten copies of the comments, or the reply comments, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE, Washington, DC 20599–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

What Is the Digital Performance Right in Sound Recordings Act of 1995?

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (DPRSRA), Pub. L. 104–39 (1995). Among other things, this law clarified that the compulsory license for making and distributing phonorecords includes the distribution of a phonorecord of a nondramatic musical work by means of a digital phonorecord delivery. 17 U.S.C. 115(c)(3). A ''digital phonorecord delivery'' is each individual delivery of a phonorecord by digital transmission of

a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient. 17 U.S.C. 115(d), 37 CFR 255.4.

Why Has the Copyright Office Initiated This Rulemaking Proceeding?

The DPRSRA directs the Librarian of Congress to establish regulations by which the entities availing themselves of this new license would keep records of their use, make the records available to the copyright owners, and give notice to the copyright owners of the use of their works. 17 U.S.C. 115(c)(3)(D). Specifically, sec. 115(c)(3)(D) requires ''The Librarian of Congress (to) establish requirements by which copyright owners may receive reasonable notice of the use of their works under this section, and under which records of use shall be kept and made available by persons making digital phonorecord deliveries.''

Are There Currently Regulations Governing the Use of the Section 115 Compulsory License?

Sections 201.18 and 201.19 of title 37 of the Code of Federal Regulations, detail how potential compulsory licensees must file a notice of intention to obtain a compulsory license for making and distributing phonorecords of nondramatic musical works, how to make royalty payments to the copyright owners, and how to file statements of account in compliance with the terms of the sec. 115 license. Although these rules were promulgated before the passage of the DPRSRA to govern the making and distribution of physical phonorecords, these regulations apply equally to compulsory licensees who make digital phonorecord deliveries.

Can the Regulations in 37 CFR 201.18 and 201.19 Be Amended To Accommodate the Delivery of Digital Phonorecords and Meet the Additional Notice and Recordkeeping Requirements in 17 U.S.C. 115(c)(3)(D)?

Section 115(b)(1) of the Copyright Act, 17 United States Code, requires ''any person who wishes to obtain a compulsory license under this section * * * (to) serve notice of intention to do so on the Copyright Owner.'' The section also requires the Copyright Office to prescribe regulations specifying the form, content, and manner of service of the notice of intention. Section 201.18 of title 37 of the Federal Code of Regulations meets this requirement. Similarly, the regulations in § 201.19 address the requirement that each compulsory licensee file monthly and annual statements of account for each sec. 115 compulsory license as required under 17 U.S.C. 115(c)(5).

These rules, however, were conceived before the dawn of the digital age, and consequently, may not serve those compulsory licensees who intend to use the license to make digital phonorecord deliveries. For instance, 37 CFR 201.19 uses the terms, ''voluntarily distributed,'' and ''phonorecord reserve,'' which, on their face, do not seem to apply to the delivery of digital phonorecords. Nevertheless, their purpose is to provide notice to the copyright owner of the use of his or her work by a compulsory licensee and to ensure proper payment of royalties—the same purpose underlying the new notice and recordkeeping provision found in 17 U.S.C. 115(c)(3)(D).

Therefore, the Copyright Office is requesting that interested parties consider how to amend 37 CFR 201.18 and 201.19 in order to accommodate the delivery of digital phonorecords, and whether these rules, if amended to accommodate the delivery of digital phonorecords, would fulfill the notice and recordkeeping requirements specified in 17 U.S.C. 115(c)(3)(D), in addition to the requirements to file a notice of intention and monthly as well as annual statements of accounts. Furthermore, the Office seeks comment on the specific requirement in sec. 115(c)(3)(D) that the ''persons making digital phonorecord deliveries'' must keep and make available records of use. Interested parties who do not believe that §§ 201.18 and 201.19 can serve as an appropriate model for the requirements of sec. 115(c)(3)(D) are invited to propose alternative means of notice and recordkeeping.

Dated: September 1, 1998.

David O. Carson,

General Counsel.

[FR Doc. 98–23907 Filed 9–3–98; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD003–3024b, MD025–3024b, MD066–3024b; FRL–6149–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Conditional Limited Approval of Major VOC Source RACT and Minor VOC Source Requirements and Withdrawal of Proposed Rule Pertaining to Major RACT and Minor VOC Source Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and withdrawal of notice of proposed rulemaking.

SUMMARY: EPA proposes conditional limited approval of the State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions pertain to Maryland's major source volatile organic compound (VOC) reasonably available control technology (RACT) regulation and minor VOC source requirements. In addition, EPA is withdrawing its March 1, 1996 proposed conditional approval of these SIP revisions, because the proposal does not comply with EPA's November 7, 1996 generic RACT policy. No public comments were received on that proposal. These actions are being taken in accordance with the SIP submittal and revision provisions of the Act. In the Final Rules section of this **Federal Register**, EPA is conditionally and limitedly approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. Detailed rationales for these actions are set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 5, 1998.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant

to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, at the EPA Region III address above, or by e-mail at pino.maria@epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title, pertaining to Maryland's major VOC source RACT and minor VOC source requirements, located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 12, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–23505 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 20–7–0084b; FRL–6138–9]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from open burning and visible emissions within the Bay Area Air Quality Management District.

The intended effect of proposing approval of these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by October 5, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, (Rulemaking [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1903).

SUPPLEMENTARY INFORMATION: This document concerns Bay Area Air Quality Management District Regulation 5, Open Burning, and Regulation 6, Visible Emissions, submitted to EPA on March 10, 1998 and May 13, 1991, respectively, by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 23, 1998.

Clyde Morris,

Acting Regional Administrator, Region IX.

[FR Doc. 98–23818 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[MARAD 98–4395]

46 CFR Part 249

RIN No. 2133–AB 36

Approval of Underwriters for Marine Hull Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance Notice of Proposed Rulemaking; request for comments.

SUMMARY: The Maritime Administration (MARAD) is soliciting comments from interested persons concerning the need to amend the existing regulations governing the placement of marine hull insurance on subsidized and Title XI program vessels. The existing regulations were promulgated in 1988 and provided, among other things, the criteria and procedures for certain foreign underwriters to participate in the writing of hull insurance on MARAD program vessels.

DATES: Comments are requested by October 5, 1998.

ADDRESSES: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Subsidy and Insurance, Maritime Administration, Washington DC 20590. Telephone 202/366–2400.

SUPPLEMENTARY INFORMATION: The 1988 explanation of the final rulemaking (53 FR 23119) provided in part that:

> Members of the Institute of London Underwriters (ILU) would remain eligible subject to prescribed trust fund and limitation on risk requirements. On the basis of a comment by one American carrier, the final rule specifically reserves MARAD's right to review this eligibility at any time.

It has come to MARAD's attention that the ILU and another London based insurance organization, the London International Insurance and Reinsurance Market Association (LIRMA) have voted to merge their two organizations in the near future. The new organization will be called the International Underwriters Association (IUA) of London. MARAD's

Director, Office of Marine Insurance had discussions with the incoming chairman of the IUA and the chairman indicated that the new organization will not have the same eligibility criteria as the ILU or any internal oversight activities. In view of this, MARAD is seeking comments concerning how to deal with existing ILU member companies after the merger. Will it be necessary to qualify ILU member companies on an individual ''ad hoc'' basis after the merger is implemented? MARAD has a number of questions it would like to receive comment on:

(1) Should companies who were in the ILU and approved to write insurance on MARAD program vessels maintain their eligibility for some period, say a year after merger, while they are reviewed on an individual basis?

(2) Should ILU member companies (post merger) be subject to the same requirements of ''Other Foreign Underwriters'' under section 249.5(c) Eligibility criteria?

(3) If an ILU member company has been previously approved under 249.5(c), in the French or Scandinavian market for example, should that eligibility be governing?

(4) Should ILU member companies appearing on the Quarterly Listing of Alien Insurers compiled by the National Association of Insurance Commissioners be eligible for MARAD underwriting provided they remain in good standing and remain on this list?

(5) If an ILU member company is the subsidiary or affiliate of a company that is approved under Section 249.5(c), should it have the benefit of that approval if a satisfactory parent company or similar guarantee is provided?

(6) Any other aspect of this issue.

By Order of the Maritime Administrator.

Dated: September 1, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–23908 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 082098G]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings; public hearing.

SUMMARY: The New England Fishery Management Council (Council) is scheduling several public meetings of its oversight committees and advisory panels in September, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on September 9 and September 17, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Gloucester and Saugus, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, September 9, 1998, 9:00 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: New England Fishery Management Council Office conference room; 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

Review and approval of the final Essential Fish Habitat Amendment document and environmental assessment prior to final consideration by the Council.

Thursday, September 17, 1998, 9:30 a.m.—Groundfish Committee Meeting

Location: The Tavern on the Harbor, 30 Western Avenue, Gloucester, MA 01930; telephone: (978) 283–4200.

Review of draft regulatory language for Amendment 9 to the Northeast Multispecies Fisheries Management Plan and development of guidance to the Council's Multispecies Monitoring Committee (MSMC). That group evaluates the effectiveness of the Northeast Multispecies Fishery Management Plan and recommends management options for Gulf of Maine cod and other species as part of an annual review and plan adjustment process. Further regulation of recreational catches, modification or addition of closed areas, or a bycatch-only designation for Gulf of Maine cod may be among the options considered by the MSMC.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 31, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–23935 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 082798B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Proposed reallocation; request for comments.

SUMMARY: Based on currently available information, NMFS has determined that the trawl catcher/processor sector will not be able to harvest its entire share of the Pacific cod total allowable catch (TAC) in the Bering Sea and Aleutian Islands management area (BSAI) and is proposes to make the projected unused amount of the trawl catcher/processor share of the Pacific cod TAC available to the trawl catcher vessel sector. NMFS also is proposing to reallocate the projected unused amount of Pacific cod from trawl catcher/processors to vessels using hook-and-line or pot gear in the BSAI. NMFS invites public comments, particularly from the trawl catcher vessel sector, on NMFS's determination that the trawl catcher/processor sector will not be able to harvest its share of Pacific cod and NMFS's proposal to reallocate the unused amount of Pacific cod from the trawl catcher/processor sector to hook-and-line and pot gear. The proposed action is necessary to

allow the 1998 TAC of Pacific cod to be harvested.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time, September 18, 1998.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, 709 West 9th, Room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7210.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(iii), the Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) established the amount of the 1998 Pacific cod TAC as 194,250 metric tons (mt). Pursuant to 679.20(a)(7)(i)(A), 3,885 mt was allocated to vessels using jig gear, 99,068 mt to vessels using hook-and-line or pot gear, and 91,298 mt to vessels using trawl gear. The share of the Pacific cod TAC allocated to trawl gear was further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)).

As of August 1, 1998, the Administrator, Alaska Region, NMFS, has determined that 16,615 mt remain in the trawl catcher/processor vessel share and projects that the trawl catcher/processor sector will not harvest 7,000 mt of that share during the remainder of 1998.

Therefore, pursuant to § 679.20(a)(7)(ii)(A), NMFS proposes to make the projected unused amount of the trawl catcher/processor share of Pacific cod available to the trawl catcher vessel sector. In accordance with § 679.20(a)(7)(ii)(B), NMFS also is proposing to reallocate the projected unused amount (7,000 mt) of Pacific cod from trawl catcher/processors to vessels using hook-and-line or pot gear.

NMFS invites public comments, particularly from the trawl catcher vessel sector, on NMFS's determination that the trawl catcher/processor sector will not be able to harvest its share of the Pacific cod TAC, on whether the catcher vessel sector would be able to harvest the projected unused catcher/processor share, and on NMFS's proposal to reallocate the unused amount of Pacific cod from the trawl catcher/processor sector to hook-and-line and pot gear.

Classification

This action is taken under 50 CFR 679.20 and is exempt from OMB review under E.O. 12866.

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

Dated: August 27, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–23796 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 172

Friday, September 4, 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

Agricultural Marketing Service

[FV–96–328]

Request for Comments on the Qualified Through Verification Program for the Fresh-Cut Produce Industry

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice, request for comment.

SUMMARY: The Department of Agriculture (USDA) is seeking comment on the ''Qualified Through Verification'' Program (QTV). The program, which began in January 1996, is a pilot program provided under the authority of the Agricultural Marketing Act (AMA) of 1946, as amended. The program provides for voluntary audit-based inspections for wholesomeness and food safety. A new service was requested by representatives of the fresh-cut produce industry that would address wholesomeness in conjunction with food safety under Hazard Analysis Critical Control Points (HACCP) criteria, and Food and Drug Administration (FDA) current Good Manufacturing Practices (cGMPs). Under a ''pilot program'', the Agricultural Marketing Service (AMS) has found that QTV fosters a proactive approach by the production facility's management for identifying process deficiencies during production rather than after production is completed.

DATES: Comments must be received on or before November 3, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, P.O. Box 96456, Washington, DC. 20090–6456 or e-mailed to james__r__rodeheaver@usda.gov. Comments should note the date and page number of this issue of the **Federal Register** and would be made available for public inspection in the Office of the Branch Chief during regular business hours at 1400 Independence Avenue, SW, Room 0709, South Building, Washington, DC 20250–0001.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver, Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, P.O. Box 96456, Washington, DC 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This notice is requesting comments on the QTV program which, since January 1996, has been a pilot program. This service is performed under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

The QTV Program was developed in 1995 by AMS in response to a request by the International Fresh-cut Produce Association (IFPA). A notice was published in the **Federal Register** on December 20, 1996 announcing the program. AMS's QTV Program is a voluntary audit and verification service using science-based techniques that helps maintain public confidence in the wholesomeness of minimally processed fruits and vegetables. Minimally processed fruits and vegetables are products that have been freshly cut, washed, packaged, and maintained with refrigeration. IFPA is one of the major trade associations that represents the fresh-cut produce industry. As currently constituted, QTV is directed only toward the fresh-cut produce industry. A producer of bottled water has asked AMS to provide QTV services to them. Although the Agency has declined the request, AMS would welcome input regarding extending QTV to this or other products.

Since January 1996, AMS has offered the QTV pilot program as a voluntary auditing and verification service. The program manual has been revised twice (once in October 1997, with the most recent revisions in July, 1998) based on the agency's experience.

QTV allows AMS to provide services that help food processors develop food safety plans based on sound scientific and objective techniques under HACCP. HACCP is widely viewed as an effective and rational means of assuring food safety from harvest to consumption. Under HACCP, safe production of food products is guided by identifying, evaluating, and controlling food safety hazards.

Since 1985, the National Academy of Sciences has strongly endorsed HACCP as the most effective and efficient means of ensuring the safety of our food supply. Regulatory agencies such as FDA and the Food Safety Inspection Service (FSIS) have required companies to implement HACCP for seafood, (December 18, 1995 (60 FR 65096)), and meat and poultry, (July 25, 1996 (61 FR 38805)). HACCP is currently being proposed to regulate the fruit and vegetable juice industry, (April 24, 1998 (63 FR 20450 and 20486)). Currently, HACCP is not required for the fresh-cut fruit and vegetable industry.

The principles of HACCP, as provided by the National Advisory Committee on the Microbiological Criteria for Foods (NACMCF) adopted November 1989 and amended in 1992 and 1997 are:

Principle 1: Conduct a hazard analysis.
Principle 2: Determine critical control points.
Principle 3: Establish critical limits.
Principle 4: Establish monitoring procedures.
Principle 5: Establish corrective actions.
Principle 6: Establish verification procedures.
Principle 7: Establish record-keeping and documentation procedures.

Hazards may be microbiological, chemical, or physical. HACCP uses preventive measures and predetermined corrective actions at specific points in the production process identified as critical control points based on a comprehensive hazard analysis of the food being produced. As defined by the NACMCF, a critical control point is a step in a process at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce it to an acceptable level.

In addition to the Agency's experience from present audit based programs, AMS processed fruit and vegetable inspectors verify that food processing facilities where AMS has contracted to perform in-plant product certification are conforming to FDA cGMP's and are handling adulterated products in accordance with FDA requirements.

QTV is not a mandatory or regulatory program like other HACCP based programs established or proposed by FDA and FSIS. Participation in QTV does not relieve a facility of its responsibilities with respect to FDA or other food safety regulators. AMS believes that participation in QTV will help firms comply with food safety regulations.

A company that is interested in the QTV pilot program begins by requesting the Agency to perform a program presentation and conduct a plant survey of the company's facilities. At the meeting, AMS seeks commitment to the QTV concept from senior management and recommends HACCP-based training for key plant personnel. Also, any deficiencies in the facility or staff training identified by AMS during the QTV approval process must be addressed satisfactorily before the plant can enter the program.

A QTV plan is developed by a company, then submitted to AMS for review. The QTV plan is then evaluated based on the criteria for the program. When a company submits its draft QTV plan to AMS for review, AMS considers the submission as the firm's application for QTV certification for the facility covered by the plan. The Agency reviews QTV plans in the order in which they are received. Draft QTV plans are generally reviewed within 30 days. Later drafts, if revisions to the QTV plan are necessary, are usually reviewed within two weeks. A company's progress in the QTV Program is based on the speed with which a firm has revised its QTV plan and completed any necessary training or facility modifications.

The QTV plan includes:

(Note: A more detailed list of technical terms and definitions can be found in the QTV Program Manual, entitled ''Qualified Through Verification'' Program for the Fresh-Cut Produce Industry''; the QTV Program Manual is available on the USDA website at http://www.ams.usda.gov/fv/qtv.htm or by contacting the Processed Products Branch Chief, at the address given above. Interested parties are invited to submit comments on the QTV Program Manual to the same address.)

1. *Organizational Chart and Narrative:* A diagram identifying the personnel responsible for developing and implementing the QTV plan; a narrative describing the duties of the identified personnel specific to QTV and HACCP requirements.

2. *Description of Product and Labels:* A list of all major groups of finished processed fruit and vegetable products that are to be covered under the QTV Program. The description includes but is not limited to product mixes, package sizes, ingredients, and shelf-life. Examples of the primary package labels are to be included in this section of the plan.

3. *Process Flow Charts and Process Flow Narrative:* The flow chart(s) illustrates the operational steps involved with a product or similar products with designations of critical control points and control points. The process flow narrative is a description of each operational step involved with a product or similar products with designations of critical control points and control points.

4. *Hazard Analysis:* This is an evaluation of all the potential hazards that can be associated with the products produced in the facility as well as in the growing, harvesting, transporting and storing of these products. This evaluation is used to determine which hazards must be addressed in the HACCP plan. A thorough hazard analysis is the most important step towards developing an effective HACCP plan for QTV. It requires extensive review by the company HACCP team and, if additional expertise is needed, outside experts.

5. *Critical Control Point (CCP) Narrative and Worksheet:* The worksheet is a description of the following information for each CCP.

(a) Location of the Critical Control Point
(b) Hazard(s) to be controlled at Critical Control Point
(c) Preventive Measures
(d) Critical Limits
(e) Monitoring Procedures
(f) Corrective Actions
(g) Records
(h) Verification

6. *Record Keeping:* Record keeping is a method of documenting and filing information relevant to HACCP and the QTV plan. These records must be identified and easily accessible for review by AMS auditors.

7. *Verification Procedures:* These procedures describe methods the company will use daily, monthly, and annually, to determine the overall effectiveness of its QTV plan.

8. *Sanitation Standard Operating Procedures (SSOPs):* SSOPs are a comprehensive description of the company's program to ensure sanitation compliance. These procedures include listing equipment and structures to be cleaned and/or sanitized, and the sanitation schedule for each. SSOPs should also identify the types of chemicals used, where and how they are stored, materials and methods used, who will perform the cleaning operations, and who will verify that the cleaning was done properly.

9. *Consumer Complaints:* There must be an established procedure for handling, addressing, and recording consumer complaints.

10. *Recall Procedures:* This is a method of positively identifying, locating, and retrieving products that have left the facility.

11. *Microbiological Testing Program and Corrective Procedures:* The microbiological testing program describes the procedures employed by the applicant to ensure that the product and sanitation techniques comply with regulations. This includes testing for specific microorganisms in incoming product, environmental testing of the facility (equipment, drains, etc.), and finished product testing. The QTV plan must specify the corrective procedures that will be undertaken if specific microorganisms are found during testing that could result in product contamination.

12. *Additional Elements as Described in the QTV Program Manual:* These include a pest control program, standard operating procedures, standard testing procedures, an employee training program, and a product coding system.

Once AMS has determined that a firm's QTV plan meets QTV requirements, the company must then implement the AMS-accepted plan for a minimum of 30 days to demonstrate that it can fulfill its plan's requirements. After the 30-day period and when requested by the plant, AMS will perform the validation audit. This is a complete review by AMS QTV auditors of the company's QTV plan in operation. The auditors will follow the Systems Audit Checklist (which may be found in the QTV Program Manual).

The validation audit includes a review of the facility's production records, interviews with employees at CCP's, observation of employee food handling practices during each shift, observation of cleaning and sanitizing of equipment before and during production, review of the microbiological testing program, and review of the employee training program. The plant will be accepted into the QTV Program if a minimum of a Level IV rating is obtained based on the results of the validation audit. A Level IV rating indicates that the facility is following its QTV plan, that the plan is effective, and that the facility qualifies for unannounced AMS QTV audits once it enters a contract for service with AMS.

AMS and the company will then enter into a contract for AMS service which includes periodic unannounced Systems Audits. The company agrees under the contract to conform to the

Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products (7 CFR 52.1 through 52.83) and instructions covering inspection and certification. The company also agrees to the following:

Records—Maintain and make available for review by AMS all records required by the QTV plan including, but not limited to, hazard analysis, preventive measures, CCP and critical limit documentation, monitoring records of preventive measures associated with CCP's, corrective action reports, and verification records, including consumer complaints relevant to the QTV plan.

Samples—Provide reasonable quantities of product samples while participating in the QTV Program at no cost to the Government.

Surety—At the discretion of AMS, furnish an acceptable surety, effective prior to the date of the first Systems Audit, guaranteeing payment for the services to be rendered in an amount sufficient to cover estimated billings for a period of three months in the form of a properly executed surety bond or advance payment.

Payment—Pay by check, draft, or money order drawn to the order of USDA for the service covered herein on or before the due date specified on the bill.

Plant Access—The applicant is responsible for granting permission for AMS to enter plant premises to perform Systems Audits at any time.

AMS agrees to perform the following:

Systems Audits—Provide objective third-party verification of the applicant's QTV plan.

Verification—Review, evaluate, and verify the effectiveness of the processor's adherence to the QTV plan through on-site inspections, evaluation of production processes identified in the plan, evaluation of product samples, audit of plant records and interviews with plant employees.

Sanitation—Perform sanitation inspections and report to company management any sanitation deficiency which may result in an unsatisfactory rating or cause product contamination.

Sample—Randomly draw and evaluate official samples to verify the effectiveness of the applicant's QTV plan and determine if end items comply with applicable specifications.

Formulation—Verify product formulation. Audit reports and records to determine if documentation of components and quantities used are accurate and complete.

Calibration—Verify procedures used to calibrate scales and measuring devices. Packaging and Labeling—Verify that product packaging and labeling are in compliance with the applicable specifications in the QTV plan.

Record Keeping—Review records associated with and identified in the QTV plan to determine adherence to the plan.

Exit Interview—Discuss and report the results and observations with the firm after each QTV Systems Audit, providing verification reports, sharing data and sample results as necessary, allowing for voluntary follow-up and corrective action, where appropriate. Provide written notification in the event any violative condition is found.

Report—Issue a report to plant management on Systems Audits and evaluations.

Confidentiality—To the extent permitted by law, consider and treat any trade secrets or confidential information as proprietary and confidential and further to consider any QTV records and related information provided to AMS, because of the company's participation in the QTV Program, as information that is voluntarily submitted to the Agency.

Charges—Bill the applicant for Systems Audits on an hourly basis in accordance with the applicable sections of the Regulations.

Systems Audits shall continue until the company has suspended service, withdrawn, been debarred, or the agreement is terminated by:

Mutual consent—either party giving the other party 30 days advance written notice specifying the date of suspension or termination;

A written notice by AMS if the applicant fails to honor any invoice for fees within 60 days after date of receipt;

Bankruptcy of the applicant or closing out of business, or change in controlling ownership of the firm;

AMS at any time, acting pursuant to any applicable law, rule, or regulation, debarring the applicant from receiving any further benefits of the service; or

Non-performance by the applicant such that the applicant no longer satisfies the requirements for participation in the QTV Program.

Following validation and the signing of the QTV contract, AMS will conduct unannounced audits at scheduled intervals as set forth in the QTV Program Manual. The company may revise its QTV plan at any time, subject to AMS review and approval.

Whenever an AMS auditor identifies a current Good Manufacturing Practice violation under QTV, whether during the Validation Audit or subsequent unannounced Systems Audits, the auditor will first notify the processor. The processor is responsible for taking proper and effective corrective action. The extent of any subsequent actions by AMS, will depend upon the nature of the audit finding and the adequacy of a processor's response.

Traditionally, shields are used by AMS for marketing as an identifying mark of a program service in its voluntary programs. The shields shown in Figures 1 and 2 can be used by facilities that have been successfully validated and have entered into a QTV contract. The processor's name and address or assigned plant number identifies the facility as approved for the QTV plan.

BILLING CODE 3410–02–P

Figure 1

←Blue →
←White→
←Red →

QTV No. 000
Figure 2

BILLING CODE 3410–02–C

AMS welcomes comments on how to improve the design or wording for the shield, whether to provide for an official QTV shield at all, or whether the use of an approved official QTV mark should in some way be limited. The Agency is aware of differing views on the use and design of the QTV mark.

Two types of marks are available under the program for use by a validated company. One shield, Figure 1, includes a QTV facility number within the shield and can be used by a company with only one facility. A company under the same name with multiple facilities can use either Figure 1 or the non-numbered QTV shield provided the QTV facility number is also included on the label in close proximity to the shield in Figure 2. Each plant successfully operating under an approved QTV plan has a separate QTV identifying number. These approved identification marks may only be used on products specified in the QTV plan.

There is no additional charge for use of the QTV shield. Firms may use the shield in their advertising and promotion. This activity must not, however, suggest that products bearing the shield are safer than others or otherwise misrepresent the QTV shield.

QTV facilities that fail to meet acceptable QTV audit levels will be dropped from the pilot program. Products from such facilities may not then bear the QTV shield and the facility must destroy such labels. AMS verifies that the facility has ceased its use of the approved mark. Unauthorized use of the mark may violate the AMA of 1946 and/or the Perishable Agricultural Commodities Act of 1930 (PACA), as amended (7 U.S.C. 499a–499s). Violators may be subject to fines and/or imprisonment, civil penalties, loss of USDA grading and certification, or suspension or revocation of their PACA license.

AMS maintains a copy of a plant's QTV plan and AMS, QTV auditors examine but do not normally, copy or remove from the facility any plant documents during systems audit. QTV plans in AMS's possession remain the property of the company and will be treated as privileged or confidential. AMS will maintain as confidential, QTV related records and plans to the extent permitted by law.

Beyond the costs of AMS audits, the overall cost of participation in QTV will vary depending on a company's facility and staff preparation. The frequency of AMS audits, and hence the Agency's charges for its services, will vary based on a firm's performance as determined by the periodic QTV audits. After validation, all firms begin at Level IV, which requires an unannounced QTV audit every two weeks. Under the original QTV Program requirements dated October 1995, a firm which demonstrates exemplary performance during all audits could advance from Level IV to Level I (which requires the least frequent auditing) in approximately nine months, or seven audits, significantly reducing their audit costs. Firms which perform well will reduce their audit costs since the frequency of AMS unannounced audits decreases when a firm is able to progress from Level IV to Levels III, II, and ultimately to Level I. Level I had required an unannounced audit every six months, but the Agency has adjusted the minimum audit rate to once every three months in the current revision dated July 1998. Under the new revision, a company can advance from Level IV to Level I in seven months or five audits.

Fees for the program would be provided for in the regulations under § 52.51(a). The QTV Program is funded entirely through user fees. The fee currently charged for QTV services under the pilot program is $41.00 per hour (see 7 CFR 52.42). This fee is charged for the time required by AMS personnel to travel to and from an audit site, do the audit, and perform associated administrative activities. Currently, the door-to-door cost for a typical eight-hour QTV Systems Audit, based on recently completed QTV Systems Audits by two auditors, has averaged between $1700.00 and $2000.00. As the QTV Program continues and AMS knows more precisely the program costs, it will make any necessary fee rate adjustments. Costs for analytical work regularly performed by a firm or an outside provider to support a firm's QTV Program is the firm's responsibility.

There are approximately 300 to 400 fresh-cut processors according to IFPA estimates. This estimate does not include an unknown number of restaurants, produce wholesalers, or retailers that may process fruits and vegetables for salads or other purposes. There are currently seven plants participating in Systems Audits under the program. These plants include small to large-size processors.

AMS has identified a need for participation from the private sector in training, consulting, and microbiological testing for QTV Program applicants. Several private laboratories have taken the initiative to provide these services and are currently working jointly with AMS in training and QTV plan development for several applicants. This cooperation has proven beneficial to all parties.

AMS invites comments on the program, use of the shield, requirements of the program, and quality versus food safety issues.

This notice has a 60-day comment period. All interested parties will have an opportunity to express their views. Once the comment period has closed, AMS will review and consider all comments before making further decisions about the QTV Program.

Dated: August 28, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–23903 Filed 9–3–98; 8:45 am]

BILLING CODE 3410–02–P

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 Thursday, September 17, 1998, in Stevenson, Washington, at the Rock Creek Center (Rock Creek Drive) in the auditorium. The meeting will begin in 10 a.m. and continue until 5 p.m. The purpose of the meeting is to provide information on (1) the Status of Watersheds on the Gifford Pinchot National Forest, (2) Social and Economic Factors, and (3) 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 (3) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments or 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 NE 51st Circle, Vancouver, WA 98682.

Dated: August 27, 1998.

Thomas Mulder,

Administrative Officer.

[FR Doc. 98–23847 Filed 9–3–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northern Goshawk Habitat Management

ACTION: Proposal to prepare interim direction for Northern Goshawk habitat management in the Intermountain Region, (R4) U.S. Forest Service.

SUMMARY: Notice is hereby given that the Regional Forester (R4), in cooperation with Bureau of Land Management and the USDI-Fish and Wildlife Service, is reviewing Utah state-wide information (Habitat Assessment and Management Recommendations for the Northern Goshawk in the State of Utah (in press) and USDI–FWS 12-month finding on a petition to list the northern goshawk (FR, June 29, 1998, Volume 63, Number 124, pages 35183 to 35184)) relating to the sustainability of habitat for the northern goshawk. A Conservation Strategy and Agreement for the Management of Northern Goshawk Habitat in Utah is being developed based on the Assessment. The Forest Service is proposing to amend regional direction, Regional Guides, and Forest Plans to incorporate interim direction in the form of goals and objectives, desired habitat conditions, standards and guidelines, and monitoring requirements based on the information in the Assessment and the Strategy. The interim direction will apply to National Forest System Lands throughout Utah.

The purpose and need for the proposed action is to provide state-wide consistency in future project design, implementation and monitoring that will insure long-term goshawk habitat sustainability throughout the state of Utah. The proposed amendment to the Regional Guide and six national forests in Utah would be prospective only, and would not apply to projects that have been approved prior to the effective date of the amendments. This action will provide interim direction to protect habitat and populations of northern goshawks until existing forest plans are revised or suitably amended. Specifically, the proposed action will include National Forest System Lands on the Wasatch-Cache, Uinta, Ashley, Manti-LaSal, Fishlake and Dixie National Forests in the Intermountain Region.

The Forest Service serves notice that the agency is seeking information and comments from federal, state, and local agencies, and other individuals or organizations who may be interested or affected by the proposed action for the sustainability of northern goshawk habitat in Utah. This input will be used in preparing regional direction, Forest Plan amendments and/or Guides, and accompanying environmental analyses.

Written comment should be sent to the agency within 30 days from the date of publication of this notice in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The Forest Service, in accordance with 16 U.S.C. 1604 and 36 CFR parts 219 et seq., develops Land and Resource Management Plans to provide for multiple use and sustained yield of products and services including outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. At its discretion, the Forest Service may amend Regional Guides (36 CFR 219.8) and/or Forest Plans based on the results of monitoring and evaluation (36 CFR 219.10(f), 219.12(k)). Review of research reports, published professional papers and agency assessments indicates that additional long term programmatic habitat management direction may be warranted for the northern goshawk in Utah. This long-term approach is being developed through the Conservation Strategy and Agreement for the Management of Northern Goshawk Habitat in Utah (to be released in the fall of 1998). This interim direction is being proposed to preserve options for long term management that will be developed during Forest Plan revision. Once the conservation strategy is released that information plus the current policy direction to use the 1992 Reynolds et al., report will be used during project level design and National Environmental Policy Act (NEPA) analysis and disclosure of effects.

A range of alternatives will be considered. One of these will be the ''no action'' alternative in which current management would continue. Other alternatives could examine the effect of varying approaches to the interim direction.

The Forest Service is seeking information and comments from federal, state and local agencies, and other individuals and organizations who may be interested or affected by the proposed action. This information will be used in determining the scope of the amendments to the Regional Guide, direction, and Forest Plans. Prior to completing these amendments, the Forest Service will publish a Notice of Intent (NOI) in the **Federal Register** to describe the specific proposal and type of NEPA documentation. At the time such a Notice is published, there will be additional opportunities for public comment.

The responsible official will be the Regional Forester for the Intermountain Region; Intermountain Region, Federal Building, 324 25th Street, Ogden, Utah 84401.

The determination of proposed amendments is expected to be completed and available for public review by November 30, 1998. At that time an improved estimate of time for

amendments and/or revisions will be available although we expect most of the amendment work to take less than a year.

Dated: August 31, 1998.

Jack A. Blackwell,

Regional Forester, Intermountain Region.

[FR Doc. 98–23858 Filed 9–3–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing that nominations are being sought for persons to serve on GIPSA's Grain Inspection Advisory Committee.

SUPPLEMENTARY INFORMATION: Under authority of section 20 of the United States Grain Standards Act (Act) Pub. L. 97–35, the Secretary of Agriculture established the Grain Inspection Advisory Committee (Advisory Committee) on September 29, 1981, to provide advice to the Administrator on implementation of the Act. Section 14 of the United States Grain Standards Act Amendments of 1993, Pub. L. 103–156, extended the authority for the Advisory Committee through September 30, 2000.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, and exporters, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Committee serve without compensation. They are reimbursed for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Committee service, as authorized under section 5703 of title 5, United States Code. Alternatively, travel expenses may be paid by Committee members.

Nominations are being sought for persons to serve on the Advisory Committee to replace the five members and six alternate members whose terms expire in December 1998.

Persons interested in serving on the Advisory Committee, or in nominating individuals to serve, should contact: GIPSA, by telephone (tel: 202–720–0219), fax (fax: 202–205–9237), or electronic mail (e-mail: mplaus@fgisdc.usda.gov) and request Form AD–755, which must be completed and submitted to GIPSA by fax or at the following address: GIPSA, 1400 Independence Ave., SW, Stop 3601, Washington, DC 20250–3601. Form AD–755 must be received not later than November 3, 1998.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates will be made by the Secretary.

Dated: August 28, 1998.

David R. Shipman,

Acting Administrator.

[FR Doc. 98–23790 Filed 9–3–98; 8:45 am]

BILLING CODE 3410–EN–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: October 5, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 2, 17 and 24, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 36212, 38555, 39812 and 39813) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center, Fort Bliss, Texas.
Janitorial/Custodial, MacDill Air Force Base, Florida.
Janitorial/Custodial, Naval Hospital and Dental Clinic, Naval Education and Training Center, Buildings 1, 23, 44, 46, 1121 and 1173, Newport, Rhode Island.
Mailing Service, U.S. Patent and Trademark Office, Office of Finance, Arlington, Virginia.
Laundry Service, Naval Air Station, Galley Building 794, San Diego, California.
Laundry Service, Naval Station, Everett, Washington.
Warehouse Operation, USDA, U.S. Army Charles Melvin Price Support Center, Rural Development Facility, Warehouse #2, Building 309, Granite City, Illinois.
Warehouse Operation, Department of Veterans Affairs, Service and Distribution Center, Building 37, Hines, Illinois.

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Bedspread

7210–00–728–0181
7210–00–728–0184
7210–00–728–0185

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 98–23955 Filed 9–3–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 5, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Battleboard Kit, Identification

2590–01–411–4390
2590–01–411–4391
2590–01–394–2530
2590–01–392–0285
2590–01–392–0286
2590–01–392–0287
2590–01–392–0288
2590–01–392–0290
2590–01–392–0291
2590–01–392–0292
2590–01–392–1565
2590–01–392–1566
2590–01–392–6898
2590–01–394–2531
2590–01–394–2534
2590–01–394–5635
2590–01–394–5638
2590–01–394–5639
2590–01–394–5640
2590–01–394–5641
2590–01–394–7635
2590–01–394–7636
2590–01–394–7838
2590–01–394–8449
2590–01–398–3172
2590–01–398–3835
2590–01–398–3836
2590–01–398–3837
2590–01–398–3838
2590–01–398–3839
2590–01–398–3841
2590–01–398–3842
2590–01–398–3843
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2590–01–398–3846
2590–01–398–3847
2590–01–398–5161
2590–01–398–5163
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2590–01–398–6291
2590–01–398–6718
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2590–01–399–1362
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2590–01–399–1365
2590–01–399–1935
2590–01–399–2932
2590–01–399–2933
2590–01–399–2934
2590–01–399–2936
2590–01–399–2937
2590–01–399–3840
2590–01–399–5100
2590–01–399–5863
2590–01–399–5864
2590–01–399–5865
2590–01–399–5866
2590–01–399–5867
2590–01–399–6773
2590–01–399–6774
2590–01–399–7502
2590–01–400–0372
2590–01–400–1809
2590–01–400–1810
2590–01–406–0481
2590–01–411–2566
2590–01–411–3170
2590–01–411–3171
2590–01–411–3172
2590–01–411–3174
2590–01–411–4393
2590–01–420–2875
2590–01–420–2877
2590–01–420–2878
2590–01–420–5984
2590–01–421–7060
2590–01–421–7067
NPA: Crossroads Rehabilitation Systems, Inc. Indianapolis, Indiana

Services

Food Service Attendant
Enlisted Dining Facility and Summer Camp
United States Military Academy
West Point, New York
NPA: Orange County Rehabilitation Center—Occupations, Inc. Middletown, New York

Grounds Maintenance
Florida Caribbean Science Center 7920 NW 71st Street
Gainesville, Florida
NPA: Association for Retarded Citizens of Alachua County, Inc. Gainesville, Florida

Janitorial/Custodial
Florida Caribbean Science Center 7920 NW 71st Street
Gainesville, Florida
NPA: Association for Retarded Citizens of Alachua County, Inc. Gainesville, Florida

Janitorial/Custodial
Postwide
Fort Stewart, Georgia
NPA: Goodwill Industries of the Coastal Empire, Inc. Savannah, Georgia

Operation of Postal Service Center
Langley Air Force Base, Virginia
NPA: Virginia Industries for the Blind Richmond, Virginia

Operation of Postal Service Center and Base Information Transfer Services
Lackland Air Force Base, Texas
NPA: Goodwill Industries of San Antonio San Antonio, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

Commodities

Mophead, Wet

7920–00–926–5499
7920–00–926–5501
7920–00–926–5502
7920–00–926–5498

Bag, Evidence

8105–00–NIB–0004
8105–00–NIB–0005
8105–00–NIB–0002
8105–00–NIB–0001
8105–00–NIB–0003

Services

Administrative Services
Social Security Administration
Great Lakes Program Service Center
600 West Madison Street
Chicago, Illinois

Janitorial/Custodial
Federal Archives and Record Center
Building 12 and 22
Military Ocean Terminal
Bayonne, New Jersey

Janitorial/Custodial
U.S. Army Reserve Center
400 Horsham Road
Horsham, Pennsylvania

Janitorial/Custodial
U.S. Army Reserve Center
Division & Woodlawn Avenue
Willow Grove, Pennsylvania

Janitorial/Custodial
Federal Building
100 Bluestone Road
Mount Hope, West Virginia

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 98–23956 Filed 9–3–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from the petitioners and respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1996 through July 31, 1997.

We have preliminarily determined that respondent has made sales below normal value during the period of review. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0405 or 482–3833, respectively.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Trade and 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 of 1994 (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce published an antidumping duty order on cold-rolled carbon steel flat products from the Netherlands on August 19, 1993 (58 FR 44172). The Department published a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order for the 1996/1997 review period on August 4, 1997 (62 FR 41925). On August 29, 1997, both the respondent, Hoogovens Staal BV, and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company) filed requests for review. We published a notice of initiation of the review on September 25, 1997 (62 FR 50292).

Due to the complexity of issues involved in this case, the Department extended the time limit for completion of the preliminary results until August 31, 1998, in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)). The deadline for the final results of this review will continue to be 120 days after the date of publication of this notice. The Department is conducting this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i)(3) of the Act, we verified information provided by Hoogovens at its headquarters in Beverwijk and IJmuiden, the Netherlands, using standard verification procedures, including inspection of the manufacturing facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. We also verified information provided by Hoogovens Steel USA, Inc. at its office in Scarsdale, New York.

Export Price (EP)

In calculating the U.S. starting price, the Department considered whether respondent's sales reported as export price (EP) sales are more appropriately characterized as CEP sales, as argued by petitioners in their letter to the Department dated July 10, 1998. Respondent offered a rebuttal to petitioners' argument in a letter dated August 6, 1998.

In previous reviews the Department accepted the characterization of these sales as reported. Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands; Final Results of Antidumping Duty Administrative Review, 61 FR 48465 (September 13, 1996); 62 FR 18476 (April 15, 1997); 63 FR 13204 (March 18, 1998).

To ensure proper application of the statutory definitions of EP and CEP, where a U.S. affiliate is involved in making a sale, we consider the sale to be CEP unless the record demonstrates that the U.S. affiliate's involvement in making the sale is incidental or ancillary. Thus, whenever sales are made prior to importation through an affiliated sales agent in the United States, the Department typically determines whether to characterize the sales as EP sales based upon the following criteria: (1) whether the merchandise was shipped directly to the unaffiliated buyer, without being introduced into the affiliated selling agent's inventory; (2) whether this

procedure is the customary sales channel between the parties; and (3) whether the affiliated selling agent located in the United States acts only as a processor of documentation and a communications link between the foreign producer and the unaffiliated buyer. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Newspaper Printing Presses From Germany, 61 FR 38175 (July 23, 1996); Certain Corrosion Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Administrative Review, 61 FR 18547, 18551 (April 26, 1996); Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review, 62 FR 18390 (April 15, 1997); Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170, 13177 (March 18, 1998).

The Department found that the sales through Hoogovens Steel USA, Inc. (HSUSA) satisfy these criteria. The subject merchandise is shipped directly from Hoogovens' mill to customers in the United States. HSUSA does not take title to the merchandise and does not maintain inventories of subject merchandise. This procedure is the customary sales channel between the parties, and the Department found no exceptions to this rule. The analysis of the third criterion is more complex. In this case the producer sells directly to the U.S. customer. The affiliate does not issue invoices, conduct customer credit checks, or finance sales, and rarely handles receipt of payment for Hoogovens' sales. Rather, Hoogovens creates and maintains most of the documentation for U.S. sales in the Netherlands. With respect to negotiations and price setting, the record is less clear. On the one hand, Hoogovens has stated that HSUSA negotiates prices with U.S. customers, subject to Hoogovens' approval. On the other hand, HSUSA does not have the authority to set prices or quantities. Under the terms of the agency agreement between Hoogovens and HSUSA, HSUSA is responsible for conducting market research, finding new customers, and soliciting orders. However, the agency agreement provides that in performance of these activities on behalf of Hoogovens, HSUSA has no authority to conclude contracts on Hoogovens' behalf. HSUSA cannot negotiate above the prices set by Hoogovens and its compensation does not depend on the price, quantity or profitability of sales. The record shows that Hoogovens is directly and continuously involved in negotiations and other communications with unaffiliated customers, and is solely responsible for providing technical service. See Verification at Hoogovens Steel USA, Inc., July 15, 1998, page 3 and Verification Exhibits 4 and 6. HSUSA serves as a communications link in relaying price quotes and other information, as well as quality complaints, between Hoogovens and customers. HSUSA regularly visits U.S. customers, both alone and in the company of Hoogovens officials from the Netherlands, and participates in meetings with U.S. customers that take place in the Netherlands. Based upon the information on the record, the Department preliminarily concludes that HSUSA's role is ancillary to the sales made in the Netherlands.

We note that this is a very complex and difficult issue. While we have preliminarily determined to treat the transactions through HSUSA as EP sales, we note that certain record evidence could be argued to support treating these transactions as CEP sales. The Department invites parties to submit information and comment on this issue. Any such information or argument should be included in parties' case and rebuttal briefs. We intend to examine this issue carefully for the final results of this review. Any information or arguments parties provide will be fully analyzed in making this final decision. Parties are encouraged to provide any relevant information and arguments on this issue to ensure that the Department's final determination as to whether Hoogovens' sales to unaffiliated customers should be treated as EP or CEP is based on a complete and thorough record.

We calculated EP based on the delivered, duty-paid price to unaffiliated customers in the United States. We made adjustments for discounts and post-sale price adjustments. We made deductions, where applicable, for foreign inland freight, ocean freight and marine insurance, brokerage and handling, U.S. inland freight, post-sale warehousing, and U.S. customs duties in accordance with section 772(c) of the Act. For EP sales, we rejected the reported imputed credit expenses based on the weighted average interest rate on short term dollar-denominated loans taken out in the Netherlands. We recalculated these U.S. credit expenses using the weighted average interest rate on HSUSA's short term borrowings in the United States during the POR.

Constructed Export Price (CEP)

We based CEP on the delivered price to unaffiliated customers in the United States. We made deductions for foreign inland freight, ocean freight and marine insurance, brokerage and handling, U.S. inland freight, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including credit expenses, indirect selling expenses, and inventory carrying costs. In accordance with section 772(d)(2) of the Act, for sales made through the affiliated Rafferty-Brown companies, we also deducted the cost of further manufacturing, including repacking expenses. Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

In the absence of cost of production (COP) data for certain home market sales,[1] we estimated COP for calculation of the CEP profit allocation and the home market profit rate for CV as follows:

1. We estimated the home market fixed costs by calculating the weighted average ratio of fixed costs to variable costs for U.S. sales (using the reported VCOMU and TCOMU variables) and multiplying the reported home market variable costs (VCOMH) by this ratio.
2. We obtained the total cost of manufacturing (COM) by adding the reported total variable costs and the estimated fixed costs.
3. We obtained general and administrative expenses and interest expenses from the constructed value (CV) data base and added them to the total COM to obtain COP.

Normal Value (NV)

In order to determine whether sales of the foreign like product in the home market are a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Hoogovens' aggregate volume of home market sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on home market sales.

[1] Hoogovens reported CV data, which provide the cost of manufacturing the products sold in the United States. As the product mix is very different in the home market, the CV data are not representative of total costs.

Hoogovens made sales to both affiliated and unaffiliated customers in the home market during the period of review. We included sales to affiliated customers when we determined those sales to be at arms length (*i.e.*, at weighted average prices that were 99.5 percent or more of weighted average prices for identical products sold to unaffiliated customers in the home market). When the weighted average price to an affiliated customer was less than 99.5 percent of the weighted average price to unaffiliated customers, or there were no sales of identical merchandise to unaffiliated customers, we excluded sales to that affiliated customer from our calculation of NV. See e.g., Rules and Regulations, Antidumping Duties; Countervailing Duties 62 FR 27296, 27355 (May 19, 1997): ''The Department's current policy is to consider transactions between affiliated parties as 'arm's length' if the prices to affiliated purchasers are on average at least 99.5 percent of the prices charged to unaffiliated purchasers.''

Home market prices were based on the packed, ex-factory or delivered prices to customers. We made deductions to NV for inland freight, early payment discounts, rebates, credit expenses, and packing. We made deductions or additions, as appropriate, for post-sale price adjustments. Where CV was used as the basis of NV, we deducted direct selling expenses (comprised of credit and warranty/technical service expenses).

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 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. In this case, the exporter sells directly to unaffiliated customers. 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 an LOT adjustment under section 773(a)(7)(A) of the Act. We determine any effect on price comparability by examining sales at different levels of trade in the home market (or the third country market) used to calculate NV. Any price effect must be manifested in a pattern of consistent price differences between home market (or third-country) sales used for comparison and sales at the equivalent LOT of the export transaction. To quantify the price differences, we calculate the difference in the weighted average of the net prices of the same models sold at different levels of trade in the home market. Net prices are used because any difference will be due to differences in LOT rather than other factors. We use the average percentage difference between these weighted averages to adjust NV when the LOT of NV is different from that of the export sale. If there is no pattern of price differences, then the difference in LOT does not have a price effect and no adjustment is necessary.

In the case of CEP sales, Section 773 (b)(7)(B) of the statute also provides for an adjustment to NV if it is compared to U.S. sales at a different LOT, provided the NV is more remote from the factory than the CEP sales and we are unable to determine whether the difference in levels of trade between CEP and NV affects the comparability of their prices. This latter situation might occur when there is no home market (or third-country) LOT equivalent to the U.S. sales level, or where there is an equivalent home market (or third-country) level, but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is the lower of the (1) indirect selling expenses of the home market (or third-country) sale; or (2) indirect selling expenses deducted from the starting price used to calculate CEP. The CEP offset is not automatic each time we use CEP. The CEP offset is made only when the LOT of the home market (or third country) sale is more advanced than the LOT of the U.S. CEP sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

To examine LOT in this review, we requested detailed information concerning the selling functions associated with sales to service centers and to several categories of end-users in each of Hoogovens' markets and interviewed sales, technical service and research managers. The information gathered indicated that there are no significant differences among the selling functions performed and services offered to service centers and end-user customers in either the home or U.S. markets. In both markets, the larger customers received more frequent visits from sales personnel. In the home market, a higher level of service was provided to automotive customers than to other end-users, but the sales were at the same stage of marketing as all other home market sales. Hoogovens stated it cannot differentiate among the selling functions performed and services offered to different classes of home market or export price customers. However, Hoogovens claimed it has no home market sales at a LOT equivalent to the CEP LOT, alleging:

> While the CEP sale has been adjusted to create, in effect, an ex-factory level of trade, the starting price of the home market sales reflects many selling activities not reflected in the adjusted CEP price. These include indirect selling activities, indirect warranty and technical service expenses, and inventory carrying costs incurred on home market sales.

Section A response (October 6, 1997), p. 13.

We disagree with Hoogovens' claim that the prices used to determine NV reflect many selling activities not reflected in CEP. In calculating CEP, the Department deducted the imputed credit expenses incurred by the Rafferty-Brown companies as direct selling expenses. In accordance with section 772(d)(1), the Department deducted indirect selling expenses (ISE), including imputed inventory carrying costs (ICC) incurred in the United States by the Rafferty-Brown companies for sales to the first unaffiliated buyers. The Department did not deduct ISE incurred in the Netherlands (reported in computer data fields DINDIRSU and DINVCARU), nor expenses of the U.S. sales office from the adjusted CEP, on the grounds that these are expenses associated with the sale to Hoogovens U.S. affiliates, rather than with the sales by the affiliates to the first unaffiliated buyers. Thus, the CEP includes Hoogovens' warranty and technical service expenses for U.S. sales, as well as ISE, including the expenses of the sales offices in IJmuiden and New York incurred in connection with the sales to the affiliated service centers.

Hoogovens' starting price for home market sales includes direct warranty and technical service expenses, ICC, the expenses of the sales office in IJmuiden, and other indirect selling expenses incurred for home market sales. Thus, for the purposes of the LOT analysis, there is no distinguishable difference between the selling functions included

in the home market starting price and the selling functions included in the CEP. On the basis of this analysis, the Department has determined that there is no basis for Hoogovens' claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales. The Department therefore has determined for these preliminary results that Hoogovens' sales are made at one LOT in both markets.

We note that this is a very complex and difficult issue. While we have preliminarily determined to treat all home market and U.S. sales as at the same LOT, we note that this is a change from the prior review period. The Department invites parties to submit information and comment on this issue. Any such information or argument should be included in parties' case and rebuttal briefs. We intend to examine this issue carefully for the final results of this review. Any information or arguments parties provide will be fully analyzed in making this final decision. Parties are encouraged to provide any relevant information and arguments on this issue to ensure that the Department's final determination as to whether all of Hoogovens' home market and U.S. sales are at the same LOT is based on a complete and thorough record.

Sales Comparisons

To determine whether sales of cold-rolled carbon steel flat products in the United States were made at less than fair value, we compared EP or CEP to NV, as described in the ''Export Price,'' ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777(A) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. When there were no contemporaneous home market sales of the foreign like product, we used CV as the basis for normal value, in accordance with section 773(a)(4) of the Act. All the sales to which CV was applied were CEP sales of secondary merchandise. We calculated CV in accordance with section 773(e) of the Act and the methodology enunciated in the Memorandum of April 19, 1995, entitled ''Treatment of Non-Prime Merchandise for the First Administrative Review of Certain Carbon Steel Flat Products.'' We included the cost of manufacture, and selling, general and administrative expenses (SG&A). 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 the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses, we used the weighted average home market selling expenses. We calculated profit by subtracting the weighted average total cost of production (estimated as described above) from the total weighted average sales revenue. We adjusted CV for credit and warranty expenses.

Reimbursement

Section 351.402(f) of the antidumping regulations requires the Department to deduct from EP or CEP the amount of any antidumping duty that is reimbursed to the importer. Based on verified evidence on the record in this review, including the revised agency agreement between Hoogovens and Hoogovens Steel USA, Inc. (HSUSA) and the refund to Hoogovens by HSUSA of a portion of the cash deposits advanced equal to the Department's calculation of the antidumping duties to be assessed in the third administrative review, the Department has preliminarily determined that HSUSA is solely responsible for the payment of antidumping duties. Further, evidence on the record in this review shows that as a result of corporate restructuring, HSUSA has sufficient assets to establish its ability to pay the antidumping duties to be assessed. Therefore, for this period of review, we have determined that Hoogovens has not reimbursed HSUSA for antidumping duties to be assessed.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the period August 1, 1996 through July 31, 1997:

Company	Margin (percent)
Hoogovens Staal BV	0.95

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. For assessment purposes, the duty assessment rate will be a specific amount per metric ton. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review, except if the rate is less than 0.5 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106, in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 19.32 percent.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–23930 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Certain Cut-to-Length Carbon Steel Plate From Romania: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: In response to a request from one respondent, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on cut-to-length carbon steel plate from Romania. This administrative review covers one Romanian exporter of plate, Windmill International Romania branch (Windmill), for the period August 1, 1996 through July 31, 1997. We are rescinding this review as a result of the absence of any *bona fide* sales of subject merchandise during the period of review (POR).

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Baker or John Kugelman, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2924 (Baker), –0649 (Kugelman).

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 references to the provisions codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Scope of the Review

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, or coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot rolled carbon steel flat rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished or coated with plastics or other non-metallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling''); for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate.

Background

Windmill International PTE Ltd. of Singapore, Windmill International Romania Branch, and Windmill International Ltd. (U.S.A.) (collectively ''Windmill''), an exporter and importer of Romanian plate, submitted a request on August 29, 1997, that the Department review its U.S. sales made during the period August 1, 1996 through July 31, 1997. The Department initiated the review on September 25, 1997 (62 FR 50292).

SUPPLEMENTARY INFORMATION: In a January 16, 1998, submission Windmill explained that it made two sales during the POR. The first, shipped via ocean carrier, was made as a ''test shipment'' for the purpose of initiating this administrative review. When it became apparent in late July 1997 that this sale would not enter U.S. customs territory during the POR, Windmill and the same U.S. customer negotiated another sale, which was shipped by air, that entered U.S. customs territory on July 31, 1997, the last day of the POR. *See* Windmill's November 20, 1997 submission, p. C–15.

On July 24, 1998, Bethlehem Steel Corporation and U.S. Steel Group (a division of USX Corporation) (petitioners) requested that the Department rescind this review. Petitioners argue that the Department should disregard Windmill's first U.S. sale because it entered U.S. customs territory after the POR. They also argue that Windmill's second U.S. sale was not a *bona fide* sale. Petitioners claim that, for a sale to be *bona fide,* it must:

(1) Be at arm's length, and have a price that is negotiated, not artificially set;

(2) Be consistent with good business practices; and,

(3) Be sold pursuant to procedures typical of the parties' normal business practices.

Petitioners base these criteria on Court of International Trade (CIT) rulings in *PQ Corporation* v. *United States,* 652 F. Supp. 724, 729 (CIT 1987) (*PQ Corporation*) and *Chang Tieh Industry Co.* v. *United States,* 840 F. Supp. 141, 146 (CIT 1993) (*Chang Tieh*).

Regarding the first criterion, petitioners argue that the sale was not an arm's-length transaction because both parties were guided by the same legal counsel in setting the price and the shipping terms. They further argue that the parties artificially set the price for this sale because Windmill and the U.S. customer (by their admission) fixed a price and structured the arrangement ''to protect Windmill from legal attack in the present proceedings.'' *See* Windmill's March 3, 1998 submission, p. 5. Finally, petitioners argue that Windmill's U.S. customer cannot be viewed as an arm's-length buyer because it took a tremendous loss on the sale when it resold the merchandise. Petitioners argue that using the criteria outlined in *PQ Corporation* Windmill's sale to the U.S. is not an arm's-length transaction. In *PQ Corporation* (where the CIT found the sale at issue to be *bona fide*), the CIT based its determination in part on the fact that there was no danger of foreign producers creating fictitious markets in the United States because to do so a producer would have to raise the price above the market value. Here, petitioners argue, because Windmill's U.S. customer sold the merchandise for a lower amount than it paid for it, the Department cannot determine the market value, and the Department therefore cannot apply the reasoning of *PQ Corporation.*

Regarding the second criterion, petitioners argue that Windmill's sale was not consistent with good business practices. They argue that there is no reasonable commercial justification for the U.S. customer to have participated in this transaction. First, the U.S. customer resold the merchandise for substantially less than what it paid Windmill. Second, the U.S. customer paid more to warehouse the

merchandise than it received from the resale of the merchandise to its customer. Third, there was no commercial reason for the U.S. customer to pay the high shipping charges it paid to obtain the industry's cheapest and most common product.

Regarding the third criterion, petitioners argue that the U.S. customer's sales procedures with respect to this sale were atypical of its normal business practices. First, Windmill's responses indicate that the U.S. customer functions as a trading company that typically purchases large quantities of steel in response to buyers' inquiries, and does not take physical possession of the merchandise. For this sale, however, the U.S. customer did not have an order until after it had purchased the product from Windmill and imported the plates into the United States. Additionally, the U.S. customer took possession of the steel plates for two weeks and paid the warehousing fees before the subsequent customer purchased the merchandise. Finally, petitioners argue that the U.S. customer would normally not resell products at a substantial loss.

In an August 13, 1998 letter to Windmill, the Department explained that it intended to review Windmill's first sale (if a review is requested) in the review of the period covering the date on which the sale entered U.S. customs territory. The Department also explained that it considered Windmill's second sale to be not a *bona fide* sale. The Department gave the following reasons for this determination:

a. The cost of the air freight, customs fees, brokerage expenses, warehousing, and miscellaneous expenses (which were borne by the U.S. customer, and not Windmill) was significantly greater than the total value of the sale.

b. By Windmill's own admission, the decision to send the shipment by air, rather than by ocean, was based solely on the need to enter the merchandise into the United States before the end of the POR. There was no customer emergency or particular need for costly air shipment rather than the usual surface shipment.

c. The quantity of the sale was atypical of that which Windmill normally sells to the U.S. customer, which was a trading company and not an end-user.

d. The U.S. customer's purchase of the merchandise prior to receiving an order for it from a customer was atypical of its normal business practice.

e. The same legal counsel guided both Windmill and the U.S. customer through the sales process, and by its admission helped negotiate a price for the sale solely for the purpose of obtaining for Windmill a lower cash deposit rate. There is no evidence that any commercial factors that normally influence price negotiations played any role in setting the price for this sale.

f. The U.S. customer resold the merchandise at a substantial loss.

We stated that we found these factors significant in light of the fact that the grade involved in this sale was one of the cheapest and most common grades of steel. Based on these factors we determined the sale was not commercially reasonable, and involved selling procedures atypical of Windmill's and the U.S. customer's normal selling procedures. We therefore concluded that it was not *bona fide*. Based on this determination, we indicated in our letter that we intended to rescind the review. We invited Windmill to comment on this determination. On August 20, 1998, we received comments from Windmill.

Windmill argues that until now existing precedents have permitted the Department to rescind reviews only where the test shipment or sale to the United States was fraudulent. *See PQ Corporation, Chang Tieh, Fresh and Chilled Atlantic Salmon from Norway,* 62 FR 1430 (1997) (*Salmon*), and *IPSCO, Inc.,* v. *United States,* 10 ITRD 1392, 1398, 687 F. Supp. 633, 641 (CIT 1988). The Department's determination, Windmill argues, creates a new, ''opaque'' standard which in effect changes the definition of *bona fide* to mean ''commercially reasonable,'' rather than its dictionary definition of ''legitimate.'' This new standard, Windmill argues, requires an artificially high standard of commercial and practical reasonableness. It would also require a test sale to be structured as if the antidumping order and high cash deposit rate did not exist before it could be accepted as *bona fide*.

Furthermore, Windmill argues that because this new standard is discretionary and capricious, it violates the URAA's purpose of making antidumping procedures more transparent. It also violates the URAA's purpose of expanding access to administrative reviews of antidumping orders, because no sale by a new shipper (which Windmill claims it is) can be commercially reasonable and typical of normal business practices when there have been no sales because of high dumping margins. Moreover, there is nothing in the URAA or in section 772 of the applicable U.S. statute that suggests that ''unusual,'' ''strange,'' ''atypical,'' or ''commercially unreasonable'' sales were to be excluded from antidumping calculations.

Additionally, Windmill argues that this new standard would severely undermine the solely remedial purpose of the U.S. antidumping law because it would turn antidumping orders into exclusion orders by increasing tenfold the difficulties foreign exporters face in lowering antidumping margins and cash deposit rates. This result, Windmill argues, is essentially punitive.

Furthermore, Windmill argues that the CIT and the Department have consistently declined to apply any ''ordinary course of trade'' requirement to U.S. sales. The Department's determination with regard to its sale in this review, Windmill argues, in effect reverses this practice. Windmill states that there is nothing commercially normal about any test shipment; by definition it differs from the normal course of business if only because it is the first sale in what the respondent hopes to establish as a major new market.

Additionally, Windmill argues that because its sale was sold at arms length and at a market price, it was by definition *bona fide*.

In addition to the above arguments, Windmill attempts a point-by-point rebuttal of each of the six factors the Department cited in its August 13, 1998, letter as the bases for its determination. First, with respect to its movement expenses relative to the value of the sale, Windmill argues that this point is irrelevant because the terms of sale were ex-works, loaded on truck. By citing this factor, Windmill states, the Department is essentially dismissing the sale because it is inconsistent with good business practices or is outside the ordinary course of trade. Windmill argues that the fact that the sale may not have been commercially viable or normal in some or all respects cannot in itself make it not *bona fide* for purposes of qualifying as a test shipment. Moreover, Windmill states, freight costs often exceed the cost of the goods; particularly in the steel trade, steel is often flown via air freight to meet a deadline. Additionally, both Windmill and the U.S. customer found it commercially reasonable for the U.S. customer to pay higher transportation costs in order to complete a test sale and to get the current cash deposit rate lowered.

Second, as for Windmill's decision to send the shipment by air being based solely on the need to have it enter the United States before the end of the POR, Windmill argues that the Department is again criticizing the sale as inconsistent with good business practices. Windmill states that there is nothing fraudulent about these circumstances, which is the

correct standard to be applied. Furthermore, Windmill states that, contrary to the Department's assertion, there was a commercial need, namely, Windmill's need to have the sale enter U.S. customs territory by July 31, 1997.

Third, with respect to the quantity of the sale being atypical, Windmill argues that there is no ''typical quantity'' because it was a test shipment.

Fourth, with respect to the U.S. customer's purchase of the merchandise prior to receiving an order for it from a customer being atypical of its normal business practices, Windmill argues that, based on the CIT's determination in *Chang Tieh,* the issue is not whether the test shipment was ''atypical'' but whether the transaction was tainted by fraud. Furthermore, because the sale was a test shipment, it is irrelevant whether the selling procedures were typical. Moreover, Windmill did not learn the identity of the U.S. customer's buyer except in the context of these proceedings.

Fifth, with respect to the Department's statement that the same legal counsel helped negotiate a price for the sale, Windmill argues that the Department's information is incorrect. Windmill states Windmill itself negotiated the price, and that its legal counsel ''only advised Windmill to land a shipment in the United States by the end of July and to make the sale a *bona fide* arm's-length transaction at a market price.'' Furthermore, it argues that petitioners have submitted no evidence of what the market price was at the time of the sale. The standard reference for such price, Windmill states, is the journal *Metals Bulletin*. Windmill argues that *Metals Bulletin* substantiates that its price was a market price.

Finally, with respect to Windmill's U.S. customer having sold the merchandise at a substantial loss, Windmill argues that this loss is irrelevant because only Windmill's price to its U.S. customer is relevant to the new cash deposit rate.

We disagree with Windmill and find that its U.S. sale is not *bona fide.* In conducting an administrative review, section 751(a)(2) of the statute instructs the Department, in general, to determine a dumping margin for each entry. The CIT has, however, recognized that the Department has the authority to disregard a sale to the United States that is not *bona fide. See Chang Tieh* at 146. Therefore, we are disregarding the sale in question; moreover, because this sale is associated with the only entry during the period of review and there are no other entries to review, we are rescinding the review.

We disagree with Windmill's argument that the Department has improperly established a new, ''opaque'' standard which equates the term *bona fide* with ''commercially reasonable.'' In determining whether Windmill's sale is *bona fide* in this case, as in past cases, we have looked to whether the transaction has been so artificially structured as to be commercially unreasonable. The CIT has agreed, stating that where a transaction is an orchestrated scheme involving artificially high prices, the Department may disregard the sale as not resulting from a *bona fide* transaction. *Chang Tieh* at 146. Thus, evidence concerning whether the transaction is commercially reasonable is relevant to whether a sale is *bona fide.* Moreover, such evidence has been examined by the Department in past cases. For example, in *Manganese Metal from the Peoples' Republic of China,* 60 FR 56045 (November 6, 1995) (*Manganese Metal*), based on the timing of the single sale by one respondent relative to the filing of the petition, the price, which was significantly higher than the market price, and other commercially unusual facts about the transaction (these were proprietary), the Department found that the sale was not *bona fide* and disregarded it. Thus, judicial precedent and agency practice demonstrate that the standard applied by the Department in this case is neither new nor opaque.

In the present case Windmill has acknowledged that its ''test'' shipment was structured to address what it views as a commercial problem presented by the existence of the antidumping order and the high ''all others'' rate. The Department recognizes that exporters may make only a single sale in order to establish their own antidumping duty rate, particularly where the ''all others'' rate is high. We have, in fact, conducted reviews of single shipments. *See, e.g., Salmon; Chang Tieh; PQ Corp.* However, in all of those cases the evidence indicated that the sales were commercially reasonable. *Salmon* at 1432 (no evidence to indicate sale was not *bona fide;* no unusual sales procedures; price was consistent with the market at the time); *Chang Tieh* at 146 (no evidence that price was outside the appropriate market range); *PQ Corp.* at 729 (no evidence of dealings or relationship between exporter and buyer to indicate sale was other than *bona fide*; price was lower than that of U.S. supplier, therefore, consistent with good business practice). In contrast, in *Manganese Metal,* discussed above, where the evidence indicated that the sale was orchestrated to manipulate the margin calculation and was not commercially reasonable, we excluded it. To do otherwise would be a fraud upon the proceeding. *See Chang Tieh* at 144; *American Permac, Inc. et al.,* v. *United States,* 783 F. Supp. 1421 (Ct. Int'l Trade 1992) (noting that ''although periodic reviews set final duty rates for certain sales, they also set deposit rates for future years'').

The evidence in the present case leads us to conclude that Windmill's ''test'' sale was made solely for the purpose of obtaining a separate rate for Windmill. Such a purpose does not render a sale non-*bona fide* as long as the sale itself is at least arguably commercially reasonable. Here, although the price charged by Windmill does not appear to be unreasonable, the reasonableness of the transaction must be judged by the total costs borne by the U.S. importer. The extraordinarily high transportation costs incurred by the importer, combined with other expenses borne by the importer in connection with this sale and the fact that the merchandise was subsequently resold at a significant loss (excluding transportation and other costs) lead us to conclude that there is no basis upon which it could be found that the sale was commercially reasonable. Therefore, we find that the sale is not *bona fide.*

The fact that Windmill has not acted fraudulently, in the sense that it has not attempted to deceive the Department about the nature of the transaction, is irrelevant. That Windmill may have acted out of an erroneous interpretation of the law and the agency's practice, rather than an intent to deceive, does not change the nature of the transaction itself.

Moreover, on the facts of this case, finding that the sale is not *bona fide* does not, as respondent asserts, equate antidumping orders with exclusion orders. As noted above, single sales, even those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties' normal selling practices. Thus, we do not believe that the determination in this case violates the statute's remedial purpose or acts to exclude the respondent from the market.

For the foregoing reasons, we are rescinding this administrative review in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 351.213(d)(3) of the Department's regulations.

Dated: August 31, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration

[FR Doc. 98–23910 Filed 9–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–404]

Live Swine from Canada; Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 30, 1998, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on live swine from Canada for the period April 1, 1996 through March 31, 1997 (63 FR 23723). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Lorenza Olivas, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department has determined that it is not practicable to conduct a company-specific review of this order because of the large number of producers and exporters which requested the review. Therefore, pursuant to section 777A(e)(2)(B) of the Tariff Act of 1930, as amended, we are conducting a review of all producers and exporters of subject merchandise covered by this order on the basis of aggregate data. This review covers 27 programs.

Since the publication of the preliminary results on April 30, 1998 (63 FR 23723), the following events have occurred. We invited interested parties to comment on the preliminary results. On June 10, 1998, case briefs were submitted by the Government of Quebec (''GOQ''), and the National Pork Producers Council (''petitioner''). On June 17, 1998, rebuttal briefs were submitted by the Government of Canada (''GOC''), GOQ, and the Canadian Pork Council (''CPC''). At the request of the GOQ, the Department held a public hearing on July 9, 1998.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351, published in the **Federal Register** at 62 FR 27296 (May 19, 1997).

Scope of the Review

The merchandise covered by this order is live swine, except U.S. Department of Agriculture (''USDA'') certified purebred breeding swine, slaughter sows and boars, and weanlings, (weanlings are swine weighing up to 27 kilograms or 59.5 pounds) from Canada. The merchandise subject to the order is classifiable under the *Harmonized Tariff Schedule* (''HTS'') item numbers 0103.91.00 and 0103.92.00. The HTS item numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Allocation Methodology

In the past, the Department has relied on information from the U.S. Internal Revenue Service (''IRS'') on the industry-specific average useful life of assets in determining the allocation period for nonrecurring grant benefits. *See General Issues Appendix* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37063, 37226 (July 9, 1993). However, in *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel*), the U.S. Court of International Trade (''the Court'') ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for nonrecurring subsidies based on the average useful life (''AUL'') of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel*, 929 F. Supp. 426, 439 (CIT 1996).

The Department has not appealed the Court's decision and, we intend to determine the allocation period for nonrecurring subsidies using company-specific AUL data where reasonable and practicable. In *Live Swine from Canada; Preliminary Results of Countervailing Duty Administrative Review* (62 FR 52426; October 7, 1996) and *Live Swine from Canada; Final Results of Countervailing Duty Administrative Review* (62 FR 18087; April 14, 1997) (*Swine Tenth Review Results*), the Department determined that it is not reasonable and practicable to allocate nonrecurring subsidies using company-specific AUL data because it is not possible to apply a company-specific AUL in an aggregate case (such as the case at hand). Accordingly, in this review, the Department has continued to use as the allocation period the average useful life of depreciable assets used in the swine industry, as set forth in the U.S. IRS Class Life Asset Depreciation Range System (*see Swine Tenth Review Results*), which is a period of three years.

The GOQ submitted a comment on the allocation period. The GOQ agreed with the Department that the IRS tax tables are appropriate for allocating nonrecurring grants in this review. However, because better sources of information may be available in future reviews of this case, the GOQ argues that the Department should accept suggestions from interested parties in future reviews regarding more appropriate sources to calculate the allocation period. In future reviews, the Department will allow interested parties to submit information and comment on any other reasonable and practicable approaches for complying with the Court's ruling with respect to the appropriate allocation period.

Analysis of Programs

Based upon the responses to our questionnaire, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

In the preliminary results, we found that the following programs conferred countervailable benefits on the subject merchandise. We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidies for each of these

programs (less than Can$0.0001 per kilogram, except for the National Transition Scheme for Hogs Program, which is Can$0.0041 per kilogram), remain unchanged from the preliminary results.

1. National Transition Scheme for Hogs Program
2. Alberta Crow Benefit Offset Program (ACBOP)
3. Ontario Livestock and Poultry and Honeybee Compensation Program
4. Saskatchewan Livestock Investment Tax Credit
5. Saskatchewan Livestock Facilities Tax Credit
6. New Brunswick Livestock Incentives Program
7. New Brunswick Swine Industry Financial Restructuring and Agricultural Development Act—Swine Assistance Program

II. Programs Found Not To Confer Subsidies

In the preliminary results, we found the following program did not confer subsidies during the POR. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

1. Research Program under the Canada/Quebec Subsidiary Agreement on Agri-Food Development

III. Programs Found To Be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Western Diversification Program
2. Farm Income Stabilization Insurance
3. Federal Atlantic Livestock Feed Initiative
4. Agricultural Products Board Program
5. Newfoundland Farm Products Corporation Hog Price Support Program
6. Newfoundland Hog Price Stabilization Program
7. Newfoundland Weanling Bonus Incentive Policy
8. Nova Scotia Improve Sire Policy
9. Ontario Bear Damage to Livestock Compensation Program
10. Ontario Rabies Indemnification Program
11. Ontario Swine Sales Assistance Policy

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

IV. Programs Found To Be Terminated

In the preliminary results, we found the following programs to be terminated and that no residual benefits were being provided. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to change our findings from the preliminary results.

1. New Brunswick Swine Assistance Policy on Boars
2. Ontario Export Sales Aid

V. Other Programs Examined

On November 17, 1997, the GOC and the GOQ requested ''green box'' treatment for the Agri-Food Agreement. Under section 771(5B)(F) of the Act, domestic support measures provided with respect to the agricultural products listed in Annex 1 to the 1994 WTO Agreement on Agriculture shall be treated as noncountervailable if the Department determines that the measures conform fully with the provisions of Annex 2 of that same Agreement. The GOQ and the GOC claimed that the Agri-Food Agreement met these criteria, and therefore, funding under the Agri-Food Agreement should be noncountervailable pursuant to section 771(5B)(F) of the Act.

The initial Agri-Food Agreement was signed on February 17, 1987 and remained in effect from 1987 to 1991. On August 26, 1993, a new Agri-Food Agreement was enacted by the governments of Canada and Quebec covering the period April 1, 1993 through March 31, 1998. Funding for this agreement is shared 50/50 by the federal and provincial governments. Through this Agreement, grants are made to private businesses and academic organizations to fund projects under the following program areas: (1) Research, (2) Technology Innovations, and (3) Support for Strategic Alliances.

The Department has previously examined each of the three components under the Agri-Food Agreement (Research, Technology Innovation, and Support for Strategic Alliances) as three separate programs. *See Swine Tenth Review Results.* During the POR, producers of the subject merchandise received assistance under the three component programs of the Agri-Food Agreement for which the GOC and the GOQ have requested green box treatment.

Specifically, with regard to the Research program, we have determined that this program does not confer countervailable benefits because the results of the research are publicly available. As such, there is no need to address whether it is non-countervailable in the context of section 771(5B)(F) of the Act. With regard to the Technology Innovations program and the Support for Strategic Alliances program, any benefit to the subject merchandise under either program or both programs combined is so small (Can$ 0.0000013 and Can$ 0.0000008 per kilogram, respectively) that there is no cumulative impact on the overall subsidy rate. Accordingly, because there is no impact on the overall subsidy rate in the instant review, we have not included the benefits from Technology Innovations program and the Support for Strategic Alliances program in the calculated subsidy rate for the POR, and do not consider it necessary to address the issue of whether benefits under these programs are noncountervailable as green box subsidies pursuant to section 771(5B)(F) of the Act. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990, 54995 (October 22, 1997); *Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 64062, 64065 (December 3, 1996) and *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997); *Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring (''LHF'') From Canada*, 62 FR 5201 (February 4, 1997); *Industrial Phosphoric Acid From Israel; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 28845 (June 6, 1996) and *Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review*, 61 FR 53351 (October 11, 1996).

In addition, some farmers in Prince Edward Island received payments during the POR under the Agricultural Disaster Insurance Program (ADIP), which is authorized under section 12(5) of the Farm Income Protection Act (FIPA) and a provincial statute. The GOC stated that this program was designed to meet the ''green box'' criteria under the 1994 WTO Agreement on Agriculture. With regard to the ADIP program, any benefit to the subject merchandise under this program is so small (Can$ 0.0000081 per kilogram) that there is no impact on the overall subsidy rate, even when taking into account the assistance provided under the Technology Innovations program and the Support for Strategic Alliances program. In other words, when the benefits from the Technology Innovations program, the Support for Strategic Alliances program and the

ADIP program are summed, the aggregate benefit from these three programs has no impact on the overall subsidy rate. Accordingly, because there is no impact on the overall subsidy rate in the instant review, we have not included the benefits from ADIP in the calculated subsidy rate for the POR, and do not consider it necessary to address the issue of whether benefits under this program are countervailable in this review.

Analysis of Comments

Comment 1: Treatment of the Ontario Export Sales Aid Program—Termination

According to the petitioners, the Ontario Export Sales Aid Program should not be treated as a terminated program. The petitioners cite section 355.50(b)(2) of the Department's 1989 Proposed Regulations and claim that it is the Department's practice not to recognize a subsidy program as terminated unless there is an official law, decree, or regulation that has been enacted that terminates the program. (*See Notice of Proposed Rulemaking and Request for Public Comment,* May 31, 1989). In addition, the petitioners cite various cases and assert that the Department has only treated programs as terminated when the respondent has presented evidence of the termination with official documentation and, if possible, when the Department has verified that the program was actually terminated.

The petitioners contend that with respect to the Ontario Export Sales Aid program, the evidence on the record does not meet the standard for this program to be treated as a terminated program. According to petitioners, the only document on the record pertaining to this program, the ''Background Document'' issued by the Ontario Ministry of Economic Development, Trade and Tourism, is insufficient to support the conclusion that the Export Sales Aid program is terminated for purposes of this review, because this document only establishes that the program is being eliminated and does not reflect the official legal status of the program.

The petitioners further argue that the Department's treatment of the Ontario Export Sales Aid program is not consistent with its treatment of the Farm Products Board Hog Price Stabilization Program which has a similar status but the Department treated as not used. The petitioners maintain that the Government of the Province of Newfoundland submitted a budget document issued by the Newfoundland Ministry of Finance that clearly shows that subsidies under the Hog Price Stabilization Program had been ''eliminated'' and that this documentation is of a similar nature to the documentation presented with regard to the Ontario program. Therefore, to be consistent with the record evidence and with other findings in this review, the petitioners argue that the Department should revise its finding with respect to the Ontario Export Sales Aid program and find the program to be not used in these final results.

In rebuttal, the GOQ and the CPC argue that the Department's determination that the Ontario Export Sales Aid program was terminated is correct. The GOQ asserts that the petitioners have not cited any facts to dispute the Department's finding that the program was terminated. Moreover, the CPC claims that the documentation on the record provided by the Government of Ontario supports the decision and cites *Live Swine from Canada; Preliminary Results of Administrative Review,* 62 FR 47460 (September 9, 1997) and *Live Swine from Canada; Final Results of Administrative Review,* 63 FR 2204 (January 14, 1998) (*Swine Eleventh Review Results*) in which the Department made a determination that the Hog Price Stabilization program was terminated based on an announcement from the Government of Prince Edward Island's Department of Agriculture. The CPC also cites *Swine Tenth Review Results* in which the Department found the Livestock and Beeyard Damage Compensation Program terminated based on the Government of Alberta's submission of a memorandum from the program's administrator regarding the program's termination. The CPC asserts that the petitioners did not contest either of these determinations.

Furthermore, the CPC argues that these examples show that the Department has never articulated a blanket rule requiring an official law, decree or regulation before finding a program terminated. The CPC argues that when a provincial program is of a limited size and involves a limited number of users, the termination of the program may be carried out administratively without the passage of a separate law. In these cases, the CPC argues, if the Department were to require an official law, these programs, which are terminated and providing no benefits, would be reinvestigated year after year because their termination had been accomplished by means other than an official law. The GOQ and the CPC contend that the result would be a burden on the Department to continue investigating terminated programs that were providing no benefits. Therefore, the GOQ and the CPC assert, that the Department's preliminary findings that the Ontario Export Sales Aid program is terminated is correct and should be maintained in these final results.

Department's Position: The Department's practice is to treat a program as terminated when the respondent presents satisfactory documentation to demonstrate that the program is terminated and not merely suspended. *See e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey,* 61 FR 30366, 30370 (June 14, 1996); *Certain Iron-Metal Castings from India; Final Results of Administrative Review,* 60 FR 44843, 44844 (August 29, 1995). In this instance, the GOC submitted official documentation from the Ontario Ministry of Economic Development demonstrating that the Export Sales Aid program has terminated as a consequence of a provincial-wide initiative to eliminate certain forms of direct monetary assistance to Ontario businesses. Because this official report was prepared by the authority responsible for administering the subsidy program, we are satisfied that the Export Sales Aid program was terminated on March 31, 1996 and not merely suspended. Therefore, our determination that the Ontario Export Sales Aid program is terminated remains unchanged in these final results.

In the case of Newfoundland's Farm Products Board Hog Price Stabilization program, there were no exports of the subject merchandise from Newfoundland during the POR. Therefore, we did not find it necessary to make a finding regarding the termination of this program during the POR.

Comment 2: Green Box Claim

The petitioners assert that, although the Department did not address the countervailability of two components of the Agri-Food Agreement and the Agricultural Disaster Insurance Program (ADIP), these programs are providing potentially countervailable benefits to live swine producers. The petitioners contend that because these benefits could increase in the future, the Department should treat the ADIP program and these Agri-Food programs as not used to preserve the Department's ability to address the countervailability of these programs should the level of benefits increase in subsequent reviews.

Department's Position: The Department's practice is to treat programs under which producers of the subject merchandise receive *no*

assistance during the POR as not used. (*See Swine Eleventh Review Results*). During this POR, producers of live swine received benefits under the Technology Innovations and Support for Strategic Alliances programs under the Canada/Quebec Subsidiary Agreement on Agri-Food Development and the ADIP program. Therefore, treating these programs as ''not used'' would be inconsistent with our longstanding practice. We note, however, that we will continue to examine these programs in future reviews.

Comment 3: The Countervailability of Benefits under the Research Program Under the Canada/Quebec Subsidiary Agreement on Agri-Food Development

The petitioners assert that the Department should not rely upon the public availability test as the basis for finding that the Research program under the Canada/Quebec Subsidiary Agreement on Agri-Food Development (''Research program'') is noncountervailable. The petitioners point out that under the URAA, the countervailability of research subsidies are analyzed under the ''green light'' provision, and thus, the public availability test is outdated.

The petitioners further argue that during this proceeding neither the GOC nor the GOQ has shown that the projects carried out under the Research program satisfy the criteria for noncountervailability. The petitioners contend that the public availability test is no longer sufficient to avoid a finding of noncountervailablity for research subsidies. Therefore, the petitioners argue that the Research program can only satisfy the test for noncountervailability if it meets all of the statutory green light criteria.

In rebuttal, the GOC and CPC contend that the petitioners' arguments that the Research program should be examined under the green light provisions are untimely. The GOC maintains that the Department's policy since 1995, which is applied in this review, requires a submission of ''green'' claims much sooner than the case brief stage. The GOC and CPC contend that the questionnaire in the instant review instructed respondents to make green light or green box claims within two weeks. Moreover, the GOC and the CPC argue that petitioners had ample time to make this claim which is extraordinarily untimely at the case brief stage. The GOC cites several cases in which the Department rejected allegations that were not raised until the case briefs. The GOC and the CPC assert that the Department is not required to address petitioners' green light claim at this late stage in the preceding.

The GOC also contends that even if the petitioners' green light claim was timely, petitioners' arguments reflect analytical errors. In rebuttal to petitioners' claim that the public availability test is outmoded, the GOC, GOQ, and the CPC argue that the public availability test is still U.S. law and administrative practice. The GOC and GOQ maintain that there is nothing in the WTO agreements or U.S. implementing legislation that repeals the Department's practice of using the public availability test or preempts its application and cites several cases in which the Department has applied the public availability test under post-WTO cases. Although the Department's proposed regulations omit the prior proposed regulation on public availability, the GOC and the GOQ argue that no final regulations have been issued that actually change the policy.

Furthermore, the GOQ maintains that the Department has found the Research program noncountervailable in eight previous administrative reviews and should no longer examine this program in future reviews. The GOQ argues that in the *Delverde* case, the Department's practice not to initiate investigations on programs previously found not to be countervailable was affirmed, citing *Delverde* v. *United States*, No. 96–08–01997, Slip Op. at 10 (CIT December 1, 1997). As an example of the Department's practice, the GOQ cites the investigation in *Fresh, Chilled, and Frozen Pork from Canada*, in which the Department did not initiate on several programs previously found not to be countervailable in an administrative review on live swine from Canada. (*See Initiation of the Countervailing Duty Investigation; Fresh, Chilled, and Frozen Pork from Canada*, 54 FR 5537 (February 3, 1989)). In addition, the GOC, GOQ, and the CPC argue that the petitioner has provided no new information or evidence of changed circumstances requiring the Department to reconsider its analysis of the Research program during the POR. Therefore, the GOC, GOQ, and CPC assert that the Department should maintain its determination that the Research program is noncountervailable in these final results.

Department's Position: We disagree with the petitioners that we must analyze the Research program under the green light provisions. Unless parties make a timely green light claim, the Department does not examine whether a program meets the green light criteria for noncountervailability. Absent such a claim, we followed our standard practice for determining whether this program was countervailable. (*See Swine Eleventh Review Results*, 62 FR 47460 at 47469 (September 9, 1997)).

However, we disagree with the GOQ's assertion that the Research program does not warrant reexamination in future reviews. The Department's current practice with regard to research and development programs is that research results must be publicly available with no restrictions. The standard contracts under the Research program contain a patent clause authorizing non-disclosure of research results with commercial value. As we explained in *Swine Eleventh Review Results*, the ability to restrict disclosure of research results requires a determination on the public availability of research results until projects are completed. (*See* 63 FR 2204, at 2207 (January 14, 1998)). Accordingly, we will continue to examine the Research program in future reviews.

Final Results of Review

For the period April 1, 1996 through March 31, 1997, we determine the net subsidy for live swine from Canada to be Can$0.0041 per kilogram. This rate is *de minimis*.

We will instruct Customs to liquidate without regard to countervailing duties all shipments of the subject merchandise from Canada exported on or after April 1, 1996, and on or before March 31, 1997. The Department will also instruct Customs to waive cash deposits on all shipments of live swine from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR § 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1)).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–23929 Filed 9–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Plate in Coils From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Stephanie Hoffman, or James Breeden, Office I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189, (202) 482–4198, or (202) 482–1174, respectively.

Preliminary Determination

The Department of Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of stainless steel plate in coils from Belgium. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed on March 31, 1998. The petitioners are Allegheny Ludlum Corp., Armco, Inc., Lukens Inc., and, United Steelworkers of America, AFL-CIO/CLC (''the petitioners'').

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see* Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa, 63 FR 23272 (April 28, 1998)), the following events have occurred. On April 30, 1998, we issued countervailing duty questionnaires to the Government of Belgium (''GOB''), the Government of Flanders (''GOF''), the European Commission (''EC''), and the producers/exporters of the subject merchandise. The GOB identified ALZ N.V. (''ALZ'') as the sole producer/exporter of subject merchandise from Belgium.

On May 18, 1998, ALZ, filed a submission stating that the petition was inadequate in its allegations of certain programs. This allegation was repeated in several submissions. The petitioners responded with several submissions challenging these arguments. Following a review of the respondent's and petitioners' submissions, we determined not to continue investigating the Funding for Early Retirement program alleged in the petition. (*See* Memorandum to Richard Moreland, ''Initiation of Certain Programs Alleged to Benefit ALZ,'' June 18, 1998.)

On June 8, 1998, we postponed the preliminary determination of this investigation until August 28, 1998 (*see* Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Plate in Coils From Belgium, Italy, the Republic of Korea and the Republic of South Africa, 63 FR 31201 (June 8, 1998)).

We received responses to our initial questionnaires from the GOB, the GOF, the EC, and ALZ on June 19, 1998. On July 14, 1998, we issued supplemental questionnaires to the GOB, GOF and ALZ. We received responses to these supplemental questionnaires on August 3, 1998.

Scope of Investigation

For purposes of this investigation, the product covered is stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to the current regulations as codified at 19 CFR Part 351 and published in the **Federal Register** on May 19, 1997 (62 FR 27295).

Injury Test

Because Belgium is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (''ITC'') is required to determine whether imports of the subject merchandise from Belgium materially injure, or threaten material injury to, a U.S. industry. On May 28, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Belgium of the subject merchandise (*see* 63 FR 29251 (May 28, 1998)).

Alignment With Final Antidumping Duty Determination

On May 27, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigations. *See* Initiation of Antidumping Duty Investigations: Stainless Steel Plate in Coils From Belgium, Canada, Italy, Republic of South Africa, South Korea and Taiwan, 63 FR 20580 (April 27, 1998). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel plate in coils.

Period of Investigation

The period for which we are measuring subsidies (''the POI'') is calendar year 1997.

Company History

The GOB identified one producer of the subject merchandise that exported to

the United States during the POI, ALZ. There are also two subsidiaries of ALZ which are involved in the production of the subject merchandise, ALBUFIN N.V. (''Albufin'') and AL–FIN N.V. (''Alfin''), and we have included any subsidies to these companies in the subsidy rate for ALZ. In 1987, the GOB sold its ownership interest in ALZ to SIDMAR N.V. (''Sidmar''). Normally, we would apply our privatization methodology under the circumstances presented. However, because the subsidies provided to ALZ prior to 1987 were extremely small, the amount of that could be considered as repayment would be insignificant. *See, e.g.*, Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review, 61 FR 53351 (October 11, 1996), *see also* Industrial Phosphoric Acid from Israel; Preliminary Results of Countervailing Duty Administrative Review, 61 FR 28845 (June 6, 1996). Therefore, we did not apply our privatization methodology to the 1987 transaction.

Subsidies Valuation Information

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies (*see* the General Issues Appendix (''GIA'') to the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, at 37225 (July 9, 1993)). However, in *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (''British Steel I''), the U.S. Court of International Trade (''the Court'') ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (''AUL'') of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (''British Steel II''). Thus, we intend to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g.*, Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review, 62 FR 16551 (April 7, 1997).

In this investigation, the Department has followed the Court's decision in British Steel I, and examined information submitted by the respondent as to its average useful life of assets. Based on the information submitted by ALZ on the average useful life of its non-renewable physical assets, we preliminarily determine that the AUL for ALZ is 15 years. Furthermore, for those subsidies received by Sidmar, which may be, in part, attributable to ALZ, we intend to seek information prior to the final determination regarding Sidmar's AUL. If necessary, for those years in which Sidmar was not consolidated with ALZ, we intend to use Sidmar's AUL for purposes of determining the allocation period for non-recurring subsidies received by Sidmar. For those years in which ALZ was consolidated with Sidmar, we intend to use a company-specific AUL, based on Sidmar's consolidated information, for purposes of determining the allocation period for non-recurring subsidies granted to Sidmar.

Equity Methodology

Consistent with the Department's methodology, the first question in analyzing an equity infusion is whether, at the time of infusion, there was a market price for newly-issued equity (*see* GIA, 58 FR 37239). The Department will find an equity investment to be inconsistent with the usual practice of a private investor if the market-determined price for equity purchased from the firm is less than the price paid by the government for the same form of equity purchased directly from the firm. In this investigation, for those years in which market prices do not exist, the Department has conducted an equityworthiness analysis of the firm as described in the GIA, 58 FR at 37239. *See* ''1985 Debt to Equity Conversion and Purchase of ALZ Shares'' section, below.

Benchmarks for Long-Term Loans and Discount Rates

ALZ reported that it obtained long-term commercial loans contemporaneously with the receipt of certain government loans or grants. Therefore, when available, we have used these company-specific interest rates as the long-term loan benchmark interest rate or discount rate. For those years in which ALZ did not receive commercial loans, we used the national average rates for long-term, fixed-rate debt as reported by the GOF.

Green Light

The GOF requested green light treatment for certain benefits provided pursuant to the Economic Expansion Law of 1970 (''1970 Law''). Among other things, the 1970 Law offers incentives to promote the establishment of new enterprises or the expansion of existing ones which contribute directly to the creation of new activities and new employment within designated development zones.

While the 1970 Law is currently administered by the GOF, the GOB originally oversaw the implementation of 1970 Law benefits to disadvantaged regions throughout Belgium. Pursuant to the overall devolution of power from the GOB to the regional governments since the early 1980s, the authority to administer the 1970 Law has been transferred to the regional governments. With respect to Flanders, many of the 1970 Law subsidy programs have been implemented and administered by the GOF since the late 1980s and the ''execution modalities'' have been amended by several Flemish decrees. Currently, funding for programs under the 1970 Law at issue in this investigation is included in a lump sum amount from the GOB as part of the funds needed to finance the overall operation of the GOF. This understanding of the authority and funding of the 1970 Law relates only to the benefits examined in this investigation and is based upon record evidence of this case. We will seek more clarification on the administration and funding of the 1970 Law.

ALZ received several types of assistance under the 1970 Law (the initiation notice identified these subsidies as: 1993 Expansion Grant, 1994 Environmental Grants, Investment and Interest Subsidies, Accelerated Depreciation, and Real Estate Tax Exemption). Most of this assistance was granted after the GOF assumed control of the subsidy programs. Therefore, for purposes of this preliminary determination, we are treating the GOF as the granting government for these bestowals. However, ALZ received one grant in 1983 (identified in the initiation notice as Investment and Interest Subsidies). Because this grant was received prior to the GOF takeover of 1970 Law authority, we consider this one grant as having been bestowed by the GOB.

As mentioned above, the GOF requested green light treatment for certain benefits provided pursuant to the 1970 Law. They requested such treatment under both sections 771(5B)(C) (disadvantaged regions) and 771(5B)(D) (environmental adaptations) of the Act. In order for an otherwise countervailable benefit to be accorded green light status, it must meet each of the requirements set forth in sections 771(5B)(C) or (D) of the Act (see also Statement of Administrative Action,

H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870, 266 (1994)).

Aid to Disadvantaged Regions

At this time, the record lacks certain fundamental information necessary to evaluate this program for potential regional green light treatment. Section 771(5B)(C) of the Act permits green light status for only those subsidies provided pursuant to a general framework of regional development, which means that the regional subsidy programs are part of an internally consistent and generally applicable regional development program. *See also* section 771(5B)(E)(iii)(I) of the Act. Moreover, sections 771(5B)(C)(i) (II) and (III) of the Act require that each region be considered disadvantaged on the basis of neutral and objective criteria, including a measurement of economic development. In response to questions regarding the process by which regions are classified as disadvantaged, the GOF stated that the EC establishes the regions as disadvantaged and that neither the GOB nor the GOF are involved in this process. The information on the record to date does not provide a full understanding of the EC process and how it relates to the framework of GOF regional assistance. Moreover, it appears that the GOF distinguishes its own regions (similar to the EC's regions) and provides this information in an application to the EC. The GOF did not provide any information regarding its own system of identifying disadvantaged regions. Consequently, there is an absence of record evidence relating to whether the subsidies are provided pursuant to a ''general framework of regional development which is internally consistent and generally applicable.''

Therefore, we preliminarily determine that subsidies provided pursuant to the 1970 Law for the reduction of regional disparities are countervailable.

Aid for Environmental Adaptations

Section 771(5B)(D)(i) of the Act stipulates that subsidies provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation shall not be countervailable, assuming other statutory requirements are met. In this investigation, we are evaluating only the grants received by ALZ under the 1970 Law for ecological investments (identified in the initiation notice as 1994 Environmental Grants).

Section 771(5B)(D)(i) of the Act requires that the adaptation must be made to satisfy specific environmental requirements and those environmental requirements must ''* * * result in greater constraints and financial burdens on the recipient of the subsidy * * *'' In addition, a subsidy must: (I) be a one-time nonrecurring measure, (II) be limited to 20% of the cost of adaptation, (III) not cover the cost of replacing and operating the subsidized investment, and (IV) be directly linked and proportionate to the recipient's planned reduction of nuisances and pollution, and must not cover any manufacturing cost savings that may be achieved. Based upon the information currently on the record, we preliminarily determine the following.

ALZ has shown that a financial burden was incurred because, by law, it was required to pay a large majority of the costs of the environmental adaptations necessary to conform to environmental regulations; non-compliance with these regulations would result in fines. Moreover, because these subsidies are one-time, non-recurring grants which are limited to 15 percent *de jure*, and 12 percent *de facto* (due to GOF budgetary constraints) of the adaptation costs, we preliminarily determine that ecological grants provided under the 1970 Law fulfill requirements (I) and (II). With respect to requirements (III) and (IV), ALZ has shown that the calculation of assistance is based solely on the costs of the environmental adaptation, and does not include any costs of expansion. Moreover, the assistance cannot cover plant expansion or result in manufacturing cost savings. In this regard, there is a provision in the 1970 Law which states that if an investment is associated with an increase in the capacity of the plant, the eligible costs shall be proportionate to the initial capacity of the plant. Stated differently, the amount of aid granted for an ecological investment can only apply to an existing facility and may not be used to build or adapt an expanded facility.

Notwithstanding the analysis outlined above, certain questions have arisen which are not fully addressed by the information currently on the record. For example, section 771(5B)(D)(i) stipulates that subsidies provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation shall not be countervailable (emphasis added). There is a question as to whether certain projects were performed by ALZ to adapt to a published law or regulation.

Moreover, section 771(5B)(D)(i)(V) of the Act states that the subsidy must be ''available to all persons that can adopt the new equipment or production processes.'' The 1970 Law provides environmental grants only to enterprises located in a development region. Shortly before this preliminary determination, we discovered that two Flemish acts may supplement the 1970 Law: the 1993 Economic Expansion Decree (''1993 Decree'') and the Act of August 4, 1978 (''1978 Act''). There is a copy of the 1993 Decree on the record and it appears that the 1993 Decree provides the same assistance for ecological investments to any medium- and large-sized enterprises in Flanders not eligible for assistance under the 1970 Law. However, the 1978 Act is not on the record and there is no record evidence to suggest that the same provisions for ecological adaptations are provided to small-sized enterprises under the 1978 Act.

Because of these outstanding questions, we preliminarily determine that more information is needed to complete our analysis. After we collect additional information and conduct verification, we will prepare an analysis memorandum addressing the green light status of this program during this period, and provide all parties an opportunity to comment on our analysis.

I. Programs Preliminarily Determined To Be Countervailable

A. Regional Subsidies Under the Economic Expansion Law of 1970

As stated above, the 1970 Law offers incentives to enterprises located within designated disadvantaged regions. This law provides benefits specifically to firms in certain development zones of Flanders. Therefore, we preliminarily determine that benefits provided under this law are specific under section 771(5A)(D)(i) of the Act.

In the Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium, 58 FR 37273 (July 9, 1993) (''Certain Steel''), we determined that assistance provided under the 1970 Law complemented that provided under the 1959 Economic Expansion Law (''1959 Law''), because it generally increased the amount of assistance for companies located in certain development zones. Subsidies provided pursuant to the 1959 Law were found not countervailable in the Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium, September 7, 1982 (47 FR 39305) (''Belgian Steel'') because they were not specific. Therefore, in Certain Steel, we countervailed benefits under the 1970 Law only to the extent they exceeded benefits available under the 1959 Law (*see* Certain Steel at 37275 and 37289

and section 355.44(n) of the 1989 Proposed Regulations).

ALZ has argued for the same treatment in this case. However, the verification report of the GOB in Certain Steel states that the 1959 Law was repealed effective August 1, 1991. Therefore, for benefits received by ALZ after 1991, it is not appropriate to take into account the benefits that might have been provided under the 1959 Law. The GOB stated that the 1959 Law was replaced with the Flemish 1993 Decree. However, we need more information on the 1993 Decree to determine whether benefits available under it are non-specific and whether such benefits should affect the level of countervailable benefits provided under the 1970 Law.

1. 1993 Expansion Grant

The GOF gave Albufin, a subsidiary of ALZ, a cash grant in 1994 to construct an annealing and pickling line. The grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to the recipient in the amount of the grant. Furthermore, as mentioned above, benefits under the 1970 Law are available only to firms in certain regions of Flanders. On this basis, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that the 1993 Expansion Grant received by Albufin is countervailable within the meaning of section 771(5) of the Act.

We further preliminarily determine that this grant is non-recurring because the company could not expect to receive it on an ongoing basis. Because the benefit to Albufin was below 0.5 percent of sales in the year of receipt, we expensed the grant in that year. Thus, Albufin received no benefit during the POI.

2. Investment and Interest Subsidies

The petitioners alleged that ALZ financial statements for 1996 and 1997 show entries for ''investment subsidies'' and ''interest subsidies.'' According to ALZ, the majority of these figures are comprised of the environmental grants described above. However, as mentioned above, in 1983, ALZ received one cash grant from the GOB under the old system of assistance. At that time, the 1959 Law was still in effect.

We preliminarily determine that this grant received by ALZ is countervailable within the meaning of section 771(5) of the Act. The 1983 grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to the recipient in the amount of the grant. Because the countervailable portion of the assistance was received from the GOB pursuant to the 1970 Law and, as mentioned above, benefits under the 1970 Law were available only to firms in certain regions of the country, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act.

Therefore, because cash grants of this nature were also available to companies under the 1959 Law, we preliminarily determine that only the difference in the assistance level between the two laws constitutes a countervailable benefit (*see also* Certain Steel, 58 FR 37273, 37275). To derive the benefit, we calculated the difference in the level of benefit between what was actually granted pursuant to the 1970 Law and what could have been received pursuant to the 1959 Law.

We further determine that this grant is non-recurring because it was not provided on an ongoing basis. In calculating the benefit, we applied the Department's standard grant methodology. We divided the benefit attributable to the POI by ALZ's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to be 0.02 percent *ad valorem*.

3. Accelerated Depreciation

Article 15 of the 1970 Law allows companies to declare twice the standard depreciation for assets acquired through funds provided by the grants bestowed under the law. The tax benefit is a financial contribution as described in section 771(5)(D)(ii) of the Act which provides a benefit to the recipient in the amount of the tax savings. Because only enterprises situated in certain development zones are eligible to apply for accelerated depreciation, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that this tax benefit received by ALZ is countervailable within the meaning of section 771(5) of the Act.

Albufin, an ALZ subsidiary, received tax savings under this program during the POI. In calculating the benefit, we treated the tax savings as a recurring benefit and divided it by ALZ's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to be 0.49 percent *ad valorem*.

4. Real Estate Tax Exemption

Pursuant to Article 16, assets acquired through investments financed in part by the 1970 Law may be exempted from real estate taxes for up to five years, depending on the extent to which objectives of the 1970 Law are achieved. The tax benefit is a financial contribution as described in section 771(5)(D)(ii) of the Act which provides a benefit to the recipient in the amount of the tax savings. Because only enterprises situated in certain development zones are eligible to apply for a real estate tax exemption, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that this tax benefit received by ALZ is countervailable within the meaning of section 771(5) of the Act.

Albufin received tax savings under this program during the POI. In calculating the benefit, we treated the tax savings as a recurring benefit and divided it by ALZ's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to be 0.04 percent *ad valorem*.

B. 1985 ALZ Share Subscriptions and Subsequent Transactions (Identified in the Initiation Notice as 1985 Debt to Equity Conversion and Purchase of ALZ Shares)

On September 26, 1985, the GOB made three share subscriptions in ALZ pursuant to the Royal Decree No. 245 of December 31, 1983. This Royal Decree allowed the GOB to make preference share subscriptions in the steel industry as long as the subscriptions did not exceed one-half of the social capital of the company. The Nationale Maatschappig voor de Herstructurering van de Nationale Sectoren (''NMNS''), the government agency purchasing the shares, acquired ordinary shares and preference shares through this transaction.

In analyzing whether these share purchases conferred a benefit on ALZ, we must determine whether the GOB investment was inconsistent with the usual investment practice of private investors in Belgium. Neither ALZ's ordinary nor preference shares were publicly traded. Therefore, we have analyzed the circumstances of the transaction.

According to ALZ, the price at which the GOB purchased shares in ALZ was determined by two separate studies as discussed in ALZ's shareholders' meeting of September 26, 1985. These studies were performed by an independent accounting firm and a group of experts selected by ALZ. ALZ also submitted documentation from the European Commission notifying the GOB that ALZ's capital increase met the Commission's private investor standard. In addition, we have performed an

independent analysis of ALZ's financial health at the time of the stock purchase. This analysis indicates that the company was equityworthy.

Consistent with the standard established in *Aimcor* v. *the United States*, 871 F. Supp. 447, 454 (CIT 1994) and *Geneva Steel et al.* v. *United States*, 914 F. Supp. 563, at 582, (CIT 1996), a finding of equityworthiness means that the Department need not inquire further regarding the commercial soundness of a government's purchases of ordinary shares. Hence, we preliminary determine that the GOB's 1985 purchase of ordinary shares was consistent with the usual investment practice of private investors in Belgium.

With respect to ALZ's preference shares, we have analyzed the characteristics of the shares and the price paid per share, and have concluded that the government's 1985 investment in these preferred shares was consistent with the usual investment practice of private investors in Belgium (*see* memorandum from Team to Richard Moreland, ''Concurrence Memorandum; Summary of Issues,'' public version, dated August 28, 1998 (''Concurrence Memorandum'')).

However, in 1987, the GOB sold ALZ's ordinary shares purchased under the Royal Decree No. 245 to Kempense Investeringsvennootschap (''KIV''), a company controlled by Sidmar. The price received by the GOB was lower than the price Sidmar paid a private company for its ordinary shares in ALZ, in a relatively contemporaneous transaction.

Furthermore, in 1993, Sidmar acquired the preference shares originally purchased under the Royal Decree No. 245 from the GOB in return for an ownership interest in a Sidmar controlled company. Based on our analysis, the GOB sold these preference shares at a price below the market value for ALZ stock (the exact terms of this transaction are proprietary in nature and are discussed in the Concurrence Memorandum.

We preliminarily determine that the GOB's sales of ALZ's ordinary and preferred shares to Sidmar constitute countervailable subsidies within the meaning of section 771(5) of the Act. These programs provide a financial contribution, as described in section 771(5)(D)(i) of the Act. As discussed above, benefits under Royal Decree No. 245 are available only to the steel sector. On this basis, we preliminarily determine that the programs are specific under section 771(5A)(D) of the Act.

To calculate the benefits, we took the difference between market values for ALZ's ordinary and preferred shares and the price paid by Sidmar for the stock in question. We then applied the Department's standard grant methodology and divided the benefit attributable to the POI by Sidmar's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidies to be 0.05 and 0.12 percent *ad valorem*, respectively.

C. Belgian Industrial Finance Company (''Belfin'') Loans

Belfin was established by Royal Decree on June 29, 1981, as a mixed corporation with 50 percent GOB participation and 50 percent private industry participation. In Certain Steel, we determined that Belfin's objective is to finance investments needed for the restructuring and development of various sectors of industry, commerce, and state services. Belfin borrows money in Belgium and on international markets, with the benefit of government guarantees, in order to obtain the funds needed to make loans to Belgian companies. The government's guarantee makes it possible for Belfin to borrow at favorable interest rates and to pass the savings along when it lends the funds to Belgian companies. Belfin loans to Belgian companies are not guaranteed by the GOB. However, these loans carry a one percent commission which is used to maintain a guarantee fund to support the GOB's guarantee of Belfin's borrowing. ALZ received Belfin loans which were outstanding during the POI.

We preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. These loans provide a financial contribution, as described in section 771(5)(D)(i) of the Act, with the benefit equal to the difference between the benchmark rate and the rate ALZ pays on these loans. Although the objective of Belfin loans is to assist the restructuring and development of various sectors, steel companies are the predominant recipients of Belfin loans. Therefore, we preliminarily determine that the Belfin loans to the steel industry are specific under section 771(5A) of the Act.

To calculate the subsidy conferred by these loans we used our long-term fixed-rate loan methodology. We measured the interest savings to ALZ in each year the loans were outstanding. We then took the present value of each of these amounts as of the time the loan was received. Finally, using the benchmark as a discount rate, we allocated the subsidy over the life of the loan. We then divided the benefit attributable to the POI by ALZ's total 1997 sales. On this basis, we preliminarily determine the countervailable subsidy to be 0.01 percent *ad valorem*.

D. Industrial Reconversion Zones

Alfin

Alfin was established as a ''proper'' reconversion company in 1985 under the reconversion program ''Herstelwet 1984.'' It was financed by a government agency, Nationale Investeringsmaatschappij (''NIM'') and ALZ. In exchange for its investment, NIM received preferred non-voting shares and a two percent annual return on its investment. ALZ is obligated to repurchase all of the shares purchased by NIM over a ten year period at the issued price.

We used the hierarchical criteria discussed in the ''Classification of Hybrid Financial Instruments Issue'' section of the GIA to examine these shares and preliminarily find that they constitute debt instruments because they have a fixed repayment period. We preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act. Because the ''Herstelwet 1984'' law provides benefits specifically to firms in certain regions of the country, we preliminarily determine that it is specific under section 771(5A) of the Act.

To measure the benefit on this loan, we used our long-term fixed-rate loan methodology and measured the cost savings conferred by the loan in each year the loan was outstanding, as described above. We divided the subsidy allocated to the POI by ALZ's total 1997 sales. On this basis, we preliminarily determine the countervailable subsidy to be 0.20 percent ad valorem.

Albufin

Albufin was established as an ''improper'' reconversion company in 1989, also under the reconversion program ''Herstelwet 1984.'' It received capital with partial financing from the government (NIM), the Sidmar Group (FININDUS), a private company (Klockner Stahl) and ALZ. Because Klockner Stahl was a private company at the time of Albufin's establishment, and it invested on the same terms as the government, we preliminarily determine that there is no countervailable benefit resulting from the establishment of the company. However, as an ''improper'' reconversion company, Albufin benefits from a tax exemption on dividend payments and is exempt from the capital registration tax. We

preliminarily determine that these tax benefits received by Albufin are countervailable subsidies within the meaning of section 771(5) of the Act. The tax benefits are a financial contribution as described in section 771(5)(D)(ii) of the Act which provide a benefit to the recipient in the amount of the tax savings. Because the ''Herstelwet 1984'' law provides benefits specifically to firms in certain regions of the country, we preliminarily determine that it is specific under section 771(5A) of the Act.

In the POI, Albufin did not receive tax savings under the capital registration tax but did benefit from the exemption on dividend payments. To measure the benefit from this tax exemption, we treated the tax savings as a recurring benefit and divided it by ALZ's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to be 0.05 percent *ad valorem*.

E. Subsidies Provided to Sidmar That Are Attributable to ALZ

As discussed in the ''Company History'' section above, Sidmar owns either directly or indirectly 100 percent of ALZ's voting shares and is the overall majority shareholder of ALZ. In Certain Steel and in the Department's redetermination on remand of Certain Steel, we found that Sidmar received several countervailable benefits that were attributable to the entire Sidmar group. Because ALZ is a fully consolidated subsidiary of Sidmar, any untied subsidies provided to Sidmar are attributable to ALZ (*see* Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review, 63 FR 18367 (April 15, 1998) (''UK Lead and Bismuth'')). Thus, we preliminarily determine that the following two programs provide countervailable benefits to ALZ via its parent company, Sidmar.

1. Assumption of Sidmar's Debt

Between 1979 and 1983, the GOB assumed the interest costs associated with medium- and long-term loans for certain steel producers, including Sidmar. In exchange for the GOB's assumption of financing costs, Sidmar agreed to the conditional issuance of convertible profit sharing bonds (''OCPCs'') to the GOB. In 1985, Sidmar and the GOB agreed to substitute parts beneficiaires (''PBS'') for the OCPCs.

Consistent with Certain Steel and the attendant litigation, we preliminarily determine that the GOB's initial assumption of interest costs was specific under section 771(5A) of the Act. Furthermore, we preliminarily determine that the OCPCs are properly classifiable as debt and that the conversion of OCPCs to PBS constituted a debt to equity conversion. Comparing the price paid for the PBS to the market value of Sidmar's common stock, we preliminarily determine that the debt to equity conversion provided a benefit to Sidmar as the share transactions were on terms inconsistent with the usual practice of a private investor.

We preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act. As discussed above, benefits under this program were available only to certain steel producers. On this basis, we preliminarily determine that the program is specific under section 771(5A)(D) of the Act.

To measure the benefit from the debt to equity conversion, we calculated the premium paid by the government as the difference between the price paid by the government for the PBS and the adjusted market price of the common shares. We then applied the Department's standard grant methodology and divided the benefit attributable to the POI by Sidmar's total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to be 0.31 percent ad valorem.

2. SidInvest

The right to establish ''Invests'' was limited to the five national industries. SIDINVEST N.V. (''SidInvest'') was incorporated on August 31, 1982, as a holding company jointly owned by Sidmar and the Societe Nationale d'Investissement, S.A. (''SNI''). SidInvest was given drawing rights on SNI to finance specific projects. The drawing rights took the form of conditional refundable advances (''CRAs''), which were interest-free, but repayable to SNI based on a company's profitability. In 1987, the GOB moved to accelerate the repayment of the CRAs and thus, in 1988, SidInvest agreed to pay back the outstanding balance on the CRAs at a rate of 3 percent per year. Later in July 1988, an agreement was reached for NMNS to become a shareholder in SidInvest by contributing the CRAs owed to it by SidInvest in exchange for SidInvest stock. Through a series of transactions the Sidmar group then repurchased the SidInvest shares obtained by NMNS.

Consistent with Certain Steel, we preliminarily determine that the CRAs were interest-free loans. On July 29, 1988, a fixed repayment schedule over 32 years was established for these interest-free loans. Thus, the first benefit arising from the July 1988, transactions was the creation of a 32-year interest-free loan.

The second benefit arose from the GOB's subsequent exchange of the loan for shares in SidInvest and the selling of those shares back to various members of the Sidmar group. Because SidInvest paid less than the net present value in 1988 of the amount due in 32 years for the repurchase of its loan, we are treating the difference between what SidInvest should have been willing to pay and what NMNS received as a benefit.

We preliminarily determine that both transactions provided a countervailable subsidy within the meaning of section 771(5) of the Act. Both provide a financial contribution, as described in section 771(5)(D)(i) of the Act. Moreover, because the right to establish ''Invests'' was limited to the five national sectors, we view these programs as being limited to a specific group of industries. On this basis, we preliminarily determine that the programs are specific under section 771(5A)(D) of the Act.

To measure the benefit from the interest-free loan, we allocated the benefit over the life of the loan using our standard long-term loan methodology. To calculate the benefit from the selling of the loan, we applied the Department's standard grant methodology. We divided the benefits attributable to the POI by Sidmar's consolidated total sales during the POI. On this basis, we preliminarily determine the countervailable subsidies to be 0.25 and 0.05 percent ad valorem, respectively.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Societe Nationale de Credite a l'Industrie (''SNCI'') Loans (Loans Approved Between 1987 and 1990)

The SNCI was a public credit institution, which, through medium- and long-term financing, encouraged the development and growth of industrial and commercial enterprises in Belgium. SNCI was organized as a limited liability company and, until 1997, was 50-percent owned by the Belgian government. ALZ received investment loans from SNCI which were outstanding during the POI. All SNCI loans received by ALZ and outstanding during the POI were approved and disbursed after 1986.

In Certain Steel, we examined whether investment loans from SNCI were specific by analyzing whether the steel industry received a disproportionate share of benefits (58 FR 37273, 37280–37281). We compared the steel industry's share of benefits to the share of benefits provided to all other users of the program. Although SNCI made loans to many sectors of the Belgian economy, we determined that the steel industry had received a disproportionately large share of investment loans granted between 1975 and 1986. However, we did not find disproportionality or specificity in 1987 and 1988 as the steel industry's share of benefits dropped significantly. No new information has been presented in this investigation to change our Certain Steel determination.

In the present case, we examined data on the distribution of SNCI investment loans after 1988 to determine whether they were specific under section 771(5A)(D)(iii) of the Act. The GOB provided information on the sectoral distribution of loans under the program for the years 1989 and 1990. This information indicates that the steel industry did not receive a disproportionate share of benefits in those years. Therefore, for loans approved between 1989 and 1990, we preliminarily determine that SNCI investment loans were non-specific, and therefore, not countervailable. Moreover, ALZ stated that it received one loan from SNCI after the institution was completely privatized. Because the loan was approved and disbursed after SNCI's privatization, we preliminarily determine that this loan is not countervailable under section 771(5B) of the Act.

We do not have specific industry usage information for SNCI loans for years after 1990 and before SNCI was privatized. We requested this information from the GOB in both the original and supplemental questionnaires. While the GOB provided SNCI's annual reports for all relevant years, after 1990 these reports ceased to provide specific information on sectoral distribution of loans. However, there are general descriptions of changes in SNCI lending patterns. These descriptions provide no indication that the steel industry received a disproportionate share of investment loans from SNCI during this period. Therefore, we need more information to determine whether SNCI loans approved after 1990 were specific under section 771(5A)(D)(iii) of the Act. However, after we collect additional information and conduct verification, we will prepare an analysis memorandum addressing the specificity of this program during the period under investigation, and provide all parties an opportunity to comment on our analysis.

III. Programs for Which We Need More Information

A. Societe Nationale de Credite a l'Industrie (''SNCI'') Loans (loans approved after 1990)
See ''SNCI Loans'' section, above.
B. 1994 Environmental Grants under the 1970 Law
See ''Green Light'' section, above.

IV. Programs Preliminarily Determined To Be Not Used

Based upon the information provided in the responses, we determine that the company under investigation did not apply for or receive benefits under the following programs during the POI.

A. Government of Belgium Programs

1. Subsidies Provided to Sidmar that are Potentially Attributable to ALZ
   a. Water Purification Grants
2. Societe Nationale pour la Reconstruction des Secteurs Nationaux (''SNSN'')
3. Regional subsidies under the Economic Expansion Law of 1970 (''1970 Law'')
   a. Corporate Income Tax Exemption
   b. Capital Registration Tax Exemption
   c. Government Loan Guarantees
4. Special Depreciation Allowance
5. Preferential Short-Term Export Credit
6. Interest Rate Rebates

B. Programs of the European Commission

1. ECSC Article 54 Loans and Interest Rebates
2. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid
3. European Social Fund Grants
4. European Regional Development Fund Grants
5. Resider II Program

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for ALZ, the sole manufacturer of the subject merchandise. We preliminarily determine that the total estimated net countervailable subsidy rate is 1.59 percent *ad valorem*. Because we only investigated one producer/exporter, ALZ's rate will also serve as the ''all others'' rate. Therefore, the ''all others'' rate is 1.59 percent *ad valorem*.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of plate in coils from Belgium, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amount of 1.59 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the

nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the date of publication of the preliminary determination. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 28, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–823]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Plate in Coils From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Craig W. Matney, Office of AD/CVD Enforcement, Group 1, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4087 or 482–1778, respectively.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of stainless steel plate in coils from Italy. For information on the estimated countervailing duty rates, please see the *Suspension of Liquidation* section of this notice.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steels, Inc., Lukens Inc., AFL–CIO/CLC (USWA), Butler Armco Independent Union and Zanesville Armco Independent Organization (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigation: Certain Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa*, 63 FR 23272 (April 28, 1998) (*Initiation Notice*)), the following events have occurred. On April 30, 1998, we issued countervailing duty questionnaires to the Government of Italy (GOI), the European Commission (EC), and the producers/exporters of the subject merchandise. On June 1, 1998, we postponed the preliminary determination of this investigation until August 28, 1998 (*see Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa*, 63 FR 31201 (June 8, 1998)).

We received responses to our initial questionnaires from the GOI, the EC, and Acciai Speciali Terni S.p.A. (AST) (the sole producer/exporter of subject merchandise during the POI to the United States) between June 19 and June 26, 1998. On July 15 and 16, 1998, we issued supplemental questionnaires to the GOI, the EC and AST. We received responses to these supplemental questionnaires between July 29 and August 3, 1998.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 and published in the **Federal Register** on May 19, 1997 (62 FR 27295).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because Italy is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On May 28, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (*see Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, 63 FR 29251).

Alignment With Final Antidumping Determination

On May 27, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final

determination in the companion antidumping duty investigation. *See Initiation of Antidumping Duty Investigations: Stainless Steel Plate in Coils from Belgium, Canada, Italy, Republic of South Africa, South Korea and Taiwan*, 63 FR 20580 (April 27, 1998). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel plate in coils.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

Corporate History of Respondent AST

Prior to 1987, Terni, S.p.A, (Terni), a main operating company of Finsider, was the sole producer of stainless steel plate in coils (SSPC) in Italy. Finsider was a holding company that controlled all state-owned steel companies in Italy. Finsider, in turn, was wholly-owned by a government holding company, Istituto per la Ricostruzione Industriale (IRI). As part of a restructuring in 1987, Terni transferred its assets to a new company, Terni Acciai Speciali (TAS).

In 1988, another restructuring took place in which Finsider and its main operating companies (TAS, Italsider, and Nuova Deltasider) entered into liquidation and a new company, ILVA S.p.A. (ILVA) was formed. ILVA took over some of the assets and liabilities of the liquidating companies. With respect to TAS, part of its liabilities and the majority of its viable assets, including all the assets associated with the production of SSPC, were transferred to ILVA on January 1, 1989. ILVA itself became operational on the same day. Part of TAS' remaining assets and liabilities were transferred to ILVA on April 1, 1990. After that date, TAS no longer had any manufacturing activities. Only certain non-operating assets remained in TAS.

From 1989 to 1994, ILVA consisted of several operating divisions. The Specialty Steels Division, located in Terni, produced subject merchandise. ILVA was also the majority owner of a large number of separately incorporated subsidiaries. The subsidiaries produced various types of steel products and also included service centers, trading companies, and an electric power company, among others. ILVA together with its subsidiaries constituted the ILVA Group. The ILVA Group was wholly-owned by IRI. (For purposes of the grant expense test (*i.e.*, 0.5 percent test) and the 1994 change in ownership calculations, we used ILVA Group's financial information).

In October 1993, ILVA entered into liquidation. On December 31, 1993, two of ILVA Group's divisions were removed and separately incorporated: AST and ILVA Laminati Piani (ILP). The balance of ILVA's holdings remained in ILVA Residua. IVLA's Specialty Steels Division was transferred to AST while its carbon steel flat products operations were placed in ILP. The remainder of ILVA's assets and liabilities, along with much of the redundant workforce, were transferred to ILVA Residua.

In December 1994, AST was sold to KAI Italia S.r.L. (KAI), a privately-held holding company jointly owned by German steelmaker Hoesch-Krupp (50 percent) and a consortium of private Italian companies called FAR Acciai (50 percent). Between 1995 and the POI, there were several restructurings/ changes in ownership of AST and its parent companies. As a result, at the end of the POI, AST was owned 75 percent by Krupp Thyssen Stainless GmbH and 25 percent by Fintad.

Affiliated Parties

The information presently on the record of this investigation does not permit us to make a determination as to whether any companies currently affiliated with AST are sufficiently related to it to warrant treating them as a single company. As a result, we limited our analysis to those potential benefits received by AST itself. However, for the final determination, we will examine this issue more critically.

Change in Ownership

In the 1993 investigations of Certain Steel Products, we developed a methodology with respect to the treatment of non-recurring subsidies received prior to the sale of a company. *See Final Countervailing Duty Determination; Certain Steel Products from Austria, et. al.*, 58 FR 37217 (July 9, 1993) (*Certain Steel from Austria*). This methodology was set forth in the *General Issues Appendix* (*GIA*) at 37226, appended to *Certain Steel from Austria*. The methodology was subsequently upheld by the Federal Circuit. *See Saarstahl AG v. United States*, 78 F.3d 1539 (Fed. Cir. 1996); *British Steel plc v. United States*, 127 F.3d 1471 (Fed. Cir. 1997).

Under the *GIA* methodology, we estimate the portion of the company's purchase price which is attributable to prior subsidies. To make this estimate, we divide the face value of the company's subsidies by the company's net worth in the years preceding the sale of the company. To make these calculations, we go back in time to a period corresponding to the company's allocation period (see below for a discussion of allocation period). We then take the simple average of these ratios, which serves as a reasonable surrogate for the percentage that subsidies constitute of the overall value, *i.e.*, net worth, of the company. Next, we multiply this average ratio by the purchase price of the company to derive the portion of the purchase price that we estimate to be a repayment of prior subsidies. Then, the benefit streams of the prior subsidies are reduced by the ratio of the repayment amount to the net present value of all remaining benefits at the time of the change in ownership.

In the URAA, Congress clarified how the Department should approach changes in ownership. Section 771(5)(F) of the Act states that:

> A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administrating authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

The Statement of Administrative Action accompanying the URAA, reprinted in H.R. Doc. No. 103–316 (1994) (SAA) explains why section 771(5)(F) was added to the statute. The SAA at page 928 states:

> Section 771(5)(F) is being added to clarify that the sale of a firm at arm's length does not automatically, and in all cases, extinguish any prior subsidies conferred. Absent this clarification, some might argue that all that would be required to eliminate any countervailing duty liability would be to sell subsidized productive assets to an unrelated party. Consequently, it is imperative that the implementing bill correct such an extreme interpretation.

We have continued to follow the methodology developed in the *GIA* based on our determination that this methodology does not conflict with the change in ownership provision of the URAA. As stated by the Department, ''[t]he URAA is not inconsistent with and does not overturn the Department's General Issues Appendix Methodology. * * *'' *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377, 58379 (Nov. 14, 1996) (*UK Lead Bar 94*). We further clarified in *UK Lead Bar 94* that, ''[t]he language of Sec. 771(5)(F) of the Act purposely leaves discretion to the Department with regard to the impact of a change in ownership on the

countervailability of past subsidies.'' *Id.* at 58379. AST, the GOI and the EC have all expressed the opinion that the sale of AST to a private consortium in an arm's length transaction extinguished all prior subsidies. However, information on this record provides no basis for distinguishing the sale of AST from other sales that we have analyzed under the *GIA* methodology. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago,* 62 FR 55003 (October 22, 1997) (*Wire Rod from Trinidad and Tobago*), *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada*, 62 FR 54972 (October 22, 1997) and *Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Italy*, 63 FR 40474 (July 29, 1998) (*Wire Rod from Italy*). Therefore, we have applied the methodology set forth in the *GIA* for the 1994 privatization. Furthermore, we note that after the 1994 privatization of AST, there were numerous changes in the ownership structure of the company; however, we do not have all the information necessary for the preliminary determination to determine whether it is appropriate to apply our change in ownership methodology for these later transactions.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: Consistent with the Department's finding in *Wire Rod from Italy* at 40476–77, we have based our long-term benchmarks and discount rates on the Italian Bankers' Association (ABI) rate. Because the ABI rate represents a long-term interest rate provided to a bank's most preferred customers with established low-risk credit histories, commercial banks typically add a spread ranging from 0.55 percent to 4 percent onto the rate for other customers depending on their financial health.

In years in which AST or its predecessor companies were creditworthy, we added the average of that spread onto the ABI rate to calculate a nominal benchmark rate. In years in which AST or its predecessor companies were uncreditworthy, we calculated the discount rates according to the methodology described in the *GIA* at 37227. Specifically, we added to the ABI rate a spread of 4 percent in order to reflect the highest commercial interest rate available to companies in Italy. We then added to this rate a risk premium equal to 12 percent of the ABI.

Additionally, information on the record of this case indicates that published ABI rates do not include amounts for fees, commissions and other borrowing expenses. Since such expenses raise the effective interest rate that a company would experience and it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. While we do not have information on the expenses that would be applied to long-term commercial loans, information on the record shows that borrowing expenses on overdraft loans range from 6 to 11 percent of interest charged. For purposes of this preliminary determination, we are assuming that the level of borrowing expenses on overdraft loans approximates the level on long-term commercial loans. Accordingly, we are increasing the nominal benchmark rate by 8.5 percent, representing the average reported level of borrowing expenses, to arrive at an effective benchmark rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See GIA*, 58 FR at 37227. However, in *British Steel plc v. United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order in that case, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). As a result of this decision, the Department changed its policy so that it determines the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16551 (April 7, 1997).

In this investigation, the Department has followed the Court's decision in *British Steel* by examining information submitted by AST regarding its average useful life of assets. In the course of this examination, however, the Department has noted several features of AST's financial records that are incompatible with the use of company-specific AUL. For instance, the financial statements indicate that the depreciation schedules for at least some of AST's assets may not reflect the actual estimated useful life of those assets. Moreover, information contained in AST's and its predecessors' financial statements and questionnaire responses suggests that the gross value of AST's non-renewable physical assets has been written down during the period upon which AST's AUL calculation is based.

Therefore, for the purposes of this preliminary determination, we are using an AUL of 15 years, as derived from industry-specific data from the U.S. Internal Revenue Service. We will, however, seek additional information regarding the useful life of AST's assets at verification, and will reconsider this methodology for the final determination.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion, based on information available at that time. *See GIA* at 37244. Our review of the record has not led us to change our finding in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357 (April 18, 1994), (*Electrical Steel from Italy*), in which we found AST's predecessors unequityworthy from 1984 through 1988, and from 1991 through 1992.

In measuring the benefit from a government equity infusion into an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. In this case, a market benchmark does not exist so we used the methodology described in the *GIA* at 37239. *See, also, Wire Rod from Trinidad and Tobago*, 62 FR 55004. Following this methodology, equity infusions made on terms inconsistent with the usual practice of a private investor are treated as grants. Use of this methodology is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year; this determination is based on the information available in that year.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final*

Affirmative Countervailing Duty Determinations: Certain Steel Products from France, 58 FR 37304 (July 9, 1993) (*Certain Steel from France*); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela,* 62 FR 55014 (Oct. 21, 1997).

Terni, TAS and ILVA were found to be uncreditworthy from 1983 through 1993 in *Electrical Steel from Italy* at 18358 and *Wire Rod from Italy* at 40477. No new information has been presented in this investigation that would lead us to reconsider these findings. Therefore, consistent with our past practice, we continue to find Terni, TAS and ILVA uncreditworthy from 1985 through 1993. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil,* 58 FR 37295, 37297 (July 9, 1993).

I. Programs Preliminarily Determined To Be Countervailable

Programs of the Government of Italy

A. Equity Infusions to Terni and ILVA

The GOI, through IRI, provided new equity capital to Terni or ILVA in every year from 1984 through 1992, except in 1989 and 1990. We preliminarily determine that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. These equity infusions provide a financial contribution, as described in section 771(5)(D)(i) of the Act, and these investments were not consistent with the usual investment practices of private investors (*see* the *Equityworthiness* section above). Because these equity infusions were limited to Finsider and its operating companies and ILVA, we preliminarily determine that they are specific within the meaning of section 771(5A)(D) of the Act.

AST did not report, in its response to our questionnaires, the 1988 equity infusion provided to ILVA. We have public information from *Electrical Steel from Italy* on the existence and amount of this infusion and are including it in our calculations for the preliminary determination.

We have treated these equity infusions as non-recurring grants given in the year the infusion was received because each required a separate authorization. Because Terni and ILVA were uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the *Change in Ownership* section above to determine the amount of each equity infusion appropriately allocated to AST after its privatization. We divided this amount by AST's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 5.59 percent ad valorem for AST.

B. Benefits From the 1988–90 Restructuring (called Debt Forgiveness: Finsider-to-ILVA Restructuring in Initiation Notice)

As discussed above in the *Corporate History* section of this notice, the GOI liquidated Finsider and its main operating companies in 1988 and assembled the group's most productive assets into a new operating company, ILVA. In 1990, additional assets and liabilities of TAS, Italsider and Finsider went to ILVA.

Not all of TAS' liabilities were transferred to ILVA; rather, many remained with TAS and had to be repaid, assumed or forgiven. In 1989, Finsider forgave 99,886 million lire of debt owed to it by TAS. Even with this debt forgiveness, a substantial amount of liabilities left over from the 1990 transfer of assets and liabilities to ILVA remained with TAS. In addition, losses associated with the transfer of assets to ILVA were left behind in TAS. These losses occurred because the value of the transferred assets had to be written down. As TAS gave up assets whose book value was higher than their appraised value, it was forced to absorb the losses. These losses were generated during two transfers as reflected in: (1) an extraordinary loss in TAS' 1988 Annual Report and (2) a reserve against anticipated losses posted in 1989 with respect to the 1990 transfer.

Consistent with our treatment of the 1988–90 restructuring in *Electrical Steel from Italy* at 18359, we preliminarily determine that the debt and loss coverage provided to ILVA constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The debt and loss coverage provide a financial contribution as described in section 771(5)(D)(i) of the Act. Because this debt and loss coverage was limited to TAS, AST's predecessor, we preliminarily determine that it is specific within the meaning of section 771(5A)(D) of the Act.

In calculating the benefit from this program, we followed our methodology in *Electrical Steel from Italy* except for a correction of a calculation error which had the effect of double-counting the write-down from the first transfer of assets in 1988 by including it in the calculations of losses generated upon the second transfer of assets in 1990. We have treated Finsider's 1989 forgiveness of TAS' debt and the loss resulting from the 1989 write-down as grants received in 1989. The second asset write down and the debt outstanding after the 1990 transfer were treated as grants received in 1990. We find these benefits to be non-recurring since AST did not receive them on an on-going basis. Because ILVA was uncreditworthy in these years, we used discount rates that include a risk premium to allocate the benefits over time. In addition, we find the debt and loss coverage to be untied subsidies which benefit all of ILVA. Finally, we followed the methodology described in the *Change in Ownership* section above to determine the amount of each benefit appropriately allocated to AST after its privatization. We divided this amount by AST's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 3.61 percent *ad valorem* for AST.

C. Debt Forgiveness: ILVA-to-AST (included are the following programs from the *Initiation Notice:* Working Capital Grants to ILVA, 1994 Debt Payment Assistance by IRI, and ILVA Restructuring and Liquidation Grant)

As of December 31, 1993, the majority of ILVA's manufacturing activities had been separately incorporated into either AST or ILP, ILVA Residua was primarily a shell company with liabilities far exceeding assets. In contrast, AST and ILP, now ready for privatization, had operating assets and relatively modest debt loads.

The liabilities remaining with ILVA Residua after the spin-off of AST and ILP had to be repaid, assumed, or forgiven. AST has stated that IRI, in accordance with Italian Civil Code, bears responsibility for all liabilities remaining in ILVA Residua. Furthermore, information submitted by AST indicates that the EC has approved IRI's plan to cover ILVA Residua's remaining liabilities when its final liquidation occurs.

Although this debt has yet to be eliminated by any specific act of the GOI or its holding company IRI, we preliminarily determine that AST (and consequently the subject merchandise) received a countervailable subsidy in 1993 when the bulk of ILVA's debt was placed in ILVA Residua, rather than being placed with AST and ILP.

The placing of this debt with ILVA Residua was equivalent to debt forgiveness for AST. The debt forgiveness provides a financial contribution, as described in section 771(5)(D)(i) of the Act because, in relieving AST of a proportional share of ILVA's liabilities, the GOI eliminated an obligation that AST otherwise would bear. Because the debt forgiveness was received only by AST and its sister company, ILP, we preliminarily

determine that it is specific under section 771(5A)(D) of the Act.

As noted above, certain operating assets and non-operating assets (*e.g.*, cash, bank deposits) remained in ILVA Residua. Presumedly, these assets have been or will be used to fund repayment of ILVA Residua's liabilities. In order to account for the fact that certain assets that could be liquidated at full value, namely cash and bank deposits, were left behind in ILVA Residua, we have subtracted this amount from the liabilities outstanding after the 1993 restructuring. For the final determination, we intend to examine further the liquidation of ILVA Residua's assets as well as any liquidation costs not represented on ILVA Residua's 1993 financial statements. Additionally, we have subtracted the amount of debt (*i.e.*, 253 billion lire) that was tied to Cogne Acciai Speciali (CAS), an ILVA subsidiary privatized in 1993, which was left behind in ILVA. *See Wire Rod from Italy* at 40478. We have attributed ILVA Residua's remaining liabilities to AST based on the proportion of assets assigned to AST to the total assets assigned to AST and ILP and considered this amount as debt forgiveness.

We treated the debt forgiveness to AST as a non-recurring grant because it was a one-time, extraordinary event. The discount rate we used in our grant formula included a risk premium based on our determination that ILVA was uncreditworthy in 1993. (For purposes of the final determination we will examine the issue of whether it is more appropriate to analyze the creditworthiness of AST rather than ILVA in 1993.) We followed the methodology described in the *Change in Ownership* section above to determine the amount appropriately allocated to AST after its privatization. We divided this amount by AST's total sales during the POI. Accordingly, we determine the estimated net subsidy to be 4.19 percent *ad valorem* for AST.

D. Law 796/76: Exchange Rate Guarantees

Law 796/76 established a program to minimize the risk of exchange rate fluctuations on foreign currency loans. All firms that had contracted foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CER) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculated loan payments based on the lira-foreign currency exchange rate in effect at the time the loan was approved. The program established a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to 2 percent. If the lira depreciated against the foreign currency, AST was still able to purchase foreign currency at the established ceiling rate, and the UIC would absorb a loss in the amount of the difference between the ceiling rate and the actual rate. If the lira appreciated against the foreign currency, the UIC would realize a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992 by Decree Law 333/92. However, the exchange rate guarantees continue on any loans outstanding after that date. AST received benefits from this program on interest and principal payments for two ECSC loans outstanding during the POI.

We preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, to the extent that the lira depreciates against the foreign currency beyond the 2 percent band. When this occurs, the borrower receives a benefit in the amount of the difference between the 2 percent floor and the actual exchange rate. The GOI did not provide information regarding the nature of the enterprises who have used this program as requested. However, we have previously found the steel industry to be a dominant user of the exchange rate guarantees provided under Law 796/76 and, on this basis, preliminarily determine that the program is specific under section 771(5A)(D) of the Act. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy*, 60 FR 31996 (June 19, 1995). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we have treated benefits under this program as recurring grants. The benefit was calculated as the difference between the total payment due (*i.e.*, the sum of interest, principal, and any guarantee fees paid by AST) in foreign currency converted at the current exchange rate minus the total payment due in foreign currency at the established (ceiling) rate. We divided this amount by AST's total sales during the POI. Accordingly, we determine the countervailable subsidy to AST for this program to be 0.86 percent *ad valorem*.

E. Law 675/77

Law 675/77 was designed to provide GOI assistance in the restructuring and reconversion of Italian industries. There are six types of assistance available under this law: (1) Grants to pay interest on bank loans; (2) mortgage loans provided by the Ministry of Industry (MOI) at subsidized interest rates; (3) grants to pay interest on loans financed by IRI bond issues; (4) capital grants for the South; (5) VAT reductions on capital good purchases for companies in the South; and (6) personnel retraining grants. During the POI, AST received assistance under grants to pay interest on loans financed by IRI bond issues.

Under Law 675/77, IRI issued bonds to finance restructuring measures of companies within the IRI group. The proceeds from the sale of the bonds were then re-lent to IRI companies. During the POI, AST had two outstanding loans financed by IRI bond issues for which the effective interest rate was reduced by interest contributions made by the GOI. In addition to interest contributions on these variable rate long-term loans, the GOI also made other financial contributions relating to ''expenses'' associated with the loans.

We preliminarily determine that these loans constitute a countervailable subsidy within the meaning of section 771(5) of the Act. These loans provide a financial contribution, consistent with section 771(5)(D)(i) of the Act.

With regard to specificity, a number of different industrial sectors have received benefits under Law 675/77. However, in *Electrical Steel from Italy*, the Department determined that assistance under this law was specific on the basis of dominant use. This determination was based on the fact that the steel industry received 34 percent of the benefits. See *Electrical Steel from Italy* at 18361. In the instant proceeding, the GOI submitted additional information regarding the distribution of benefits under this program. While it is unclear whether this information reflects the distribution of benefits at the time the subsidies in question were received, the new information is nevertheless consistent with the previous finding of specificity.

To measure the benefit from these loans, we compared the benchmark interest rate to the amounts paid by AST on these loans during the POI. We divided the resulting difference by AST's total sales during the POI.

Accordingly, we determine the estimated net subsidy from this program to be 0.10 percent *ad valorem*.

F. Pre-Privatization Employment Benefits (Law 451/94)

Law 451/94 authorized early retirement packages for Italian steel workers from 1994–1996. The program, as described by the GOI, was designed to comply with the EC's reorganization of the iron and steel industry, specifically in regards to reducing productive capacity. The law entitled men of at least 50 years of age and women of 47 years of age with at least 15 years of pension contributions to retire early. AST's employees made use of this program in each year from 1994 through 1996.

In *Wire Rod from Italy*, we determined that large Italian companies such as AST cannot simply lay off workers, but instead must use one of the GOI's special early retirement programs. Hence we reviewed the early retirement programs that would be widely used by Italian companies in order to compare those programs to the program established under Law 451. In *Wire Rod from Italy*, we determined that the closest program to that of Law 451 is the Cassa Integrazione Guadagni (CIG) program. Like Law 451, CIG is available to workers whose companies are restructuring, reorganizing, and/or downsizing.

Unlike Law 451, the CIG program was not developed for particular Italian industries and is used by a wide variety of them. Therefore, CIG serves as a benchmark to determine what costs AST would have incurred in laying off employees had it not been able to take advantage of Law 451. Under CIG, a company must pay a small percentage of the employees' salaries and continue to set aside the mandatory severance contributions under Article 2120 of the Italian Civil Code for 3 years. However, under Law 451, the employee/company relationship terminates immediately, and the company does not have to continue to set aside these benefits. Consequently, Law 451 relieves steel companies of costs that otherwise would incur if they participated in more widely available early retirement programs.

We preliminarily determine that the early retirement benefits provided under Law 451/94 are a countervailable subsidy under section 771(5) of the Act. We find that this program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, because Law 451 relieves the company of costs it would have normally incurred. Because Law 451 was developed for and exclusively used by the steel industry, we preliminarily determine that Law 451 is specific within the meaning of section 771(5A)(D) of the Act.

Consistent with the Department's practice, we have treated benefits to AST under Law 451 as recurring grants expensed in the year of receipt. *See GIA* at 37226 and *Wire Rod from Italy* at 40480. To calculate the benefit received by AST, we found the difference between the costs AST would have incurred during the POI had it used the CIG program and the costs it did incur under Law 451. We divided this benefit by AST's total sales during the POI. Accordingly, we determine the countervailable subsidy for this program to be 0.23 percent *ad valorem* for AST.

Programs of the European Union

G. ECSC Article 54 Loans

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the iron and steel industries to finance modernization and the purchase of new equipment. Eligible companies apply directly to the EU for up to 50 percent of the cost of an industrial investment project. The Article 54 loan program is financed by loans taken out by the European Union (EU), which are then refinanced at slightly higher interest rates than those at which the EU obtained them. AST had two long-term, fixed-rate loans outstanding during the POI under this program.

We preliminarily determine that these loans constitute a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act. The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy* at 18362 and *Certain Steel from Italy* at 37335 because loans under this program are provided only to iron and steel companies. The EU has also indicated on the record of this investigation that Article 54 ECSC loans are for steel undertakings. Thus, no new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of our previous finding that this program is specific.

AST had two long-term, fixed-rate loans outstanding during the POI, each one denominated in a foreign currency. Consistent with *Electrical Steel from Italy* at 18362, we have used the lira-denominated interest rate discussed in the *Subsidies Valuation Information* section of this notice as our benchmark interest rate. The interest rate charged on one of AST's two ECSC loans was lowered part way through the life of the loan. Therefore, for the purpose of calculating the benefit, we have treated this loan as if it were contracted on the date of this rate adjustment. We used the outstanding principal as of that date as the new principal amount, to which the new, lower interest rate applied. As our interest rate benchmark, we used the long-term, lira-based rate in effect on the date of the downward rate adjustment.

To calculate the benefit under this program, we employed the Department's standard long-term loan methodology. We calculated the grant equivalent and allocated it over the life of each loan. We followed the methodology described in the *Change in Ownership* section above to determine the amount appropriately allocated to AST after its privatization. We divided this benefit by AST's total sales during the POI. Accordingly, we determine the countervailable subsidy to AST for these to loans together to be 0.13 percent *ad valorem*.

H. European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EU, was established to improve workers' opportunities through training and to raise their standards of living throughout the community by increasing their employability. Like other EU structural funds, there are five different Objectives (sub-programs) identified under ESF: Objective 1 covers projects located in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 funds training for employees in companies undergoing restructuring, and Objective 5 pertains to agricultural areas.

During the POI, AST received ESF assistance under Objectives 2 and 4. The Objective 2 funding was to retrain production, mechanical, electrical maintenance, and technical workers. The Objective 4 funding was to train AST's workers to increase their productivity.

The Department considers training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy*, 61 FR 30287, 30294 (June 14, 1996) (*Pasta From Italy*). Since companies normally incur the costs of training to enhance the job-related skills of their own employees, and we have no information on the record to indicate that this training was not for this

purpose, we preliminarily determine that ESF funding under both Objectives relieves AST of an obligation it would have otherwise incurred.

Therefore, we preliminarily determine that the ESF grants received by AST are countervailable within the meaning of section 771(5) of the Act. The ESF grants are a financial contribution as described in section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grant.

Consistent with prior cases, we have examined the specificity of the funding under each Objective separately. *See Wire Rod from Italy* at 40487. In *Pasta From Italy* at 30291, the Department determined that Objective 2 funds provided by the EU and the GOI were regionally specific because they were limited to areas within Italy which are in industrial decline. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. In this case, the Objective 2 grant received by AST was funded by the EU, the GOI, and the regional government of Umbria acting through the provincial government of Terni. Because we have not been provided with information from the regional government as to the distribution of grants it has provided under Objective 2, we are assuming for purposes of this preliminary determination, as adverse facts available under section 776(b) of the Act, that the funds provided by the provincial government of Terni are also specific.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion is *de jure* specific because its availability is limited on a regional basis within the EU. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). See *Wire Rod from Italy* at 40487. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

The Department normally considers the benefits from worker training programs to be recurring. *See GIA* at 37255. However, consistent with the Department's past practice and our understanding that these grants relate to specific, individual projects which require separate government approval, we are treating these benefits as non-recurring grants. *See Wire Rod from Italy* at 40488 and *Pasta from Italy* at 30295. Because the benefits received under both Objectives 2 and 4 are less than 0.5 percent of AST's sales during the relevant years, we have expensed these grants in the year of receipt. Two of these grants were received during the POI. For these grants, we divided this benefit by AST's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.01 percent *ad valorem* for ESF Objective 2 and 0.03 percent *ad valorem* for ESF Objective 4.

II. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses, we determine that the company under investigation did not apply for or receive benefits under the following programs during the POI:

A. Benefits from the 1982 Transfer of Lovere and Trieste to Terni (called Benefits Associated With the 1988–90 Restructuring in the *Initiation Notice*)
B. Decree Law 120/89: Recovery Plan for the Steel Industry
C. Law 181/89: Worker Adjustment and Redevelopment Assistance
D. Law 345/92: Benefits for Early Retirement
E. Law 706/85: Grants for Capacity Reduction
F. Law 488/92: Aid to Depressed Areas
G. Law 46/82: Assistance for Capacity Reduction
H. Loan to KAI for Purchase of AST
I. Debt Forgiveness: 1981 Restructuring Plan
J. Law 675/77: Mortgage Loans, Personnel Retraining Aid and VAT Reductions
K. Law 193/84: Interest Payments, Closure Assistance and Early Retirement Benefits
L. Law 394/81: Export Marketing Grants and Loans
M. Law 341/95 and Circolare 50175/95
N. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid
O. European Regional Development Fund
P. Resider II Program and Successors
Q. Law 227/77: Export Financing and Remission of Taxes

III. Programs For Which We Need More Information

AST Participation in the THERMIE Program

The EU provided funds to AST for the development of a demonstration project (pilot plant) through an EU program promoting research and development in the field of non-nuclear energy (THERMIE). The objective of the THERMIE program is to design and demonstrate more efficient, cleaner, and safer technologies for energy production and use. The THERMIE program is part of a larger program categorized under the EU's Fourth Framework Programme which covers activities in research and technological development from 1994–1998.

The objective of AST's demonstration plant is to reduce energy consumption in the production of stainless steel by eliminating some of the traditional production steps through the adoption of ''strip casting'' technology. The EU has requested noncountervailable (green light) treatment for this project as a research and development subsidy under section 771(5B)(B)(ii)(II) of the Act.

In evaluating this request, the statute requires the Department to make a finding that all five specifically enumerated conditions of section 771(5B)(B)(i) of the Act have been met before according green light status to a research subsidy. One of these criteria specifies that the instruments, equipment, land, or buildings must be used exclusively and permanently (except when disposed of on a commercial basis) for the research activity.

Information contained on the record of this proceeding indicates that the Terni project can be converted to commercial use. Furthermore, there is no provision in the program mandating that the demonstration plant be ''disposed of on a commercial basis'' if it is to be used for commercial production. Therefore, we preliminarily determine that the EU's funding of the Terni project does not meet all of the criteria for a noncountervailable research subsidy as mandated by the Act and is not entitled to green light treatment.

However, it is not clear from the current record if this program benefits the production of the subject merchandise. The Terni project description indicates that the funds will cover the design, construction, and operation of a pilot plant which would demonstrate the commercial viability of strip casting technology. We do not have sufficient information at this time to determine if this technology and the demonstration plant could benefit subject merchandise. After we collect additional information and conduct verification, we will prepare an analysis memorandum addressing the countervailability of this program, and provide all parties an opportunity to comment on our analysis.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondent prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual subsidy rate for AST. Since AST is the only respondent in this investigation, we have also used its rate as the all-others rate. In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel plate in coils from Italy.

Company Ad Valorem Rate

AST–14.75 percent
All Others–14.75 percent

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 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.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the publication of this notice. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated; August 28, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–23912 Filed 9–3–98; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–832]

Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Cassel or Kristen Johnson, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of stainless steel plate in coils from the Republic of Korea.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Lukens Inc., United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Initiation of Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa,* 63 FR 23272 (April 28, 1998) (*Initiation Notice*)), the following events have occurred. On May 4, 1998, we issued countervailing duty questionnaires to the Government of Korea (GOK), and the producers/exporters of the subject merchandise. On June 1, 1998, we postponed the preliminary determination of this investigation until no later than August 28, 1998. *See Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa,* 63 FR 31201 (June 8, 1998).

We received responses to our initial questionnaires from the GOK and Pohang Iron & Steel Company, Ltd. (POSCO), the producer of the subject merchandise, on July 1, 1998. In addition, we also received responses from five trading companies which are involved in exporting the subject merchandise to the United States: POSCO Steel Service & Sales Company, Ltd. (POSTEEL), Hyosung Corporation (Hyosung), Samsun Corporation (Samsun), Samsung Corporation (Samsung), and Sunkyong Ltd. (Sunkyong) on July 1, 1998. On July 22, 1998, we issued supplemental questionnaires to all of the responding parties and received their responses on August 3, 6, and 7, 1998. We also issued supplemental questionnaires on August 11, 1998 and August 19, 1998, and received the responding parties' responses on August 19, 1998, and August 24 and 25, 1998, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19

CFR Part 351 and published in the **Federal Register** on May 19, 1997 (62 FR 27295).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because the Republic of Korea (Korea) is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On May 28, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*See Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, Korea, South Africa, and Taiwan,* 63 FR 29251).

Alignment With Final Antidumping Duty Determination

On May 27, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Investigations: Stainless Steel Plate in Coils From Belgium, Canada, Italy, Republic of South Africa, Republic of Korea, and Taiwan,* 63 FR 20580 (April 27, 1998). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel plate in coils.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: In the *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea,* 58 FR 37338 (July 9, 1993) (*Steel Products from Korea*), we stated that the three-year corporate bond yield ''was the best indicator of a market rate in Korea.'' *See* 58 FR at 37346. In conformance with that prior decision, we have used as our long-term benchmark the three-year corporate bond yield. For variable rate loans for which the benefit is calculated on the interest payment during the POI, we have used as our benchmark the three year over-the-counter corporate bond rate, as reported by the GOK in its August 19, 1998, questionnaire response (public version on file in the Department's Central Records Unit, Room B–099). We have also used the three-year corporate bond yield to calculate the benefit from fixed rate loans provided under the Energy Savings Fund.

Benchmarks for Short-Term Financing: For those programs which require the application of a short-term interest rate benchmark, we used as our benchmark a company-specific weighted-average, short-term interest rate for won-denominated loans for the POI. Each respondent provided to the Department its respective company-specific interest rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the *General Issues Appendix (GIA),* 58 FR at 37227, which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37225 (July 9, 1993). However, in *British Steel plc* v. *United States,* 879 F. Supp. 1254 (CIT 1995) (British Steel I), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). Thus, we are determining the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16551 (April 7, 1997).

In this investigation, the Department has followed the Court's decision in *British Steel I and II,* and examined information submitted by POSCO as to the AUL of its assets. In the course of this examination, we found that POSCO included special accelerated depreciation expenses and a depreciation of salvage value in its calculated AUL. POSCO reported that the accelerated depreciation is permitted in accordance with Korean GAAP for plant and equipment which operate for a standard eight-hour work day, and for facilities and equipment which operate longer than a standard eight-hour day. Since POSCO is a producer of steel products, it appears to be the company's normal course of business to operate its facilities longer than a standard eight-hour day. Therefore, we disagree with POSCO's calculation of its AUL, and have recalculated the company's AUL excluding these adjustments to depreciation expenses. Because POSCO did not break-out separately the accelerated depreciation and depreciation of salvage value expenses which are reported under the category ''special charges to depreciation expense,'' we recalculated POSCO's

AUL excluding all of these adjustments. Based upon our recalculation of the company's AUL, we calculated an AUL of 12 years for POSCO.

Treatment of Subsidies Received by Trading Companies: During the POI, POSCO exported the subject merchandise to the United States through five trading companies. We required that the five trading companies provide responses to the Department with respect to the export subsidies under investigation. One of the trading companies, POSTEEL, is affiliated with POSCO within the meaning of section 771(33)(E) of the Act because POSCO owned 95.3 percent of POSTEEL's shares as of December 31, 1997. The other four trading companies are not affiliated with POSCO. We required responses from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer, with those provided to the exporter.

Under section 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a ''combination'' rate for each combination of an exporter and supplying producer. However, as noted in the ''Explanation of the Final Rules'' (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final rule,* 62 FR 27296; 27303 (May 19, 1997).

In this investigation, we preliminarily determine that it is not appropriate to establish combination rates. This determination is based on two main facts: First, the majority of the subsidies conferred upon the subject merchandise were received by the producer, POSCO. Second, the difference in the levels of subsidies conferred upon the subject merchandise among the individual trading companies is insignificant. Therefore, combination rates would serve no practicable purpose because the calculated subsidy rate for POSCO/Hyosung or POSCO/Sunkyong or POSCO and any of the other trading companies would effectively be the same rate. For these reasons we are not calculating combination rates in this investigation. Instead, we have only calculated one rate for the subject merchandise, all of which is produced by POSCO.

To include the subsidies received by the trading companies, which are conferred upon the export of the subject merchandise, in the calculated *ad valorem* subsidy rate, we used the following methodology. For each of the five trading companies, we calculated the benefit attributable to the subject merchandise and factored that amount into the calculated subsidy rate for the producer. In each case, we determined the benefit received by the trading companies for each export subsidy and weight-averaged the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. This calculated *ad valorem* subsidy was then added to the subsidy calculated for POSCO. Thus, for each of the programs below, the listed *ad valorem* subsidy rate is cumulative of the countervailable subsidies received by both the trading companies and POSCO.

I. Programs Preliminarily Determined To Be Countervailable

A. Direction of Credit

In the 1993 investigation of *Steel Products from Korea,* the Department determined (1) that the GOK influenced the practices of lending institutions in Korea; (2) regulated long-term loans were provided to the steel industry on a selective basis; and (3) the selective provision of these regulated loans resulted in a countervailable benefit. Accordingly, all long-term loans received by the producers/exporters of the subject merchandise were treated as countervailable. The determination in that investigation covered all long-term loans bestowed through 1991.

In this investigation, petitioners allege that the GOK continued to control the practices of lending institutions in Korea through the POI, and that the steel sector received a disproportionate share of low-cost, long-term credit, resulting in countervailable benefits being conferred on the producers/exporters of the subject merchandise. Petitioners assert, therefore, that the Department should countervail all long-term loans received by the producers/exporters of the subject merchandise that were still outstanding during the POI.

1. The GOK's Credit Policies Through 1991

As noted above, we previously found significant GOK control over the practices of lending institutions in Korea through 1991, the period investigated in *Steel Products From Korea.* This finding of control was determined to be sufficient to constitute a government program and government action. *See Steel Products from Korea,* 58 FR at 37342. We also determined that (1) the Korean steel sector, as a result of the GOK's credit policies and control over the Korean financial sector, received a disproportionate share of regulated long-term loans, so that the program was, in fact, specific, and (2) that the interest rates on those loans were inconsistent with commercial considerations. *Id.* at 37343. Thus, we countervailed all long-term loans received by the steel sector from all lending sources.

In this investigation, we provided the GOK with the opportunity to present new factual information concerning the government's credit policies prior to 1992, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea.* Therefore, we preliminarily determine that the provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. This finding is in conformance with the Statement of Administrative Action (SAA), which states that ''section 771(5)(B)(iii) encompasses indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable.'' SAA, accompanying H.R. 5110 (H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess.) (1994), at 926. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the ''Subsidies Valuation'' section, above.

We also preliminarily determine that all regulated long-term loans provided to the producers/exporters of the subject merchandise through 1991 were provided to a specific enterprise or industry, or group thereof, within the meaning of section 771(5A)(D)(iii)(III) of the Act. This finding is in conformance with our determination in *Steel*

Products from Korea. See, 58 FR at 37342.

POSCO was the only producer of the subject merchandise, and POSCO received long-term loans prior to 1992 that were still outstanding during the POI. These included loans with both fixed and variable interest rates. To determine the benefit from the regulated loans with fixed interest rates, we applied the Department's standard long-term loan methodology and calculated the grant equivalent for the loans. For POSCO's variable-rate loans, we compared the amount of interest paid during the POI on the regulated loans to the amount of interest that would have been paid at the benchmark rate. We then summed the benefit amounts from the loans attributable to the POI and divided the total benefit by POSCO's total sales. On this basis, we determine the countervailable subsidy to be 0.15 percent *ad valorem*.

2. The GOK's Credit Policies From 1992 Through 1997

We have also examined the GOK's credit policies during the period 1992 through 1997. Because of the complexity of this issue and the conflicting information on the record, which we discuss below, we will continue to seek additional information on whether the GOK's practices during this period confer a countervailable subsidy. After we collect additional information and conduct verification, we will prepare an analysis memorandum addressing the countervailability of the GOK's credit policies during this period and provide all parties with an opportunity to comment on our analysis.

In its questionnaire responses, the GOK asserts that there was no government policy to direct long-term credit to the Korean steel industry during the period 1992 through 1997, and that it was not involved in the lending activities of Korean financial institutions. The GOK states that the lending decisions and loan distributions of financial institutions in Korea reflect commercial considerations. The GOK states that its role in the financial sector is limited to monetary and credit policies as well as bank supervision and examination.

Evidence submitted to the Department by the GOK indicates that some deregulatory measures affecting the Korean financial sector have been taken since 1991. These include a four-stage interest rate deregulation plan that, according to the GOK, virtually eliminated all government control over deposit and lending rates in Korean won. For example, rates on corporate bonds and all bank loans, other than those assisted by Bank of Korea (BOK) rediscounts, were deregulated by November 1993. Also, information submitted to the Department by the GOK indicates that there have been reforms to the process by which commercial bank presidents are selected. The reforms include a procedure, implemented in 1993, whereby bank chairmen are selected by committees consisting of shareholder representatives, corporate clients, and ex-bank presidents. In 1997, the GOK further amended the Banking Act to prescribe that a candidate for bank president, recommended by a candidate recommendation committee, must be elected by an affirmative vote of a two-thirds majority of the non-permanent directors of the bank.

However, other information in the record indicates that the GOK may still exert substantial influence over the lending decisions of financial institutions. For example, recent GOK policies appear to be aimed, in part, at promoting certain sectors of the economy, such as high technology and small and medium sized enterprises (SMEs). *See, e.g.,* ''KDB Financial Support for Korean Industries,'' from the Korea Development Bank's appended to ''Memorandum From Case Analyst to File, Re: Articles on Korean Financial System,'' (on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099) (''Korean Financial System Memo''). Other official information on the record appears to suggest that the GOK may have continuted the practice of directing credit after 1991. Independent commentators have also noted the GOK's continued involvement in the financial system. *See, e.g., Deep Pockets,* ''The Economist,'' (May 3, 1997), appended to Korean Financial System Memo; *Financing Foreign Operations, South Korea,* The Economist Intelligence Unit, 1997, page 20, appended to Korean Financial System Memo; *The Korean Economy in 1997: Crisis and Response,* by Thomas Byrne, appended to Korean Financial System Memo.

As noted above, in light of this conflicting information, at verification and during the course of this proceeding, we will gather additional information on this issue in order to make a determination as to whether credit provided after 1991 is countervailable. During verification, we plan to meet with various individuals knowledgeable about the financial sector in Korea in order to gather information on the differences between the GOK's credit policies in the 1980s and the 1990s; the lending practices of government-owned banks and of commercial lending institutions; the role of securities (public and corporate bonds) in the financial system; and the impact of the GOK's financial liberalization on the lending practices of Korean banks after 1991.

B. Loans from the Energy Savings Fund

Established in accordance with Article 51 of the ''Rationalization of Energy Utilization Act'' (Energy Use Act), the Energy Saving Fund provides financing at below-market interest rates for investment by businesses in facilities that rationally and efficiently use energy. Overall responsibility for the program lies with the Ministry of Industry and Energy (MIE), but the operation and management of the program is entrusted to the Korea Energy Management Corporation (KEMC). While the Energy Use Act was repealed in 1995, the MIE, under the new ''Energy Use Rationalization Act,'' provides financing for this program from special government accounts.

Korean companies obtain financing under this program by submitting an application to the KEMC. If the KEMC is satisfied that the applicant's business plans are intended for the rationalization of energy use, it will then issue a recommendation, and forward the company's application to a bank. The KEMC will transfer funds to the bank, which will in turn provide the funds to the applicant. The interest rate charged under the Energy Saving Fund was set at 7.0 percent. POSCO paid interest on two Energy Saving Fund loans during the POI, both of which were received in 1994, and the interest rates paid by POSCO were less than the 7.0 percent rate prescribed by the program.

This program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act and, in accordance with section 771(5)(E)(ii) of the Act, provides a benefit to the recipient based on the difference between the interest rate on the program loan and the benchmark rate described in the ''Subsidies Valuation'' section, above. We preliminarily determine that the loans provided to POSCO were specific within the meaning of section 771(5A)(D)(iii)(IV) of the Act, because the interest rate charged to POSCO was less than the program interest rate prescribed by the program's regulations.

To calculate the benefit from the Energy Savings Loans, we employed the Department's standard long-term loan methodology, using as our benchmark the rate described in the ''Subsidies Valuation'' section of the notice, above.

We divided the benefit attributable to the POI by POSCO's total sales during 1997. On this basis, we preliminarily determine the countervailable subsidy to be less than 0.005 percent *ad valorem*.

C. Kwangyang Bay

Petitioners requested that the Department investigate whether the GOK's infrastructure development at Kwangyang Bay continues to provide a countervailable subsidy to POSCO's steel production. The Department previously determined that the Korean government's infrastructure development at Kwangyang Bay constituted a specific countervailable subsidy to POSCO, because POSCO was found to be the predominant user of the infrastructure. *See Steel Products from Korea*, 58 FR at 37346–47. Because POSCO still produces steel products at Kwangyang Bay, we requested information on this program to determine whether the GOK has made additional investments since 1991, at Kwangyang Bay.

1. GOK Infrastructure Investments at Kwangyang Bay Pre-1992

In *Steel Products from Korea*, the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. During this period of time, the GOK's investments at Kwangyang Bay included: construction of an industrial waterway, construction of a railroad station, construction of a road to Kwangyang Bay, dredging of the harbor, and construction of three finished goods berths. We determined that the GOK's provision of infrastructure to POSCO at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea*, 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea*, which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred. The Department used as its discount rate the three-year corporate bond rate on the secondary market, which was the average cost of long-term fixed rate debt in Korea at that time.

To determine the benefit conferred to POSCO during the POI, we applied the Department's standard grant methodology and allocated the GOK's infrastructure investments over a 12-year time period using the AUL which we calculated for POSCO in this investigation. See the allocation period discussion under the ''Subsidies Valuation Information'' section above. We used as our discount rate the three-year corporate bond rate on the secondary market used in *Steel Products from Korea*. We then summed the benefits received by POSCO during 1997, from each of the GOK's yearly investments over the period 1986–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1997. On this basis, we preliminary determine a countervailable subsidy of 0.23 percent *ad valorem* for the POI.

2. GOK Infrastructure Investments at Kwangyang Bay Post-1991

The GOK has made the following additional infrastructure investments at Kwangyang Bay since 1991: construction of a road from Kwangyang to Jinwol, construction of a container terminal, and construction of the Jooam Dam. The GOK states that pursuant to Article 29 of the Industrial Sites and Development Act, it is the national and local governments' responsibility to provide basic infrastructure facilities throughout the country, and the nature of the infrastructure depends on the specific needs of each area and/or the types of industries located in a particular area. Depending upon the type of infrastructure built, the GOK provides services to companies through the use of the infrastructure facilities and charges fees for these services based on published tariff rates applicable to all users.

With respect to the GOK's post-1991 infrastructure investments at Kwangyang Bay, the GOK argues that the construction of the infrastructure was not for the benefit of POSCO. The GOK reports that the purpose of developing the Jooam Dam, which was fully constructed in 1993, was to meet the rising demand for water by area businesses and households. The supply capacity of the Sueochon dam, which was constructed prior to 1991, could not meet the area's water needs and therefore a second dam at Kwangyang Bay was built. The GOK further reports that the construction of the Jooam Dam did not benefit POSCO because POSCO receives all of its water supply from the Sueochon Dam. In *Steel Products from Korea*, we determined that POSCO was the predominant user of the Sueochon Dam, and on this basis treated the government's full investment costs for constructing that dam as countervailable subsidies benefitting POSCO.

The GOK developed the container terminal according to the Kwangyang Container Terminal Development Plan. The purpose of the container terminal was to provide another major southern port with a container terminal in order to relieve congestion at Pusan, and to encourage the further commercial development of the region. The GOK states that, given the nature of the merchandise imported, produced, and exported by POSCO at Kwangyang Bay, this container terminal cannot be used by POSCO's operations. According to the responses from the GOK and POSCO, neither steel products nor steel inputs are shipped through the container terminal at Kwangyang Bay, nor, given the nature of those products, would they be shipped through the container terminal.

The road from Kwangyang to Jinwol was constructed in 1993. The road between the two cities is a by-pass route constructed to relieve a transportation bottleneck in the area. The GOK states that this is a general service, public access road available for, and used by, all residents and businesses in the area of Kwangyang Bay. According to the GOK response, the reason for building the public highway was not to serve POSCO, but to provide general infrastructure to the area as part of the GOK's continuing development of the country.

Based on the information on the record regarding the GOK's infrastructure investments at Kwangyang Bay since 1991, we preliminarily determine that these investments are not providing countervailable benefits to POSCO. However, we will further investigate the GOK's infrastructure investments at verification to ascertain whether, in fact, the facilities were built for POSCO's benefit.

D. Port Facility Fees

The GOK reports in its August 7, 1998, questionnaire response that, since 1991, POSCO has built new port facilities at Kwangyang Bay, at the company's own expense. However,

since title to port facilities must be transferred to the GOK in accordance with Article 17–1 of the Harbor Act, POSCO had to revert these facilities to the GOK. In return, POSCO has the right to use the port facilities free of charge, and can charge other users a usage fee until the company recovers all of its investment costs.

In the 1993 investigation of *Steel Products from Korea,* the Department found that POSCO, which built port berths at Kwangyang Bay, but, by law, had to deed them to the GOK, was exempt from paying fees for use of the berths. POSCO was the only company entitled to use the berths at the port facility free of charge. The Department determined that because this privilege was limited to POSCO, and because the privilege relieved POSCO of costs it would otherwise have had to pay, POSCO's free use of the berths at Kwangyang Bay constituted a countervailable benefit. The Department stated that each exemption from payment of the fees, or ''reimbursement'' to POSCO, creates a countervailable benefit because the GOK is relieving POSCO of an expense the company would have otherwise incurred. *See Steel Products from Korea,* 58 FR at 37347–348.

With respect to the present investigation, because POSCO remains exempt from paying port facility fees which it otherwise would have to pay, and therefore the government is not collecting revenue that it is otherwise due, we preliminarily determine that POSCO's free use of the port facilities provides a financial contribution to the company within the meaning of section 771(5)(D)(ii) of the Act. We also preliminarily find that the exemption from paying port facility charges is a specific subsidy under section 771(5A)(D)(iii)(IV) of the Act, because POSCO was the only company exempt from paying port facility fees during the POI.

Because the exemption of the port facility fees are not ''exceptional'' benefits and are received automatically on a regular and predictable basis without further government approval, we preliminarily determine that this fee exemption provides a recurring benefit to POSCO. Therefore, we have expensed the benefit from this program in the year of receipt. *See GIA,* 58 FR at 37226. To measure the benefit which POSCO received during the POI for the free use of the facilities, we calculated the amount of the fees which POSCO would have had to pay for the use of the facilities during the POI. We then divided this benefit amount by POSCO's total sales for the POI. On this basis, we preliminarily determine that POSCO received a countervailable subsidy of 0.03 percent *ad valorem* during the POI.

E. Short-Term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea,* 58 FR at 37350. Petitioners allege that this program may also benefit the producers and/or exporters of the subject merchandise. In this investigation, the GOK reports that the BOK, under the ''Detailed Rules of Trade Financing Related to the Aggregate Ceiling Loans'' (Detailed Rules), provides discounts on foreign trade bills to commercial banks, which, in turn, extend short-term loans to exporters. Under the aggregate credit ceiling system established in 1994, the BOK allocates a credit ceiling every month to each commercial bank, including branches of Korean and foreign banks. This ceiling is based on each bank's loan performance *i.e.*, each bank's discounting of commercial loans, foreign trade financing, and loans for the production of parts and material. These banks then provide loans to exporters using the funds received from the BOK and funds generated from their own sources to discount trade bills.

There are two types of trade financing: production financing and raw material financing. A bank provides production financing when a company needs funds for the production of export merchandise or the production of raw materials used in the production of exported merchandise. A bank extends raw material financing to exporters which require financing for the importation or local purchase of raw materials used in the production of exported merchandise.

During the POI, POSCO was the only producer/exporter of the subject merchandise that received export financing. POSCO reports that the company entered into a credit ceiling loan agreement with a commercial bank in accordance with Articles 12 and 13 of the Detailed Rules to receive production financing. The loan agreement outlines the maximum amount of credit which POSCO is eligible to receive, the period covered by the loan agreement, the applicable interest rate, and the penalty interest rate. POSCO states that when the company purchases raw materials from a supplier on a letter of credit basis, the supplier presents the letter of credit to POSCO's bank for payment. The bank, in turn, pays the purchase price to the supplier and debits the trade loan against POSCO's line of credit. POSCO pays the full amount of each trade loan after about 90 days, which is the average period from production to sales. Interest is paid by POSCO against each trade loan at the time the loans are received. POSCO reported that the company paid all of its export financing during the POI in a timely manner and incurred no overdue interest penalties. In accordance with section 771(5A)(B) of the Act, we preliminary determine that this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. A financial contribution is provided to POSCO under this program within the meaning of section 771(5)(D)(i) of the Act. In order to determine whether this export financing program confers a countervailable benefit to POSCO, we compared the interest rate POSCO paid on the export financing received under this program during the POI with the interest rate POSCO would have paid on a comparable short-term commercial loan. See discussion above in the ''Subsidies Valuation Information'' section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.*, interest is paid up-front at the time the loans are received), the effective rate paid by POSCO on its export financing is a discounted rate. Therefore, it was necessary to derive from POSCO's company-specific weighted-average interest rate for short-term won-denominated commercial loans, a discounted benchmark interest rate. We compared this discounted benchmark interest rate to the interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we preliminarily determine that this program confers countervailable benefits because the interest rates charged on the loans were less than what POSCO would have had to pay on a comparable short-term commercial loan.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable discounted benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. Because POSCO was unable to segregate its production financing applicable to only subject merchandise exported to the United States, we divided the benefit derived from the loans by total exports. On this basis, we preliminarily

determine that POSCO received from this program during the POI a countervailable subsidy of less than 0.005 percent ad valorem.

F. Reserve for Export Loss—Article 16 of the TERCL

Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL), a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. During the POI, Samsun was the only exporter of the subject merchandise which received benefits under this program.

We preliminarily determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 1996, by the corporate tax rate for 1996. We treated the tax savings on these funds as a short-term interest-free loan. Accordingly, to determine the benefit, the amount of tax savings was multiplied by the company's weighted-average interest rate for short-term won-denominated commercial loans for the POI, described in the ''Subsidies Valuation Information'' section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the ''Subsidies Valuation Information'' section of this notice, we preliminarily determine a countervailable subsidy of less than 0.005 percent ad valorem.

G. Reserve for Overseas Market Development—Article 17 of the TERCL

Article 17 of the TERCL operates in a manner similar to Article 16, discussed above. This provision allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters.

The following exporters of the subject merchandise received benefits under this program during the POI: Hyosung, POSTEEL, Samsun, Samsung, and Sunkyong.

We preliminarily determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. We used as our benchmark interest rate, each trading company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, described in the ''Subsidies Valuation Information'' section above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the ''Subsidies Valuation Information'' section of this notice, we preliminarily calculate a countervailable subsidy of 0.01 percent *ad valorem* for this program during the POI.

H. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in later tax years. During the POI, POSCO used various investment tax credits received under the TERCL to reduce its net tax liability. In *Steel Products from Korea,* we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, there were changes in the statute effective in 1995, which have caused us to revisit the countervailability of the investment tax credits.

POSCO claimed or used the following tax credits in its fiscal year 1996 income tax return: (1) Tax credits for investments in facilities for research and experimental use and investments in facilities for vocational training or assets for business to commercialize new technology under Article 10; (2) tax credits for vocational training under Article 18; (3) tax credits for investment in productivity improvement facilities under Article 25; (4) tax credits for investment in specific facilities under Article 26; (5) tax credits for temporary investment under Article 27; and (6) tax credits for specific investments under Article 71 of TERCL. For these specific tax credits, a company normally calculates its authorized tax credit based upon three or five percent of its investment, *i.e.*, the company receives either a three or five percent tax credit. However, if a company makes the investment in domestically-produced facilities under these Articles, it receives a 10 percent tax credit. Under section 771(5A)(C) of the Act, which became effective on January 1, 1995, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies receive a higher tax credit for investments made in domestically-produced facilities, we preliminarily determine that investment tax credits received under Articles 10, 18, 25, 26, 27, and 71 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, we also preliminarily determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. Therefore, we preliminarily determine this program to be countervailable.

To calculate the benefit from this tax credit program, we examined the

amount of tax credits POSCO deducted from its taxes payable for the 1996 fiscal year. In its 1996 income tax return filed during the POI, POSCO deducted from its taxes payable, credits earned in the years 1992 through 1995, which were carried forward and used in the POI. We first determined the amount of the tax credits claimed which were based upon the investment in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on investments in domestically-produced facilities rather the regular three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales for the POI. On this basis, we preliminarily determine a countervailable subsidy of 0.27 percent *ad valorem* from this program during the POI.

I. Electricity Discounts Under the Requested Load Adjustment Program

Petitioners alleged that POSCO is being charged utility rates at less than adequate remuneration and, hence, the production of the subject merchandise is receiving countervailable benefits from this subsidy. Petitioners alleged that POSCO is receiving these countervailable benefits in the form of utility rate discounts.

The GOK reports that during the POI the government-owned Korea Electric Power Company (KEPCO) provided POSCO with three types of discounts under its tariff schedule. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. (See the discussion below in ''Programs Preliminarily Determined To Be Not Countervailable'' with respect to the Power Factor Adjustment and Summer Vacation and Repair Adjustment discount programs.)

With respect to the Requested Load Adjustment (RLA) program, the GOK introduced this discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted 44 companies RLA discounts even though KEPCO did not need to request these companies to reduce their respective loads. The GOK reports that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997. In 1996, KEPCO entered into RLA contracts with 232 companies.

We analyzed whether this electricity discount program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as being eligible to participate in the electricity discount programs. The RLA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. We preliminarily find that the RLA electricity program is not *de jure* specific under section 771(5A)(D)(i) of the Act because the regulation does not explicitly limit eligibility of the program.

We next examined data on the distribution of assistance under the RLA to determine whether the electricity discount program meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the RLA were distributed to a limited number of customers, *i.e.*, a total of 44 customers during the POI. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we preliminarily determine that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Because the electricity discounts are not ''exceptional'' benefits and are received automatically on a regular and predictable basis without further government approval, we preliminarily determine that these discounts provide a recurring benefit to POSCO. Therefore, we have expensed the benefit from this program in the year of receipt. *See GIA*, 58 FR at 37226. To measure the benefit from this program, we summed the electricity discounts which POSCO received from KEPCO under the RLA program during the POI. We then divided that amount by POSCO's total sales value for 1997. On this basis, we preliminarily determine that POSCO received a countervailable subsidy of less than 0.005 percent *ad valorem*, from this discount program during the POI.

Given the information the GOK provided on the record regarding KEPCO's increased capacity to supply electricity and the resulting decrease in KEPCO's need to enter into a large number of RLA contracts during the POI, we will further investigate the *de facto* specificity of this discount program at verification. It is the GOK's responsibility to demonstrate to the Department on what basis KEPCO chose the 44 customers with which it entered into the RLA contracts during the POI.

II. Program Preliminarily Determined To Be Not Countervailable

Electricity Discounts Under Power Factor Adjustment and Summer Vacation and Repair Adjustment Programs

As noted above, the GOK reported that KEPCO provided POSCO with three types of discounts under its tariff schedule during the POI. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. (See the separate discussion above in regard to the countervailability of the Requested Load Adjustment program.)

With respect to the Power Factor Adjustment (PFA) program, the GOK reports that the goal of the PFA is to improve the energy efficiency of KEPCO's customers which, in turn, provides savings to KEPCO in supplying electricity to its entire customer base. Customers who achieve a higher efficiency than the performance standard (*i.e.*, 90 percent) receive a discount on their base demand charge. Therefore, any customer who installs a proper facility to measure its power factor and achieves a power factor greater than 90 percent receives a discount on its demand charge.

The GOK states that the PFA is not a special program, but a normal factor used in the calculation of a customer's

electricity charge which was introduced in 1989. The PFA is available to all general, educational, industrial, agricultural, midnight power, and temporary customers who meet the eligibility criteria. The eligibility criteria are that a customer must: (1) Have a contract demand of 6 KW or more, (2) have a power factor that exceeds the 90 percent standard power factor, and (3) have proper facilities to measure its power factor. If these criteria are met, a customer always receives a PFA discount on its monthly electricity invoice. According to the response of the GOK, there are no limitations on the types of customers or industries which can receive the PFA discounts from KEPCO and there were over 600,000 recipients of the PFA discounts during the POI.

With the aim of curtailing KEPCO's summer load by encouraging customer vacations or the repair of their facilities during the summer months, the GOK introduced the Summer Vacation and Repair Adjustment (VRA) in 1985. Under this program, a discount of 550 won per KW is given to customers, if they curtail their maximum demand by more than 50 percent, or 3,000 KW, through a load adjustment or maintenance shutdown of their production facilities during the summer months. Eligible customers apply for a VRA discount during the period June 1 to June 15 of each year. If KEPCO finds the application in order, KEPCO and the customer prepare a contract with respect to the discount.

The GOK states that this discount program is available to all industrial and commercial customers with a contract demand of 500 KW or more. The GOK states that the VRA is one of several programs that KEPCO operates as part of its broad long-term strategy of demand-side management which includes curtailing peak demand, and is the most effective of these programs. The GOK submitted information demonstrating that hundreds of KEPCO customers, from a wide and diverse range of industries, received VRA discounts during the POI.

We analyzed whether these two electricity discount programs are specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the PFA, all general, educational, industrial, agricultural, midnight power, and temporary customers who have the necessary contract demand are eligible to participate in the discount program. Likewise, the VRA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, we preliminarily determine that the electricity programs are not *de jure* specific under section 771(5A)(D)(i) of the Act.

We then examined data on the distribution of assistance under these programs to determine whether the electricity discount programs meet the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the PFA and VRA were distributed to a large number of firms in a wide variety of industries. Given the data with respect to the large number of companies and industries which received electricity discounts under these programs during the POI, we preliminarily determine that the PFA and VRA programs are not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that the PFA and VRA discount programs are not countervailable.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the questionnaire response, we preliminarily determine that the companies under investigation either did not apply for or did not receive benefits under the following programs during the POI:

A. Excessive Duty Drawback

Petitioners alleged that under the Korean Customs Act, Korean exporters may have been receiving an excessive abatement, exemption, or refund of import duties payable on raw materials used in the production of exported goods. The Department has found that the drawback on imported raw materials is countervailable when the raw materials are not physically incorporated into the exported item, and therefore, the amount of duty drawback is excessive. In *Steel Products from Korea*, we determined that certain Korean steel producers received excessive duty drawback because they received duty drawback at a rate that exceeded the rate at which imported inputs were actually used. *See* 58 FR at 37349.

The GOK reports that under Article 3 of *The Act on Special Cases concerning the Refundment of Customs Duties, etc. Levied on Raw Materials for Export,* the refund of duties only applies to imported raw materials that are consumed, *i.e.,* physically incorporated, into the finished merchandise. Items used to produce a product, but which do not become physically incorporated into the final product, do not qualify for duty drawback. The GOK reports that POSCO was the only producer/exporter of the subject merchandise which received duty drawback for inputs consumed in the production of the subject merchandise which was subsequently exported during the POI. The raw materials imported by POSCO to produce the subject merchandise that were eligible for duty drawback are nickel, chrome, and stainless steel scrap.

The GOK states that in order to determine the appropriate amount of duty drawback a producer/exporter is eligible to receive, the National Technology Institute (NTI) routinely conducts surveys of producers of exported products to obtain their raw material input usage rate for manufacturing one unit of output. In determining an input usage rate for a raw material, the NTI factors recoverable scrap into the calculation. In addition, the loss rate for each imported input is reflected in the input usage rate. The GOK states that the factoring of reusable scrap into usage rates is done routinely for all products under Korea's duty drawback regime. The NTI maintains a materials list for each product, and only materials and sub-materials that are physically incorporated into the final product are eligible for duty drawback. The NTI then compiles this information into a standard usage rate table which is used to calculate a producer/exporter's duty drawback eligibility. The NTI most recently completed a survey of POSCO in 1993. The GOK reports that since POSCO is the only producer of the subject merchandise, the standard input usage rate table for the subject merchandise is based on POSCO's actual production data.

The GOK states that there is no difference in the rate of import duty paid and the rate of drawback received. The rate of import duty is based on the imported materials and the rate of drawback depends on the exported merchandise and the usage rate of the imported materials. POSCO pays import duties based on the rate applicable to and the price of the imported raw material. POSCO then receives duty drawback based on the amount of that material consumed in the production of the finished product according to the

standard input usage rate. Accordingly, the rate at which POSCO receives duty drawback is the amount of import duty paid on the amount of input consumed in producing the finished product. In *Steel Products from Korea,* we determined that POSCO appropriately factored recovered scrap into its calculated usage rates. *See* 58 FR at 37349.

In the current investigation, the GOK and POSCO report that the company has not received duty drawback on imported raw materials that were not physically incorporated in the production of exported merchandise. They also state that the duty drawback rate applicable to POSCO is calculated in a manner which accounts for recoverable scrap. Based on the duty drawback studies provided in the response, the GOK has factored recoverable scrap into the calculation of input usage rates. In *Steel Products from Korea,* we found that when recoverable scrap is factored into the usage rate, the relevant loss and waste rates are not excessive. Based on these factors, we preliminarily determine that POSCO has not received excessive duty drawback.

B. Tax Incentives for Highly-Advanced Technology Businesses Under the Foreign Investment and Foreign Capital Inducement Act

C. Reserve for Investment Under Article 43–5 of TERCL

D. Export Industry Facility Loans and Special Facility Loans

E. Export Insurance Rates Provided by the Korean Export Insurance Corporation

IV. Program Preliminarily Determined Not To Exist

Based on information provided by the GOK, we preliminarily determine that the following program does not exist:

Unlimited Deduction of Overseas Entertainment Expenses

In *Steel Products from Korea,* 58 FR at 37348–49, the Department determined that this program conferred benefits which constituted countervailable subsidies because the entertainment expense deductions were unlimited only for export business activities. In the present investigation, the GOK reported that Article 18–2(5) of the Corporate Tax Law, which provided that Korean exporters could deduct overseas entertainment expenses without any limits, was repealed by the revisions to the law dated December 29, 1995. According to the GOK, beginning with the 1996 fiscal year, a company's domestic and overseas entertainment expenses are deducted within the same aggregate sum limits as set by the GOK. As a result of the revision to the law, overseas entertainment expenses are now treated in the same fashion as domestic expenses in calculating a company's income tax. Therefore, we determine that this program is no longer in existence.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Summary

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual subsidy rate for POSCO, the sole manufacturer of the subject merchandise. We preliminarily determine that the total estimated net countervailable subsidy rate is 0.69 percent *ad valorem,* which is *de minimis.* Therefore, we preliminarily determine that no countervailable subsidies are being provided to the production or exportation of stainless steel plate in coils in Korea.

We also note that pursuant to section 705(a)(1) of the Act, this investigation is now aligned with the antidumping investigations of stainless steel plate in coils.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Public Comment

In accordance with 19 C.F.R. 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 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.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the date of publication of the preliminary determination. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 28, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–23913 Filed 9–3–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–806]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Plate In Coils From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, Robert Copyak, or Kathleen Lockard, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to the Columbus Joint Venture, a producer and exporter of stainless steel plate in coils from South Africa. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J & L Specialty Steel, Inc., Lukens Inc., United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register**, the following events have occurred. *See Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa*, 63 FR 23272 (April 28, 1998) (*Initiation Notice*). On May 8, 1998 we issued countervailing duty questionnaires to the Government of South Africa (GOSA) and the producers/exporters of the subject merchandise. On June 1, 1998, we postponed the preliminary determination of this investigation until August 28, 1998. *See Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Plate in Coils from Belgium, Italy, the Republic of Korea, and the Republic of South Africa*, 63 FR 31201 (June 8, 1998).

We received responses to our initial questionnaires from the GOSA and the Columbus Joint Venture, the only producer/exporter of the subject merchandise during the POI, on June 29, 1998. On April 30, 1998, Petitioners provided additional information with respect to seven programs on which the Department did not initiate. On June 17, 1998, we initiated on two additional programs. *See* ''Memorandum to Maria Harris Tildon, Acting Deputy Assistant Secretary for AD/CVD Enforcement II, Regarding Petitioners' Allegations,'' a public document on file in the CRU. On June 18, 1998, we issued a questionnaire on these programs. The response to that questionnaire was received on July 27. We issued several supplemental questionnaires between July 14 and August 10 and received responses from August 3 through August 17.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR 351 and published in the **Federal Register** on May 19, 1997 (62 FR 27295).

Scope of Investigation

For purposes of this investigation, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this investigation are the following: (1) plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because South Africa is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from South Africa materially injure, or threaten material injury to, a U.S. industry. On May 28, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from South Africa of the subject merchandise (62 FR 49994).

Alignment With Final Antidumping Duty Determination

On May 27, 1998 the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigations. *See Initiation of Antidumping Investigations: Stainless Steel Plate in Coils From Belgium, Canada, Italy, Republic of South Africa, Republic of Korea, and Taiwan*, 63 FR 20580 (April 27, 1998). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final antidumping duty determinations in the antidumping investigations of stainless steel plate in coils.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

Facts Available

Section 776(a)(1) of the Act requires the Department to use facts available if ''necessary information is not available on the record.'' In this investigation, information necessary to our analysis of the Columbus Joint Venture (CJV) was

unavailable on the record. Pursuant to section 782(d), we gave CJV the opportunity to cure the deficiencies, but the information was not provided in time for the preliminary determination. Therefore, we have resorted to facts available as discussed in the ''Allocation Period'' and ''IDC/Impofin Financing'' sections below.

Company History

In 1988, Samancor Limited (Samancor) and Highveld Steel and Vanadium (Highveld) formed the Columbus Joint Venture to explore the possibility of establishing a world-class, 500,000-ton capacity, stainless steel facility in South Africa. In 1991, the partners examined the option of building a plant in South Africa and made a proposal to the Industrial Development Corporation of South Africa (IDC) that it take a capital stake in the joint venture. The IDC is a state-owned corporation, established in 1940, to further the economic development goals of the South African government. The partners approached the IDC because it provides equity investments and facilitation and guarantee of financing for projects which contribute to furthering the GOSA's economic development objectives. After being approached by the partners, the IDC performed a detailed analysis of the 1991 proposal and decided to participate in the investment subject to certain conditions: that the project be based on the expansion of an existing facility rather than on the construction of a new plant; and, that its implementation be delayed pending the establishment of a program providing tax benefits for capital investments (see discussion of the section 37E program, below).

To meet the IDC's condition, in October 1991, Samancor and Highveld purchased an existing stainless steel facility, the Middleburg Steel & Alloys (MS&A) company. In 1992, the partners again approached the IDC. Based on a revised proposal, the IDC and the two partners conducted a detailed feasibility study to identify the prospects for the venture. The IDC made a counteroffer to the partners which was accepted. Samancor, Highveld, and the IDC entered into a new partnership agreement which is the basis for the current structure of the CJV. Effective January 1, 1993, the IDC became a one-third and equal partner in the venture.

The implementation of the CJV expansion project began in 1993 and was undertaken over the course of two and one-half years. The expansion was completed in 1995. The CJV produces a range of stainless steel products including subject merchandise.

Subsidies Valuation Information

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific AUL in determining the allocation period for non-recurring subsidies. *See General Issues Appendix (GIA)*, 58 FR 37227, appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria, et al.*, 58 FR 37217 (July 9, 1993). However, in *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*). Thus, we intend to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16551 (April 7, 1997).

In this investigation, the Department has followed the Court's decision in *British Steel*, and requested that the respondent submit information relating to its average useful life of assets. However, despite repeated requests, the CJV has not provided the information required to calculate a company-specific AUL. Therefore, as facts available, we are relying on the U.S. Internal Revenue Service depreciation tables, which report a schedule of 15 years for the productive equipment used in the steel industry.

Discount Rates

The Department normally uses, as the discount rate, the average commercial long-term fixed interest rate available in the country under investigation. However, we were unable to obtain this information prior to the preliminary determination; the only information on the record on long-term fixed interest rates in South Africa is the long-term government bond rate. Therefore, for purposes of the preliminary determination, we have used the long-term government bond rate as the discount rate. We will seek a rate for the final determination that better reflects an average long-term commercial fixed interest rate in South Africa.

I. Programs Preliminarily Determined To Be Countervailable

A. Benefits Under Section 37E of the Income Tax Act

The GOSA established section 37E of the Income Tax Act to promote capital investment in order to foster long-term economic development. The purpose of the program is to encourage investment in large industrial expansion projects in value-added sectors of the economy. For projects approved as valued-added processes, section 37E allows for depreciation of capital assets and the deduction of pre-production interest and finance charges in advance, that is, in the year the costs are incurred rather than the year the assets go into use. The program also allows taxpayers in loss positions to receive ''negotiable tax credit certificates'' (NTCCs) in the amount of the cash value of the section 37E tax deduction (*i.e.*, deduction multiplied by the tax rate). The NTCCs can be sold (normally at a discount) to any other taxpayer, who then can use them to pay taxes. The program does not provide for accelerated depreciation, nor does it provide for additional finance charge-related deductions beyond those available under the South African tax code; the advantage to users of this program is the receipt of these tax deductions in advance, *i.e.*, when the expenses are incurred rather than when the equipment is put into use.

Eligibility for section 37E benefits is determined on a project-by-project basis by a committee appointed by the Minister of Finance in concurrence with the Minister of Trade and Industry. According to section 37E, a project's eligibility is contingent upon being designated a ''value-added process.'' Qualifying investments had to be made between September 12, 1991 and September 11, 1993. Applicants had to submit comprehensive information which demonstrated: (1) that the project would add at least 35 percent to the value of the raw material or intermediate product processed; (2) that the project would be carried out on an internationally competitive scale; and (3) that the taxpayer would utilize foreign term credits when importing capital goods for the project.

The CJV became eligible to receive section 37E benefits in 1993, two years before the completion of the expansion of CJV's plant in 1995. Because the CJV is a partnership rather than a tax-paying corporation, section 37E benefits earned by the CJV are claimed by the partners.

When determining whether a program is countervailable, we must ascertain whether it provides benefits to a specific enterprise, industry, or group thereof. We examined whether the program is *de jure* specific and found that the implementing legislation does not limit eligibility for the program to an enterprise, industry, or group thereof. We then analyzed whether the program meets the criteria for *de facto* specificity defined under section 771(5A)(D)(iii) of the Act, *i.e.*, whether the actual recipients of the subsidy are limited in number, whether an enterprise, industry, or group thereof is a predominant user of the subsidy, whether an enterprise, industry, or group thereof receives a disproportionately large amount of the subsidy, or whether the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise, industry, or group thereof is favored over others. We examined information about the recipients, including the number of enterprises and industries, and the distribution of benefits granted. The record indicates that only 13 companies were approved to receive benefits and fewer than 13 companies actually received benefits under the section 37E program. *See* Decision Memorandum, dated August 28, 1998, public version on file in the Central Record's Unit (CRU), room B–099 of the main Commerce building (Decision Memorandum). Thus, we preliminarily determine that section 37E is *de facto* specific as the actual recipients of the subsidy are limited in number.

The Department normally considers that a benefit arises from a tax program in the amount of the difference between the taxes paid and the taxes that would have been paid absent the program. However, the section 37E program does not operate as a normal tax program. The purpose of the program is to promote capital investment. According to the IDC, ''[t]he accelerated tax allowances reduce the peak funding requirements of major capital investment projects.'' *See IDC 1992 Annual Report,* Annexure 7 of the July 31, 1998 Questionnaire Response, public version on file in the CRU. Through this program, capital requirements for investments are reduced, as evidenced by the partners' views that the program was essential in reducing the start-up costs of the venture. *See* Petition at Exhibit S–8, public version on file in CRU. Furthermore, there is a cash flow impact regardless of the company's tax position. As such, we consider that, although the section 37E program is a ''tax'' program, it would be inappropriate to treat it as a tax program. Rather, the 37E program is like a capital contribution and therefore should be treated accordingly.

The section 37E program provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act as it constitutes revenue foregone by the GOSA. Because section 37E provides only for the claiming of depreciation and finance-related deductions in advance of the normal period, the benefit within the meaning of section 771(5)(E) of the Act, is the value to the company of being able to claim the depreciation in advance. Therefore, we preliminarily determine that the section 37E program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. In addition, since the section 37E program reduces a company's capital requirements, and because the receipt of section 37E benefits required express government approval, we preliminarily determine that it is more appropriate to treat the assistance provided under section 37E as a non-recurring subsidy. *See GIA,* 58 FR at 37226.

To determine the benefit, we ascertained the value of the section 37E allowances to the company. First, we calculated the cash value of each 37E claim by multiplying the total allowance claimed in each year by the relevant tax rate. Then, we determined the time value of obtaining the allowance in advance, in this case, by two years, by discounting the cash value of each allowance. The difference between the tax value of the allowances and the discounted amount is the benefit to the company. This analysis is akin to the discounting by a commercial bank of the face value of a negotiable instrument obtained in advance of its maturity, for example, an invoice or a letter of credit submitted by an exporter. Finally, because we consider that the section 37E assistance should be allocated over time as a nonrecurring subsidy, we treated the benefit realized in each year as a non-recurring grant using our standard grant methodology. Since the CJV did not report its AUL, as facts available, we are relying on the IRS depreciation schedule of 15 years as the allocation period. We summed the amounts allocated to the POI and divided by CJV's total sales. Accordingly, we preliminarily determine the countervailable subsidy to be 1.94 percent *ad valorem* for the CJV.

B. Import Financing through Impofin, Ltd. and the IDC

The IDC and its wholly-owned subsidiary, Impofin, Ltd., facilitate and guarantee foreign credits for the importation of capital goods into South Africa. The program was established in 1989 and was designed to facilitate foreign lending to South African firms; the availability of foreign credit in South Africa was extremely limited at that time. The IDC/Impofin maintain blanket credit lines with banks in numerous countries which are used in two ways. First, the IDC may act as an intermediary lending authority, borrowing funds through these credit lines from the foreign bank and lending them to the South African firm. Second, based on these credit lines, the South African firm may negotiate its own supply contract loan with the foreign lender which is then guaranteed by the IDC. Any company seeking financing for the purchase of foreign capital equipment may apply to Impofin to use the program. Whether the financing is arranged through the IDC/Impofin or directly with the foreign lender, it is guaranteed through the IDC/Impofin program. The IDC charges a fee for its guaranteeing and facilitating services.

The CJV used the IDC/Impofin financing program to finance all of its foreign capital equipment sourcing. Of the 23 U.S. dollar-denominated loans, twelve are held by the IDC or Impofin with the foreign lender, the funds re-loaned to CJV, and the financing guaranteed by the IDC/Impofin. For the remaining eleven loans, the IDC/Impofin arranged for CJV to hold the loan contract directly with the foreign lender and then the IDC/Impofin provided the guarantee.

The Department considers government-guaranteed loans to constitute a financial contribution within the meaning of section 771(5)(D) of the Act. With respect to the CJV, the IDC/Impofin arranged for and guaranteed all the import financing for the capital equipment purchased for the expansion project. This guaranteed financing represents a financial contribution by the GOSA. Loan guarantees confer a benefit as provided under section 771(5)(E)(iii) ''if there is a difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority.'' A comparison of the benchmark interest rate to the interest rate charged on the guaranteed loans

indicates for some of the loans that the interest rate is less than the interest rate on a comparable commercial loan.

Next, we analyzed whether the program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of subsections 771(5A)(D)(i) and (iii) of the Act. The enacting legislation for the IDC/Impofin does not explicitly limit eligibility for these financing programs to an enterprise, industry, or group thereof. Thus, we find that the law is not *de jure* specific, and we must analyze whether the program meets the *de facto* criteria defined under section 771(5A)(D)(iii). We examined information provided by the GOSA and found that since 1990, the ''fabricated metal products'' and ''basic metal manufacture'' industries have been predominant users of the program. These industries have received more than fifty percent, by value, of the total guaranteed loans awarded over the life of the program. On this basis, we find IDC/Impofin guaranteed financing to be *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that the IDC/Impofin guaranteed financing program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act.

To calculate the benefit, we used the Department's standard long-term fixed rate loan methodology. We included in the calculation the fees paid by the CJV to the IDC for the financing and guaranteeing services. We plan to gather information on commercial loan guarantee practices and add commercial guarantee fees to the benchmark rate for the final determination. All of the loans were denominated in U.S. dollars. Because respondent did not provide information about long-term U.S. dollar borrowing in South Africa in time for this preliminary determination, we resorted to facts available to determine the appropriate benchmark. (*See* ''Facts Available'' section above.) Therefore, we used Moody's average yield on selected long-term corporate bonds as reported by the Federal Reserve as the benchmark interest rate. We summed the benefits received during the POI and divided that amount by CJV's total sales. Accordingly, we preliminarily determine the countervailable subsidy to be 0.20 percent *ad valorem* for the CJV.

II. Program Preliminarily Determined To Be Not Countervailable Capital Contributions/ IDC Participation in the Columbus Joint Venture

As discussed in the ''Company History'' Section above, in 1988, Highveld and Samancor formed the Columbus Joint Venture to explore the possibility of establishing a stainless steel facility in South Africa. In 1991, the partners proposed that the IDC make a capital investment in the venture. The IDC performed a detailed analysis of the 1991 proposal and decided to participate in the investment subject to certain conditions: that the project would be based on the expansion of an existing facility and that its implementation would be delayed pending the establishment of the section 37E program. In 1992, after the partners acquired an existing facility for the purpose of implementing the IDC's recommendations, the partners approached the IDC with a revised proposal. Based on this proposal, the IDC and the two partners conducted a detailed feasibility study to identify the prospects for the venture. The IDC made a counteroffer to the partners which was accepted. Effective January 1, 1993, the IDC became a one-third and equal partner in the venture. Samancor, Highveld, and the IDC entered a new partnership agreement which is the basis for the current structure of the CJV.

The Department considers the government's provision of equity or start-up capital to constitute a benefit ''* * * if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made.'' *See* 771(5)(E)(i) of the Act. The Department applies this standard in a case-by-case analysis of the commercial context in which the investment decision is made. Thus, we must determine whether the IDC's decision to participate in the CJV was consistent with the usual investment practices of private investors in South Africa.

While Samancor and Highveld are both private investors, their participation in the venture, *per se,* is not a sufficient basis for determining whether the IDC's participation is consistent with usual investment practices. By the time the IDC decided to invest, Samancor and Highveld had been partners in this investment for five years. Both already had substantial stakes in the project, including the purchase of the MS&A facility in 1991. Thus, their evaluation of the CJV expansion project was affected by their interest in protecting their existing investment and they may have been willing to accept a higher level of risk than another private investor would. Therefore, their continued participation is not the appropriate background against which to examine the IDC's decision, and we have focused our analysis on the independent basis for the IDC's decision in order to determine whether it was consistent with the investment practices of a private investor.

As discussed above, in 1991 and 1992, the partners made detailed presentations to the IDC of the risks and projected returns of the project. The IDC agreed to participate in the venture subject to modifications designed to increase the rate of return of the project by lowering its initial capital requirements. In 1992, with assistance from the partners, the IDC conducted a feasibility study to analyze the strengths and weaknesses of the venture and to project its financial performance, based upon the expansion of the MS&A facility. This detailed analysis, which respondents submitted for the record, is the primary basis for the IDC's decision to invest in the CJV.

Given the proprietary nature of the feasibility study, the specific analysis and projections contained in the study cannot be addressed in this public notice. *See* Decision Memorandum. The study is based on reasonable assumptions and concludes that the CJV was a viable venture which would provide a positive real rate of return on the IDC's investment. The study concludes that the average nominal rate of return for the project would be 19.13 percent.

We compared the projected return on the investment to information available for other investments in South Africa during this period. Because of the proprietary nature of the feasibility study, this analysis cannot be detailed in this public notice. *See* Decision Memorandum. The nominal rate of return of 19.13 percent exceeds government bond yields. While the projected real rate of return is not outstanding, it is comparable to returns provided by other investment instruments including bonds and industrial stocks. While we plan to gather more information about commercial investment practices in South Africa in order to inform our analysis for the final determination, the information thus far on the record indicates that the projected return was adequate and it supports a finding that the IDC's investment decision was consistent with the behavior of a reasonable private investor.

Finally, we examined the structure of the partnership itself, to determine whether the IDC assumed more than its share of the risks involved in the venture or less than its share of the potential earnings. The three partners

contributed capital to the venture equally. They all account for one-third of the project's year-end results in their financial statements, in accordance with the normal practice for partnerships. They each hold the same number of seats on the CJV's board. To the extent that the IDC's commitments and obligations to the joint venture differ from the other partners, these differences reflect the IDC's role as an investor, in contrast to the other partner's experience in industrial operations. Furthermore, the IDC took steps to protect its level of risk from the investment. For example, where the IDC has assumed more than its pro-rata share of the risk, such as guaranteeing Impofin financing, it has required counterguarantees from the other partners, so the risk is shared.

While the partnership is structured so that the IDC's role in the CJV is slightly different from that of the other two partners, the agreement stipulates equal cash participation, equal representation on the Board of Directors, and equal distribution of any returns on the investments. In addition, the IDC was pro-active in protecting its investment by requiring measures to ensure that the risks would be equally distributed with the other partners. The IDC recommended ways to increase the project's earnings potential and negotiated safeguards in the partnership agreement. The IDC appears to have assumed only an amount of risk that is commensurate with its level of participation as a partner.

The IDC's decision to invest in the CJV appears to be based upon a reasonable analysis that the project was viable, an informed assessment that the IDC would realize a positive real rate of return on its investment, and a partnership based on the equal distribution of the risks. On this basis, we preliminarily determine that the IDC's capital contribution into the CJV was not inconsistent with the normal practice of private investors in South Africa, and thus, does not constitute a countervailable subsidy within the meaning of the Act.

IV. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses, we preliminarily determine that the company under investigation did not apply for or receive benefits under the following programs during the POI.

A. Low Interest Rate Finance for the Promotion of Exports (LIFE) Scheme, which the GOSA reports is the same program as the Low Interest Rate Scheme for the Promotion of Exports

B. Competitiveness Fund

C. Export Assistance Under the Export Marketing Assistance and the Export Marketing and Investment Assistance Programs

D. Regional Industrial Development Program (RIDP)

E. Export Marketing Allowance

F. Multi-Shift Scheme

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for CJV, the sole manufacturer/exporter of the subject merchandise. We preliminarily determine that the total estimated net countervailable subsidy rate is 2.14 percent *ad valorem*. Because we only investigated one producer/exporter, CJV, rate will also serve as the ''all others'' rate. Therefore, the ''all others'' rate is 2.14 percent *ad valorem*.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of plate in coils from South Africa, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amount of 2.14 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 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.

Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the date of publication of the preliminary determination. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 28, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–23914 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082698C]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold its 95th Council meeting.

DATES: The Council meeting will be held on September 29, 1998.

ADDRESSES: The meeting will be held at the Best Western Pierre Hotel, 105 De Diego Avenue, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926; fax: (787) 766–6239.

SUPPLEMENTARY INFORMATION: The Council will hold its 95th regular public meeting to discuss the Draft Essential Fish Habitat (EFH) Generic Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean, and will take final action on these items.

The Council will meet on Tuesday, September 29, 1998, from 10:00 a.m. to 4:00 p.m. The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral and written statements regarding agenda issues.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Management Act, those issues may not be the subject of formal action during this memeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. For more information or requests for sign language interpretation or other auxiliary aids, please contact Mr. Miguel A. Rolon at the Council (see **FOR FURTHER INFORMATION CONTACT** for address) at least 5 days prior to the meeting dates.

Dated: August 31, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–23936 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082698B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on September 14–17, 1998.

ADDRESSES: These meetings will be held at the Adam's Mark Hotel, 64 South Water Street, Mobile, AL; telephone: 334–438–4000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

September 14

8:30 a.m.—Convene.

8:45 a.m. - 10:00 a.m.—Receive public testimony on Draft Essential Fish Habitat (EFH) Amendment, which identifies and describes essential fish habitat in the Gulf of Mexico for the seven fisheries managed by the Council.

The following is a summary of the Draft EFH Amendment: (1) EFH is identified and described based on areas where various life stages of 21 selected, managed species and the coral complex commonly occur. The selected species are shrimp, red drum, reef fish, coastal migratory pelagic species, stone crab, spiny lobster, and the coral complex; (2) The selected species represent about one-third of the species under management by the Council. Collectively, these species commonly occur throughout all of the marine and estuarine waters of the Gulf of Mexico. Consequently, EFH for the remaining managed species would be included with that of the species discussed. EFH for the remaining managed species will be further addressed in future fishery management plan (FMP) amendments, as appropriate; (3) EFH is defined as everywhere that the above managed species commonly occur. Because these species collectively occur in all estuarine and marine habitats of the Gulf of Mexico, EFH is separated into estuarine and marine components. For the estuarine component, EFH includes all estuarine waters and substrates (mud, sand, shell, rock, and associated biological communities), including the sub-tidal vegetation (seagrasses and algae) and adjacent inter-tidal vegetation (marshes and mangroves). In the marine waters of the Gulf of Mexico, EFH includes virtually all marine waters and substrates (mud, sand, shell, rock, and associated biological communities) from the shoreline to the seaward limit of the Exclusive Economic Zone (EEZ); (4) Threats to EFH from fishing and nonfishing activities are identified; (5) Options to conserve and enhance EFH are provided and research needs are identified; (6) No management measures and, therefore, no regulations are proposed at this time. Fishing-related management measures to minimize any identified impacts are deferred to future amendments when the Council has the information necessary to decide if the measures are practicable.

10:00 a.m. - 10:30 a.m.—Take final action on the EFH Amendment.

10:30 a.m. - 3:00 p.m.—Consider the SFA Amendment Options Paper.

3:00 p.m. - 6:00 p.m.—Receive public testimony on TAC for Vermilion Snapper and Gag.

September 17

8:30 a.m. - 12:30 p.m.—Receive the Reef Fish Management Committee Report.

2:00 p.m. - 2:30 p.m.—Receive Budget Committee Report.

2:30 p.m. - 3:00 p.m.—Receive Joint Reef Fish/Shrimp Committees' Report.

3:00 p.m. - 3:30 p.m.—Receive Shrimp Committee Report.

3:30 p.m. - 3:45 p.m.—Receive Marckerel Committee Report.

3:45 p.m. - 4:00 p.m.—Receive the Tortuga Sanctuary Enforcement Report.

4:00 p.m. - 4:15 p.m.—Receive International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Meeting Reports.

4:15 p.m. - 4:30 p.m.—Receive NMFS Highly Migratory Species (HMS)/ Billfish Advisory Panels (AP) Meeting Report.

4:30 p.m. - 4:45 p.m.—Receive Enforcement Reports.

4:45 p.m. - 5:15 p.m.—Receive Director's Reports.

5:15 p.m. - 5:30 p.m.—Select a member for the Red Snapper and Reef Fish APs.

5:30 p.m.—Elect a Council chair and vice chair.

September 14

8:00 a.m. - 9:30 a.m.—Convene the Budget Committee to develop the 1999 Council budget.

9:30 a.m. - 12:00 p.m.—Convene the Habitat Protection Committee to review and approve changes to the EFH Amendment for consideration by the Council on Wednesday.

1:30 p.m. - 5:30 p.m.—Convene the Mackerel/Reef Fish/Red Drum Management Committees to review and approve changes to the EFH Amendment for consideration by the Council on Wednesday.

September 15

8:00 a.m. - 11:30 a.m.—Convene the Reef Fish Management Committee to consider the stock assessment information on vermilion snapper and gag, as well as the recommendations of the Council's scientific advisory groups and advisory panel. The recommendations of the Reef Fish Committee will be considered by the Council on Thursday.

1:00 p.m. - 4:00 p.m.—Convene a joint meeting of the Reef Fish and Shrimp Committees to review analyses by NMFS on the effectiveness of bycatch reduction devices (BRDs) in reducing bycatch of juvenile red snapper.

4:00 p.m. - 5:00 p.m.—Convene a meeting of the Shrimp Committee to review a request by NMFS that the Council begin development of Shrimp Amendment 10. Proposed provisions would include requirements for shrimp vessel permits, logbook reporting, observers, and vessel monitoring systems (VMS). If the Council concurs with this request, the amendment would be developed in 1999.

5:00 p.m. - 5:30 p.m.—Convene the Mackerel Management Committee to consider a control date for dolphin (fish) and adding wahoo as a stock for management under the fishery management plan (FMP).

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jenny Biggs at the Council (see **ADDRESSES**) by September 4, 1998.

Dated: August 31, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–23934 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082798D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory bodies.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Seattle, WA, the week of October 5, 1998.

DATES: 1. The Scientific and Statistical Committee (SSC) will meet beginning at 8:00 a.m. on Monday, October 5, continuing through at least Wednesday, October 7, 1998.

2. The Advisory Panel (AP) will begin meeting at 8:00 a.m. on Monday, October 5, and continue through a portion of Friday, October 9, 1998.

3. The Council will meet jointly with the International Pacific Halibut Commission, beginning at 1:00 p.m. on Tuesday, October 6, and begin their regular plenary session at 8:00 a.m. on Wednesday, October 7, continuing through a portion of Monday, October 12, 1998.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel. All meetings are open to the public with the exception of Council executive sessions, which may be held during the noon hour during the meeting week, if necessary, to discuss personnel, international issues, or litigation.

ADDRESSES: The meetings will be held at the Doubletree Hotel-Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98188.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The agenda for the Council's joint meeting with the International Pacific Halibut Commission will include reports and discussion of the following subjects: bycatch mortality reduction in groundfish fisheries; halibut community development quota (CDQ) program , halibut individual fishing quota (IFQ) program, halibut charterboat management, halibut subsistence, Gulf of Alaska (GOA) coastal community development, and multi-agency ecosystem research.

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports from the NMFS and Alaska Department of Fish and Game (ADF&G) on the current status of the fisheries off Alaska, and enforcement reports from the U.S. Coast Guard and NMFS Enforcement, and a status report on the formation of a social and economic data committee.

2. Final action on proposed amendments to the license limitation program for groundfish and crab.

3. Review of program elements and options for further development of a vessel buyback program for the Bering Sea/Aleutian Island (BSAI) crab fisheries.

4. Review of a discussion paper of proposed management measures for the Alaska halibut charterboat fleet, and review of proposals received by the Alaska Board of Fisheries for halibut local area management plans.

5. The Council will review the following issues relating to CDQs:

a. Status report on the multi-species CDQ program.

b. Receive report from the multi-species CDQ Implementation Committee.

c. Receive recommendations for pollock CDQs for 1999–2000 from the State of Alaska.

d. Review and discuss a proposed rule to designate the proper agency to administer the halibut CDQ fisheries.

6. Review current Observer Program and provide direction for development of fee-based program.

7. Status report on Council compliance with the Sustainable Fisheries Act.

8. Final action on proposed amendments to the Sablefish and Halibut IFQ program and receive progress reports on a weighmaster program and the cost recovery fee program.

9. Review proposal from Gulf of Alaska Coastal Communities Coalition for opportunities for community development in the Gulf of Alaska.

10. Receive a summary of the National Research Council report on ecosystem-based management and a report on regime shifts.

11. Groundfish amendments scheduled for action are as follows:

a. Initial review of revisions to the prohibited species catch allocations for BSAI chinook salmon.

b. Discussion of total catch measurement in the groundfish fisheries, review a matrix summary by species, and discuss the use of scales and bins in the pollock and yellowfin sole fisheries.

c. Action as necessary on an amendment to institute rolling closures in the sablefish fisheries to accommodate annual surveys.

d. Initial review of an amendment to address retention of demersal shelf rockfish in the GOA IFQ fisheries.

e. Initial review of an amendment for a ''fair start'' provision for the GOA Pacific cod longline fisheries.

f. Receive progress and committee reports on the improved retention/utilization (IR/IU) program and initial review of proposed amendments to the program. Review progress on report to Congress on IR/IU.

g. Receive status reports from the combined Vessel Bycatch Allowance/Halibut Mortality Avoidance Program/Individual Vessel Checklist Program Committee, and on the draft Supplemental Environmental Impact Statement for the groundfish fisheries off Alaska.

h. Discuss request from the Alaska Board of Fisheries to consider shark management measures.

12. The Council will receive the preliminary Stock Assessment and Evaluation (SAFE) reports for the 1999 GOA and BSAI groundfish fisheries, set initial 1999 harvest and bycatch allocations, and release for public comment.

13. Initial review of a license limitation program for the scallop fisheries.

14. Approve the BSAI king and Tanner crab SAFE report for 1999 and develop options for a rebuilding plan for *bairdi* crab.

15. Review proposals received for amendments to the groundfish fishery management plans and designations of critical habitat areas and give direction to staff for further development of amendments.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 7 working days prior to the meeting date.

Dated: August 31, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–23932 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082798C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold a public meeting.

DATES: The meeting will be held on Monday, September 28, 1998, beginning at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. to 5 p.m. on Tuesday, September 29, Wednesday, September 30, Thursday, October 1, and Friday, October 2, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council Conference Room, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This is a work session for the GMT to prepare the annual stock assessment and fishery evaluation (SAFE) document, review final stock assessments, and develop its final recommendations for 1999 harvest levels and management measures. The GMT will also evaluate the need for inseason trip limit adjustments and discuss information pertaining to allocation of lingcod and rockfish. The GMT may also prepare reports and recommendations regarding other issues for the Council's November 1998 meeting.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: August 31, 1998.

Bruce Morehead,

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

[FR Doc. 98–23933 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

Technical Advisory Committee To Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure

AGENCY: Technology Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure will hold a meeting on September 22, 23, 24, 1998. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advice to the Department on encryption key recovery for use by federal government agencies. All sessions will be open to the public.

DATES: The meeting will be held on September 22, 23, 24, 1998 from 9:00 a.m. to 6:00 p.m.

ADDRESSES: The meeting will take place at the Ramada Plaza Hotel, 590 Bay Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, Maryland, 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

SUPPLEMENTARY INFORMATION:

1. Agenda

Opening Remarks
Chairperson's Remarks
News Updates (Members, Federal Liaisons, Secretariat)
Review of Draft Document
Intellectual Property Issues (as necessary)
Public Participation
Plans for Next Meeting
Closing Remarks

Note that the items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation

The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the ''for further information'' section. In addition, written statements are invited and may be submitted to the Committee at any time. Written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacdfipsfkmi/ .

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Dated: September 1, 1998.

Mark Bohannon,

Chief Counsel for Technology Administation.

[FR Doc. 98–23931 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–CN–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

August 31, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 9, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for swing, reducing the limit for Category 444 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63526, published on December 1, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 31, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998.

Effective on September 9, 1998, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
435	12,595 dozen.
444	34,784 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–23900 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Application of the Chicago Mercantile Exchange for Designation as a Contract Market in Stocker Cattle Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in stocker cattle futures contracts and options on stocker cattle futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before October 5, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME stocker cattle futures and options.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the

Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5273. Facsimile number: (202) 418–5527. Electronic mail:flinse@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145(1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 28, 1998.

Steven Manaster,

Director.

[FR Doc. 98–23945 Filed 9–3–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on National Imagery and Mapping Agency (NIMA)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on National Imagery and Mapping Agency (NIMA) will meet in closed session on September 24–25, 1998 at SAI, 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the objectives and plans of the National Imagery and Mapping Agency (NIMA) to meet the needs of the national and military intelligence customers as they enter the 21st Century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (4 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: August 31, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–23841 Filed 9–3–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of Fort McClellan, Alabama

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA) and the President's Council on Environmental Quality, the Army has prepared an FEIS for the Disposal and Reuse of Fort McClellan (FMC), Alabama. The approved 1995 Base Closure and Realignment actions required by the Base Closure and Realignment Act of 1990 (Pub. L. 101–510), and subsequent actions in compliance with this law, mandated the closure of FMC. It is Department of Defense (DOD) policy to dispose of property no longer needed by DOD. Consequently, as a result of the mandated closure of FMC, the Army is disposing of excess property at FMC.

DATES: the review period for the FEIS will end 30 days after the publication of the NOA in the **Federal Register** by the EPA.

ADDRESSES: Questions and/or written comments regarding the FEIS, or a request for a copy of the document may be directed to Mr. Curtis Flakes, Mobile District, U.S. Army Corps of Engineers (ATTN: CESAM–PD–EC), P.O. Box 2288, Mobile, AL 36602–3630.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Flakes at (334) 690–2693 or telefax at (334) 690–2727.

SUPPLEMENTARY INFORMATION: The FEIS analyzes three disposal alternatives: (1) the No Action Alternative, which entails maintaining the property in caretaker status after closure: (2) the Encumbered Disposal Alternative, which entails transferring the property to future owners with Army-imposed limitations, or encumbrances, on the future use of the property; (3) the Unencumbered Disposal Alternative, which entails transferring the property to future owners with fewer or no Army-imposed restrictions on the future use of the property. The preferred action identified in this FEIS is Encumbered Disposal of excess property at FMC. Based upon the analysis contained in the FEIS, encumbrances and deed restrictions associated with the Army's disposal actions for FMC will be mitigation measures.

Planning for the reuse of the property to be disposed of is a secondary action resulting from closure. The local community has established the Fort McClellan Development Commission (FMDC) to produce a reuse development plan for the surplus property. The impacts of reuse are evaluated in terms of land use intensities. This reuse analysis is based upon implementing one of three reuse alternatives, all of which are based upon the FMDC reuse plan. The Army has not selected one of these three alternatives as the preferred action. Selection of the preferred reuse plan is a decision that will be made by the FMDC.

Comments on the FEIS will be used in preparing the Record of Decision for the Army action.

Copies of the FEIS have been forwarded to the USEPA, other Federal, state and local agencies; public officials; and organizations and individuals who previously provided substantive comments to the DEIS. Copies of the FEIS and related support studies are available for review at the following FMC libraries: Abrams Library (For McClellan Community), Building 2102, Fort McClellan, Alabama 36205–5020; Fischer Library, U.S. Army Chemical School, Fifth Avenue, Building 1081, Fort McClellan, Alabama 36205; and the Military Police School Library, U.S. Army Military Police School, Building 3181, Fort McClellan, Alabama 36205; as well as the following public and other libraries: Anniston-Calhoun County Public Library, 108 East 10th Street, Anniston, Alabama 36202; Cole

Library, Jacksonville State University, 700 Pelham Road, North, Jacksonville, Alabama 36265; Jacksonville Public Library, 200 Pelham Road, North, Jacksonville, Alabama 36205; Oxford Public Library, 213 Choccolocco Street, Oxford, Alabama 36203; and Mobile District, Army Corps of Engineers, 109 Saint Joseph Street, Mobile, Alabama 36629.

Dated: August 27, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 98–23571 Filed 9–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Center of Military History, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date of Meeting: October 23, 1998.

Place: U.S. Army Center of Military History, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

Time: 0900–1600 (October 29, 1998).

FOR FURTHER INFORMATION CONTACT: All communications regarding this advisory committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, ATTN: DAMH–ZC, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2709.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

Purpose of the Meeting: The committee will review the Army's historical activities for FY 98 and those projected for FY 99 based upon reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the October 29, 1998 meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations of oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–23939 Filed 9–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents covers a wide variety of technical arts including: An Improved Microscope and A Fast High S/N Processor.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Method and Apparatus for Producing an Intensity Contrast Image from Phase Detail in Transparent Phase Objects.

Inventor: Phillip S. Brody.

Patent Number: 5,760,902.

Issued Date: June 2, 1998.

Title: Fast High-Signal-To-Noise Ratio Equivalent Time Processor.

Inventor: John W. McCorkle.

Patent Number: 5,764,551.

Issued Date: June 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Cammarata, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, 2800 Powder Mill Road, Adelphi, Maryland 20783–1197, tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–23940 Filed 9–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents covers a wide variety of technical arts including: A Sensor for Subsurface Soil Contamination Identification, A Drag Module For Mortars.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Drag Control Module For Stabilized Projectiles.

Inventors: Michael S.L. Hollis and Fred J. Brandon.

Patent Number: 5,762,291.

Issued Date: June 9, 1998.

Title: Sensor and Method for Detecting Trace Underground Energetic Materials.

Inventor: Rosario C. Sausa.

Patent Number: 5,759,859.

Issued Date: June 2, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5055, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–23941 Filed 9–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.
ACTION: Notice of a Computer Matching Program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between VA and DoD that their records are being matched by computer. The purpose of this match is to identify disability compensation recipients who return to active duty to insure benefits are adjusted or terminated, if appropriate, and steps taken to collect any resulting overpayment.

DATES: This proposed action will become effective October 5, 1998, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Suite 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify disability compensation recipients who have returned to active duty and are therefore ineligible to receive VA compensation.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by the VA to identify ineligible VA disability compensation recipients who have returned to active duty. Using the computer matching program, information on successful matches (hits) can be provided to VA within 90 days of receipt of a magnetic tape of VA benefits record data. A computer match is the most efficient method, other than a manual search of all active duty military personnel records, to identify such cases if an individual does not report his/her own return to active duty.

A copy of the computer matching agreement between VA and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on August 21, 1998, to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435).

Dated: August 31, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND THE DEPARTMENT OF DEFENSE FOR VERIFICATION OF DISABILITY COMPENSATION

A. *Participating Agencies:* Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this agreement is to establish the conditions for a computer matching program between VA as the source agency and the DMDC as the recipient agency. The goal of this match is to identify VA disability benefit recipients who return to active duty and to ensure benefits are terminated if appropriate. VA will porvide identifying information on disability compensation recipients to DMDC to match against a file of active duty (including full-time national Guard and Reserve) personnel. The purpose is to identify those recipients who have returned to active duty and are ineligible to receive VA compensation so that benefits can be adjusted or terminated, if in order.

C. *Authority for Conducting the Match:* The legal authority for conducting the matching program for use in the administration of the VA's Compensation and Pension Benefits Program is contained in 38 U.S.C. Part 5304(c), Prohibition Against Duplication of Benefits, which precludes pension, compensation, or retirement pay on account of any person's own service, for any period for which he receives active duty pay. The head of any Federal department or agency shall provide, pursuant to 38 U.S.C. Part 5106, such information as requested by VA for the purpose of determining eligibility for, or amount of benefits, or verifying other information which respect thereto.

D. *Records to be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

The VA will use the system of records identified as 'VA Compensation, Pension and Education and Rehabilitation Records - VA (58 VA 21/22)' first published at 41 FR 924 (March 3, 1976), and last amended at 60 FR 20156, April 24, 1995, with other amendments as cited therein.

DoD will use the system of records identified as S322.10 DMDC, entitled 'Defense Manpower Data Center Data Base,' published at 62 FR 55609, October 27, 1997.

E. *Description of Computer Matching Program:* The VA, as the source agency, will provide DMDC with a magnetic tape which contains the VA benefit record data of individual VA disability compensation recipients. Upon receipt of the computer tape file of recipient accounts, DMDC will perform a computer match using all nine digits of the SSNs in the VA file against a DMDC computer database. The DMDC database will consist of employment records of active duty military members. Matching records, 'hits' based on the SSN, will

produce the member's name, branch of service, and unit designation. The hits will be furnished to the Veterans Benefits Administration which is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the source file and for resolving any discrepancies or inconsistencies on an individual basis. The Veterans Benefits Administration will also be responsible for making final determinations as to eligibility for benefits or verifying any other information with respect thereto.

The magnetic computer tape provided by VA will contain information on approximately 2.2 million disability compensation recipients.

The DMDC computer database file contains approximately 1.5 million records of active duty military members, including full time National Guard and Reserve.

DMDC will match the SSN on the VA electronic file by computer against the DMDC database. Matching records, hits based on SSNs, will produce data elements of the member's name, SSN, branch of service, unit designation and date of entry (DOE) on active duty.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time on a quarterly basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Suite 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 98–23840 Filed 9–3–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the 57th Meeting of the Chief of Engineers Environmental Advisory Board (EAB):

Name of Committee: Chief of Engineers Environmental Advisory Board.

Dates of Meeting: October 20–23, 1998.

Place: Ramada Plaza Hotel, Old Town, Alexandria, VA.

Time: 9:00–5:00 p.m. (October 20, 1998); 8:00–5:00 p.m. (October 21, 1998); 8:00–5:00 p.m. (October 22, 1998); 8:00–1:00 p.m. (October 23, 1998).

FOR FURTHER INFORMATION CONTACT: Dr. Lloyd Saunders, CECW–AG, U.S. Army Corps of Engineers, 20 Massachusetts Ave., NW, Washington, DC 20314–1000, phone (202) 761–8731.

SUPPLEMENTARY INFORMATION: The meeting will be divided into an Executive Session and technical program. The Executive Session, October 20, will be a business and planning opportunity among the Board members and will be limited to a review of the previous meeting on the watershed perspective and selection of the topics for future meetings. The technical program, October 21–23, will be a continuation of our discussion on the Watershed Perspective in Water Resources Development.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to notify our office (above address) in writing at least five days prior to the meeting of their intent to attend.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–23938 Filed 9–3–98; 8:45 am]

BILLING CODE 3710–93–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Ocean Research Advisory Panel will meet to acquaint Panel members with National Oceanographic Partnership Program activities. The session of the meeting from 9:00 a.m. through 11:30 a.m. will be open to the public. The remaining session of the meeting from 1:30 p.m. through 4:00 p.m. will be closed to the public.

DATES: The meeting will be held on Wednesday, September 9, 1998, from 9:00 a.m. to 4:00 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at the White House Conference Center, The Eisenhower Room, 726 Jackson Place, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Steven E. Ramberg, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number (703) 696–4358.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and 10 U.S.C. section 7903. The purpose of this meeting is to acquaint Panel members with the National Oceanographic Partnership Program (NOPP) activities and discuss FY 2000 and out-year NOPP research funding opportunities. The open session of the meeting will include a briefing and discussion that address current issues in the ocean sciences community and NOPP activities to date. The remaining session of the meeting will involve proprietary information and sensitive information that would be likely to significantly frustrate proposed agency action if it is disclosed to the public prematurely. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that this meeting will be partially closed to the public because it will be concerned with matters listed in 5 U.S.C. section 552b(c)(4) and (9)(b). Due to unavoidable delay in administrative processing, the normal 15 days notice could not be provided.

Dated: September 1, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–23859 Filed 9–3–98; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 9:00 a.m., September 22, 1998.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Defense Nuclear Facilities Safety Board will convene the eighth quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's (DOE) Implementation Plan for the Board's Recommendation 95–2, Integrated Safety Management (''ISM''). Discussions will include overall ISM implementation status and DOE's response to the Board's March 20, 1998, letter on feedback and improvement programs. Feedback and improvement discussions will focus on contractor self assessment, and improvement of tracking, lessons learned, and follow up processes.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Anderson, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indian Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: September 2, 1998.

John T. Conway,

Chairman.

[FR Doc. 98–24024 Filed 9–2–98; 1:05 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting 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 October 5, 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, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting 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: August 31, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Indian Student Eligibility Certification Form for Formula Grants to Local Educational Agencies.
Frequency: Annually.
Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 11,200.
Burden Hours: 3,100.
Abstract: The Indian Student Eligibility Certification Form is used by local educational agencies (LEAs) to certify the number of eligible Indian students enrolled within their school system for the purpose of generating funds under the Indian Education Formula Grant Program to LEAs.

[FR Doc. 98–23855 Filed 9–3–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following: RTD/KO(CA)–7 for the transfer of 26,400 grams of enriched sintered UO2 pellets of which 18,500 grams consists of 305.4 grams of the isotope U–235 (1.65 percent enrichment) and the remaining 7,900 grams consists of 158.6 grams of the isotope U–235 (2.00 percent enrichment) from Canada to the Republic of Korea to be incorporated into CANFLEX fuel bundles and returned to AECL, Canada for performance test in NRU reactor as part

of a joint Canada/Korea fuel development program.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: August 28, 1998.

For the Department of Energy.

Cherie P. Fitzgerald,

Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 98–23884 Filed 9–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–740–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

August 31, 1998.

Take notice that on August 24, 1998, National Fuel Gas Supply Corporation (National fuel), 10 Lafayette Square, Buffalo, New York 14203, filed a request with the Commission in Docket No. CP98–740–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new residential sales tap authorized in blanket certificate issued in Docket No. CP83–4–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to construct and operate a sales tap for delivery of approximately 1,200 Mcf of gas annually to National Fuel Gas Distribution Corporation. National Fuel states that the proposed sales tap would be located on its Line 5–3 in Clarion County, Pennsylvania. National Fuel estimates that the cost of construction would be $1,500 for which National Fuel would be reimbursed.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23849 Filed 9–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9985–024]

Rivers Electric Company, Inc.; Notice of Availability of Final Environmental Assessment

August 31, 1998.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to increase the elevation of the dam and replace the existing flashboards with pneumatically-operated crest gates. The proposed action would result in an operating capacity of 950 kW, which is within the licensed capacity of 1050 kW. A draft environmental assessment (DEA) of this application and Notice of Availability of the DEA were issued by the Commission on May 6, 1998. The FEA, like the DEA, finds that approval of the amendment application, with identified environmental protection measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be obtained by calling the Commission's Public Reference room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–23848 Filed 9–3–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6155–6]

Agency Information Collection Activities: Comment Request; RCRA Expanded Public Participation

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 continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): RCRA Expanded Public Participation, EPA ICR Number 1688.03, OMB Control Number 2050–0149, current expiration date: 11/30/98. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 3, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–RPIP–FFFFF to RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. Comments may also be submitted electronically by sending electronic mail through the Internet to: *rcra-docket@epamail.epa.gov.* Comments in electronic format should also be identified by the docket number F–98–RPIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway 1, 1235 Jefferson Davis Highway, first floor, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page.

Copies of the original ICR may be requested from the docket address and phone number listed above or may be found on the Internet.

Follow these instructions to access the information electronically.

WWW: http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/index.htm

FTP: ftp.epa.gov

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained in the RCRA Information Center (the RIC address is listed above in the section).

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703/412–9610 or TDD 703–412–3323. For technical information, contact Toshia King at 703–308–7033.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards, under Section 3004 of RCRA, that are necessary to protect human health and the environment.

Title: RCRA Expanded Public Participation, EPA ICR Number 1688.03, OMB Control Number 2050–0149, expiration date: 11/30/98.

Abstract: Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. EPA promulgated requirements for providing additional opportunities for the public to be involved in the RCRA permitting process at 40 CFR Part 124 §§ 124.31 through 124.33 and in Part 270 §§ 270.62 and 270.66. The Part 124 requirements apply to all types of hazardous waste treatment, storage, and disposal facilities, unless exempted under a specific section; the Part 270 requirements apply only to hazardous waste combustors planning trial burns.

The public participation regulations at parts 124 and 270 were promulgated by EPA under the authority of Subtitle C in RCRA to provide earlier and better public participation in the hazardous waste facility permitting process. In summary the regulations require a permit applicant to provide notice of and hold an informal meeting with the public before submitting a Part B application, and to submit a summary of the meeting to the agency (§ 124.31). This meeting is the earliest formal step in the RCRA permitting process. The agency is required to issue a public notice when it receives an application (§ 124.32). The notice informs the recipient that the facility has submitted a permit application for agency review. Certain facilities (as decided by the agency director on a case-by-case basis) are required to set up and maintain an information repository(§ 124.33). Lastly, the agency is required to issue a public notice of an upcoming trial burn at a permitted hazardous waste combustion facility (§§ 270.62(b)(6) and 270.66(d)(3)), or at a hazardous waste combustion facility operating under interim status (270.62(d) and 270.66(g)).

This information collection targets the reporting frequency and requirements of the permit and assures public involvement regulations are met by owners or operators. The reporting frequency is essential to assure that any changes in the trial burn plans or in the anticipated permit application contents are made known to EPA and to the public. In addition, in the RCRA Expanded Public Participation rule, EPA promulgated regulations to build upon the Part 124 requirements, in support of the Agency's goal to enhance public involvement in RCRA permitting procedures. These requirements are important components in : (1) meeting its statutory mandate to promote public participation in the development, revision, and implementation of any regulation under RCRA; and (2) achieving EPA's goal of enhancing public involvement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The 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: EPA estimated repondent burden hours for the information collection requirements associated with the pre-application meeting and the information repository requirements. The estimated number of likely respondents subject to public participation activities required under this collection of information is 78. The Agency estimates that 76 facilities are expected to apply for permits or renew their permits each year, and an additional two facilities are included in this universe because they are the percent of the existing RCRA TSDFs expected to be required to initiate information repositories. The total annual burden to respondents, as estimated for all public participation reporting and recordkeeping activities under this collection of information is 7,253 hours. The total estimated average annual burden cost to respondents required to perform public participation activities under this information collection request is $320,590 ($311,384 in labor cost, $3,786 in total capital cost, and $5,420 in O&M cost). The estimates for O& M cost include preparation of multilingual notices and the purchase of a file cabinet to retain copies and other required documentation. 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.

Dated: August 18, 1998.

Barnes Johnson,

Acting Director, Office of Solid Waste.

[FR Doc. 98–23814 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6156–6]

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 November 3, 1998.

ADDRESSES: Office of Enforcement and Compliance Assurance, Office of Compliance, Mail Code 2224A, 401 M Street S.W., Washington, D.C. 20406. Information may also be acquired electronically through the EnviroSense Bulletin Board, (703) 908–2090 or the EnviroSense WWW/Internet Address, http://wastenot.inel.gov./envirosense/. All responses and comments will be collected regularly for EnviroSense.

Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260–2740.

FOR FURTHER INFORMATION CONTACT:

NSPS Subpart Ea and Eb, Joyce Chandler, telephone/fax (202) 564–0000/(202) 564–0038 or e-mail chandler.joyce@epamail.epa.gov

NSPS Subpart J Tom Ripp, telephone/fax (202) 564–7003/(202) 564–0038 or e-mail ripp.tom@ epamail.epa.gov

NESHAP Subpart BB, Rafael Sanchez, telephone/fax (202) 564–7028/(202) 564–0038 or e-mail sanchez.rafael@epamail.epa.gov

NSPS Subpart N and Na, Maria Malave, telephone/fax (202) 564–7027/(202) 564–0038 or e-mail malave.maria@epamail.epa.gov

NSPS Subpart LL and UUU, Charles Williams, telephone/fax (202) 564–7016/(202) 564–0038 or e-mail: williams.charles@epa.gov

Section 609, Sandy Jones, telephone/fax (202) 564–7038/(202) 564–0038 or e-mail jones.sandra@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

NSPS Subpart Ea and Eb, Municipal Waste Combustors

Affected entities: Entities potentially affected by this action are those that combust municipal waste.

Title: NSPS Subpart Ea and Eb, Municipal Waste Combustors, OMB Control Number 2060–1506, expires 1/31/99.

Abstract: Emissions from municipal waste combustors cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. The NSPSs for subpart Ea and subpart Eb, therefore, were promulgated for this source category. The pollutants of concern for Subpart Ea are municipal waste combustor (MWC) metals, MWC organics, MWC acid gases, and nitrogen oxides. In Subpart Eb the additional pollutants of concern are cadmium (Cd), lead (Pb), and mercury (Hg). This ICR is for the combination of the existing information collection requests in support of the Clean Air Act. The NSPS Subpart Ea and Eb requires owners and operators with unit capacity above 225 mg/day to notify the Agency of intent to construct and initiate operation of a new, modified or reconstructed MWC. The notification must contain supporting information regarding unit design capacity, the calculations used to determine capacity, and estimated start-up dates.

Owners and operators of the affected facilities described must notify the Agency of the date of construction or reconstruction, the anticipated and actual startup dates and notification of any physical or operation change to an existing facility which may increase the regulated pollutant emission rate.

Owners and operators are also required to maintain records of the occurrence and duration of the startup, shutdown, or malfunction in the operation of an affected facility. These notifications and records are required, in general, for all sources subject to NSPS. In addition, facilities subject to subpart Ea must install continuous monitoring systems (CMS) to monitor specified operating parameters to ensure that good combustion practices are implemented on a continuous basis. Owners and operators must submit quarterly and annual compliance reports. The notification and reports enable EPA or the delegated State regulatory authority to determine that the best demonstrated technology is installed and properly operated and maintained, and to schedule inspections. In addition, the reporting and record keeping requirement for facilities subject to subpart Eb include information on the pollutants, Cd, Pb, Hg, and fugitive ash emissions testing and MWC siting requirements. As the means for determining compliance with the standards for Cd, Pb, Hg, and fugitive ash emissions, owners and operators are required to collect the necessary information, keep records, and submit reports. Owners and operators are required to conduct initial compliance tests and annual retests for Cd, Pb, Hg, and fugitive ash emissions. As a means of determining continuous compliance for Hg, owners and operators are required to keep records of the weekly amount of carbon used for the activated carbon injection and to calculate the estimated hourly carbon injection rate for hours of operation. Owners and operators are required to submit and initial compliance report for Cd, Pb, Hg, and fugitive ash emissions.

Once a year, owners and operators are required to submit an annual report that indicates the emission level established during the annual test for Cd, Pb, Hg, fugitive ash emissions and the lowest calculated hourly carbon feed rate. If the emission level recorded for any of these pollutants shows emissions above the emission limit for the pollutant, then the owner or operator is required to submit a semiannual report for the calendar half during which the test was conducted that includes the test report for that pollutant, including the explanation for the exceedance. If the calculated carbon feed rate recorded show a carbon injection rate lower than the carbon injection rate established during the annual compliance test for Hg, then the owner or operator is required to submit the recorded and calculated carbon feed rate data in a semiannual report for the calendar half in which the date was recorded and calculated. Owners or operators are not required to submit test reports unless a pollutant or parameter is recorded as exceeding the emission limit for the pollutant or parameter.

Owners or operators of facilities subject to subpart Eb are required to maintain records of initial performance tests and all annual performance retests for compliance with Cd, Pb, and Hg limits. Owners or operators are required to maintain records of periodic testing for fugitive ash emissions. All records are required to be maintained at the source for a period of five years.

Under the siting requirements of the subpart Eb regulation, owners or operators are required to submit the results of the siting analysis and material separation plans, hold public meeting on the analysis and the plan, and submit a report summarizing public comments and responses.

All reports required under these regulations are to be submitted to the respondent's State or local agency, whichever has been delegated NSPS enforcement authority by EPA. The information will be used solely to determine that all sources subject to the NSPS are achieving the standards.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of burden of the proposed collection information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of the collection 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 record keeping burden for this collection of information is estimated to average 90,219 hours. For Subpart Ea, it is estimated that the annual compliance test will require 850 hours, while the quarterly audits will require 125 hours and 36 hours respectively for in-situ and extractive. For Subpart Eb the burden is estimated as 227 hours for the initial performance test and test report (or the annual compliance test and test report) for a large plant consisting of three affected units. The estimate for writing the initial notification report is estimated as 2 hours, while the report writing for the annual compliance report is estimated as 17 hours. The burden for the initial site selection analysis and report is estimated as 270 hours, while the burden for the public meeting and comment response is estimated as 140 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 instruction; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing/maintaining information, disclosing and providing information. Additionally, it includes the time needed to 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 estimated number of respondents is 34.

NSPS Subpart J, Petroleum Refineries

Affected entities: Entities potentially affected by this action are fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices and all Claus sulfur recovery plants except Claus plants of 20 long tons per day or less at petroleum refineries.

Title: New Source Performance Standards (NSPS) Subpart J—Standards of Performance for Petroleum Refineries, OMB No. 2060–0022, Expiration Date: March 31, 1999.

Abstract: Owners or operators of the affected facilities described must make the following one-time-only reports: notifications of the anticipated and actual date of startup, notification of the date of construction or reconstruction, notification of any physical or operational change to an existing facility which may increase the emission rate of any regulated air pollutant, notification of the date upon which demonstration of the continuous monitoring system performance commences, notification of the date of the initial performance test, and results of the performance tests.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or malfunction in the operation of the air pollution control device, or any periods during which the monitoring system is inoperative. These notifications, reports and records are required in general, of all sources subject to NSPS.

Recordkeeping and reporting requirements specific to refineries consist mainly of recording the average coke burn-off rate, the rate of fuel combustion, and the hours of operation on a daily basis. The owner or operator is also required to install a continuous emission monitor and record the emission levels of opacity, carbon monoxide, and sulfur dioxide or hydrogen sulfide. Owners or operators are required to report all periods of emissions in excess of the standard.

In the Administrator's judgement, particulate matter, carbon monoxide and sulfur dioxide from petroleum refineries cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under Section 111 of the Clean Air Act.

The control of emissions of particulate matter, carbon monoxide and sulfur dioxide from petroleum refineries requires not only the installation of properly designed equipment, but also the proper operation and maintenance of that equipment. These standards rely on the capture of pollutants vented to a control device.

To ensure compliance with these standards, the required records and reports are necessary to enable the Administrator: (1) To identify new, modified, or reconstructed sources subject to the standard; (2) to ensure that the emission limits are being achieved; and (3) to ensure that emission reduction systems are being operated and maintained properly. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act and in accordance with any applicable permit.

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;

(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.

The estimate was based on the assumption that there would be no new affected facilities each year and that there was an average of 146 sources in existence for the three years covered by the ICR. For all sources, it was estimated that it would take: 2236 person-hours to fill out quarterly and semiannual emission reports (assuming 65% of the sources will have at least one quarter with excess emissions and that 35% of the sources will have to report semiannually.

The annual average annual burden to industry over the past three-year period from recordkeeping and reporting requirements had been estimated at 19,045 person-hours. The average annual burden to industry over the past three years was estimated to be $579,920.

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. For the new, ICR cost estimates for the required monitoring systems will need to be included in the overall burden estimate.

NSPS Subpart N and Na, Primary and Secondary Emissions From Basic Oxygen Process Furnaces

Affected entities: Entities potentially affected by this action are each basic oxygen process furnaces (BOPF) in a steel plant (Subpart N—addresses primary emissions from BOPF), and any top-blown BOPF and hot metal transfer station or skimming station used for a bottom-blown or top-blown BOPF (Subpart Na—addresses secondary emission from BOPF.

Title: New Source Performance Standards (NSPS) for Primary and Secondary Emissions from Basic Oxygen Process Furnaces; OMB No. 2060–0029; EPA No. 1069–05; Expiration Date, March 31, 1999.

Abstract: In addition to the monitoring, record keeping 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 NAPS Subparts N and Na, will install, calibrate, maintain, and continuously operate pressure loss and water supply pressure monitoring devices (for sources using venturi scrubbers), as specified in 40 CFR 60.143(b).

Owners/operators will install, calibrate, operate and maintain a monitoring device that continually measures and records for each steel production cycle the various rates or levels of the exhaust ventilation at each phase of the cycle through each duct of the secondary emission capture system, as specified in 40 CFR 60.143a(a). Owners/operators are to maintain continuous records of all monitoring device measurements (*i.e.*, measurement of the water supply pressure and pressure loss through the venturi scrubber emission control equipment, and measurement of the various rates or levels of the exhaust ventilation at each phase of the cycle through each duct of the secondary emission capture system), as specified in 40 CFR 60.143(b) and 60.143a.

Owners/operators subject to NSPS Subpart B, will report on a semiannual basis, all measurements of monitoring devices that average more than ten percent below the average results maintained during the most recent performance test, as specified in 40 CFR 60.143(c), 60.143a(d) and 60.143a(e).

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 1996 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 assumptions that there would be no new sources over the three years of the existing ICR and that there were approximately 24 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 Subparts N and Na are summarized by the following information. The estimates on reporting requirements are as follows: (1) Read Instructions (1 person-hour) and (2) Performances test (194 person-hours). The estimates for report writing are based on: (1) Notification requirements (0 person-hours); (2) Report of performance tests (32 person-hours); and, (3) Semiannual report of low pressures (10 person-hours). The estimates for reporting requirements are based on: (1) All existing sources use venturi scrubbers' emission control systems and half have reportable low pressure for which they submit a semiannual report; (2) ten percent of the existing sources are requested by the regulatory agency to conduct a performance test; and, (3) records of operating parameters of continuous monitoring system being recorded 365 days per year. Records must be kept for a period of two years following the date of measurements, maintenance reports, and records. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 2,974.8 person-hours.

NSPS Subpart LL for Metallic Mineral Processing Plants

Affected entities: Entities potentially affected by this action are those which produce emissions from metallic mineral processing plants subject to NSPS.

Title: NSPS for Metallic Mineral Processing Plants Subpart LL OMB # 2060–0016 EPA # 0982.06.

Abstract: The Administrator has judged that PM emissions from metallic mineral processing plants cause or contribute to air pollution that may reasonably be anticipated to endanger health or welfare. Owners/operators of metallic mineral processing plants must notify EPA of construction, modification, startups, shut downs, date and results of an initial performance test. Owner/ operators with facilities using any wet scrubbing device will install, calibrate, and maintain continuous monitoring devices to measure pressure drops and flow rate. Weekly records of the pressure drop and flow rates are to be maintained, and semiannual reports are to be submitted when the pressure drops and flow rate differ 30% from the most recent performance test.

Under the New Source Performance Standards (NSPS) for Metallic Mineral Processing Plants an affected facility is each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyer belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading and unloading station, railroad car loading and unloading station, railroad car loading and unloading station at the mill or concentrator, commencing construction, modification or reconstruction after the date of proposal. The NSPS does not apply to facilities located in underground mines, or to facilities performing the beneficiation of uranium ore at uranium ore processing plants.

Approximately 22 sources are currently subject to the standards. Particulate Matter (PM) is the pollutant regulated under this Subpart. The standards limit particulate emissions from the stack to 0.05 grams per dry standard cubic meter and to 7% opacity requirement. No affected facility may discharge any process fugitive emissions that exhibit greater than 10% opacity. Owners and operators must make the following one-time reports: notification of the date of construction or reconstruction; notification of the dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emissions rate; notification of the demonstration of the Continuous Monitoring Systems (CMS); notification of the date of initial performance tests; and the results of the initial performance test.

Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an effected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Record keeping and reporting requirements specific to metallic mineral processing plants consist of the measurements of the pressure drop and flow rate across the scrubber. Records of startup, shutdowns, and malfunctions should be reported semiannually.

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;

(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 reporting burden disaggregated to show the estimated average burden hours per response, the proposed frequency of response, and the estimated number of likely respondents. For example, notification of anticipated startup 2 hours, of actual startup 2 hours, initial performance test 330 hours, demonstration of CMS 4 hours, semiannual scrubber malfunction report 8 hours. This estimate assumes that 20 percent of initial performance tests must be repeated due to failure, an operation of 250 days per year and an hourly wage of $ 17.09 plus 110 percent overhead. It includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 49 CFR Part 9 and 48 CFR Chapter 15.

NSPS for Subpart UUU, Calciners and Dryers in Mineral Industries

Affected entities: Entities potentially affected by this action are those which are subject to NSPS for Calciners and Dryers in Mineral Industries.

Title: NSPS for Calciners and Dryers in Mineral Industries 40 CFR Part 60 Subpart UUU, Expiration Date 03/31/99.

Abstract: Under the New Source Performance Standards (NSPS) for Calciners and Dryers in Mineral Industries, Subpart UUU, proposed April 23, 1986 and promulgated on September 28, 1992, affected facilities are those plants that process or produce any of the following minerals or their concentrates: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite. The affected facility as listed above would be each new, modified or reconstructed calciner or dryer. The types of dryers to which the standards apply include: rotary (direct), rotary (indirect), fluid bed, vibrating grate, flash, and spray dryers. The types of calciners to which the standards apply include: Rotary, flash, and kettle calciners; multiple hearth furnaces and expansion furnaces. Affected facilities subject to NSPS LL, Metallic Mineral Processing Plants, are not subject to this Subpart.

Approximately 150 sources are currently subject to the standard, and approximately 5 sources per year become subject. Particulate matter is the pollutant regulated under this Subpart. The Administrator has judged that PM emissions from Calciners and Dryers cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. Owners or operators of the affected facilities must make the one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an

existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, for any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Reporting requirements, for this industry currently include semiannual reports of instances of exceedance of control device operating parameters. Semiannual excess emission reports and monitoring system performance reports shall include the exceedances of control device operating parameters (specified in § 60.735, Recordkeeping and Reporting), the date and time of the exceedance or deviance, the nature and cause of the malfunction (if known) corrective measures taken, and identification of the time period during which the CMS was inoperative (this does not include zero and span checks nor typical repairs/adjustments).

In order to ensure compliance with the standards promulgated to protect public health, adequate recordkeeping and reporting 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. Recordkeeping and reporting is mandatory under this regulation. Records must be kept for 2 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 CFR 60.735.

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 only type of industry cost associated with the information collection activity in the standards are labor costs. This information collection is consistent and compatible, to the maximum extent practicable, with the respondents existing reporting or recordkeeping practices. The average annual burden to industry over the next three years from these recordkeeping and reporting requirements is estimated at 330 hours for performance test, assuming 20 percent of performance test must be repeated, 100 hours for continuous opacity monitoring (COM), 2 hours scrubber demonstration, 18 hours method 9 testing, 4 hours recalibration of COM, 4 hours recalibration of scrubber, 2 hours for notification of construction, startups, performance tests and 16 hours for reports of excess emissions.

This estimate assumes 250 days of operation per year, that 12 facilities will have personnel certified for Method 9 testing, that 20% employ scrubbers and 80% use dry control devices. 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.

NESHAP Subpart BB Benzene Emissions From Bulk Transfer Operations

Affected entities: Entities affected by this action are those which the total of all loading racks at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal.

Title: NESHAP for Benzene Emissions from Bulk Transfer Operations—40 CFR Part 61, Subpart BB, OMB No. 2060–0182, Expiration Date: 1/31/99.

Abstract: The National Emission Standards for Benzene Emissions from Benzene Transfer Operations were proposed on September 14, 1989 and promulgated on March 7, 1990. The standards are codified at 40 CFR part 61, Subpart BB.

These standards apply to the following facilities in benzene transfer operations: The total of all loading racks at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal. Specifically exempted from the regulation are loading racks at which only the following are loaded: Benzene-laden waste (covered under Subpart FF of Part 61), gasoline, crude oil, natural gas liquids, petroleum distillates (*e.g.*, fuel oil, diesel, or kerosene), or benzene-laden liquid from coke by-product recovery plants. Any affected facility which loads only liquid containing less than 70 weight-percent benzene or whose annual benzene loading is less than 1.3 million liters of 70 weight-percent or more benzene is exempt from the control requirements and need only maintain records and submit an initial report. The control requirements for bulk transfer facilities require that benzene emissions be routed to a control device that achieves a 98 weight-percent emissions reduction, and (2) that loading of benzene be limited to vapor-tight tank trucks or vapor-tight railcars.

Owners or operators of the affected facilities described must make the following one-time-only notices or reports: notification of anticipated startup; notification of actual startup; initial compliance report (or control exemption by sources below cut off); notification of emission tests, report following an emission test; notification of a monitoring system performance test; and report following a monitoring system performance test. These notifications and reports are general provisions and required of all sources subject to any NESHAP.

Monitoring and recording requirements specific to benzene transfer operating include vapor-tightness documentation, and monitoring and operation parameters specific to the control method chosen (incinerator, vent valves status, steam generator, process heater, flare, carbon adsorption). Sources must maintain records of periods exceeding most recent performance test parameters, including the date and time of any exceedance or deviation, the nature and cause of the malfunction and corrective measures taken.

Owners or operators are also required to maintain records of the occurrence and duration of any period during

which the monitoring system is malfunctioning or inoperative. Reporting requirements specific to benzene transfer operations include an initial engineering report and a quarterly report by affected facilities subject to the standards at § 61.302. The quarterly reports include excess emissions and deviations in operating parameters. Sources not subject to the control standards must continue to record information and must file a report only the first year.

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:

(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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The majority of industry costs associated with the information collection activity in the standards are labor costs. The current average annual burden to industry from these recordkeeping and reporting requirements is estimated at 14,685 person-hours. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The current average annual burden to industry is estimated to be $447,158.

In addition to the loading rack affected facilities, owners and operators of tank trucks, railcars, and marine vessels are also impacted by the standards. Based upon available information, it has been estimated that there are 97 tank trucks and railcars, and 131 marine vessels subject to the standards. All tank trucks and railcars must be tested annually to ensure vapor-tightness. Marine vessels must either be checked for vapor-tightness or operated at negative pressure. In calculations of burden, 65 marine vessels are assumed to conduct vapor-tightness tests.

No person is 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 displayed in 40 CFR Part 9.

NSPS for Section 609 Motor Vehicle Air Conditioners

Affected entities: Entities affected by this action are those which produce emissions subject to Section 609 Motor vehicle air conditioners.

Title: Servicing of Motor Vehicle Air Conditioners, OMB Control No. 2060–0247, expiring 1/31/99.

Abstract: In 1992, EPA developed regulations under section 609 of the Clean Air Act Amendments of 1990 (Act) for the recycling of chlorofluorocarbons in motor vehicle air conditioners. The regulations were published in 57 FR 31240, and are codified at 40 CFR Subpart B (Section 82.30 *et seq.*). The regulation establishes standards and requirements for the servicing of MVACs that use any refrigerant other than CFC–12. The information requested for all entities that service motor vehicle air conditioning is required by Section 609(d) of the Act. Proposed automotive technician certification programs are required to be approved by EPA in Section 609(d)(4). Section 609(b)(2)(A) requires the approval of independent laboratories by EPA. The submission of data for EPA determination of substantially identical equipment is addressed by Section 609(b)(2)(B). The record keeping requirements for the motor vehicle recycling program are derived from Section 114 of the 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 Statements: The Agency estimates that are no capital/start-up costs associated with the requirements of section 609 and therefore with the renewal of this information collection request.

This renewal shows a significant reduction in burden from the original information collection request. This reduction is due primarily to revisions in the estimates of the number of service facilities that must complete certifications for the equipment they have purchased. The Agency estimates that no more than 10,000 existing facilities, plus 4,000 new facilities, will need to complete the certification form in any year. In addition, the reduction in burden hours from the original ICR is due in part to a revision in the estimate of the time it takes for a service facility manager to fill out the certification form. Compiling certification information and submitting it to EPA estimated to a half hour based on the limited nature of the information requested, and ease of obtaining the information. Compiling information from training programs and submitting it to EPA is estimated at two hours because of the brief nature of the document. The information can easily be incorporated into an establishment's mailing system. Compiling information on the independent laboratory equipment testing programs, requires independent laboratories to assemble test methodology, list equipment requirements and review the SAE standards. EPA estimated an hour to compile information. Substantially identical equipment submission of information is estimated at an hour to obtain information from a standard equipment owners manual. Small containers purchased for resale only, EPA estimated an hour of industry time for record keeping requirements. To record names and addresses of off site Reclamation or Recycling, EPA estimated five minutes based on the limited nature of the information requested and ease of obtaining the information. For industry to maintain information on all equipment operators and certified technicians, the time burden was estimated at five minutes based on the limited nature of the information requested and the ease of obtaining the information. These estimates include 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; and transmit or otherwise disclose the information.

Dated: August 28, 1998.

Bruce R. Weddle,

Acting Director, Office of Compliance.

[FR Doc. 98–23890 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6156–7]

RIN 2040–AC20

Effluent Guidelines Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of effluent guidelines plan.

SUMMARY: Today's notice announces the Agency's plans for developing new and revised effluent guidelines, which regulate industrial discharges to surface waters and to publicly owned treatment works. Section 304(m) of the Clean Water Act (CWA) requires EPA to publish a biennial Effluent Guidelines Plan. The Agency published a proposed plan on May 28, 1998, and public comments on the proposed plan are discussed in today's notice.

EFFECTIVE DATE: October 5, 1998.

ADDRESSES: The public record for this notice is available for review in the EPA Water Docket, 401 M Street, S.W., Washington, D.C. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3 p.m. for an appointment. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Engineering and Analysis Division (4303), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460; telephone 202–260–7150.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities
II. Legal Authority
III. Introduction
A. Purpose of Today's Notice
B. Overview of Today's Notice
IV. 1998 Proposed Effluent Guidelines Plan
V. 1998 Effluent Guidelines Plan
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1. Ongoing Rulemakings
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C. Summary of Changes from the Proposed Plan
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Appendix A—Effluent Guidelines Rulemaking Projects and Preliminary Studies

I. Regulated Entities

Today's plan does not contain regulatory requirements and does not provide specific definitions for each industrial category. Entities potentially affected by decisions regarding the plan are listed below.

Category of entity	Examples of potentially affected entities
Industry/Commercial	Pulp, Paper and Paperboard; Oil and Gas Extraction; Centralized Waste Treatment; Pharmaceutical Manufacturing; Metal Products and Machinery (including electroplating, metal finishing); Landfills; Industrial Waste Combustors (Incinerators); Industrial Laundries; Transportation Equipment Cleaning (tank trucks, railroad tank cars, barge tanks); Iron and Steel Manufacturing; Coal Mining; Petroleum Refining; Textile Mills; Inorganic Chemicals; Steam Electric Power Generating; Photographic Processing; Chemical Formulating, Packaging and Repackaging; Airports.
Agriculture	Feedlots (swine, poultry, dairy and beef cattle); Fish Hatcheries and Farms (Aquaculture).
Federal Government	Metal Products and Machinery (including electroplating, metal finishing); Landfills; Airports.
State Government	Metal Products and Machinery (including electroplating, metal finishing); Municipal Separate Storm Sewer Systems (Urban Storm Water); Landfills; Airports.
Local Government	Metal Products and Machinery (including electroplating, metal finishing); Municipal Separate Storm Sewer Systems (Urban Storm Water); Landfills; Airports.

To determine whether your facility would be regulated, you should carefully examine the applicability criteria in the appropriate proposed rule (previously published or forthcoming). Not all of the categories listed in the above table have been selected for rulemaking. Citations for previously published proposed rules and schedules for forthcoming proposed rules are provided in Appendix A of today's notice.

II. Legal Authority

Today's notice is published under the authority of Section 304(m) of the Clean Water Act, 33 U.S.C. 1314(m).

III. Introduction

A. Purpose of Today's Notice

Today's notice announces the Agency's fourth biennial plan for developing new and revised effluent guidelines pursuant to Section 304(m) of the CWA.

EPA published a proposed Effluent Guidelines Plan (the ''Proposed Plan'') on May 28, 1998 (63 FR 29203). The Agency accepted comment on the notice until July 27, 1998. Today's notice summarizes and addresses the major comments the Agency received.

B. Overview of Today's Notice

The Agency intends to develop effluent limitation guidelines and standards (''effluent guidelines'') as follows:

1. Continue development of eleven rules listed in the Proposed Plan. The categories are: Pulp, Paper and Paperboard, Phases 2 and 3; Centralized Waste Treatment; Metal Products and Machinery; Landfills; Industrial Waste Combustors (Incinerators); Industrial Laundries; Transportation Equipment Cleaning; Iron and Steel Manufacturing; Oil and Gas Extraction (Synthetic-Based Drilling Fluids); Coal Mining (Remining and Western subcategories); and Feedlots (Poultry and Swine subcategories).

2. Begin development of rules for two additional categories (new or revised) by December 1998, one of which is currently planned to be Feedlots (Beef and Dairy Cattle).

3. Complete preliminary studies on Feedlots, Urban Storm Water, and Airport Deicing.

4. Plan for development of two additional effluent guidelines, either new or revised. EPA's current plan is to begin development of two rules by December 1999.

IV. 1998 Proposed Effluent Guidelines Plan

In the Proposed Plan, EPA described its intent to continue development of ongoing rulemakings, develop additional rules, and conduct preliminary studies. The Proposed Plan set forth EPA's rationale for the selection of particular industries as candidates for new or revised effluent guidelines. The Proposed Plan also described the relevant statutory framework, the components and process for development of an effluent guidelines regulation, and other background information. The principal elements of the Proposed Plan were designed to implement Section 304(m) and a Consent Decree in *Natural Resources Defense Council et al.* v. *Browner* (D.D.C. 89–2980, January 31, 1992, as modified) (the ''Consent Decree''). See 63 FR 29204–29207.

V. 1998 Effluent Guidelines Plan

EPA's 1998 Effluent Guidelines Plan is set forth below. Today's Plan is substantively identical to the Proposed Plan.

A. Regulations

1. Ongoing Rulemakings

The Agency is currently in the process of developing new or revised effluent guidelines for the categories are set forth in Table 1.

TABLE 1.—EFFLUENT GUIDELINES CURRENTLY UNDER DEVELOPMENT

Category	Proposal	Final action
	Consent decree or publication date	Consent decree
Pulp, Paper and Paperboard, Phases 2 & 3	12/17/93	[1]2000–2002
Centralized Waste Treatment	[4]1/27/95, Fall 1998	[3]8/15/99
Metal Products and Machinery	[2]5/30/95, 10/00	12/02
Industrial Laundries	12/17/97	6/99
Landfills	2/6/98	11/99
Industrial Waste Combustors (Incinerators)	2/6/98	11/99
Transportation Equipment Cleaning	6/25/98	6/15/00
Oil and Gas Extraction (Synthetic Drilling Fluids)	12/98	12/00
Iron and Steel Manufacturing	[3]12/98	[3]12/00
Coal Mining	12/99	12/01
Feedlots (Poultry and Swine Subcategories)	12/99	12/01

[1] The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992, consent decree and dates reflect projected dates for final promulgation of the 2 phases.
[2] 5/30/95 proposal covered Phase 1 MP&M facilities only. Proposal in 10/00 will cover Phase 1 and 2 facilities combined.
[3] EPA is discussing extensions to consent decree dates with plaintiff Natural Resources Defense Council (NRDC).
[4] A re-proposal for the Centralized Waste Treatment category is planned for Fall 1998. This action is not in the consent decree.

2. Future Regulations

EPA is scheduled to begin work later in 1998 on revised effluent guidelines for the Beef and Dairy Cattle subcategories of the Feedlots category, 40 CFR Part 412. The Decree requires that EPA develop additional rules. Based on the selection process discussed in the Proposed Plan (63 FR 29208), the Agency may choose the next rulemaking projects from the following list of categories:

- Petroleum Refining.
- Textile Mills.
- Inorganic Chemicals.
- Steam Electric Power Generating.
- Photographic Processing.
- Chemical Formulators and Packagers.
- Urban Storm Water.
- Airport Deicing.
- Aquaculture (Fish Hatcheries and Farms).

Completed, ongoing or potential preliminary studies on these categories were discussed in the Proposed Plan (63 FR 29208–29210). The Agency may consider other categories for rulemaking as it receives additional data. The Consent Decree deadlines for the additional rules are part of the Agency's ongoing negotiations with NRDC.

B. Preliminary Studies

In the Proposed Plan EPA described preliminary studies either completed or underway. The studies assist the Agency in selecting industries to be subject to future effluent guidelines rulemaking. The Agency is continuing work on three studies: Feedlots, Urban Storm Water, and Airport Deicing. The Agency may conduct additional studies from time to time.

C. Summary of Changes From the Proposed Plan

Today's Effluent Guidelines Plan is substantively identical to the Proposed Plan. However, some clarifications are provided below in Section IV in response to several comments the Agency received on the proposal.

D. Updates on Rulemaking Activities

1. Transportation Equipment Cleaning

EPA published a proposed rule for the Transportation Equipment Cleaning Category on June 25, 1998 (63 FR 34685).

2. Pharmaceutical Manufacturing

The Administrator signed a final rule for the Pharmaceutical Manufacturing Category on June 30, 1998. The rule will be published shortly in the **Federal Register**.

3. Pulp, Paper and Paperboard

EPA published a notice on August 7, 1998 (63 FR 42238) to correct errors in the final Phase 1 rule for the Pulp, Paper and Paperboard category, which was published on April 15, 1998 (63 FR 18504).

4. Centralized Waste Treatment

EPA published a proposed rule for the Centralized Waste Treatment category on January 27, 1995 (60 FR 5464) and a Notice of Data Availability on September 16, 1996 (61 FR 48805). Based on data received and subsequent Agency analysis, EPA is planning a re-proposal for Fall 1998.

VI. Public Comments

EPA accepted public comment on the Proposed Plan until July 27, 1998. The Agency received comments that covered approximately 15 topics from a variety of commenters including industry and agriculture, environmental groups, local governments, States, and engineering consulting firms. The summary in this section highlights the significant comments submitted. The administrative record for today's notice includes a complete text of the comments and the Agency's responses. EPA has not yet selected additional categories for rulemaking, but will consider the comments submitted as it makes its decisions.

A. Ongoing Rulemaking Projects and Studies

Several comments addressed the scope of coverage and other issues pertaining to specific ongoing effluent guidelines rulemaking projects and preliminary studies. EPA will forward these comments to the dockets or records for the appropriate rules and studies, and will consider the comments as these projects continue. The Agency has not made final decisions about the scope and applicability of the rules addressed in these comments.

B. Aquaculture

In the Proposed Plan, EPA asked for public comment on the need for effluent guidelines for aquaculture facilities, also called fish hatcheries and farms. The notice made reference to a recent report by the Environmental Defense Fund, which recommended promulgation of effluent guidelines for aquaculture (63 FR 29210). The Agency received comments arguing either that pollutant discharges are adequately addressed by National Pollutant Discharge Elimination System (NPDES) permits and that effluent guidelines are not needed, or that the permits issued by the various state programs are inconsistent and inadequate. Some comments also provided additional information such as explanations of how aquaculture facilities are regulated under existing permits, comparisons of state permitting policies, and technical papers describing the pollutants generated and treatment processes used in the industry. EPA needs additional information to determine whether the existing NPDES permit process is adequate to address these discharges. The Agency has not yet made a decision on whether national effluent guidelines will be developed for some or all parts of the industry. The Agency may conduct a preliminary study to obtain additional information and evaluate all of the information received.

C. Metal Molding and Casting (Foundries)

The Agency received comments recommending revisions to the Metal Molding and Casting (Foundries) regulations at 40 CFR Part 464. The commenters argue, among other things, that the effluent limits were based on faulty, incomplete and non-representative data, and that the treatment technologies used as the basis for best practicable control technology (BPT) effluent limitations do not work and do not represent actual BPT. None of the comments provided current data on individual plant processes, descriptions of fluids used, waste streams, costs, etc. The Agency is considering these comments and may contact some facilities to obtain data, but has not determined whether revisions to Part 464 will be made.

D. Ore Mining

The Agency received comments recommending revisions to the Ore Mining regulations at 40 CFR Part 440. The proposed changes are related to ongoing EPA actions to modify and/or clarify a recent Agency interpretation of the Part 440 regulations associated with the Storm Water Multi-Sector General Permit for Industrial Activities. The Agency published the proposed clarification and accompanying permit modifications at 62 FR 54949 (Oct. 22, 1997) and took final action at 63 FR 42533 (Aug. 7, 1998). Commenters suggest that EPA could conduct a ''focused'' rulemaking, to address discharges from waste rock piles, overburden piles and other sources of water pollution at mine sites which are not currently covered by part 440. The Agency is considering these comments but has not determined whether to revise the part 440 regulations. Over the next few years, the mine operators claiming coverage under the recently modified EPA-issued general permit for storm water will be providing monitoring data to EPA according to the permit terms. The Agency will review these data for usefulness in revising the effluent guidelines, for example, to determine the effluent variability associated with these discharges and to evaluate the performance and effectiveness of the permit controls (primarily ''best management practices'') at reducing pollutants. Additionally, EPA may conduct a preliminary study to gather other relevant data (such as cost data) on mining processes. Based on the results of these data and analyses, EPA may consider revisions to Part 440 in an upcoming effluent guidelines plan.

E. Plan for Future Activities

EPA received comments suggesting that the Agency has an ongoing obligation under Section 304(m) to identify all future industries in need of a new or revised effluent guideline and establish a schedule to promulgate such guidelines. In EPA's view, the current plan is consistent with the terms of the Decree. Under paragraph 7(b) of the Decree, an Effluent Guidelines Plan that is consistent with the Decree also satisfies the terms of Section 304(m), at least through 2003. EPA has not yet begun to plan for effluent guideline activities after that, but will address them in future 304(m) plans.

VII. Economic Impact Assessment

Today's notice proposes a plan for the review and revision of existing effluent guidelines and for the selection of priority industries for new regulations. This notice does not establish any requirements; therefore, no economic impact assessment has been prepared. EPA will provide economic impact analyses or other regulatory analyses, as appropriate, for all of the future effluent guideline rulemakings developed by the Agency.

VIII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency 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 rule is not a ''significant regulatory action'' under the terms of Executive Order

12866 and is therefore not subject to OMB review.

Dated: August 28, 1998.

J. Charles Fox,

Acting Assistant Administrator.

APPENDIX A.—EFFLUENT GUIDELINES RULEMAKING PROJECTS AND PRELIMINARY STUDIES EFFLUENT GUIDELINES CURRENT AND FUTURE RULEMAKING PROJECTS

Category	Proposed	Final
Pulp, Paper and Paperboard, Phases 2 & 3	12/17/93[1] (58 FR 66078)	[1]2000–2002
Centralized Waste Treatment	1/27/95 (60 FR 5464)	[3]8/15/99
	Fall 1998[4] (Re-proposal)	[3]8/15/99
Metal Products and Machinery	5/30/95[2] (60 FR 28209) (Phase 1 only)	
	10/00	12/02
Industrial Laundries	12/17/97 (62 FR 66182)	6/99
Landfills	2/6/98 (63 FR 6425)	11/99
Industrial Waste Combustors (Incinerators)	2/6/98 (63 FR 6391)	11/99
Transportation Equipment Cleaning	6/25/98 (63 FR 34685)	6/15/00
Oil and Gas Extraction (Synthetic-based drilling fluids)	12/98	12/00
Iron and Steel Manufacturing	12/98[3]	[3]12/00
Coal Mining	12/99	12/01
Feedlots (Poultry and Swine subcategories)	12/99	12/01
Feedlots (Beef and Dairy Cattle)	12/00	12/02
Category to be selected	12/00	12/02
Category to be selected	12/01	12/03

Notes:
[1] The Pulp, Paper and Paperboard rulemaking is not covered by the January 31, 1992 consent decree.
[2] 5/30/95 proposal covered Phase 1 MP&M facilities only. The proposal in 10/00 will cover Phase 1 and 2 facilities combined.
[3] EPA is discussing extensions to Consent Decree dates with NRDC.
[4] A re-proposal for the Centralized Waste Treatment category is planned for Fall 1998. This action is not in the consent decree.

CURRENT PRELIMINARY STUDIES

Category	Complete
Feedlots	1998
Urban Storm Water	1998
Airport Deicing	1999

[FR Doc. 98–23891 Filed 9–3–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5495–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed August 24, 1998 Through August 28, 1998

Pursuant to 40 CFR 1506.9.

EIS No. 980330, DRAFT SUPPLEMENT, NOA, CA, Coastal Pelagic Species Fishery Management Plan Amendment 8, (Formerly Known as Northern Anchovy Fishery Management Plan), Approval and Implementation, WA, CA and OR, Due: October 19, 1998, Contact: Jim Morgan (562) 980–4026.

EIS No. 980331, FINAL EIS, FRC, ND, IA, MN, IL, Alliance Natural Gas Pipeline Project, Construction and Operation, Funding, NPDES Permit, COE Section 10 and 404 Permit, ND, MN, IA and IL, Due: October 05, 1998, Contact: Lauren O'Donnell (202) 208–0325.

EIS No. 980332, DRAFT EIS, FHW, TX, US–190 Corridor from FM2657 to the East City Limits of Copperas Cove, Transportation Improvements, Major Investment Study, Coryell and Lampasas Counties, TX, Due: October 19, 1998, Contact: Walter C. Waidelich (512) 916–5988.

EIS No. 980333, DRAFT EIS, AFS, CA, Lucerne Valley to Big Bear Valley Transmission Line/Substation Project, Construction and Operation of Three Electrical Power Facilities: 115 kV Line between the Cottonwood Substation in Lucerne Valley; Goldhill Substation and a new Bear Valley Substation, Special-Use-Permit and Right-of-Way Permit, San Bernardino County, CA, Due: October 22, 1998, Contact: Gene Zimmerman (619) 233–0952.

EIS No. 980334, DRAFT SUPPLEMENT, EDA, PA, Lackawanna County New Business Park, Development and Operation, Additional Information, Funding Support from Economic Development Administration (EDA) under Title I, Site Lies Within Moosic Mountain Range, Straddling Jessup and Olyphant Boroughs, Lackawanna County, PA, Due: October 19, 1998, Contact: Edward L. Hummel (215) 597–6767.

EIS No. 980335, FINAL EIS, USA, AL, Fort McClellan (Main Post) Disposal and Reuse, Implementation, Calhoun, Cleburne, Randolph, Clay, Talledega, St. Clair, Etowah and Cherokee Counties, AL, Due: October 05, 1998, Contact: Carla K. Coulson (703) 697–0225.

EIS No. 980336, FINAL EIS, AFS, WA, White Pass Ski Area Expansion, Special-Use-Permit, Pigtail Basin and Hogback Basin, Wenatchee and Gifford Pinchot National Forests, Yakima and Lewis Counties, WA, Due: October 05, 1998, Contact: Jim Pence (509) 653–2205.

EIS No. 980337, DRAFT EIS, AFS, UT, South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT, Due: October 19, 1998, Contact: Phil Eisenhauer (801) 865–3200.

EIS No. 980338, FINAL EIS, COE, CA, Santa Clara River and Major Tributaries Project, Approval of 404 Permit and 1603 Streambed Alteration Agreement, In portions of the City Santa Clarita, Los Angeles County, CA, Due: October 05, 1998, Contact: Bruce Henderson (805) 641–1128.

EIS No. 980339, DRAFT EIS, FRC, MI, IN, IL, Vector Pipeline Project, Natural Gas Pipeline and Associated above ground Facilities Construction and Operation, Approval, Joliet, IL to Vector Canada at the International Border near St. Clair, MI, Several Counties, MI, IN and IL, Due: October 19, 1998, Contact: David Boergers (202) 208–1371.

EIS No. 980340, FINAL EIS, BLM, NM, CO, Rio Grande Corridor Coordinated Resource Management Plan and Taos Management Plan Amendment, Activity-Level-Plans, Implementation, NM and CO, Due: October 05, 1998, Contact: Steve Henke (505) 758–8851.

Amended Notices

EIS No. 980262, DRAFT EIS, FHW, WA, WA–16/Union Avenue Vicinity to WA–302 Vicinity of Tacoma Improvements, Construction, Funding, Coast Guard Permit, COE Section 10 and 404 Permits, Pierce County, WA, Due: September 30, 1998, Contact: James Leonard (360) 753–9408. Published FR 07–17–98 Review Period Extended.

EIS No. 980275, DRAFT EIS, FAA, NC, Charlotte/Douglas International Airport, Construction and Operation, New Runway 17/35 (Future 18L/36R Associated Taxiway Improvements, Master Plan Development, Approval Airport Layout Plan (ALP) and COE Section 404 Permit, Mecklenburg County, NC, Due: September 14, 1998, Contact: Thomas M. Roberts (404) 305–7153. Published FR 07–24–98—Review Period extended.

EIS No. 980321, DRAFT EIS, COE, WY, Little Snake Supplemental Irrigation Water Supply Project, Construction, Right-of-Way Permit and COE Section 404 Permit, Carbon County, WY, Due: October 12, 1998, Contact: Patsy Freeman (402) 221–3803. Published FR 08–28–98 Correction to Title.

Dated: September 1, 1998.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 98–23942 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5495–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 3, 1998 Through August 7, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF FEDERAL ACTIVITIES at (202) 260–5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–AFS–J67027–MT Rating EC2, Stillwater Mine Revised Waste Management Plan and Hertzler Tailings Impoundment, Construction and Operation, Plan-of-Operation, and COE Section 404 Permit, Custer National Forest, Stillwater County, MT.

Summary: EPA expressed environmental concerns about impact to water quality and suggested linkage between NPDES and groundwater permit, application of non-degradation water quality standard and water balance/pollutant load data.

ERP No. D–AFS–L65289–00 Rating EC2, Eastside Ecosystem Based Lands Management Plan, Implementation, Interior Columbia Basin Ecosystem Management Project, WA, OR, ID and MT.

Summary: EPA expressed environmental concerns. EPA's most significant concerns are: (1) the lack of adequate provisions to identify and protect high quality waters and aquatic habitats, (2) the uncertainty with how impaired waters will be addressed, (3) the uncertainty with the nature of restoration and conservation efforts and their associated impacts, (4) the lack of a clear protocol for determining how conflicts between competing objectives and needs will be resolved, (5) the implications of less than full budget for implementation. EPA suggests combining some of the features of Alternatives 7 and with Alternative 4. EPA strongly supports ecosystem management principles on a broad scale to analyze resource issues that transcend jurisdictional boundaries.

ERP No. D–FHW–G40150–NM Rating EC2, I–25/I–40 Interchange and Adjacent Sections of I–25 and I–40, Dr. Martin Luther King, Jr. Avenue to Comache Road and Carlise Boulevard to South Street, Reconstruction, Funding and Right-of-Way Acquisition, Bernalillo County, NM.

Summary: EPA identified environmental concerns in the area of relocation, economic impacts, noise, and cumulative impact that need to be included in the final EIS. This information will complement the NEPA document and assure full compliance with the CEQ regulations.

ERP No. D–FHW–L40206–WA Rating EC2, WA–104/Edmonds Crossing Project, Connecting Ferries, Bus and Rail, Funding, NPDESs Permit and COE Section 10 and 404 Permit, City of Edmonds, Snohomish County, WA.

Summary: EPA expressed concern regarding the traffic analysis and how the alternative would result in decreased single-occupancy vehicle use as it related to air quality impacts. EPA also expressed concern regarding disposition of pier and terminal impact, and hazardous waste issues. EPA requested that there issues be clarified in the final document.

Final EISs

ERP No. F–COE–C39009–NY, Atlantic Coast of Long Island Jones Inlet to East Rockaway Inlet Storm Damage Reduction Project, Construction, Long Beach Island, Nassau County, NY.

Summary: EPA had no objections to the Corp's proposed storm damage protection project. EPA recommended that fully evaluate cumulative impacts prior to issuance of the Record of Decision (ROD), and commit to a flexible beach nourishment schedule in the ROD.

ERP No. F–FHW–E40355–FL, Miami Intermodal Center (MIC), Construction, Bounded by FL–112 on the north, FL–836 on the south, Miami International Airport landside terminal NW 27th Avenue on the east, along FL–836 that extends West to NW 57th Avenue, Dade County.

Summary: EPA review of the document finds that the environmental impacts of concern to EPA agency have been adequately addressed.

ERP No. FS–COE–E34002–00, Lake Seminole Hydrilla Action Plan Updated Information to the Lake Seminole and Jim Woodruff Lock and Dam, Operation and Maintenance Project, Implementation, Gadsden and Jackson Counties, FL; Decatur and Seminole Counties, GA and Houston County, AL.

Summary: EPA noted that the proposed modified aquatic weed control plan has some adverse environmental consequences, the plan represents a reasonable approach to balancing the many interests involved in this issue.

Dated: September 1, 1998.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 98–23943 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6156–5]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee will meet on September 24–25, 1998, in Alexandria, Virginia. The Committee will host two panels of representatives from State and local government associations for discussions about the associations' functions and services and how the Committee can work better with the associations. The Committee will be updated on several EPA initiatives such as Drinking Water Consumer Confidence Reports, Title VI of the Civil Rights Act, establishment of a Mayor's Desk, and the EPA/Environmental Commissioners of the States Small Town Workshop. The subcommittees will meet during the second day.

The Committee will hear comments from the public between 1:30–1:45 p.m. on the 24th. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 8:15 a.m. on Thursday, September 24 and conclude at 4:00 p.m. on the 25th.

ADDRESSES: The meeting will be held in Alexandria, Virginia at the Ramada Plaza Hotel—Old Town located at 901 Fairfax Street.

Requests for Minutes and other information can be obtained by writing to the DFO at 401 M Street, SW (1306), Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 260–0419.

Dated: August 20, 1998.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 98–23887 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6130–7]

Availability of Cleaner Technologies Substitutes Assessment for Professional Fabricare Processes

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This is a public notice of availability of the US Environmental Protection Agency's Cleaner Technologies Substitutes Assessment for Professional Fabricare Processes (CTSA). This CTSA is a technical report that summarizes a range of information on professional clothes cleaning methods; the goal is to provide comparative information on professional clothes cleaning technologies. This report includes information on the cost, risk, and performance of cleaning technologies. It is intended as a resource for technically-informed fabricare professionals and to be used as the basis of future information products that will assist the cleaning industry in making technology choices that incorporate environmental concerns along with more typical considerations of cost and performance. The primary audience for the CTSA is technically informed and might consist of individuals such as environmental health and safety personnel, technically informed owners, equipment manufacturers in the clothes cleaning industry, and other decision makers.

The CTSA is a part of the Design for the Environment's Garment and Textile Care Program under the Office of Pollution Prevention and Toxics. The CTSA is not a rigorous risk assessment of chemicals used in the fabricare industry. It should not be used to describe the absolute level of risk associated with a particular clothes cleaning operation to specific populations or individuals.

The CTSA is a lengthy and dense document with a lot of technical information. A shorter ''SUMMARY'' version of the CTSA will also be published. The SUMMARY CTSA will contain summaries of the primary information and conclusions from the full CTSA. The SUMMARY CTSA is expected to be of broader interest to the general public.

DATES: The Cleaner Technologies Substitutes Assessment for Professional Fabricare Processes, and the SUMMARY CTSA will be available in July 1998.

FOR FURTHER INFORMATION CONTACT: Individual copies of either of these documents is available free of charge for a limited time from the Pollution Prevention Information Clearinghouse at (202)260–1023, through E-mail at ppic@epamail.epa.gov or the National Center for Environmental Publications and Information at 1–800–490–9198. Copies can be purchased by contacting the National Technical Information Service at 1–800–553–NTIS.

Dated: August 17, 1998.

Cindy Stroup,

Manager, Garment and Textile Care Program.

Dated: August 17, 1998.

Larry Longanecker,

Acting Division Director, Economics, Exposure and Technology Division.

[FR Doc. 98–23895 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00542A; FRL–6028–7]

Guidance for Identifying Pesticides That Have a Common Mechanism of Toxicity; Notice of Availability and Solicitation of Public Comments; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In the **Federal Register** of August 6, 1998, EPA announced and requested comment on a proposed pesticide policy guidance document entitled ''Guidance for Identifying Pesticide Chemicals That Have a Common Mechanism of Toxicity, for Use in Assessing the Cumulative Toxic Effects of Pesticides.'' Interested parties were provided a 30–day comment period. The Agency has received requests for additional time to respond. This document announces the extension of the comment period to October 8, 1998.

DATES: Comments must be received by October 8, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail. All comments (written and electronic) must be identified by the docket control number ''OPP–00542.''

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Stephen C. DeVito, Health Effects Division (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 804G, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; (703) 308–9584; e-mail: devito.steve@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 6, 1998 (63 FR 42031) (FRL–5797– 7), EPA issued a notice announcing the availability of the proposed EPA pesticide policy guidance document entitled ''Guidance for Identifying Pesticide Chemicals That Have a Common Mechanism of Toxicity, for Use in Assessing the Cumulative Toxic Effects of Pesticides.'' The guidance document was developed by EPA in response to the recent amendments to the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act as promulgated by the Food Quality Protection Act of 1996. The guidance document describes the approach that EPA will use for identifying and categorizing pesticide chemicals that have common mechanisms of toxicity for purposes of assessing the cumulative toxic effects of such pesticides.

List of Subjects

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

Dated: August 28, 1998.

Stephen L. Johnson

Acting Director, Office of Pesticide Programs.

[FR Doc. 98–23894 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51913; FRL–6023–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from July 1, to July 14, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51913]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: 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 in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51913]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51913]'' (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 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

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.

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

''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 49 Premanufacture Notices Received From: 07/01/98 to 07/14/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0975	07/02/98	09/30/98	CBI	(S) Defoamer in paper making processes	(G) Polyglycerol ester
P–98–0976	06/30/98	09/28/98	CBI	(G) Intermediate chemical	(G) Dialkyl methylamine
P–98–0977	06/30/98	09/28/98	CBI	(S) Final product- polymer stablizer	(G) Dialkyl amine oxide
P–98–0978	07/01/98	09/29/98	CBI	(G) Nickel plating additive	(G) Unsaturated aliphatic amine, salt
P–98–0979	06/30/98	09/28/98	CBI	(G) Lubricant	(G) Alkanedioic acid, diester with branched alcohols
P–98–0980	06/30/98	09/28/98	CBI	(G) Site-limited intermediate	(G) Alkyl nitrile
P–98–0981	07/06/98	10/04/98	CBI	(G) Contain use	(G) Macrocyclic cobalt complex
P–98–0982	07/06/98	10/04/98	CBI	(G) Open, non-dispersive use	(G) Acrylic resin
P–98–0983	07/07/98	10/05/98	CBI	(G) Destructive use	(G) Halogenated phthalimide
P–98–0984	07/07/98	10/05/98	CBI	(G) Destructive use	(G) Halogenated aromatic
P–98–0985	07/02/98	09/30/98	Gehring-Montgomery, Inc.	(S) Cord adhesion promotor for rubber	(G) Modified phenol-resorcinol novolak
P–98–0986	07/07/98	10/05/98	CBI	(G) Destructive use	(G) Halogenated phthalimide
P–98–0987	07/07/98	10/05/98	CBI	(G) Destructive use	(G) Halogenated aromatic
P–98–0988	07/01/98	09/29/98	CBI	(G) Open-nondispersive (coating resin)	(G) Aliphatic polyisocyanate
P–98–0989	07/07/98	10/05/98	CBI	(S) Intermediate product, used in the production of a separate and final product	(G) Substituted hydrocarbon of molecular weight of less than 200
P–98–0990	07/06/98	10/04/98	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–98–0991	07/06/98	10/04/98	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–98–0992	07/06/98	10/04/98	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–98–0993	07/06/98	10/04/98	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–98–0994	07/06/98	10/04/98	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–98–0995	07/06/98	10/04/98	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–98–0998	07/07/98	10/05/98	CBI	(S) Fiber reactive dye for the coloration of textile cotton and cellulosic fibers	(G) Naphthalene disulfonic acid-amino-hydroxy-methoxy-sulfophenyl-azo-ethyl-sodium salt derivative

I. 49 Premanufacture Notices Received From: 07/01/98 to 07/14/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0999	07/08/98	10/06/98	CBI	(G) General use coating	(G) Styrene-acrylate modified cross-linked poly (methoxy, methyl, phenyl) siloxanes
P–98–1000	07/06/98	10/04/98	CBI	(G) Binder resin for automotive top-coat	(G) Acrylic copolymer
P–98–1001	07/06/98	10/04/98	CBI	(G) Binder resin for automotive top-coat	(G) Acrylic copolymer
P–98–1002	07/06/98	10/04/98	CBI	(G) Binder resin for automotive top-coat	(G) Acrylic copolymer
P–98–1003	07/06/98	10/04/98	CBI	(G) Binder resin for automotive top-coat	(G) Acrylic copolymer
P–98–1004	07/06/98	10/04/98	CBI	(G) Binder resin for automotive top-coat	(G) Acrylic copolymer
P–98–1005	07/06/98	10/04/98	CBI	(G) Binder resin for automotive top-coat	(G) Acrylic copolymer
P–98–1006	07/07/98	10/05/98	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Amino substituted butyric acid ester
P–98–1007	07/07/98	10/05/98	Teknor Apex Company	(S) Plasticizer for flame retardant PVC compounds	(G) Brominated phthalate ester
P–98–1008	07/07/98	10/05/98	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted azetidine sulfonyl chloride
P–98–1009	07/08/98	10/06/98	3M Company	(G) Resin additive	(G) Modified silica
P–98–1010	07/08/98	10/06/98	CBI	(G) Open, non-dispersive: part of emulsifier for binder use in construction and maintenance of roads	(G) Products formed between tannis and tallow amines in the presence of hydrochloric acid
P–98–1011	07/08/98	10/06/98	CBI	(G) Water treatment application	(G) Acrylic acid based polymer
P–98–1012	07/09/98	10/07/98	ICI Surfactants	(G) Oil in water emulsifier for commercial herbicide	(G) Alkylaminium alkoxylate alkylalkoxylate phosphate; or linear alkylamine ethoxylate, complex with branched alkylethoxylate phoshate
P–98–1013	07/09/98	07/09/98	ICI Surfactants	(G) Oil in water emulsifier for commercial herbicide	(G) Alkylaminium alkoxylate alkylalkoxylate phosphate; or linear alkylamine ethoxylate, complex with branched alkylethoxylate phoshate
P–98–1014	07/09/98	07/09/98	ICI Surfactants	(G) Oil in water emulsifier for commercial herbicide	(G) Alkylaminium alkoxylate alkylalkoxylate phosphate; or linear alkylamine ethoxylate, complex with branched alkylethoxylate phoshate
P–98–1015	07/10/98	10/08/98	CBI	(G) Ingredient for use in consumer products; highly dispersive use	(G) Ester
P–98–1016	07/09/98	10/07/98	CBI	(G) Emulsifying component for adhesive resin	(G) Modified polyether
P–98–1017	07/10/98	10/08/98	Apollo America Corporation	(G) Lubricating oil	(G) Saturated alicyclic hydrocarbon
P–98–1018	07/13/98	10/11/98	Reichhold Chemicals Inc	(G) Component of automotive electrocoat resin	(G) Aminated epoxy resin
P–98–1019	07/13/98	10/11/98	Reichhold Chemicals Inc	(G) Component of automotive electrocoat resin	(G) Aminated epoxy resin
P–98–1020	07/13/98	10/11/98	Reichhold Chemicals Inc	(G) Component of automotive electrocoat resin	(G) Blocked isocyanate (mdi)
P–98–1021	07/10/98	10/08/98	Halocarbon Prod. Corp.	(S) Chemical intermediate	(S) (trichloromethoxy) benzene (trichloroanisole, or tcan)*
P–98–1022	07/13/98	10/11/98	Ashland Chemical Company	(G) Open non-dispersive manufacture of reinforced plastics	(G) Unsaturated polyester
P–98–1023	07/14/98	10/12/98	CBI	(G) Open non-dispersive (Catalyst)	(G) Phosphonium compound
P–98–1024	07/14/98	10/12/98	CBI	(S) Polymer stabilizer for the production of acrylic homopolymers or copolymer dispersion which will eventually be used in textile printing applications	(G) Acrylic copolymer
P–98–1025	07/14/98	10/12/98	NIPA Hardwicke	(S) Intermediate for agricultural chemical intermediate	(G) Methylated alkylated, aromatic acid chloride
P–98–1026	07/14/98	10/12/98	NIPA Hardwicke	(S) Intermediate for agricultural chemical intermediate	(G) Chlorinated, methylated aromatic
P–98–1027	07/13/98	10/11/98	BASF Corp	(S) Developer for lithographic printing plates	(S) 2,5-furandione, polymer with 2,4,4-trimethyl-1-pentene, ester with polyethylene glycol mono-C_{12-14}-alkyl ethers, sodium salt*

II. 25 Notices of Commencement Received From: 07/01/98 to 07/14/98

Case No.	Received Date	Commence-ment/Import Date	Chemical
P–95–0256	07/07/98	06/30/98	(G) Tung phenolic varnish
P–95–0738	07/06/98	06/10/98	(S) 3-decen-1-ol, acetate, (*z*)-*
P–95–2107	07/06/98	03/21/96	(G) Polyester resin
P–96–1141	07/06/98	06/30/98	(G) Modified acrylic terpolymer
P–97–0768	07/06/98	06/04/98	(G) Amphoteric polyacrylamide
P–97–0793	07/13/98	07/04/98	(G) Phenylenediamine salt
P–97–0810	07/01/98	04/10/98	(G) Halogenated aromatics
P–97–1017	07/07/98	06/15/98	(G) Poly carboxylate, sodium salt
P–98–0125	07/02/98	06/04/98	(G) Aliphatic amine salts of aliphatic acids
P–98–0126	07/02/98	06/04/98	(G) Aliphatic amine salts of aliphatic acids
P–98–0186	07/13/98	03/11/98	(G) Magenta azo sulphonic acid, sodium
P–98–0200	07/02/98	06/08/98	(G) Fatty acid modified phenolic polymer
P–98–0225	07/02/98	06/08/98	(G) Propoxylated phenolic polymer
P–98–0315	07/09/98	07/01/98	(G) Substituted cyclic olifin
P–98–0316	07/09/98	07/08/98	(G) Substituted cyclic olifin
P–98–0412	07/13/98	06/09/98	(G) Intermediate salt for grind vehicle synthesis for use in electrodepositable primer
P–98–0418	07/13/98	06/09/98	(G) Intermediate salt for grind vehicle synethesis for use in electrodepositable primer
P–98–0424	07/13/98	06/09/98	(G) Grind vehicle for electrodepositable primer
P–98–0430	07/13/98	06/10/98	(G) Grind vehicle for electrodepositable primer
P–98–0459	07/06/98	06/11/98	(G) Acrylic oligomer
P–98–0486	07/10/98	05/27/98	(G) Aliphatic polyurethane with tertiary amine
P–98–0516	07/10/98	07/02/98	(G) Fatty acid polyamine condensate, carboxylic acid salt
P–98–0540	07/06/98	06/23/98	(G) Triethylamine neutralized aliphatic urethane polymer
P–98–0547	07/10/98	06/25/98	(G) Modified diphenylmethane diisocyanate
P–98–0586	07/09/98	07/06/98	(G) Siloxanes and silicones, methyl alkyl, polyester modified.*

List of Subjects

Environmental protection, Premanufacture notices.

Dated: August 28, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–23892 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51912; FRL–6022–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from June 16, to June 30, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51912]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: 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 in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51912]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51912]'' (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 public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

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.

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

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 54 Premanufacture Notices Received From: 06/16/98 to 06/30/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0915	06/16/98	09/09/98	Elf Development Inc.	(S) Lubricity improver for low sulfur diesel fuel engine	(G) Mixtures of fatty acids in solution of a naphta petroleum solvent
P–98–0916	06/16/98	09/14/98	Champion Technologies	(S) Used as high temp. mud stabilizer.	(S) Poly(oxy-1,2-ethanediyl), alpha-(phenylmethyl)-omega-hydroxy-*
P–98–0923	06/17/98	09/15/98	CBI	(S) Electronics; plastic coatings	(G) Acrylic acrylate
P–98–0924	06/17/98	09/15/98	CBI	(G) Charge transport agent	(G) Diphenyl derivative
P–98–0925	06/17/98	09/15/98	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–98–0926	06/17/98	09/15/98	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–98–0927	06/17/98	09/15/98	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–98–0928	06/17/98	09/15/98	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–98–0929	06/17/98	09/15/98	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–98–0930	06/17/98	09/15/98	CBI	(S) Resin for printing ink	(G) Modified hydrocarbon resin
P–98–0931	06/17/98	09/15/98	Mitsui Chemicals America, Inc.	(S) Toner binder	(G) Urethane modified polyester
P–98–0932	06/17/98	09/15/98	Mitsui Chemicals America, Inc.	(S) Toner binder	(G) Urethane modified polyester
P–98–0933	06/18/98	09/16/98	CBI	(G) Surfactant in a fabric softeners; hair conditioning softener	(G) Quatermary ammonium compound
P–98–0934	06/19/98	09/17/98	Flexsys America	(G) Rubber anti degradent polymerization inhibitant for polymerizable vinly monomers	(S) Benzenamine, *n*-[4-[(1,3-dimethylbutyl)imino]-2,5-cyclohexadien-1-ylidene]-*
P–98–0935	06/23/98	09/21/98	CBI	(G) Intermediate for additive, destructive use	(G) Polyester polyether urethane block copolymer
P–98–0936	06/23/98	09/21/98	CBI	(G) Intermediate for additive, destructive use	(G) Polyester polyether urethane block copolymer
P–98–0937	06/23/98	09/21/98	CBI	(G) Intermediate for additive, destructive use	(G) Polyester polyether urethane block copolymer
P–98–0938	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–98–0939	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer

I. 54 Premanufacture Notices Received From: 06/16/98 to 06/30/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0940	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–98–0941	06/19/98	09/17/98	CBI	(S) Coating for wood, metal, plastic paper and masonry; adhesives; inks; sealants; photoresists	(G) Graft acrylate, methacrylate hydrocarbon polymer
P–98–0942	06/22/98	09/20/98	CBI	(G) Industrial coating binder component	(G) Polyester acrylate
P–98–0943	06/22/98	09/20/98	CBI	(G) Component of manufactured consumer article - contained use	(G) Substituted-[(1,2,3,4-tetrahydro-5,8-dihydroxy-1,4-methanonaphthalene -6,7-diyl)bis(methylene)]bis*
P–98–0944	06/22/98	09/20/98	CBI	(S) Uv and electron beam curable coating materials for paper, wood and plastic subtrates	(G) Polyether acrylate
P–98–0945	06/22/98	09/20/98	CBI	(S) Cobinder in aqueous based paper coating formulations	(G) Acrylate copolymer
P–98–0946	06/22/98	09/20/98	Wacker Silicones Corporation	(S) UV/EB coating additive	(G) Polydimethylsiloxane with acrylate groups
P–98–0947	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–98–0948	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–98–0949	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–98–0950	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–98–0951	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–98–0952	06/23/98	09/21/98	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–98–0953	06/25/98	09/23/98	3M Company	(G) Surface treatment	(G) Fluorinated silane
P–98–0954	06/24/98	09/22/98	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P–98–0955	06/25/98	09/23/98	CBI	(G) Emulsifying component component for adhesive resin	(G) Modified polyether
P–98–0956	06/24/98	09/22/98	CBI	(G) Destructive use	(G) Acrylic polymer
P–98–0957	06/25/98	09/23/98	CBI	(G) Surfactant	(S) Poly (oxy-1,2-ethanediyl), alpha-(nonylphenyl)-omega-hydroxy-, branched, phosphates, ammonium salt*
P–98–0958	06/24/98	09/22/98	CBI	(G) Coating resin for glass	(G) Silan modified urethane prepolymer
P–98–0959	06/24/98	09/22/98	CBI	(G) Quality control agent	(G) Alkoxy benzoic acid
P–98–0960	06/25/98	09/23/98	Shell Chemical Company	(S) Intermediate for alcohol derivative manufacture, e.g. surfactants	(S) Pentadecanol, branched*
P–98–0961	06/25/98	09/23/98	Shell Chemical Company	(S) Intermediate for alcohol derivative manufacture, e.g. surfactants	(S) Hexadecanol, branched*
P–98–0962	06/25/98	09/23/98	Shell Chemical Company	(S) Intermediate for alcohol derivative manufacture, e.g. surfactants	(S) Heptadecanol, branched*
P–98–0963	06/25/98	09/23/98	Shell Chemical Company	(S) Intermediate for alcohol derivative manufacture, e.g. surfactants	(S) Octadecanol, branched*
P–98–0964	06/25/98	09/23/98	Shell Chemical Company	(S) Intermediate for alcohol derivative manufacture, e.g. surfactants	(S) Nonadecanol, branched*
P–98–0965	06/23/98	09/21/98	Ciba Specialty Chemicals-Textile Dyes Division	(G) Textile dye	(G) 4,11-triphenodioxazinedisulfonic acid, 3,10-bis[alkyl amino]-6,13-dichloro-, reaction products with 2-amino-1,4-benzenedisulfonic acid, 2-[amino aryl)sulfonyl]ethyl hydrogen sulfate and 2,4,6-trifluoro-1,3,5-triazine, sodium salts
P–98–0966	06/29/98	09/27/98	Gem Urethane Corp.	(S) Base coat for leather; textile treatment	(G) Aqueous polyurethane dispersion
P–98–0967	06/26/98	09/24/98	Allied Signal, Inc.	(S) Nondispersive additive in Ultra Violet (UV) cured coatings; UV cured inks; UV cured adhesives	(G) Fluoroalkyl vinyl ether
P–98–0968	06/26/98	09/24/98	Allied Signal, Inc.	(S) Nondispersive additive in Ultra Violet (UV) cured coatings; UV cured inks; UV cured adhesives	(G) Fluoroalkyl vinyl ether
P–98–0969	06/29/98	09/27/98	Union Camp Corporation - Chemicals Products Division	(S) Corrosion inhibition in metal working fluids	(S) Decanedioic acid, compound with 2,2′,2″-nitrilotris [ethonal]*

I. 54 Premanufacture Notices Received From: 06/16/98 to 06/30/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0970	06/29/98	09/27/98	Union Camp Corporation - Chemicals Products Division	(S) Corrosion inhibition in metal working fluids	(S) Decanedioic acid, compound with 2-aminoethanol*
P–98–0971	06/29/98	09/27/98	Union Camp Corporation - Chemicals Products Division	(S) Corrosion inhibition in metal working fluids	(S) Decanedioic acid, compound with 2-amino-2-methyl-1-propanol*
P–98–0972	06/29/98	09/27/98	Union Camp Corporation - Chemicals Products Division	(S) Corrosion inhibition in metal working fluids	(S) Decanedioic acid, compound with 1,1′-iminobis [2-propanol]*
P–98–0973	06/29/98	09/27/98	Union Camp Corporation - Chemicals Products Division	(S) Corrosion inhibition in metal working fluids	(S) Decanedioic acid, compound with 1,1′,1″-nitrilotris [2-propanol]*
P–98–0974	06/29/98	09/27/98	Union Camp Corporation - Chemicals Products Division	(S) Corrosion inhibition in metal working fluids	(S) Decanedioic acid, potassium salt*

II. 22 Notices of Commencement Received From: 06/16/98 to 06/30/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–95–2072	06/26/98	06/06/98	(G) Alkyl poly-ether
P–96–0323	06/15/98	06/02/98	(G) Polymeric product of reactions of epoxy with organic acid and acrylic monomers, partially neutralized with dimethyl ethanolamine.
P–96–0897	06/22/98	05/26/98	(G) Terpene residue distillates
P–97–0207	06/22/98	06/10/98	(S) Poly(oxy-1,2-ethanediyl),alpha-(carboxymethyl)-omega-(undecyloxy)-*
P–97–0208	06/22/98	06/11/98	(S) Poly(oxy-1,2-ethanediyl), alpha-(carboxymetyl)-omega-(undecycloxy)-, sodium salt*
P–97–0571	06/30/98	06/10/98	(G) Polyester acrylate
P–97–0656	06/15/98	05/26/98	(G) Polyurea
P–97–0739	06/19/98	06/09/98	(G) Glycine, *n*-[3-(substitutedlamino)phenyl]-*n*-(carboxymethyl)-, diesters, reaction products with diazotized 2-chloro-4-nitrobenzenamine
P–97–0956	06/24/98	05/24/98	(G) Mixed metal oside
P–98–0102	06/24/98	06/16/98	(G) *N,N′*-substituted isophthalamide
P–98–0240	06/30/98	06/23/98	(G) Acrylic resin
P–98–0248	06/22/98	05/26/98	(G) Urethane polymer
P–98–0322	06/29/98	06/11/98	(S) Acetamide, *n*-ethenyl-*n*-methyl-, polymer with 1-ethenylhexahydro-2*h*-azepin-2-one, 2,2′-azobis[2-methyl butanenitrile]-intiated*
P–98–0381	06/30/98	06/08/98	(G) Polycaprolactive polyol
P–98–0396	06/29/98	06/03/98	(S) 2,6,7-trioxabicyclo [2.2.2] octane 4-ethyl-, 1-C_{5-9}-alkyl derivatives*
P–98–0464	06/29/98	06/02/98	(G) Polyester resin
P–98–0483	06/23/98	05/20/98	(G) Modified styrene-acrylate polymer
P–98–0484	06/23/98	05/20/98	(G) Modified styrene-acrylate polymer
P–98–0501	06/18/98	05/20/98	(S) Boric acid (h3 10bo3)
P–98–0502	06/18/98	05/20/98	(S) Borate (1–)-11b, tetrafluoro-, potassium
P–98–0503	06/18/98	05/20/98	(S) Borate (1–)-10b, tetrafluoro-, potassium
P–98–0507	06/16/98	06/10/98	(G) Organo-modified polysiloxanes

List of Subjects

Environmental protection, Premanufacture notices.

Dated: August 26, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–23893 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; DA 98-1770]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On September 2, 1998, the Commission released a public notice announcing the September 22 and September 23, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Linda Simms, Administrative Assistant of the NANC, at (202) 418-2330 or via the Internet at lsimms@fcc.gov or Jeannie Grimes at (202) 418-2313 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

SUPPLEMENTARY INFORMATION: *Released:* September 2, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, September 22, from 8:30 a.m., until 5:00 p.m., and on Wednesday, September 23, 1998, from 8:30 a.m., until 5:00 p.m. The meeting will be held at the Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C., on September 22. The September 23, meeting will be held at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, N.W., Washington, D.C.

This meeting will be open to members of the general public. The FCC will attempt to accommodate as many people as possible. Admittance, however will be limited to the seating available. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before each meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Linda Simms at the address under **FOR FURTHER INFORMATION CONTACT,** stated above.

Proposed Agenda

The proposed agenda for the September 22-23, 1998, meeting is as follows:

1. Approval of meeting minutes.
2. Numbering Resource Optimization (NRO) Working Group Report. Review final recommendation regarding implementation of number pooling by December 1999, and other conservation measures, pursuant to Chief, Common Carrier Bureau letter of March 23, 1998.

Wednesday, September 23, 1998

3. Continuation of NRO discussion including Industry Numbering Committee Report on 1000 Block Administration Guidelines and Cost Recovery Report concerning 1000 Block Cost Recovery.
4. Local Number Portability Administration (LNPA) Working Group Report.
5. N11 Ad Hoc Working Group Report. Review final report and recommendation, pursuant to the First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket 92–105, FCC 97–51.
6. COCUS and Proposed Line Number Utilization Survey. Review of integrated recommendation from four contributions on question of a rule or clarification of existing rule for reporting utilization data; possible enforcement mechanism; audits; forecasts from resellers; appeals and confidentiality issues.
7. Definition of Reserved Telephone Numbers. Discussion of contributions.
8. Steering Group Report.
9. Other Business.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–24026 Filed 9–3–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, September 1, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Ms. Leann Britton, acting in the place and stead of Director Julie L. Williams (Acting Comptroller of the Currency), Director Joseph H. Neely (Appointive), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, D.C.

Dated: September 2, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–24006 Filed 9–2–98; 10:48 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, September 9, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 2, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–24020 Filed 9–2–98; 11:48 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 A.M. September 14, 1998.

PLACE: National Finance Center, TANO Building, Conference Room 7, 13800 Old Gentilly Road, New Orleans, Louisiana.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the August 10, 1998, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of FY 1998 budget and projected expenditures, approval of FY 1999 proposed budget, and review of FY 2000 estimates.
4. Review of KPMG Peat Marwick audit reports:

(a) ''Pension and Welfare Benefits Administration Review of Access Controls and Security Over the United States Department of Agriculture, National Finance Center.''

(b) ''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Account Maintenance Subsystem, Forfeiture and Forfeiture Restoration Operations and Interfund Transfer Process at the United States Department of Agriculture, National Finance Center.''

(c) ''Pension and Welfare Benefits Administration Review Backup, Recovery, and Contingency Planning of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center.''

(d) ''Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Billing Process at the United States Department of Agriculture, National Finance Center.''

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs (202) 942–1640.

Dated: September 2, 1998.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 98–24058 Filed 9–2–98; 2:30 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0192]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Establishment and Product License Applications: Forms FDA 2599, 2599a, 2600, 2600b, 3066, 3086, 3096, 3098, 3098a, 3098b, 3098c, 3098d, 3098e, 3210, 3213, 3214, and 3314

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 5, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

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 compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Establishment and Product License Applications: Forms FDA 2599, 2599a, 2600, 2600b, 3066, 3086, 3096, 3098, 3098a, 3098b, 3098c, 3098d, 3098e, 3210, 3213, 3214, and 3314—21 CFR 601.2 and 601.12—(OMB Control Number 0910–0124—Extension)

FDA is the Federal agency charged with responsibility for determining that drugs and biological products are safe and effective. Manufacturers of biological products for human use must file an application for FDA approval of the product prior to introducing it into interstate commerce. The information provided by manufacturers on these license application forms is necessary for FDA to carry out its mission of protecting the public health and helping to ensure that biologics for human use have been shown to be safe and effective. The uniform format of the forms provides for orderly, efficient review by the Center for Biologics Evaluation and Research (CBER) staff and expedites the licensing process as well as documenting for future reference the methods and procedures that have been approved for use at each manufacturing location. Statutory authority for the collection of this information is provided by section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262).

Section 601.2 (21 CFR 601.2) requires that manufacturers of biological products regulated under the PHS Act submit an establishment license application (ELA) and a product license application (PLA), or a biologic license application (BLA) to CBER for review and approval prior to marketing a biological product in interstate commerce. Blood and blood components fall within the category of biological products. All establishments collecting and/or preparing blood and blood components for sale or distribution in interstate commerce are subject to the licensing application provisions of section 351 of the PHS Act. Section 601.12 (21 CFR 601.12) requires manufacturers of a biologic for human use to file supplemental applications for all important changes to applications previously approved prior to implementing such changes. In addition to §§ 601.2 and 601.12, other regulations provide additional standards for human blood and blood products, which require submission of certain information in a license application, including 21 CFR 640.17, 640.21(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), and 680.1(b)(2)(iii) and (c). The information collection requirements in the preceding regulations and their associated reporting burdens are provided under the burden estimated for §§ 601.2 and 601.12 and the application form in approved OMB control number 0910–0338.

As outlined in the President's November 1995 National Performance Review's document entitled ''Reinventing the Regulation of Drugs Made From Biotechnology,'' FDA intends to use a single harmonized application form for all drug and licensed biological products. FDA revised Form FDA 356h, ''Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use,'' for this purpose and announced its availability in the **Federal Register** of July 8, 1997 (62 FR 36558). This notice described FDA's intent to phase in the use of the new Form FDA 356h for all biological products and stated that applicants submitting new drug applications (NDA's), abbreviated new drug applications (ANDA's), abbreviated antibiotic drug applications (AADA's), and BLA's for biologic products specified in § 601.2(c) could begin to use the new Form FDA 356h immediately. The notice also advised such applicants that they will be required to use revised Form FDA 356h beginning January 8, 1998. In the interim period, the old Form FDA 356h and the new Form FDA 356h were to be acceptable alternatives for NDA's, ANDA's, AADA's, and BLA's.

In future **Federal Register** notices, FDA will advise applicants for the products not yet using the new Form FDA 356h, when they may voluntarily begin, and when they will be required to use the new Form FDA 356h. FDA is in the process of preparing guidance documents on the content and format of the chemistry, manufacturing, and controls section, and establishment description section of the new Form FDA 356h for those biological products not yet using the new form. As these guidance documents are completed, FDA will begin accepting the new Form

FDA 356h. Until further notice, if the biological product is not specified in § 601.2(c), applicants should continue to submit an ELA and a PLA application on the CBER forms listed below in this notice.

This collection of information involves the following forms:
Form FDA 2599, ''Establishment License Application for the Manufacture of Blood and Blood Components;''
Form FDA 2599a, ''Supplement to Establishment License Application for the Manufacture of Blood and Blood Components;''
Form FDA 2600, ''Product License Application for the Manufacture of Source Plasma;''
Form FDA 2600b, ''Product License Application for Therapeutic Exchange Plasma;''
Form FDA 3066, ''Product License Application for Manufacture of Blood Grouping Reagents;''
Form FDA 3086, ''Product License Application for the Manufacture of Reagent Red Blood Cells;''
Form FDA 3096, ''Product License Application for the Manufacture of Anti-Human Globulin;''
Form FDA 3098, ''Product License Application for the Manufacture of Whole Blood and Blood Components;''
Form FDA 3098a, ''Product License Application for Red Blood Cells;''
Form FDA 3098b, ''Product License Application for Plasma;''
Form FDA 3098c, ''Product License Application for Platelets;''
Form FDA 3098d, ''Product License Application for Cryoprecipitated Antihemophilic Factor;''
Form FDA 3098e, ''The Manufacture of Products Prepared by Cytapheresis;''
Form FDA 3210, ''Application for Establishment License for Manufacture of Biological Products;''
Form FDA 3213, ''Application for License for the Manufacture of Allergenic Products;''
Form FDA 3214, ''Application for the Manufacture of a Human Plasma Derivative;'' and
Form FDA 3314, ''Product License Application for the Manufacture of Human Immunodeficiency Virus for In-Vitro Diagnostic Use.''

Respondents to this collection of information are manufacturers of biological products. The reporting burden for the current collection of information using CBER's license application forms under OMB control number 0910–0124 was reported to OMB as part of the total burden for the agency's collection of information using Form FDA 356h. This collection of information using Form FDA 356h was assigned OMB control number 0910–0338 and approved by OMB on April 23, 1997. The approval for OMB control number 0910–0338 expires on April 30, 2000. The announcement of OMB's approval was published in the **Federal Register** of May 19, 1997 (62 FR 27262).

Under OMB control number 0910–0338, FDA estimated that CBER's portion of the reporting burden for collection of information using Form FDA 356h was 76,200 hours. The 76,200 hours reflected the future use of Form FDA 356h by all manufacturers of biological products. The number of manufacturers of biological products that are already using Form FDA 356h would account for approximately 3,000 hours of the total burden hours. The other 73,200 hours would account for manufacturers who may not have completed the transition to using Form FDA 356h and still need to use other license application forms. FDA expects that all manufacturers of biological products will begin to use Form FDA 356h during 1998.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Forms	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
601.2 and 601.12	FDA 2599, 2599a, 2600, 2600b, 3066, 3086, 3096, 3098, 3098a, 3098b, 3098c, 3098d, 3098e, 3210, 3213, 3214, and 3314	376	4.9	1,830	40	73,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–23838 Filed 9–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92F–0397]

Great Lakes Chemical Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2B4343) proposing that the food additive regulations be amended to provide for the safe use of an aqueous solution of 1-bromo-3-chloro-5,5-dimethylhydantoin as a sanitizing solution to be used on food processing equipment and utensils and on food-contact surfaces in public eating places.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 7, 1992 (57 FR 57838), FDA announced that a food additive petition (FAP 2B4343) had been filed by Great Lakes Chemical Corp., P.O. Box 2200, West Lafayette, IN 47906. The petition proposed to amend the food additive regulations in § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) to provide for the safe use of an aqueous solution of 1-bromo-3-chloro-5,5-dimethylhydantoin as a sanitizing solution to be used on food processing equipment and utensils and on food-contact surfaces in public eating places.

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170), which was enacted on August 3, 1996, amended the Federal Food, Drug, and Cosmetic Act (the act) and provided the Environmental Protection Agency (EPA) with the regulatory authority over the petitioned use of this substance. Under FQPA, the petitioned use of this

substance is regulated as a pesticide chemical under section 408 of the act (21 U.S.C. 346a). Thus, post-FQPA, the petitioned use of this substance is no longer subject to FDA's regulatory authority as a food additive under section 409 of the act (21 U.S.C. 348).

In response to a request by the petitioner, which was prompted by the change in regulatory authority over the antimicrobial substance that is the subject of this petition, FDA transferred the records for FAP 2B4343, including all of FDA's reviews of information in the petition, to EPA. Great Lakes Chemical Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 15, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–23837 Filed 9–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pharmacy Compounding 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). The meeting will be open to the public.

Name of Committee: Pharmacy Compounding Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 14, 15, and 16, 1998, 8:30 a.m. to 5:30 p.m.

Location: Advisory Committee conference room, rm. 1066, Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20852.

Contact Person: Kimberly L. Topper or John B. Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857–1000, 301–827–7001, or e-mail Topperk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12440. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will: (1) Address those bulk drug substances that are neither components of FDA approved products nor covered by a United States Pharmacopeia monograph for inclusion on a list of bulk drug substances that may be used in compounding that qualifies for the applicable statutory exemptions, and (2) review drug products to be included on a list that have been withdrawn or removed from the market for reasons of safety or efficacy that may not be used in compounding that qualifies for the applicable statutory exemptions.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 30, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 30, 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.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 27, 1998.

Michael A. Friedman.

Deputy Commissioner for Operations.

[FR Doc. 98–23836 Filed 9–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Special Projects of National Significance; Integrated Service Delivery Model

AGENCY: Health Resources and Services Administration.

ACTION: Notice of limited competition for grant funds.

SUMMARY: The Health Services Administration (HRSA) announces that approximately $100,000 is available for grants from the Special Projects of National Significance (SPNS) Program, funded under the authority of Section 2691 of the Public Health Service Act, as established by the Ryan White Care Act Amendments of 1996, Public Law 104–148, dated May 20, 1996.

These awards will be limited to Los Angeles County, California. Applicants may apply for project periods of up to 3 years. The purpose of this limited competition is to support the development and evaluation of models of care that (a) target the African American community in Los Angeles County, (b) can be replicated in other similar localities, and (c) address the formal linkage and integration of HIV ambulatory medical care (including primary medical care) and mental health, substance abuse treatment and/or other critical HIV services.

The SPNS Program is designed to demonstrate and evaluate innovative and potentially replicable HIV service delivery models. The authorizing legislation specifies three SPNS Program objectives: (1) to assess the effectiveness of particular models of care; (2) to support innovative program design; and (3) to promote replication of effective models. The SPNS program will provide technical assistance and support for evaluation studies.

DATES: Applications for these announced grants must be received in the Grants Management Branch by the close of business September 24, 1998 to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

ADDRESSES: Grant application kits may be obtained from the HRSA Grants Application Center by calling 1–888–333-HRSA. Additional information regarding business, administrative, and fiscal issues related to the awarding of grants under this Notice may be requested from Mr. Neal Meyerson, Grants Management Branch, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–27, Rockville, Maryland 20857. The telephone number is (301) 443–5906 and the FAX number is (301) 594–6096. Applicants for grants will use Form PHS 5161–1, approved under OMB Control No. 0937–0189. Completed applications should be sent to the Grants Management Officer, c/o HRSA Grants Application Center, 40 West Gude Drive, Rockville, Maryland 20850.

FOR FURTHER INFORMATION: Additional technical information may be obtained from the Office of Science and

Epidemiology, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7A–07, Rockville, Maryland 20857. The telephone number is (301) 443–6560 and the FAX number is (301) 594–2511.

SUPPLEMENTARY INFORMATION: The SPNS Program endeavors to advance knowledge and skills in HIV services delivery, stimulate the design of innovative models of care, and support the development of effective delivery systems for these services. SPNS accomplishes its purpose through funding and technical support of innovative HIV service delivery models.

The SPNS Program supports innovative projects for which implementation, utilization, costs, and outcomes can be evaluated rigorously. Proposals will be expected to adequately define and justify the need, innovative nature, and evaluation methodology of the proposed model of services. These funds should be used to create and/or evaluate models of care that would likely not exist or be evaluated without SPNS support, or that would extend the care model to previously underserved or unserved populations defined either geographically or demographically.

SPNS Program funds cannot be used for expenses related to the provision of medical care, supportive services, or any other expenses currently reimbursed, subsidized or eligible for reimbursement through third party payers, grants awarded under Titles I-IV of the Ryan White CARE Act, or other grant and foundation sources.

Applications will be accepted that propose to demonstrate and evaluate an integrated service delivery for persons with HIV disease and provide formal linkage and integration of primary health care with mental health, substance abuse treatment and other critical HIV services in Los Angeles County. Projects should provide comprehensive services to African Americans with HIV disease in facilities or clinics that primarily serve this population and should focus on harm reduction services and the provision of culturally, socially, and linguistically appropriate care and care management. Project evaluations should assess client, provider, and organizational outcomes and satisfaction of those in care.

Review Criteria

Applications submitted to the SPNS program under this announcement will be reviewed and rated by an objective review panel. Criteria for the technical review of applications will include the following factors:

Factor 1: Justification of Need (10 Points)

Adequacy of demonstrated knowledge of the local HIV service delivery system and the adequacy of the justification of need within the Los Angeles County African American community and target population for the proposed integration model. The extent to which the applicant's justification of need goes beyond documenting the existence of an available population in need of HIV services and describes what is innovative about the proposed model, how this model will be of benefit to the population in need, and its potential to advance knowledge in the HIV service delivery field. The adequacy of the discussion about whether or not this or similar models have been evaluated in published literature or reports. The extent to which the applicant identifies past/existing/future systemic or programmatic issues that have contributed to a fragmented service delivery system and how this model will result in a more integrated system of care. Consistency with the Statewide Coordinated Statement of Need.

Factor 2: Description of Proposed HIV Service Integration Model (25 Points)

The extent of the feasibility and clarity of the description, appropriateness, innovative quality, and potential for evaluation, replication and dissemination of the proposed model. The amount of emphasis given to the definitive integration of services within the African American Community to ensure the delivery of a comprehensive spectrum of care to persons with HIV disease. The extent to which the identification of providers and services integrated by the model is described. The adequacy of the discussion of the rationale for the selection of providers and services integrated by the proposed model.

Factor 3: Description of the Program Plan (20 Points)

Comprehensiveness of the program plan as described in clearly stated goals, time-limited and measurable objectives for each goal, activities directly related to each objective, and a time line that shows the schedule of critical program and evaluation activities. The extent to which the applicant demonstrates access to the proposed target population and an appropriate process for maintaining client confidentiality throughout the project period.

Factor 4: Description of Evaluation Plan (20 points)

Thoroughness, feasibility and appropriateness of the project's evaluation design from a methodological and statistical perspective. The extent to which the design of the evaluation allows a generalized conclusion regarding the outcomes of the integration model and its suitability for replication in other African American communities. The adequacy of the plan to assess HIV-related health outcomes among the population serviced and followed, and the anticipated impact from a community perspective.

Factor 5: Description of Dissemination (15 Points)

The extent to which the applicant demonstrates past involvement with disseminating information about HIV service delivery by describing dissemination activities to date (e.g., presenting and publishing findings through reports and papers, training, or technical assistance). The adequacy and feasibility of the preliminary dissemination plan, designed to fully share knowledge resulting from this project with relevant audiences, particularly in the African American community.

Factor 6: Description of Organizational Capacity (10 points)

Competency of the applicant organization in terms of fiscal, program management, and evaluation, as evidenced by (a) the consistency between the proposed level of effort and the budget justification; (b) skill level and time commitment required in the personnel specifications for program and evaluation staff; (c) the adequacy of resources proposed to conduct a quality evaluation of the project and dissemination of the project's findings; (d) the qualifications and experience of the proposed evaluation staff; and (e) appropriate confidential handling of clients' medical, social service, and epidemiological data. Extent of documentation demonstrating current and proposed coordination, formal collaboration, and specific linkages with related medical, health and support service activities within the project's catchment area.

Other Grant Information

Allowable Costs

The basis for determining allocable and allowable costs to be charged to PHS grants is set forth in 45 CFR part 74, subpart Q and 45 CFR part 92 for State, local or tribal governments. The four separate sets of cost principles prescribed for public and private nonprofit recipients are OMB Circular A–87 for State, local or tribal

governments; OMB Circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Reporting and Other Requirements

A successful applicant under this notice will submit semi-annual activity summary reports in accordance with provisions of the general regulations which apply under 45 CFR part 74, subpart 74.51, ''Monitoring and Reporting Program Performance,'' with the exception of State and local governments to which 45 CFR part 92, Subpart C reporting requirements apply. Also, grantees must be prepared to collaborate with other grantees on the design and implementation of project evaluations which may include multi-site evaluation studies.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements which have been approved by the Office of Management and Budget under No. 0937–0195. Under these requirements, any community-based, nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to keep State and local health officials apprised of proposed health services grant applications submitted from within their jurisdictions.

Community-based, nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the administrator of the State and local AIDS programs in the area(s) to be impacted by the proposal: (a) a copy of the face page of the application SF424); and, (b) a summary of the project PHSIS), not to exceed one page, which provides: (1) a description of the population to be served; (2) a summary of the services to be provided; and, (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to this program.

Certification Regarding Environmental Tobacco Smoke

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

The Special Projects of National Significance Grant Program has been determined to be a program subject to the provisions of Executive Order 12372, as implemented by 45 CFR 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State Single Point of Contact (SPOC) in the State for the review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected state. The due date for State process recommendations is 60 days after the appropriate deadline dates. The Health Resources and Services Administration does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and CFR part 100, for a description of the review process and requirements.)

OMB Catalog of Federal Domestic Assistance

Number for the Special Projects of National Significance is 93.928.

Dated: September 1, 1998.

Claude Earl Fox,

Administrator.

[FR Doc. 98–23995 Filed 9–3–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

List of Recipients of Indian Health Scholarships under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation, if applicable. These scholarships were awarded under the authority of Section 104 of the Indian Health Care Improvement Act, 25 U.S.C. 1613–1613a, as amended by the Indian Health Care Amendments of 1988, Pub. L. 100–713.

The following is a list of Indian Health Scholarship Recipients for Fiscal Year 1997:

Ables, Millicent Elaine, University of Kansas, Choctaw Nation of Oklahoma
Abold-Arellano, Carol Ann, University of South Dakota, Oglala Sioux
Acunia-Sockyma, Della Mae, Arizona State University, Gila River Pima-Maricopa
Adair, Roger Willard, Arizona State University, Cherokee Nation of Oklahoma
Adams, Hayley Marie, University of Alaska/Anchorage, Nenana Native Association
Akers, Margaret Ann, Tulsa Junior College, Muskogee (Creek) of Oklahoma
Alex, Jane M., Arizona State University, Navajo Tribe of AZ, NM, & UT
Alexander, Lisa Kalliah, Washington State University/Vancouver, Confederated Grand Ronde
Allard-Laroque, Stephanie Marie, University of North Dakota, Turtle Mountain Chippewa
Allery, Gina Louise, University of Minnesota, Turtle Mountain Chippewa
Allery-Decoteau, Crystal Vernelle, Minot State University, Turtle Mountain Chippewa
Ammesmaki, Frank P., University of North Dakota, Fond du Lac Band-MN Chippewa
Anderson, Lanelle April, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Anderson, Tarina Kay, University of Southern Mississippi, Mississippi Band of Choctaw
Anderson, Zachariah Jessic, University of North Dakota, Muskogee (Creek) of OK
Antone-Morton, Jerrilene Denise, University of Arizona, Navajo Tribe of AZ, NM, & UT
Antonio, John Emery, Baylor University, Pueblo of Laguna
Arce, Julie Gaye, University of Oklahoma Health Sciences Center, Choctaw Nation of OK
Archuleta, Flora, University of New Mexico, Hualapai
Arkansas, Carmen, University of Utah, Eastern Band of Cherokee—NC

Arkie, Carolyn Ann, New Mexico State University, Pueblo of Acoma
Arneson, Richelle Marie, Washington State University, Tlingit & Haida, Central Council
Arviso, Alice R., University of New Mexico, Navajo Tribe of AZ, NM, & UT
Arviso, Angela, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Aunko, Israel Jerome, Midwestern State University, Kickapoo Tribe of OK
Baca, Yvonne Elfrieda, Northern New Mexico Community College, Pueblo of San Juan
Baker, Susan Frankye, Presentation College, Standing Rock Sioux of NO & SO Dakota
Banks, Joey M. Journeycake, Indiana University, Cherokee Nation of OK
Bartholomew, Carmallia Marie, University of Tulsa, Cherokee Nation of OK
Bartholomew, Michael Lee, Dartmouth Medical School, Kiowa of OK
Bean, Meggin Elizabeth, University of Central Oklahoma, Choctaw Nation of OK
Beaumont, Shane David, Montana Tech/CSC, Crow Tribe of MT
Beaver, John Matthew, University of Oklahoma HSC, Muskogee (Creek) of OK
Begay, Andreana, University of New Mexico/Gallup, Navajo Tribe of AZ, NM & UT
Bagay, Keithetta, Northern Arizona University, Navajo Tribe of AZ, NM & UT
Begay, Kendrick Davis, Fort Lewis College, Navajo Tribe of AZ, NM, & UT
Begay, Michelle, New Mexico State University, Navajo Tribe of AZ, NM, & UT
Begay, Miranda, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Begay, Morris Wayne, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Begay, Pierrette Rose, Arizona State University, Navajo Tribe of AZ, NM, & UT
Begaye, Brandon Wayne, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Behymer, Virginia May, University of Alaska/Anchorage, Aleut
Bekes, Kimberly Dawn, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Belgrade, Debra Ann, Medcenter One, Turtle Mountain Chippewa
Benally, Marianne-L., Weber State University, Navajo Tribe of AZ, NM, & UT
Benally, Romancelita, University of Arizona, Navajo Tribe of AZ, NM, & UT
Benally, Shawn T., University of New Mexico, Navajo Tribe of AZ, NM, & UT
Benedict, Alison Mary, University of Michigan, St. Regis—Mohawk
Berquist, Melissa Dawn, University of North Dakota, Turtle Mountain Chippewa
Berryhill, Tishanda Leigh, Northeastern State University, Muskogee (Creek) of OK
Bethel, Dennis Wayne, University of Minnesota, Alabama Quassarte Creek Nation of OK
Bivins, John David, Dartmouth Medical School, Cherokee Nation of OK
Black, Ann Marie, University of North Dakota, Spirit Lake Tribe, ND
Black, Geoffrey Wayne, University of Southern California, Choctaw Nation of OK
Blair, Wendy Suzanne, University of Texas Medical School at San Antonio, Comanche of OK
Blake, Ginger Elaine, University of Oklahoma Health Sciences Center Osage of OK
Blue, Lawrence Donald, University of North Dakota, Turtle Mountain Chippewa
Boatwright, Melinda Lea, University of Oklahoma, Choctaw Nation of OK
Bojorquez, Michael Valentino, Yuba College, Mooretown of Maidu
Bollig, John Joseph, Oregon Health Sciences University, Alaskan
Boloz, Angelita Colleen, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Bonnet, Bryan Edward, University of Missouri, Choctaw Nation of OK
Boot, Maryjo, University of Arizona College of Pharmacy, Pueblo of Zuni
Booth, Sheila Marie, Lake Area Technical Institute, Oglala Sioux
Bormann, Teresa Jo, University of North Dakota School of Medicine, Oglala Sioux
Bourque, Leanna Sheree, Lake Superior State University, Sault Ste. Marie-Chippewa
Bowker, Debra Dawn, University of Minnesota Duluth Medical School, Cheyenne River Sioux
Bowling, April Shea, University of Oklahoma, Cherokee Nation of OK
Boyd, Irene Ellen, Allegheny University of Health Sciences, Menominee of WI
Boyer, Alexis Francis, George Washington University, Oglala Sioux
Brandt, Julie Marie, University of Kansas, Iowa of KS & NE
Braswell, John Joseph, University of Oklahoma College of Medicine, Cherokee Nation of OK
Brennan, Janna Kay, Chaffey College, Sault Ste. Marie-Chippewa
Brinckmeyer, Julie Ann, Dakota Wesleyan University, Lower Brule Sioux
Brooks, Shelly Beth, University of Arkansas-Fayetteville, Cherokee Nation of OK
Brosel, Conrad Carl, University of Wisconsin, Oneida of WI
Brown-Stephens Heather Dawn, University of Oklahoma HSC, Choctaw Nation of OK
Brown, Dana Renee, University of Oklahoma Health Sciences Center, Muskogee (Creek) of OK
Brown, Gerald Ray, Oklahoma State University, Cherokee Nation of OK
Brown, Rayan David, University of Oklahoma, Choctaw Nation of OK
Brunoe, Carnella Lynn, Oregon HSU/Nursing, Pueblo of Laguna
Buckles, Paula Kaye, Miles Community College, Assiniboine & Sioux
Bullshoe, Frances Gail, Valley City State University, Blackfeet
Burnette, Ronald, New Mexico State University, White Mountain Apache
Burton, Pamela Michelle, Pacific University College, Tlingit & Haida, Central Council
Bushnell, Charles Brent, Southwestern State Coll School of Pharmacy, Eastern Shawnee of OK
Butterfly, Glenn Curtis, Blackfeet Community College/XRY, Blackfeet
Cain, David Luke, University of Oklahoma Dental School, Cherokee Nation of OK
Cain, Marcia Lynette, University of Montana, Sitka Community Association
Calac, Daniel Joseph, Harvard Medical School, Pauma Band of Luiseno
Campbell, Dekota Marie, Tulsa Junior College/RT, Seminole Nation of OK
Campbell, Laurel Suzette, East Central Oklahoma State University, Choctaw Nation of OK
Camplain, Jamie Lynn, University of Oklahoma, Choctaw Nation of OK
Camplain-Sudderth, Lisa Nichole, University of Oklahoma HSC, Choctaw Nation of OK
Carlos, Angela Mary, University of North Dakota, Seneca of NY
Carlson, Gwendolyn Ann, West Virginia Wesleyan College, Aleut
Carmona, Happy Elizabeth, University of New Mexico, Omaha of NE
Carpenter, April Rachelle, University of Oklahoma HSC, Chickasaw Nation of OK
Carpio, Jean Marie, University of New Mexico College of Pharmacy, Pueblo of Laguna
Carroll, Ian Lorne, University of Washington School of Medicine, Alaskan
Caruso, Sam Ernest, East Central Oklahoma State University, Seminole Nation of OK

Chambellan, David Begay, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Charles, Tracey Roseann, University of Memphis, Choctaw Nation of OK
Charley, Stephanie Nebah-Sabrina, University of Colorado, Navajo Tribe of AZ, NM, & UT
Charlie, Jimmie Ray, Stanford University, Navajo Tribe of AZ, NM, & UT
Charlie, Josephine Ann, Weber State University, Navajo Tribe of AZ, NM, & UT
Charlo, Joseph Donald, University of Montana, Confederated Salish & Kootenai
Chavez, Katherine, University of New Mexico, Navajo Tribe of ZA, NM, & UT
Chee, Lawrence, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Chelberg, Robert Paul, University of Missouri, Minnesota Chippewa (6 component reservations)
Chestnut, Tracie Lynn, University of Oklahoma Health Sciences Center, Comanche of OK
Chouteau, Christine Wilma, Dartmouth Medical School, Cherokee Nation of OK
Christensen, Kim Ann, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Chythlook, William Thomas, Loma Linda University, Alaskan Eskimo
Clah, Melinda, Arizona State University, Navajo Tribe of AZ, NM, & UT
Chythlook, William Thomas, Loma Linda University, Alaskan Eskimo
Clah, Melinda, Arizona State University Navajo Tribe of AZ, NM, & UT
Clancy, Vanessa Mae, Miles Community College, Assiniboine & Sioux
Clark, Dorrance Dean, University of Nebraska, Assiniboine & Sioux
Clark, Leroy Allen, University of Minnesota, Minneapolis, Cheyenne River Sioux
Clark, Rose Lydia, California School of Professional Psychology, Navajo Tribe of AZ, NM, & UT
Clarke, David Eric, Pacific University of College of Optometry, Santa Ynez of Chumash
Clay, Rondella Evelyn, Eastern Central Oklahoma State University, Three Affiliated Tribes-Ft. Berthold
Cloer-Myers, Melissa Lynn, University of Missouri, Choctaw Nation of OK
Collins, Candyce Cole, Massachusetts College of Pharmacy, Choctaw Nation of OK
Condon, William Roger, University of Mary, Standing Rock Sioux NO & SO Dakota
Conley, Deborah Sue, University of Nebraska-Lincoln, Winnebago
Conner, Bonita Faye, University of North Dakota, White Earth Band-Minnesota Chippewa
Conners, Tina Jean, State University of NY/Oswego/ACC, St. Regis-Mohawk
Connor, Leslie John, Bemidji State University, Bois Forte Band-Minnesota Chippewa
Conter, Keri Lee, Rocky Mountain College, Crow Tribe of MT
Coon, Teresa Lynne, East Central University, Seminole Nation of OK
Cox, Brian Christopher, George Fox University, Turtle Mountain Chippewa
Crawford, Leland Louis, Salish Kootenai College, Blackfeet
Crebs, Jolene Dora, University of Great Falls, Chippewa Cree
Crissler, Mary Jo, University of North Dakota, Turtle Mountain Chippewa
Crittenden, Robert Bryan, University of Oklahoma Dental School, Cherokee Nation of OK
Crocker-Ericson, Elizabeth Marie, University of Southern California, Cherokee Nation of OK
Cromer, Kelly Jenise, Southwestern Oklahoma State University, Cheyenne-Arapaho of OK
Crouch, Carol Vallee, University of Oklahoma, Confederated Salish & Kootenai
Crum, Carol Anna, Great Basin College, Shoshone-Pauite-Duck Valley
Cruz, Karl Marcus, University of New Mexico, Pueblo of San Juan
Cruz, Mark Deleon, University of San Francisco, Ysleta Del Sur Pueblo of Texas
Cummings, Dave Matthew, Oklahoma Baptists University, Cherokee Nation of OK
Cunningham, Roxie Kim, University of Washington School of Medicine, Nez Perce of ID
Currin, Detricia Lahawn, University of Oklahoma, Osage of OK
Currin, Philemon Matthew, University of Oklahoma, Muskogee (Creek) of OK
Dahberg, Carl Alex, California State University, Fort Independence Paiute
Dahozy, Roger Norman, Arizona State University, Navajo Tribe of AZ, NM, & UT
Dailey, Samuel, Arizona State University, Navajo Tribe of AZ, NM, & UT
Daniels, Virginia, California School of Professional Psychology, Navajo Tribe of AZ, NM, & UT
Davis, Brenda K., Oklahoma City Community College, Seneca-Cayuga of OK
Davis, Daniel G. North Dakota State University, Turtle Mountain Chippewa
Davis, Gloria Marion, University of North Dakota, Turtle Mountain Chippewa
Davis, Lisa Marie, University of North Dakota/PNU, Turtle Mountain Chippewa
Davis, Omar Leneve, California State University/San Bernadino, Hualapai
Dawes, Christina Renae, Southwestern State College, Cherokee Nation of OK
Dawes, Kari Elaine, Missouri Southern State College, Cherokee Nation of OK
Deardorff, Cynthia Ann, Oklahoma Baptist University, Absentee Shawnee of OK
Decoteau, Tami Jo, University of North Dakota, Turtle Mountain Chippewa
Decoteau, Chrystal Dawn, Rocky Mountain College, Blackfeet
Delorme, Angelynn, University of North Dakota, Turtle Mountain Chippewa
Delorme, Carolyn Marie, North Dakota State University, Turtle Mountain Chippewa
Dement, Rachel Leah, Rochester Institute of Technology, Oglala Sioux
Demers, Larry John, University of North Dakota, Turtle Mountain Chippewa
Demery, Jessica Kareen, University of North Dakota, Standing Rock Sioux NO & SO Dakota
Dennison, Alex Ray, New Mexico State University/Las Cruces, Navajo Tribe of AZ, NM, & UT
Deroche, Mary Louise, University of Great Falls, Blackfeet
Deshnod, Sheilah A., University of New Mexico, Navajo Tribe of AZ, NM, & UT
Dexter, Nathan Lee, Lewis & Clark College, Klamath Indian Tribe of Oregon
Dick, Brad Elliot, University of Kansas, Cherokee Nation of OK
Dickerson, Daniel Lee, College of Osteopathic Medicine of the Pacific, Alaskan
Dineyazhe, Frances Lynn, University of Arizona, Navajo Tribe of AZ, NM, & UT
Donnell, Colleen Nancy, Sisseton Wahpeton Community College, Sisseton-Wahpeton Sioux
Drapeau, Glenn Richard, Valley City State University, Yankton Sioux Tribe, ND
Ducheneaux, Colette Ann, University of Minnesota, Cheyenne River Sioux
Ducheneaux, Roberta Jo, Presentation College, Lower Brule Sioux
Elliott, Billy Wayne, Heritage College, Wyandotte of OK
Elliott, Evangela, Yakima Valley Community College, Navajo Tribe of AZ, NM, & UT
Emarthla, Nanelle Joyce, Oklahoma Baptist University, Seminole Nation of OK
Engavo, Earlene Debra, Central Wyoming College, Arapaho-Wind River

Eriacho, Marlene J, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Eschiti, James Edwards, University of Central Oklahoma, Comanche of OK
Etsitty, Tina, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Etter, Evangeline Riggs, Oklahoma City University, Navajo Tribe of AZ, NM, & UT
Evan, Mona Irene, University of Alaska, Organized Village of Kake
Factor, Stephen Walter, The University of Oklahoma, Muskogee (Creek) of OK
Fagg, Kristi Danielle, Connors State College, Choctaw Nation of OK
Fain, Julie Elizabeth, Oklahoma State University, Choctaw Nation of OK
Fairbanks, Barbara Ann, Northwest Technical College, White Earth Band-MN Chippewa
Fields, Bryan Solomon, University of Oklahoma Dental School, Cherokee Nation of OK
Fields, Julie Marie, University of Tulsa, Crow Tribe of Montana
Fisher, Michael F. Northeastern Oklahoma State University, Cherokee Nation of OK
Fitzpatrick, Robin Dawn, University of Oklahoma, Crow Tribe of Montana
Fleming, Pamela Elese, University of Great Falls, Berry Creek Maidu
Flemming, Stephani Rose, Casper College, Turtle Mountain Chippewa
Floyd, Sharon Ann, Tulsa Junior College, Choctaw Nation of OK
Folger, Gloria, Weber State College, Navajo Tribe of AZ, NM, & UT
Foote, Lorita Alice, Alfred State College, Alaskan
Franceschini, Lisa Anne, University of North Dakota, Choctaw Nation of OK
Francis, Cyrilla Marie, University of Maine, Passamaquoddy of Maine
Francis, Deanna May, University of New England, Passamaquoddy of Maine
Frigerio, Sonya Renee, University of New Mexico, Choctaw Nation of OK
Fritts, Stephanie Gail, Connors State College, Cherokee Nation of OK
Gallagher, Theresa Jo, University of Southern California, Choctaw Nation of OK
Garcia, Daryl Katherine, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Garcia, Margaret Ann, Albuquerque Technical Vocational Institute, Pueblo of Laguna
Garner, Kristi Lois, Millerville University, Fort Independence Paiute
Garnette, Louella Rose, Oglala Lakota College, Oglala Sioux
Garza, Daniel, University of Oklahoma, Comanche of OK
Geddes, Jacqueline Lee, Washington State University, Rosebud Sioux
Gesinger, Ruthie Ann, University of Mary, Cheyenne River Sioux
Gibson, Pamela Kay, East Central University, Muskogee (Creek) Of OK
Goggles, Dawn Rae, University of North Dakota, Arapahoe-Wind River
Gomez, Sylvia R, University of Arizona, San Carlos Apache
Gonzales, Denise Carleen, New Mexico State University, Pueblo of Laguna
Gooden, Daniel Albert, Northern Dakota State University, Navajo Tribe of AZ, NM, & UT
Gordon, Jennifer Lynn, California State University, Red Cliff-Lake Superior-Chippewa
Gordon, Melissa Marion, Montana State University, Crow Tribe of MT
Gorman, Marianita Elizabeth, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Goulet, Lori Lynn, University of North Dakota, Turtle Mountain Chippewa
Gourneau, Dean Anthony, University of North Dakota, Turtle Mountain Chippewa
Gourneau, Jessica Lynn, University of North Dakota, Turtle Mountain Chippewa
Graham, Sara Wanbli, South Dakota School of Mines & Tech, Oglala Sioux
Grass, Regina, University of Oklahoma Health Sciences Center, Cherokee Nation of OK
Graumann, Jacqueline Carol, San Francisco State University, Redwood of Pomo
Gray, Cori Ann, University of Oklahoma, Osage of OK
Gray, Deborah Ann, University of Maine, Aroostook Band of Micmac of ME
Gray, Thomas Kevin, University of North Dakota, Confederated Salish & Kootenai
Gregoire, Wenona Evonne, SUNY at Buffalo, Seneca of NY
Grey, Barry Robert, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Grey, Michael, Trinity Christian College, Navajo Tribe of AZ, NM, & UT
Griggs, Roger Lee, University of Arizona College of Medicine, White Mountain Apache
Grimley, Phoebe Martine, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Grinnell, Michael Scott, Idaho State University, Turtle Mountain Chippewa
Guimont, Chrystal Dawn, University of North Dakota, Three Affiliated Tribes-Ft. Berthold
Guinn, Ida Samantha, Connors State College, Muskogee (Creek) of OK
Guinn, Tonya Lynn, Seminole Junior College, Muskogee (Creek) of OK
Hall, Lisa Gay, Salish Kootenai College, Blackfeet
Hall, Shelly Marie, Salish Kootenai College, Blackfeet
Haller, Michael Dean, Eastern Washington University, Confederated Grand Ronde
Hamilton, Brandi, University of Oklahoma, Osage of OK
Haney, Carrie Leigh, University of Tulsa, Cherokee Nation of OK
Hardy, Valornia Lynn, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Harhut, Michael Anthony, University of Michigan, Nome Eskimo Community
Harjo, Jim B., College of Osteo Med. of Oklahoma State University, Muskogee (Creek) of OK
Harjo, Rebecca Ruth, University of California/Northridge, Muskogee (Creek) of OK
Harris, Leslie Jo, University of North Dakota, Turtle Mountain Chippewa
Harris, Tamara Kaye, San Juan College, Navajo Tribe of AZ, NM, & UT
Harrison, Letoy, San Juan College, Navajo Tribe of AZ, NM, & UT
Harry, Rebecca Dawn, University of Southern California, Cherokee Nation of OK
Hastings, Verna Susan, Northland Pioneer College, White Mountain Apache
Hately, Mari Carlin, University of Washington School of Medicine, Alaskan
Hawley, Paula Rochelle, Colorado State University, Fort Belknap
Hayes, Jennifer Lynn, Bacone College, Cherokee Nation of OK
Heim-Cody, Heather Renee, Mayo Medical School, Kickapoo Tribe of Kansas
Helton, Sherri Lynn, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Henson, Amy Jo, Northeastern State University, Cherokee Nation of OK
Hill, Paula Lynn, University of North Dakota-Williston, Sault Ste. Marie—Chippewa
Hix, Christ, Elaine, Northeastern State University, Cherokee Nation of OK
Hnat, Donnell Rae, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Hogue, Michael Andrew, George Washington University, Choctaw Nation of OK
Holiday, Karen Louise, University of Oklahoma, Eastern Band—Cherokee of NC
Housteen, Deniece, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Howard, Jennifer Leigh, University of North Dakota, Pueblo of Cochiti
Huffman, Angela Desiree, Dartmouth Medical School, Sac & Fox of OK
Hugues, Ross Neil, University of Iowa, Shoshone-Brannock—Fort Hall

Hull, Debra Maney, Southwestern Community College, Eastern Band—Cherokee of NC
Huson, Betty Ann, Yuba College, Cherokee Nation of OK
Hyde, Petie Ann, University of Oklahoma, Cherokee Nation of OK
Ingram, Dena Gail, University of Oklahoma, Chickasaw Nation of OK
Interpreter, Christina Lynn, Northern Arizona University, Hopi
Iron Shooter-Foote, Berta Ann, University of North Dakota, Fort Belknap
Jackson, Gillian Joseph, California State University/Sacramento, Pinoleville of Pomo
James, Gertrude Ann, New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Jamison, Julie Ann, California State University, Cherokee Nation of OK
Jefferson, Charlotte Kay, University of Montana School of Pharmacy, Crow Tribe of MT
Jennings, Lesley Ann, Seminole State College, Seminole Nation of OK
Jensen, Darcy Nicole, University of Mary, Northern Cheyenne
Jerome, Ralph Frederick, Langston University, Choctaw Nation of OK
Jesse, Michelle Nicole, Seminole State College, Citizen Potawatomi Nation of OK
Jim, Lisa Gentry, University of New Mexico, Klamath Indian Tribe of Oregon
Jimmie, Bessie, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Jimmy, Gerald, University of North Dakota, Te-Moak—Western Shoshone
Johnson, Anne Marie, University of Alaska, Golovin Village (Chinik Eskimo)
Johnson, Melissa Ann, East Central University/PDI, Muskogee (Creek) of OK
Johnson, Meredith Leigh, Oklahoma State University, Chickasaw Nation of OK
Johnson, Norman Chris, Utah State University, Sisseton-Wahpeton Sioux
Johnson, Stephanie Jean, United Tribes Technical College/PNU, Pyramid Lake Paiute
Johnson, Veronica Renee, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Johnson, Vivian, California State University, Navajo Tribe of AZ, NM, & UT
Johnson-Joines, Angela Rae, Southeastern Oklahoma State University, Muskogee (Creek) of OK
Joice, Kelly A., University of Kansas/Lawrence, Cherokee Nation of OK
Joines, John Clifford, Southwestern Oklahoma State University, Choctaw Nation of OK
Jolley, Tena Kay, East Central University, Choctaw Nation of OK
Jones-Pingleton, Ronda Kay, Eastern Oklahoma State College, Choctaw Nation of OK
Jones, Denise Dawn, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Jones, Myles Randall, Northern State University, Sisseton-Wahpeton Sioux
Jones, Vernita Michelle, Colorado Tech, Navajo Tribe of AZ, NM, & UT
Juneau, Rose Ann, Blackfeet Community College, Fort Belknap
Jurek, Carol Renee, College of Saint Scholastica, Fond Du Lac Band—Minnesota Chippewa
Juvinel, Lorna Tuanda, University of Washington School of Medicine, Confederated Yakima
Kalvels, Erik Paul, Colorado State University, Rosebud Sioux
Kanawite, Freida Mae, Albuquerque Tech-Voc Institute, Navajo Tribe of AZ, NM, & UT
Kaniatobe, Angie Jo, New England College of Optometry, Choctaw Nation of OK
Kee, Emily Tara Ann, New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Keene, Kristi Michelle, Southwestern State College, Cherokee Nation of OK
Keener, Guy Sidney, University of North Dakota, Cheyenne River Sioux
Kellar, Colleen Neilan, Frontier School/Midwifery & Family Nursing, Muskogee (Creek) of OK
Kelley, Ralph Zane, University of Arizona, Cherokee Nation of OK
Kemnitz, Shelly Ann, University of North Dakota, Turgle Mountain Chippewa
Kennedy, Jay Pehrson, University of Minnesota Minneapolis Medical School, Blackfeet
Kerley, Arthur, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Khoury, Stephen Carter, Oklahoma State University, Muskogee (Creek) of OK
Kie, Glorianna, University of New Mexico, Pueblo of Laguna
Kienzle, Judy Ann, University of Iowa, Oglala Sioux
Kills Pretty Enemy, Casey Adell, University of North Dakota, Crow Tribe of MT
King, Jeannie, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Kipp, Billie Jo, The University of Montana, Blackfeet
Kirk, John Vincent, Northeastern State University, Cherokee Nation of OK
Kline, Heather Louise, Kutztown University, Choctaw Nation of OK
Knaub, Marcella Ann, Carroll College/Nursing, Chippewa Cree
Knight, Jenny Ella, University of Oklahoma Health Sciences Center, Seminole of OK
Krech, Paul Rock, Arizona State University, Minnesota Chippewa (6 Component Reservations)
Lafriniere, Melody Lou, University of North Dakota, Minnesota Chippewa (6 Component Reservations)
Lamebull, Charlotte O., Northern Montana College, Fort Belknap
Lameman, Joann, Navajo Community College, Navajo Tribe of AZ, NM, UT
Lamere, Cindy, Salish Kootenai College, Turtle Mountain Chippewa
Laroche, Faith Antoinette, US International University, Rosebud Sioux
Latocha, Demetrius Hawkshield, University of Iowa, Standing Rock Sioux of NO & SO Dakota
Latray, James Eldon, Rocky Mountain College, Blackfeet
Laughter, Richard Kim, University of Utah, Navajo Tribe of AZ, NM, & UT
Lawrence, Donavon Clay, Northern State University, Cheyenne River Sioux
Lawrence, Lynnae Susan, University of Arizona College of Medicine, Hopi
Lawrence, Morse Paul, University of Nebraska, Oglala Sioux
Lebeaux, Doriann Joyce, Presentation College, Cheyenne River Sioux
Lebeaux, DiJondra Rae, Oglala Lakota College, Navajo Tribe of AZ, NM, & UT
Lee, Michael Patrick, Southwestern State College, Muskogee (Creek) of OK
Lewis, Barbara Beth, Polomar College, Pala Band of Luiseno
Little, Kendall Jay, University of Oklahoma, Muskogee (Creek) of OK
Little, Renee Michele, University of Washington School of Medicine, Mescalero Apache
Littleghost, Sheila-May, University of North Dakota, Spirit Lake Tribe, ND
Livermont, Amy Marie, University of Mary, Cheyenne River Sioux
Lomay, Lorraine, Arizona State University, Hopi
Long-Likeric, Kendra Beth, University of Washington, Muskogee (Creek) of OK
Longee, Nettie Lee, Shoreline Community College/PMT, Confederated Yakima
Longstaff, Laura Ann, University of Washington, Seneca of New York
Lopez, Katrina Francine, Pacific University, Aleut
Loretto, Mariam Brenda, Albuquerque Technical Vocational Institute, Pueblo of Jemez
Lujan, Natasha Jane, University of New Mexico, Pueblo of Taos
Lundgren, Roberta Toneena, University of Washington, Tulalip

Lutes, Crystal Dawn, University of Central Oklahoma, Navajo Tribe of AZ, NM, & UT
Mancha, Lorraine Sue, Eastern Washington University, Blackfeet
Mansfield, Shawn Christopher, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Manuel, Patricia Fedelis, Phoenix College, Tohono O'odham Nation
Manuelito, Darlene, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Manuelito-Thompson, Sharon Jean, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Marron-Dominguez, Jackie Mae, Albuquerque Technical Vocational Institute, Pueblo of Laguna
Martell-Rondeau, Christi Sue, North Dakota State University, Turtle Mountain Chippewa
Martin, Candelaria Cynthia, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Martin, Edward Angelo, University of Arizona, Navajo Tribe of AZ, NM, & UT
Martin, Shanda Renee, University of Minnesota, Standing Rock Sioux of NO & SO Dakota
Martine, Cynthia Ann, University of North Dakota, Jicarilla Apache
Masayesva, Brett Gordon, University of Arizona, Hopi
Mathews, Diane Wagers, Tulane University, Oglala Sioux
Mault, Clifford Homer, Ohio University, Cherokee Nation of OK
Mauricio, Lillia, Weber State University, Navajo Tribe of AZ, NM, & UT
McCloud, Lynn Marie, University of North Dakota, Turtle Mountain Chippewa
McDaniel, Vicki Lynn, Oklahoma City Community College, Cherokee Nation of OK
McGilberry, Charles Stephen, Oklahoma City University, Choctaw Nation of OK
McGinn, Michelle Lee, University of New Mexico, Pueblo of Acoma
McIntosh, Richard Lee, Texas Tech University, Muskogee (Creek) of OK
McKenna, Shannon Lee, University of New Mexico, Pueblo of Nambe
McKinney, Ava Marie, Chemeketa Community College, Three Affiliated Tribes-Ft. Berthold
McLain, Stephanie Ashley, University of Oklahoma, Muskogee (Creek) of OK
McLellan, Stacey Lea, University of Texas, Chickasaw Nation of OK
McQuay, Cory Christine, University of Central Oklahoma, Cherokee Nation of OK
Meade, Kathryn Rae, University of Arizona College of Medicine, Three Affiliated Tribes-Ft. Berthold
Melbourne, Linda A, University of Mary, Assiniboine & Sioux
Mist, Heidi Christine, Tulane University, Cherokee Nation of OK
Montreal, Eunice Rose, Presentation College, Cheyenne River Sioux
Moore, Mark Wilburn, Texas Woman's University, Cherokee Nation of OK
Moore, Mary Kathleen, Oklahoma State University, Cherokee Nation of OK
Moose, LeDonna Denyse, Oregon Health Sciences University, Pechanga Band of Luiseno
Morigeau, Tamra Ann, University of New Mexico, Confederated Salish & Kootenai
Morris, Charla Jean, University of North Dakota, Cherokee Nation of OK
Morris, Jeffrey Scott, East Central University, Quechan of Fort Yuma
Murray, Timothy Michael, University of Oklahoma HSC, Choctaw Nation of OK
Muskett, Eunice Annazbah, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Muskett, Jennifer Rena, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Muzquiz, Leeanna Irvine, University of Washington, Confederated Salish & Kootenai
Nadeau, Melanie Ann, University of North Dakota, Turtle Mountain Chippewa
Nauhauser, Diane Marie, Kean College, Cheyenne River Sioux
Nelson, Tina Ann, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Newago, Kimberly Dawn, University of Wisconsin, Red Cliff-Lake Superior Chippewa
Nez, Sonya, Arizona State University, Navajo Tribe of AZ, NM, & UT
Nichols, Jason Wade, Northeastern State University, Muskogee (Creek) of OK
Noisy Hawk, Lynelle Nancy, University of North Dakota, Oglala Sioux
Nunan, Cindy Lou, La Salle University, Wampanoag of Gay Head
O'Connor, Ramona Mae, University of Minnesota, Yankton of Sioux
Old Horn-Vondall, Carol Rose, University of Montana, Crow Tribe of MT
Oliver, James Patrick, University of Idaho, Lummi
Ortiz, Viola Marie, New Mexico State University, Pueblo of Acoma
Ott, Ginger Gayle, Northeastern State University, Cherokee Nation of OK
Owen, Mary June, University of Minnesota, Alaskan
Owens, Janet Lynn, University of Tulsa, Cherokee Nation of OK
Pablito, Bertha, University of New Mexico, Pueblo of Zuni
Palm, Toby James, University of Montana, Cherokee Nation of OK
Paquette, Jessica Maureen, Michigan State University, Sault Ste. Marie-Chippewa
Parisien, Anjanette Marie, University of North Dakota, Turtle Mountain Chippewa
Pasquale, Pamela Jo, Pima Community College, Choctaw Nation of OK
Patnaude, Lawrence Andrew, North Dakota State University, Turtle Mountain Chippewa
Payne, Jewel Ruby, Montana State University, Assiniboine & Sioux
Perdue, David Garett, University of Washington, Chickasaw Nation of OK
Peterman, Roxanne, University of Arizona, Navajo Tribe of AZ, NM, & UT
Peyketewa, Al Lotario, University of New Mexico, Pueblo of Zuni
Phelps-Parker, Nancy Elizabeth, University of Oklahoma HSC, Cherokee Nation of OK
Pittman, Larry Hale, Howard University, Choctaw Nation of OK
Plumer, Diana Lynn, Kent State University, Minnesota Chippewa
Porter, Gus Ray, University of Oklahoma, Seminole of OK
Potts, Richard Ray, University of Michigan, Chickasaw Nation of OK
Powell, Sarah Kristine, Oklahoma State University, Choctaw Nation of OK
Priddy, Bobby Don, Midwestern State University, Caddo
Priest, Monica Eve, D'Youville College, Seneca of New York
Quintana, Alexandria Lynn, University of New Mexico, Navajo Tribe of AZ, NM, & Ut
Quisno, Jacqueline Elaine, University of Washington, Oglala Sioux
Radney, Ruth W., California State University, Comanche of OK
Rainer, Lillian Little Red Flower, University of Utah, San Carols Apache
Ranco, Mark Robert, University of Maine Orono, Penobscot of Maine
Randall, Diane Renee, East Central Oklahoma State, Muskogee (Creek) of OK
Rasor, Joseph James, Northern Arizona University, Navajo Tribe of AZ, NM, & UT
Rave, Tiffany Ann, University of North Dakota, Cheyenne River Sioux
Reano, Iris Jane, University of New Mexico, Pueblo of Santo Domingo
Reategui, Tyra Nicole, University of North Dakota, Turtle Mountain Chippewa
Redman, Kay Lynne, Medical College of Wisconsin, Muskogee (Creek) of OK
Reid, Ron Andrew, University of North Dakota, Pueblo of Isleta
Reyhner, Deborah Dawn, University of Colorado School of Medicine, Comanche of OK

Ricciardi, Catherine Joy, Salish Kootenai College, Fort Belknap
Richardson, Randall Charles, Brown University, Turtle Mountain Chippewa
Riddle, Helen Yolanda, Washington University, Navajo Tribe of AZ, NM, & UT
Riggs, Randall Wayne, University of New Mexico, Cherokee Nation of OK
Ritter, Tara Jean, Bacone College, Cherokee Nation of OK
Robbins, Cara May, University of Texas, Standing Rock Sioux NO & SO Dakota
Roberts, Montgomery Lee, Oklahoma State University, Cherokee Nation of OK
Rock, Jimmy Ray, Oklahoma Baptist University, Cherokee Nation of OK
Romancito, Gayle Rozelle, University of New Mexico, Pueblo of Zuni
Rose, Richard T., Ohio State University, Absentee-Shawnee
Ross, Cindy Lee, University of Arizona, Hopi
Rouse, Brant Philip, University of Oklahoma, Cherokee Nation of OK
Sage, Della June, North Central Technical College, Arapahoe-Wind River
Sahmaunt, Rebecca Jo, East Central Oklahoma State University-Nursing, Kiowa of OK
Sahmaunt, Sarabeth, Cameron University, Kiowa of OK
Sam, Kimberly Gayle, University of Central Oklahoma, Kiowa of OK
Sam Michelle Elma, University of Washington, Alaskan
Samuel-Makamura, Christine Bianca, University if California, Navajo Tribe of AZ, NM, & UT
Sandia, Charles F., University of New Mexico, Pueblo of Jemez
Sandoval, Jonina, University of Alaska, Pueblo of San Felipe
Sandoval, Wynema Marie, New Mexico State University, Navajo Tribe of AZ, NM, & UT
Sandoval-Lucero Lucinda, Albuquerque Technical Vocational Institute, Pueblo of San Felipe
Sanford, Kimberly Beatrice, Fort Lewis College, Navajo Tribe of AZ, NM, & UT
Scalpcane-Moore, Lavonne Jean, Salish Kootenai College, Northern Cheyenne
Schildt, Brenda L., Arizona State University, San Carlos Apache
Schmidtt, Joel Gavin, University of Memphis, Jamestown S'Klallam
Scott, Tina Marie, Oklahoma University HSC, Mississippi Band of Choctaw
Scott, Travis Lee, Oklahoma State University, Cherokee Nation of OK
Seible, Gennea Adelle, University of North Dakota, Three Affiliated Tribes—Ft. Berthold
Sexton-Grimm, Julie Marie, East Central University, Confederated Salish & Kootenai
Shrewood, Todd Martin, North Dakota State University, Standing Rock sioux—NO & SO Dakota
Shields, Darren, Oklahoma University Health Sciences Center, Absentee/ Shawnee
Shopteese, Gloria Joyclyn, Walla Walla College, Fort Belknap
Sigstad-Bumpus, Vonda Ann, University of Southern California, Cherokee Nation of OK
Simplicio, Tersa Denise, University of New Mexico, Pueblo of Zuni
Smith, Angela Rene, Rocky Mountain College, Cherokee Nation of OK
Smith, Elaine Show, Montana State University, Blackfeet
Smith, Linda Ann, Minot State College, Turtle Mountain Chippewa
Smith, Seneca Martin, East Central University, Muskogee (Creek) of OK
Smith, Sheila Rena, University of Science and Arts of Oklahoma, Seminole of OK
Sneed, Roberta Venessa Lambert, Western Carolina University, Eastern Band-Cherokee of NC
Snell, Jerry David, University of Oklahoma Dental School, Cherokee Nation of OK
Socoby, Joseph Mark, University of Maryland, Onondaga of NY
Soukup, Steven Leo, University of Minnesota/Duluth, Red Lake-Chippewa
Sparks, Kerrie Renee, East Central University, Cherokee Nation of OK
Stacey, Miriam Jean, University of New Mexico, Hopi
Stallings, Deborah M., Weber State University, Navajo Tribe of AZ, NM, & UT
Standingrock, Claudette, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Stanley, Jason Michael, University of Central Oklahoma, Cherokee Nation of OK
Stevens, Linda Louise, Portland Community College, Mooretown of Maidu
Stewart, Millie Faith, University of Northern Colorado, Crow Tribe of Montana
Stover, Partick Pete Southweatern Oklahoma State, Chickasaw Nation of OK
Stumblingbear, Zoie Ellen, University of Oklahoma, Kiowa of OK
Strum, Brenda Lee, Graceland College, Delaware of OK
Sue, Phyllis Lorraine, University of Oklahoma, Comanche of OK
Summerlin, Allen William, Northeastern State University, Cherokee Nation of OK
Super, Sarah Lee, Shasta College, Karuk
Swensen, Eric Carl, Grand Canyon College, Aleut
Tan, Tabitha Leeann, California State University, Navajo Tribe of AZ, NM, & UT
Tapia, Stefani Marlene, University of Texas/El Paso, Ysleta Del Sur Pueblo of Texas
Tarango, Elena Marveya, California State University at Sacramento, Mooretown of Maidu
Taylor, Jody Belinda, University of North Dakota, Cherokee Naiton of OK
Teller, Tanya Corina, University of New Mexico Navajo Tribe of AZ, NM, & UT
Terrell, Mindy Renee, University of Oklahoma, Cherokee Nation of OK
Thibert, Mark Alan, University of Washington School of Medicine, Turtle Mountain Chippewa
Thomas, Dirk Scott, University of Okahoma Dental School, Cherokee Nation of OK
Thomas, Sheila, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Thompson, Christina Kay, Palomar College, Choctaw Nation of OK
Todacheene, Donna Lea, Phoeniz College, Navajo Tribe of AZ, NM, & UT
Todacheeney, Rydell, Phoenix College, Navajo Tribe of AZ, NM, & UT
Toersbijns, Joan Veronica, Albuquerque Technical Vocation Institute, Pueblo of Isleta
Toledo, Sherri Jean, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Tolino, Gerilyn Ardith, New Mexico Highlands University, Navajo Tribe of AZ, NM, & UT
Tomlin, Kevin David, Western Washington University, Cheyenne River Sioux
Tommie, Titania Leonila, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Tsethlikai, Cynthia, University of New Mexico, Pueblo of Zuni
Tsinnie, Ardis Rae, Arizona State University, Navajo Tribe of AZ, NM, & UT
Tsosie, Valerie, Brigham Young University, Navajo Tribe of AZ, NM, & UT
Turner-Riddle, Meredith Michelle, Northwestern Oklahoma State University, Ottawa of OK
Tyner, Verna Alene, University of Oklahoma, Muskogee (Creek) of OK
Umber, Steven Ray, Charles Stewart Mott Community College, Mississippi Band of Choctaw
Upshaw, Carmelita, Northern Arizona University, Navajo Tribe of AZ, NM, & UT

Uttchin, Venus, Stanford University, Muskogee (Creek) of OK
Valdo, Gerald David, Oregon State University, Pueblo of Acoma
Van Meter, Catherine Leigh, Faulkner University, Poarch Band of Creek—AL
Vanatta, Sherry Ann, Texas Woman's University, Cherokee Nation of OK
Vandusen, Terra Andrea, Seminole State College, Cherokee Nation of OK
Vaughn, Jason Kent, Tulsa Community College, Caddo
Vielle, Nadine Marie, Salish Kootenai College, Blackfeet
Villines, Nathan Clark, University of Oklahoma Dental School, Cherokee Nation of OK
Volden-Smith, Minisa Michelle, California School of Psychology, Cherokee Nation of OK
Wakole, Carmen Jean, East Central Oklahoma State University, Absentee/Shawnee
Wall, Angela Dawn, Oklahoma State University, Chickasaw Nation of OK
Walton, Amber Nichole, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Waquie, Monica Janet, Albuquerque Technical Vocational Institute, Pueblo of Jemez
Ware, Brenda Lee, East Central University, Cherokee Nation of OK
Wassallie, Sherry Dolly, University of Washington, Levelock Village
Watson, Katie Joanne, Langston University, Cherokee Nation of OK
Watson Matthew Mendioro, University of California-Berkeley, Ottawa of OK
Weber, Shana Renae, Michigan State University, Oneida of Wisconsin
Webster, Edwin Quillin, University of Montana School of Pharmacy, Aleut
Webster, Roxanne Dione, College of St. Mary, Assiniboine & Sioux
Wells, Alicia Dawn, University of Oklahoma HSC, Choctaw Nation of OK
Wells, Elmer Bruce, North Dakota State University, Three Affiliated Tribes—Ft. Berthold
West, Michael Clinton, Oklahoma State University, Choctaw Nation of OK
Weston, Marnie Lee, Phoenix College, Cheyenne River Sioux
Wipple Katherine Joy, University of Minnesota/Minneapolis Medical School, Spokane
White, Kalvin Glenual, University of Utah, Navajo Tribe of AZ, MN, & UT
White Calfe-Sayler, Verlee Kay, University of North Dakota, Three Affiliated Tribes—Ft Berthold
White Horse, Wyatt Arthur, University of Wyoming, Rosebud Sioux
Whitechair, Jennifer June, University of North Dakota, Navajo Tribe of AZ, NM, & UT
Wiggins, Elizabeth Owle, University of North Carolina, Eastern Band of Cherokee—NC
Wilcox, Christopher Michael, University of Missouri, Cherokee Nation of OK
Wilcox, Darlene Marie, University of North Dakota, Oglala Sioux
Wilkett, David Matthew, Oklahoma State University, Choctaw Nation of OK
Willcuts, Peggy Sue, South Dakota State University, Rosebud Sioux
Williams, Kimberly Dawn, E. Central Oklahoma Sate University, Citizen Potawatomi National of OK
Williams, Kinde Elizabeth, Cameron University, Wichita & Affiliated Tribes of OK
Williams, Michael Shawn, Utah State University Oglala Sioux
Williams, Rhonda Lynette, University of Mexico, Navajo Tribe of AZ, NM, & UT
Wilson, Dena Lynn, Texas Tech University, Oglala Sioux
Wilson, Sandra, University of Oklahoma Dental School, Northern Cheyenne
Witherspoon, Lachelle Linette, California State University, Navajo Tribe of AZ, NM, & UT
Wotten, Kathleen Ann, University of Missouri, Cherokee Nation of OK
Yandell, Seth David, Texas Tech University, Choctaw Nation of OK
Yazzie, Bettie, Coconino County Community College, Navajo Tribe of AZ, NM & UT
Yazzie, Karen Yvonne, University of Southern California, Navajo Tribe of AZ, NM & UT
Yazzie, Nazhone Paul, University of Arizona, Navajo Tribe of AZ, NM, & UT
Yazzie, Ruybelle Natalie, Arizona State University, Navajo Tribe of AZ, NM, & UT
Yazzie, Sheldwin Aaron, University of New Mexico, Navajo Tribe of AZ, NM, & UT
Yazzie, Stewart David, Grand Canyon University, Navajo Tribe of AZ, NM, & UT
Ybarra, Ysidro Patrick, University of Alaska Anchorage, Crow Tribe of Montana
Zelmer, Jill Annette, Bacone College, Cherokee Nation of OK
Zenzick, Alexander Jon, University of North Dakota, Turtle Mountain Chippewa
Zerecero, Geneva Lee, University of North Dakota, Pyramid Lake Paiute

FOR FURTHER INFORMATION CONTACT: The Indian Health Service Scholarship Branch, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Suite 100, Rockville, Maryland, 20852, Telephone: (301) 443–6197, Fax: (301) 443–6048.

Dated: August 21, 1998.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 98–23839 Filed 9–3–98; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; ''Physicians' Resolution of Ethical Problems and Use of Institutional Ethics Consultation Services''

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Department of Clinical Bioethics (DCB), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

''Physicians' Resolution of Ethical Problems and Use of Institutional Ethics Consultation Services''—The Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, NIH, intend to seek approval to conduct a survey aimed at physicians certified by the American Board of Internal Medicine. The survey asks for information about: (1) the ways that physicians address ethical problems that arise in their practice; (2) the types of questions that physicians perceive to raise ethical issues, and how often these arise; (3) how frequently physicians use the ethics consultation service (if any) at their primary institution; and (4) the reasons why physicians do and do not request formal ethics consultation through their institution's ethics consultation service. The information collected will help the NIH and other health care institutions to structure their ethics consultation service, and other ethics resources, to provide more helpful and responsive ways of addressing ethical problems and dilemmas. Respondents will be physicians certified by the American Board of Internal Medicine and will be asked to respond to one survey, estimated to average 30 minutes per respondent. It is estimated that 450 respondent surveys will be completed for a total annual burden on respondents of 225 hours.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited with respect to: (1) whether the proposed collection of information is necessary for the proper performance of the function of the Department of Clinical Bioethics at the NIH, including whether the information will have practical utility; (2) the DCB's estimate of the burden of the proposed collection of information and the validity of the methodology and assumptions used; (3) enhancing the quality, utility, and clarity of the information to be collected; and (4) minimizing the burden of the collection of information on those who are to respond, including suggestion for the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

Written comments may be sent to: Gordon DuVal, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health, Bethesda, MD 20892–1156, Ph: (301) 435–8717, Fax: (301) 495–0760, E-mail: gduval@nih.gov

All responses to this notice will be summarized and included in the request for OMB approval and will become part of the public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Gordon DuVal at the above address or call (not toll free) (301) 435–8717.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 26, 1998.

David K. Henderson,

Deputy Director for Clinical Care, Warren G. Magnuson Clinical Center, National Institutes of Health.

[FR Doc. 98–23946 Filed 9–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request, Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 14, 1998, pages 26815–26816 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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.

Proposed Collection

Title: Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture. *Type of Information Request:* OMB #0925–0406, Exp. 11/30/97, Reinstatement, with change. *Need and Use of Information Collection:* The Agricultural Health Study has assembled a cohort of over 90,0900 private and commercial applicators and spouses of private applicators. Baseline information has been collected. The cohort will be contacted to update exposure information since enrollment and changes in health status and family medical history. Additional dietary information will be requested. A collection of buccal (cheek) cells is planned. *Frequency of Response:* Single time reporting. *Affected Public:* Individuals or households, Farms. *Type of Respondents:* Private and commercial pesticide applicators and the spouses of private applicators. The annual reporting burden is as follows:

Applicator	Spouse	Buccal cell collection
25,271	23,784	14,270
1	1	1
.5	.5	.66
12,636	11,892	9,419
Total Burden		33,947

The annualized costs to respondents estimated at: $339,470. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should addresses one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms on information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Michael C.R. Alavanja, Dr. P.H., Division of Cancer Epidemiology and Genetics, National Cancer Institute, 6130 Executive Plaza North, Rockville, Maryland 20892–7344, or call non-toll free number (301) 496–4720, or FAX your request to (301) 402–1819, or E-mail you request, including your address, to: alavanjam@epndce.nci.nih.gov

Comments Due Date: Comments regarding this information collection are best assured to having their full effect if received within 30 days of the date of this publication.

Date: August 27, 1998.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 98–23948 Filed 9–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Animal Model for Age-Related Macular Degeneration and Methods for Use Thereof

KG Csaky (NEI)
Serial No. 60/060,045 filed 25 Sept 97
Licensing Contact: Jaconda Wagner, 301/496–7735 ext. 284

The invention provides an animal model for the study of age-related macular degeneration (ARMD). The model is an animal, any mammal, having subretinal cells, *e.g.*, retinal pigment epithelial (RPE) cells, genetically modified to express vascular endothelial growth factor (VEGF) so as to result in subretinal fibrovascular proliferation. The invention also provides two methods: (1) for determining whether a molecule of interest can inhabit ARMD; and (2) for determining whether radiation can inhibit ARMD. This research has been published in Curr Eye Res 1998 Mar; 17(3): 316–21.

Protection of Tissue From Ischemic Damage

E Murphy (NIEHS), W Chen (Duke), C Steenbergen (Duck)
DHHS Reference No. E–174–97/0 filed 25 Jul 97
Licensing Contact: Dennis Penn, 301/496–7056 ext. 211

Ischemia and reperfusion injury are significant causes of tissue damage in diseases and conditions such as heart attack, stroke and in organ transplantation. Scientists at the National Institute of Environmental Health Sciences and Duke University, while investigating the phenomena of preconditioning, have discovered and developed a highly effective method for protecting tissues from cell injury by ischemia by use of 12(S)–HpETE.

Previously developed treatments to prevent ischemic damage are greatly limited in their effectiveness. TPA, routinely used to dissolve blood clots, thereby allowing greater blood flow, does not prevent ischemic tissue injury. Aspirin has been shown to have only a small protective effect in the cardiovascular system. However, the above new method demonstrates a dramatic protective effect—up to 82% recovery in initial studies—with administered during injury, as seen in animal models. The protective effect of 12(S)–HpETE was discovered during investigation of the 12-lipoxygenase-related protective effect of ischemic preconditioning and, unlike other agents, 12(S)–HpETE has no known undesirable side effects.

Uses of such an invention may include treatment of tissue during angioplasty and treatment of organs intended for transplantation to limit the chance of damage.

This research was published in Circulation Research 76: 457–467, 1995.

Dated: August 28, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–23947 Filed 9–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of he following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Oxidative Stress in Age-Associated Neurodegeneration.
Date: September 22, 1998.
Time: 12 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Homewood Suites Hotel, 530 Providence Park Drive East, Mobile, AL 36695.
Contact Person: Paul Lenz, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimers Disease Research Centers.
Date: October 1–3, 1998.
Time: 5 p.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: Louise L. Hsu, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Name of Committee: National Institute on Aging Special Emphasis Panel, Exercise & Hormone Replacement in Postmenopausal Women.
Date: October 1–2, 1998.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Burlington, 1068 Williston Road, South Burlington, VT 05403.
Contact Person: William A. Kachadorian, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Name of Committee: National on Institute on Aging Special Emphasis Panel, Sleep, Aging, Circadian Rhythm Disorders.
Date: October 8, 1998.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Arthur D. Schaerdel, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Name of Committee: National institute on Aging Special Emphasis Panel, Alzheimers Disease Research Center.
Date: October 26–28, 1998.
Time: 5 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: 8777 Georgia Avenue, Silver Spring, MD 20910–3736.
Contact Person: Louis L. Hsu, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Aging, Gateway

Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: November 2–4, 1998.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Louis L. Hsu, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 31, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–23949 Filed 9–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, RFA–TW–98–TB: Tuberculosis Supplement.

Date: September 17–18, 1998.

Time: September 17, 1998, 9:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: 6003 Executive Blvd., Solar Bldg.—Room 3B05, Rockville, MD 20852.

Contact Person: M. Sayeed Quraishi, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C22, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–7465.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 31, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–23950 Filed 9–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Committee A.

Date: November 5–6, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Committee B.

Date: November 5–6, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Irene B. Glowinski, Scientific Review Administrator, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20815, (301) 594–3663.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Committee C.

Date: November 5–6, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.

Contact Person: Arthur L. Zachary, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–23952 Filed 9–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, Marc Subcommittee A.

Date: October 14–16, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton Hotel, Darnestown Conference Room, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Richard I. Martinez, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalog of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical

Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–23954 Filed 9–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Development and Function Initial Review Group, Cellular Biology and Physiology Subcommittee 1.

Date: October 7–8, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, VA 20191.

Contact Person: Ramesh K. Nayak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Biochemical Sciences Initial Review Group, Pathobiochemistry Study Section.

Date: October 8–9, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.

Contact Person: Zakir Bengali, Center for Scientific Review, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 28, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–23951 Filed 9–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–25]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 27, 1998.

Kenneth C. Williams,

Deputy Assistant Secretary for Grant Programs.

[FR Doc. 98–23487 Filed 9–3–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held on Friday, September 18, 1998, beginning at 9 a.m. It will take place in the meeting room of the McKinley Princess Lodge, mile 133.5 of the Parks Highway, adjacent to the Denali State Park, Alaska. This meeting will be held to receive and discuss work group reports on recreation and tourism, and to discuss the 1998 awards program. The agenda will also include several briefing items.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

Ronald B. McCoy,

Department of the Interior, Office of the Secretary.

[FR Doc. 98–23857 Filed 9–3–98; 8:45 am]

BILLING CODE 4310–RP–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Act: Request for Small Grants Proposals for 1999

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the U.S. Fish and Wildlife Service (Service) is currently entertaining proposals that request match funding for wetland conservation projects under the Small Grants program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as amended. The Service will give funding priority to projects from new grant applicants with new partners, where the project ensures long-term conservation benefits. However, previous Act grantees are eligible to receive funding, and can compete successfully on the basis of strong project resource values.

DATES: Proposal must bear postmarks no later than Friday, December 4, 1998.

ADDRESSES: Address proposals to: North American Waterfowl and Wetlands

Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Small Grants Coordinator, or the office secretary, North American Waterfowl and Wetlands Office, 703/358–1784; facsimile 703/358–2282.

SUPPLEMENTARY INFORMATION: The purpose of the 1989 North American Wetlands Conservation Act (NAWCA), as amended, is to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat through partnerships. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

In 1996, the North American Wetlands Conservation Council (Council) initiated a Small Grants program with an allocation of $250,000 per year. The objective of this program is to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to compete in the regular grants program. It is also hoped that successful participants in the Small Grants program will be encouraged to participate in the NAWCA-based Standard Grants program. The Small Grants program became fully operational in 1998 with an allocation of $500,000. Over the first three years of the program, about 275 proposals requesting a total of approximately $8.3 million competed for funding. Ultimately, 34 projects were funded. For 1999, with the approval of the Migratory Bird Conservation Commission, the Council has again made the Small Grants program operational at a base level of $500,000.

To be considered for funding in the 1999 cycle, proposals must have a grant request no greater than $50,000. All wetland conservation proposals are accepted that meet the requirements of the Act. However, considering appropriate proposal resource values, funding priority is given to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits. As suggested by the former, this does not preclude former NAWCA grant recipients from receiving Small Grants funding; ultimately, project resource value is the critical factor in deciding which projects receive funding.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget must constitute 10 percent or less of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetlands-associated uplands.

Please keep in mind that NAWCA and matching funds may only be applied to wetlands acquisition, creation, enhancement, and/or restoration; they may not be applied to signage, displays, trails or other educational features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, useful project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals are not considered for funding.

Even though requiring less total information than those submitted for the regular grants program, Small Grant proposals must have clear explanations and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, ''Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds.'' All applicants must submit a completed Standard Form 424, Application For Federal Assistance. Small Grants Instructional Booklets contain forms and instructions for the Standard Form 424; booklets are available at the address provided or by E-mail, as explained later in this notice.

Small Grants proposals may be submitted prior to the due date but must bear postmarks no later than Friday, December 4, 1998. Address submitted proposals as follows: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, VA 22203. Attn: Small Grants Coordinator.

It is essential that applicants submit complete grant request packages to the North American Waterfowl and Wetlands Office (NAWWO), including *all* of the documentation of partners (partner letters) with funding pledge amounts. Information on funding in partner letters, i.e., amounts and description regarding use, must correspond with budget amounts in the budget table and any figures provided in the narrative.

With the volume of proposals received, the NAWWO is not able to contact proposal sources to verify and/or request supplemental data and/or materials. Thus, those proposals lacking required information or containing conflicting information are subject to being declared ineligible and not further considered for funding.

For more information, and/or to request the Small Grants instructional booklet, call the NAWWO office secretary at (703) 358–1784, facsimile (703) 358–2282, or send E-mail to R9ARW__NAWWO@MAIL.FWS.GOV. Small Grant application instructions are also available by E-mail, upon request.

In conclusion, the Service requires that upon arrival in the NAWWO, proposal packages must be complete with regard to the information requested, in the format requested, and on time.

The Service has submitted information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. On August 24, 1998, OMB gave an emergency approval for this information collection requirement and assigned it approval number 1018–0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless is displays a currently valid OMB control number. The information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the North American Wetlands Conservation Council and the Migratory Bird Conservation Commission; is necessary to determine the eligibility and relative value of wetlands projects; results in an approximate paperwork burden of 80 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: August 28, 1998.

John G. Rogers,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 98–23844 Filed 9–3–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Request for Information and Recommendations on Resolutions and Agenda Items for Consideration at the Eleventh Regular Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Scoping notice; Request for information.

SUMMARY: This notice is a scoping document that solicits recommendations for resolutions and agenda items for discussion at the eleventh regular meeting of the Conference of the Parties (COP11) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). We invite you to provide us with information and recommendations on possible resolutions and agenda items for discussion at COP11. We also invite your comments on the issue of transborder movements of live animals for exhibition and on the issue of the use of product annotations in the CITES Appendices. The CITES Standing Committee, at its last meeting in March 1998, established Working Groups to focus on each of these issues and it is possible that a proposed resolution on each issue may be submitted for consideration at COP11.

DATES: We will consider all information and comments received by November 3, 1998.

ADDRESSES: Concerning this request, you should send correspondence pertaining to resolutions and agenda items to the Office of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, Virginia 22203, or via E-mail at: r9oma__cites@mail.fws.gov. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Office of Management Authority. Information on species listing issues or scientific issues pertaining to CITES is available from the Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 750; Arlington, Virginia 22203, or via E-mail at: r9osa@mail.fws.gov.

FOR FURTHER INFORMATION CONTACT: Office of Management Authority, Branch of CITES Operations, phone 703/358–2095, fax 703/358–2298, E-mail: r9oma__cites@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, hereinafter referred to as CITES, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in Appendices to CITES, copies of which are available from the Office of Management Authority at the above address or from the Service's World Wide Web site http://www.fws.gov/r9dia/applinks.html. Currently, 144 countries, including the United States, are Parties to CITES. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, or agenda items for consideration by the other Parties.

This is our second in a series of **Federal Register** notices which, together with announced public meetings, provide you with an opportunity to participate in the development of the United States' negotiating positions for the eleventh regular meeting of the Conference of the Parties to CITES (COP11). We published our first such **Federal Register** notice on January 30, 1998 (63 FR 4613), and with it we requested your information and recommendations on potential species amendments for the United States to consider submitting for discussion at COP11. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Office of Scientific Authority at the above address. Our regulations governing this public process are found in 50 CFR 23.31–23.39.

In our **Federal Register** notice of January 30, 1998 (63 FR 4613), we announced that we expected COP11 to be held in November 1999, in Indonesia. Since the publication of that notice, the CITES Secretariat informed us via Notification to the Parties No. 1998/22, dated May 25, 1998, that Indonesia, through Diplomatic Note of April 29, 1998, has withdrawn from hosting COP11. As a result, the Secretariat invited Parties that might be interested in hosting COP11 to indicate this to the Secretariat by June 20, 1998. The Secretariat informed the Parties that COP11 is now expected to be held sometime between November 1999 and May 2000. If more than one country offers to host COP11, a decision on the host country will be made through a postal voting procedure. Once the Secretariat notifies the CITES Parties of the new host country of COP11 and the dates when the meeting will be held, we will publish this information in a future **Federal Register** notice. We will also post that information on our World Wide Web site, for your benefit.

Request for Recommendations on Resolutions and Agenda Items

Although we have not yet received formal notice of the provisional agenda for COP11, we invite your input on possible agenda items the United States could recommend for inclusion, or on possible resolutions of the Conference of the Parties that the United States could submit. Copies of the agenda for the last meeting of the Conference of the Parties (COP10) in Harare, Zimbabwe, in June 1997, as well as copies of all resolutions and decisions of the Conference of the Parties currently in effect, are available from the Office of Management Authority at the above address. Copies of a list of species proposals adopted at COP10 are available from the Office of Scientific Authority at the above address. On June 6, 1997, we published in the **Federal Register** (62 FR 31127) a full agenda for COP10 and summaries of all U.S. negotiating positions on those agenda items and resolutions.

Request for Information and Comments on the Issue of Transborder Movements of Live Animals for Exhibitions

At COP10, the Parties adopted Decision 10.142, directing the Secretariat to prepare recommendations on transborder movements of live animals for exhibition. The recommendations are to be based on proposals submitted by interested Parties for consideration by the CITES Standing Committee in 1998, in order to accomplish the following:

(a) Simplify transborder movements of live animals traveling to other countries for exhibition purposes;

(b) Register and identify live animals used in exhibitions; and

(c) Present documents and animals to appropriate border control officers when traveling to other countries for exhibition purposes.

At the last meeting of the CITES Standing Committee, held March 3–6, 1998, in London United Kingdom, the

Committee agreed to establish a Working Group to focus on the establishment of simplified procedures for transborder movements of live animals for exhibition (circuses), as there was no time for discussion of this issue at the meeting. The members of the Working Group are the United States (Chair), Germany, and Switzerland. The United States is to convene the Group, whose work will be carried out through correspondence. We invite information and comments on this issue.

Request for Information and Comments on the Issue of the Use of Product Annotations in the CITES Appendices

The United States is very interested in resolving issues pertaining to the use of product annotations when transferring populations or species from CITES Appendix I to II. Product annotations are those qualifications to the listing of a species that limit commercial trade in the species, subspecies, or geographically separate population thereof to specific parts or products of that species that are to be included in Appendix II. Parts or products of the species that are not specifically included in the annotation for Appendix II are still considered to be subject to the treaty provisions and requirements of Appendix I. Two examples of product annotations are certain populations of the African elephant (*Loxodonta africana*) and the vicuña (*Vicugna vicugna*).

The United States supports adoption of clear criteria for the use of such annotations. At COP10, the Parties adopted Decision 10.70, directed to the CITES Standing Committee, which requires that a report be presented to COP11 by the Standing Committee on ways to clarify legal and implementation issues related to the use of annotations in the Appendices. At its last meeting, the Standing Committee discussed the issue and agreed to establish a Working Group with the following members: Switzerland (Chair), Germany, Namibia, and the United States. The Working Group is expected to submit a draft resolution to the Standing Committee at the Committee's next meeting, for approval and submission to COP11. The Working Group members have already agreed that the starting point will be that any new annotation or any amendment of an annotation must be in accordance with Resolution Conf. 9.24, and in accordance with all requirements for proposals to amend the CITES Appendices. We intend to be an active participant in this process in order to clarify the criteria to be used for such product annotations, avoid implementation and enforcement problems, and facilitate species conservation. We invite information and comments on this issue.

Observers

Article XI, paragraph 7 of CITES provides: ''Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.''

National agencies or organizations within the United States must obtain our approval to participate in COP11, while international agencies or organizations must obtain approval directly from the CITES Secretariat. We will publish information in a future **Federal Register** notice on how to request approved observer status.

Future Actions

We expect the next regular meeting of the Conference of the Parties (COP11) to be held sometime between November 1999 and May 2000, in a host country to be determined. We have developed a tentative U.S. schedule to prepare for that meeting. The United States must submit any proposals to amend Appendix I or II, or any draft resolutions or agenda items for discussion at COP11, to the CITES Secretariat 150 days prior to the start of the meeting. In order to accommodate this deadline, we plan to publish a **Federal Register** notice approximately 10 months prior to COP11 to:

(a) Announce the host country and dates of COP11;

(b) Include the provisional agenda; and

(c) Announce tentative species proposals, draft resolutions, and agenda items to be submitted by the United States, and to solicit further information and comments on them.

Approximately nine months prior to COP11, we will hold a public meeting to allow for additional public input. Another **Federal Register** notice approximately four months prior to COP11 will announce our decisions on those species proposals, resolutions, and agenda items submitted by the United States to the CITES Secretariat. The deadline for submission of the proposals, resolutions, and agenda items to the Secretariat is expected to be sometime between June 1999 and December 1999, as COP11 is currently being planned to take place sometime between November 1999 and May 2000.

Through a series of additional notices in advance of COP11, we will inform you about preliminary and ''final'' negotiating positions on resolutions and amendments to the Appendices proposed by other Parties for consideration at COP11, and about how to obtain observer status from us. We will also publish announcements of public meetings expected to be held approximately nine months prior to COP11, and approximately two months prior to COP11, to receive public input on our positions regarding COP11 issues.

Author: This notice was prepared by Mark Albert, Office of Management Authority, under the authority of U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 26, 1998.

John G. Rogers,

Acting Director.

[FR Doc. 98–23843 Filed 9–3–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 910 0777 30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management.

ACTION: Resource Advisory Councils' meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for the first day's meeting includes: introduction of new Council members, approval of minutes of the previous meeting, Las Vegas Water Applications, Standards and Guidelines (including Wild Horses), 3809 Mining Regulations, and determination of the subject matter for future meetings.

Day two of this meeting will be a field tour of the Buck, Bald and Diamond

Mountains and Newark Valley, north and west of Ely, Nevada. The tour will cover approximately 150 miles on unpaved roads. It will depart from and return to the Ely Field Office, Ely, Nevada. The tour will include opportunities to view and evaluate areas of past land treatments. Possible tour sites could include: wild horse gathers, wild fire, mine reclamation, riparian exclosures, vegetation manipulation (chaining) for deer habitat and an archaeological excavation.

Those attending the field tour should wear clothing and footwear suitable for walking through rugged, brush covered terrain. Food and beverages will be an individual responsibility; sack or small ice cooler lunches including an equivalent of one gallon of water per person are recommended.

All meetings are open to the public. The public may present written comments to the Council. Each Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Field Office Manager at the Ely Field Office, HC 33 P.O. Box 33500, Ely, Nevada 89301, telephone (702) 389–1800.

DATES, TIMES: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, BLM Field Office, 702 Industrial Way, Ely, Nevada 98301, September 23, 1998, starting at 1:00 p.m.; public comments will be at 3:00 p.m.; tentative adjournment 5:00 p.m.

The field tour beginning and returning to the Ely Field Office on September 24, 1998, will start at 8:00 a.m. and end approximately 3:45 p.m.; public comments will be at 4:00 p.m.; tentative adjournment at 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Curtis G. Tucker, Team Leader for the Northeastern Resource Advisory Council, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

James Perkins,

Assistant Field Manager, Renewable Resources.

[FR Doc. 98–23902 Filed 9–3–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Thursday, September 17, 1998, 9 a.m.–4 p.m.; Friday, September 18, 1998, 9 a.m.–12 noon.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: James Esget, Manager, Yakima River Basin Water Enhancement Project, P.O. Box 1749, Yakima, Washington, 98907; (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review the Bureau of Reclamation's water acquisition process and procedures and develop recommendations on the process to facilitate voluntary sale or lease of water. Progress Reports will be provided on the Basin Conservation Plan and the Yakima River Basin Wetlands and Floodplain Habitat Plan.

Dated: August 28, 1998.

James A. Esget,

Acting Area Manager.

[FR Doc. 98–23846 Filed 9–3–98; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

Board for International Food and Agricultural Development One Hundred and Twenty-Seventh Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and twenty-seventh meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9:00 a.m. to 4:00 p.m. on September 22, and from 9:00 a.m. to 5:00 p.m. on September 23, 1998, both days, at the International Trade Center, Ronald Reagan Building, Meridian Suite, Room C, located at 1300 Pennsylvania Avenue, NW, Washington, DC 20523.

As part of its agenda, BIFAD will discuss current Title XII legislation and steps required for its amendment; food aid targeting; and revisions to the CRSP Guidelines. BIFAD will also discuss recent agricultural transition in Russia including agricultural reforms and restructuring. The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW, Room 2.11–072, Washington, DC 20523–2110, telephone (202) 712–1436, fax (202) 216–3010 or internet [glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW, Room 2.11–005, Washington, DC 20523–2110, telephone him at (202) 712–5571 or fax (202) 216–3010.

Tracy Atwood,

AID Designated Federal Officer, (Deputy Director, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 98–23854 Filed 9–3–98; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–413]

Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 31, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Magnequench International, Inc. of Anderson, Indiana and Sumitomo Special Metals Co., Ltd. of Osaka, Japan. A letter supplementing the complaint was filed on August 24, 1998. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rare-earth magnets and magnetic materials and articles containing the same by reason of infringement of claims 1, 4, 5, 8, 9, and 11 of U.S. Letters Patent 4,851,058, claims 1–6, 10, 14–16, and 18–20 of U.S. Letters Patent 4,802,931, claims 13–18 of U.S. Letters Patent 4,496,395, claims 1–9, 12–20, 23–27, and 29–34 of U.S. Letters Patent 4,770,723, claims 1–6, 8–10, 13–19, 21–24, 27–35, and 37–39 of U.S. Letters Patent 4,792,368, and claims 1–3, 5, 15, 18, 19, 21, and 22 of U.S. Letters Patent 5,645,651. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue permanent exclusion orders and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 31, 1998, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rare-earth magnets or magnetic materials or articles containing the same that infringe claims 1, 4, 5, 8, 9, or 11 of U.S. Letters Patent 4,851,058, claims 1–6, 10, 14–16, or 18–20 of U.S. Letters Patent 4,802,931, claims 13–18 of U.S. Letters Patent 4,496,395, claims 1–9, 12–20, 23–27, or 29–34 of U.S. Letters Patent 4,770,723, claims 1–6, 8–10, 13–19, 21–24, 27–35, or 37–39 of U.S. Letters Patent 4,792,368, or claims 1–3, 5, 15, 18, 19, 21, or 22 of U.S. Letters Patent 5,645,651, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Magnequench International, Inc., 6435 Scatterfield Road, Anderson, Indiana 46013

Sumitomo Special Metals Co., Ltd., 4–7–19, Kitahama Chuo-ku, Osaka 541, Japan

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Houghes International, Inc., 40 Hicks Lane, Great Neck, New York 11023

International Magnaproducts Inc., 3103 Cascade Drive, Valparaiso, Indiana 46383

Multi-Trend International Corp., a/k/a MTI-Modern Technology Inc., 43288 Christy Street, Fremont, California 94538

American Union Group, Inc., 20807 Tall Forest Drive, Germantown, Maryland 20876

High End Metals Corp., No. 14 Industrial 4th Road, Hsinchu Industrial Park, Hsinchu Hsein, Taiwan

Harvard Industrial America, Inc., 470 Nibus Street, Brea, California 92621

H.T.I.E., Inc., 782 Pearl Street, Sharon, Pennsylvania 16146

CYNNY Magnetics, 5 Highview Court, Montville, New Jersey 07045

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–L, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 31, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–23901 Filed 9–3–98; 8:45 am]

BILLING CODE 7020–02–P

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 January 27, 1998, Fort Dodge Laboratories, 141 E. Riverside Drive, Forth Dodge, Iowa 50501, made application by letter, which was received for processing June 7, 1998, to the Drug Enforcement Administration to be registered as an importer of pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a product for distribution to its customers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance 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 October 5, 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 a basic class of any controlled substance 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: August 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–23834 Filed 9–3–98; 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 manufacturer 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 February 8, 1998, Galen Inc., DBA Clinical Trial Services, 2661 Audubon Road, Audubon, Pennsylvania 19407, made application to the Drug Enforcement Administration to be registered as an importer or morphine (9300), a basic class of controlled substance listed in Schedule II.

The firm plans to import gram quantities of morphine for a clinical trial.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance 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 October 5, 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 a basic class of any controlled substance 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), (e), and (f) are satisfied.

Dated: May 7, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–23835 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 7, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27588), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Lonza Riverside on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the

company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1998.

John H. King,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 98–23827 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated February 13, 1998, and published in the **Federal Register** on March 5, 1998, (63 FR 10945), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a build 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)	III
Opium fluid extract (9620)	II
Opium tintcture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Levo-alphacetylmethadol (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 as bulk products to its customers.

Dea has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt Chemical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes for controlled substance listed above is granted.

Dated: June 3, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 98–23828 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 13, 1998, and published in the **Federal Register** on March 5, 1998 (63 FR 10945), MD Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

The firm plans to manufacture the listed controlled substances to make finished dosage forms for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of MD Pharmaceutical, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 3, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–23829 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 24, 1998, and published in the **Federal Register** on March 5, 1998, (63 FR 10945), 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) to be registered 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.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Noramco of Delaware, Inc. to manufacture the listed controlled substances to consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 3, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–23830 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 6, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27588), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The institute will manufacture marijuana cigarettes for the National Institute on Drug Abuse (NIDA) and the cocaine will be used for reference standards, human and animal research, as dictated by NIDA.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–23832 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 7, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27590) Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771), made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of the listed controlled substances for incorporation in drug of abuse detection kits.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostic Systems, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostic Systems, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–23833 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 5, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27592), Stepan Company Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Stepan Company to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–23831 Filed 9–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 31, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**. The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Alien Claims Activity Report.

OMB Number: 1205–0268 (extension).

Agency Number: ETA–9016.

Frequency: Quarterly.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 53.

Total Responses: 212.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 212.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The ETA 9016 allows assessment of cost efficiency of the Immigration and Naturalization Service verification system (SAVE) and allows the determination of the impact of the Immigration Reform and Control Act of the Unemployment Insurance system nationally.

Agency: Mine Safety and Health Administration.

Title: Training Plan Regulations (48.3 and 48.23).

OMB Number: 1219–0009 (extension).

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 1,300.

Estimated Time Per Respondent: 8 hours.

Total Burden Hours: 10,400 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $2,600.

Description: Requires underground mine operators to have an MSHA approved plan containing programs for training new miners, newly employed experienced miners, new task training, annual refresher training and hazard training for miners.

Agency: Mine Safety and Health Administration.

Title: Mine Ventilation System Plan (57.8520).

OMB Number: 1219–0016 (extension).

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 240.

Estimated Time Per Respondent: 24 hours.

Total Burden Hours: 5,760 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Operators of underground metal and nonmetal mines are required to prepare written plans of the ventilation system of their mines and to update the plans annually. The information is used to insure that each operator routinely plans, reviews, and updates the mine's ventilation system; to insure the availability of accurate and current ventilation information; and to provide MSHA with an opportunity to alert the mine operator to potential hazards.

Agency: Mine Safety and Health Administration.

Title: Operations Under Water (30 CFR 75.1716, 75.1716–1 and 75.1716–3).

OMB Number: 1219–0020 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 14.

Estimated Time Per Respondent: 5 hours.

Total Burden Hours: 70 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Requires coal mine operators to provide MSHA notification and to obtain a permit to mine under a body of water if, in the judgment of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners.

Agency: Mine Safety and Health Administration.

Title: Records of Results of Examinations of Self-Rescuers (30 CFR 75.1714–3(e)).

OMB Number: 1219–0044 (extension).

Frequency: Quarterly.

Affected Public: Business or other for-profit.

Number of Respondents: 1,000.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 2,000 hours.

Total annualized capital/startup costs: -0-

Total annual costs (operating/maintaining systems or purchasing services): $86,000.

Description: Requires underground coal mine operators to keep records of the corrective actions taken as a result of required examinations of self-rescue devices. The information is used to insure that the examinations are conducted and that the devices are in operable and usable condition in case of an emergency.

Agency: Mine Safety and Health Administration.

Title: Representative of Miners (30 CFR 40.2 and 40.5(a)).

OMB Number: 1219–0042 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; small business or organizations.

Number of Respondents: 350.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 175.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Federal Mine Safety and Health Act of 1977 requires the

Secretary of Labor to exercise many of her duties under the Act in cooperation with miners' representatives. The Act also establishes miners' rights which must be exercised through a representative. Title 30, CFR Part 40 contains procedures which a person or organization must follow in order to be identified by the Secretary as representative of miners.

Agency: Occupational Safety and Health Administration.

Title: Underground Construction Air Quality Record (§ 1926.800).

OMB Number: 1218–0067 (revision).

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 320.

Estimated Time Per Respondent: Ranges from 30 seconds to record monitoring results, up to 1 hour to inspect and certify hoisting assemblies.

Total Burden Hours: 8,357 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $115,200.

Description: The underground construction standard (§ 1926.800) requires employers to certify hoist inspections; post various warning signs; and prepare and retain aboveground, at the job site, a written record of all air quality tests measured at underground work locations. A written record of specific information must be prepared and retained until completion of the project.

Agency: Occupational Safety and Health Administration.

Title: Acrylonitrile 29 CFR 1910.1045.

OMB Number: 1218–0126 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, local or tribal governments.

Number of Respondents: 26.

Estimated Time Per Respondent: Ranges from 5 minutes to maintain a record to 1.5 hours for an employee to have a medical exam.

Total Burden Hours: 6,867.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $311,360.

Description: The Acrylonitrile standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to Acrylonitrile. The Standard requires that employers must establish and maintain a training and compliance program, including exposure monitoring and medical surveillance records. These records are used by employees, physicians, employers and the OSHA to determine the effectiveness of the employers compliance efforts. Also the standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the Acrylonitrile Standard.

Agency: Pension and Welfare Benefits Administration.

Title: Prohibited Transaction Class Exemption 76–1.

OMB Number: 1210–0058 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; Individuals or households.

Number of Respondents: 1,546.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 727.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Prohibited Transaction Class Exemption 76–1 permits parties in interest, under specified conditions, to: (A) Make delinquent employer contributions, (B) receive loans, and (C) obtain office space, administrative services and goods from plans. In the absence of this exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

Agency: Pension and Welfare Benefits Administration.

Title: Class Exemption Relating to Certain Foreign Exchange Transactions Pursuant to Standing Instructions.

OMB Number: 1210–0 New.

Frequency: On occasion.

Affected Public: Business or other for-profit, individuals or households.

Number of Respondents: 35.

Estimated Time Per Respondent: 120 hours per year.

Total Burden Hours: 4,200.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The proposed exemption would permit certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, which are parties in interest with respect to such plans, pursuant to standing instructions.

Agency: Bureau of International Labor Affairs.

Title: Senior Technical Assistance Register.

OMB Number: 1225–0064 (extension).

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 10.

Estimated Time Per Respondent: 23 minutes.

Total Burden Hours: 4 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Information collected in relation to the Senior Technical Assistance Register project will be used to identify persons interested and able to render advisory services to developing countries in which the Department of Labor is providing development.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–23944 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,363; NAFTA–02283]

Dana Corporation Marion Forge Division Marion, Ohio; Notice of Termination of Investigation on Reconsideration

On July 6, 1998, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers of the subject firm. The notice was published in the **Federal Register** on July 24, 1998 (63 FR 39905).

By letter of July 27, 1998, the petitioners, comprised of a company official and Local 1667 of the Boilermakers International Union, have requested that the reconsideration be withdrawn because there are no displaced workers at the Marion, Ohio plant.

Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 14th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23876 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,231; NAFTA–02180]

Eagle Veneer, Incorporated Harrisburg Plywood Division Harrisburg, Oregon; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 22, 1998 the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA-Transitional Adjustment Assistance, applicable to petition numbers TA–W–33,570 and NAFTA—02180, respectively. The denial notices were signed on April 8, 1998 and published in the **Federal Register** on April 21, 1998 (63 FR 19753, NAFTA 02180) and May 6, 1998 (63 FR 25081, TA–W–34,231).

The petitioners allege that the imports of oriented strained board should have been considered by the Department in its survey of customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 27th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23864 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,570]

Buena Vista Manufacturing Company, Buena Vista, VA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 16, 1997, the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–33,570. The denial notice was signed on June 25, 1998 and published in the **Federal Register** on July 13, 1998 (63 FR 37590).

The petitioners allege that the imports of non-licensed as well as licensed apparel, such as that produced by the subject firm, should have been considered by the Department in its survey of customers.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 18th day of August 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23869 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,881]

Dresser Oil Tools, Odessa, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 19, 1998 in response to a worker petition which was filed on behalf of workers at Dresser Oil Tools in Odessa, Denver City, Kermit, and Levelland, Texas.

All workers of the subject firm are included under an existing investigation in process (TA–W–34,762). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 25th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23861 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,233]

Eastman Kodak Company, Kodak Park and Elmgrove, and Kodak Office and Research Labs, Rochester, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply to Worker Adjustment Assistance on May 8, 1998, applicable to all workers of Eastman Kodak Company, Kodak Park and Elmgrove, Rochester, New York. The notice was published in the **Federal Register** on June 22, 1998 (63 FR 33958).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce photographic film, paper and equipment. New information provided by Eastman Kodak Company show that workers at the Kodak Office and Research Labs located in Rochester, New York, providing services and administrative support to the Kodak Park and Elmgrove plants have been separated from employment.

The intent of the Department's certification is to include all workers of Eastman Kodak Company who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of the subject firms' Kodak Office and the Research Lab in Rochester providing services and administrative support to Kodak Park and Elmgrove plants.

The amended notice applicable to TA–W–34,233 is hereby issued as follows:

All workers of Eastman Kodak Company, Kodak Park and Elmgrove, Rochester, New York; and workers at Eastman Kodak Company, Kodak Office and Research Labs, Rochester, New York, providing services and administrative support to the Kodak Park and Elmgrove plants, who became totally or partially separated from employment on or after January 20, 1997 through May 8, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23873 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,563]

GL&V/Black Clawson-Kennedy Watertown, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 12, 1998 the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–34,563. The denial notice was signed on July 17, 1998 and published in the **Federal Register** on August 7, 1998 (63 FR 42434).

The petitioner alleges that worker separations from the subject firm were caused by imports and provided additional information which warrants reconsideration of the case.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 25th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23866 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,286]

Hasbro Manufacturing Services, El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a certification of Eligibility to Apply for Worker Adjustment Assistance on April 16, 1998, applicable to all workers of Hasbro Manufacturing Services located in El Paso, Texas. The notice was published in the **Federal Register** on May 6, 1998 (63 FR 25082).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce toys. New findings show that the workers at the subject firm were covered under a certification, TA–W–31,969, that did not expire until midnight April 17, 1998. To avoid a one day overlap in coverage for the El Paso worker group, the Department is amending the impact date for TA–W–34,286 from April 17, 1998 to April 18, 1998.

The amended notice applicable to TA–W–34,286 is hereby issued as follows:

All workers Hasbro Manufacturing Services, El Paso, Texas, who became totally or partially separated from employment on or after April 18, 1998 through April 16, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23871 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,061 and TA–W–24,061C]

Oxford Industries, Incorporated; Oxford Women's Catalog and Special Markets Division, Alma, Georgia and Oxford of Camden, Camden, South Carolina; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 21, 1997, applicable to workers of Oxford Women's Catalog and Special Markets Division of Oxford Industries, Incorporated located in Alma, Georgia. The notice was published in the **Federal Register** on January 22, 1998 (63 FR 3352).

At the request of the company, the Department revised the certification for workers of the subject firm. The company reports that workers producing ladies' sportswear and dresses will be separated from employment at Oxford Industries, Incorporated, Oxford of Camden, Camden, South Carolina when the plant closes in September 1998.

The intent of the Department's certification is to include all workers of Oxford Industries, Incorporated adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of Oxford of Camden, Camden, South Carolina.

The amended notice applicable to TA–W–34,061 is hereby issued as follows:

All workers of Oxford Industries, Incorporated, Oxford Women's Catalog and Special Markets Division, Alma, Georgia (TA–W–34,061) and Oxford of Camden, Camden, South Carolina (TA–W–34,061C) who became totally or partially separated from employment on or after November 19, 1996 through December 21, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 19th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23874 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,439]

Polaroid Corporation, W–3 Plant, Waltham, Massachusetts; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 22, 1998, applicable to workers of Polaroid Corporation located in Waltham, Massachusetts. The notice was published in the **Federal Register** on July 31, 1998 (63 FR 40935).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State reveals that Polaroid has multiple plants in Waltham, Massachusetts. The petitioning workers were employed at the W–3 plant producing instant photographic film consisting of sheets and filmpacks. Based on this information and that provided by the subject firm officials, the Department is amending the certification to limit coverage to those workers at Polaroid Corporation, Waltham, Massachusetts, W–3 Plant producing instant photographic film.

The amended notice applicable to TA–W–34,439 is hereby issued as follows:

All workers of Polaroid Corporation, W–3 Plant, Waltham, Massachusetts engaged in

employment related to the production of instant photographic film, who became totally or partially separated from employment on or after March 24, 1997 through June 22, 2000, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23870 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,326]

Rubbermaid-Cortland, Incorporation Cortland, New York; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 11, 1998, the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–34, 326. The denial notice was signed on June 16, 1998 and published in the **Federal Register** on July 13, 1998 (63 FR 37590).

The petitioners allege that the subject firm shifted production of toolboxes to Canada and Europe and imported into the U.S. and further, that imports of toolboxes and other household products from other countries impacted on the subject firm's market share.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 25th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23867 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34–281 and TA–W–34–281A]

Trico Products Corporation; Vancebro, NC and Trico Products Division Headquarters Buffalo, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 13, 1997, applicable to workers of Trico Products Corporation in Vanceboro, North Carolina. The notice was published in the **Federal Register** on May 6, 1998 (63 FR 25082).

At the request of the Company, the Department reviewed the certification for workers of the subject firm. New information provided by the Company shows that worker separations have occurred at the Division Headquarters in Buffalo, New York. The Buffalo, New York location is the corporate headquarters and administrative offices, where workers provide administrative and support service functions related to the production of windshield wipers, including blades, refills, and parts for the North American production facilities of Trico Products Corporation, including Vanceboro, North Carolina. The Division Headquarters workers have been covered under a NAFTA petition (NAFTA 2210). Based on this new information, the Department is amending the certification to cover the subject firms' workers at the Division Headquarters in Buffalo, New York.

The intent of the Department's certification is to include all workers of Trico Products Corporation affected by increased imports of windshield wipers, including blades, refills, and parts.

The amended notice applicable to TA–W–34,281 is hereby issued as follows:

All workers of Trico Products Corporation, Vanceboro, North Carolina (TA–W–34,281) and Trico Products Division Headquarters in Buffalo New York (TA–W–34,281A) who were engaged in employment related to the production of wiper blades who become totally or partially separated from employment on or after February 11, 1997 through April 13, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 25th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23863 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,677]

TRICO Products Division Headquarters Buffalo, New York; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 22, 1998 in response to a worker petition which was filed June 22, 1998 on behalf of workers at Trico Products Division Headquarters in Buffalo, New York.

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–34,281A). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23872 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,567 and TA–W–34–567A]

VF KNITWEAR, Inc. Hillsville, Virginia and VF KNITWEAR, Inc. Bassett Walker-Stuart Division Stuart, Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply to Worker Adjustment Assistance on June 8, 1998, applicable to workers of VF Knitwear, Inc. located in Hillsville, Virginia. The notice was published in the **Federal Register** on July 13, 1998 (63 FR 37590).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that temporary

separations have occurred at the VF Knitwear plant located in Stuart, Virginia and all workers producing t-shirts and fleece wear will be separated from employment when the plant closes in October 1998.

The intent of the Department's certification is to include all workers of VF Knitwear, Inc. adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of VF Knitwear, Inc., Bassett-Walker, Stuart Division, Stuart, Virginia.

The amended notice applicable to TA–W–34,567 us hereby issued as follows:

''All workers of VF Knitwear, Inc., Hillsville, Virginia (TA–W–34,567) and VF Knitwear, Inc., Bassett-Walker, Stuart Division, Stuart, Virginia (TA–W–34,567A) who became totally or partially separated from employment on or after May 11, 1997 through June 8, 2000, are eligible to apply for adjustment assistant under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 19th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23862 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,700]

Willamette Industries Saginaw Lam. Plant, Saginaw, Oregon; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 12, 1998, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–34,700. The denial notice was signed on August 4, 1998 and will soon be published in the **Federal Register**.

The petitioner alleges that like or directly competitive products other than laminated beams are being imported into the U.S. resulting in declines in production and sales of laminated beams.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 26th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23865 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02048 and NAFTA–02048 C]

Oxford Industries, Incorporated; Oxford Women's Catalog and Special Markets Division Alma, Georgia and Oxford of Camden, Camden, South Carolina; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on December 21, 1997, applicable to workers of Oxford Women's Catalog and Special Markets Division of Oxford Industries, Incorporated located in Alma, Georgia. The notice was published in the **Federal Register** on January 22, 1998 (63 FR 3352).

As the request of the Company, the Department reviewed the certification for workers of the subject firm. The company reports that workers producing ladies' sportswear and dresses will be separated from employment at Oxford Industries, Incorporated, Oxford of Camden, Camden, South Carolina when the plant closes in September 1998.

The intent of the Department's certification is to include all workers of Oxford Industries, Incorporated adversely affected by increased imports from Mexico. Accordingly, the Department is amending the certification to include workers of Oxford of Camden, Camden, South Carolina.

The amended notice applicable to NAFTA–02048 is hereby issued as follows:

All workers of Oxford Industries, Incorporated, Oxford Women's Catalog and Special Markets Division, Alma, Georgia (NAFTA–02048), Oxford of Camden, Camden, South Carolina (NAFTA–02048C) who became totally or partially separated from employment on or after November 24, 1996 through December 21, 1999, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 19th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23875 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02549]

Siebe Appliance Controls, Kendallville Plant, Kendallville, Indiana; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on August 11, 1998 in response to a petition filed on behalf of workers at the Kendallville Plant of Siebe Appliance Controls, located in Kendallville, Indiana (NAFTA–02549).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 24th day of August 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–23868 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

United States Employment Service; Labor Exchange Performance Measures; Reopening and Extension of Comment Period

AGENCY: Employment and Training Administration.

ACTION: Notice; Reopening and Extension of Comment Period.

SUMMARY: This document reopens and extends the period for filing comments regarding the request for comments on proposed labor exchange performance measures as previously published. This

action is taken to permit additional comments from interested parties and USES' stakeholders.

DATES: Comments must be received on or before September 28, 1998.

ADDRESSES: Send written comments to: United States Employment Service, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N4470, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: John R. Beverly, III, Telephone 202–219–5257, Fax 202–219–6643 (these are not toll-free numbers), or E-mail jbeverly@doleta.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 12, 1998 (63 FR 32564), the Department of Labor published a notice and request for comments on the conceptual framework within which public labor exchange services are delivered. Interested parties and USES stakeholders were requested to submit comments on or before July 27, 1998. Because of the continuing interest in this proposal, the Department believes that it is desirable to reopen and extend the comment period for all interested persons. Therefore, the comment period for the proposed labor exchange services performance measures is reopened and extended to September 28, 1998. Comments received between July 28, 1998, and the publication of this Notice will be accepted; parties should not resubmit previously-submitted comments.

Signed at Washington, DC, this 26th day of August, 1998.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 98–23825 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 27th day of August 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–23634 Filed 9–3–98; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Notice of Availability of 1999 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for proposals for the provision of civil legal services.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is the national organization charged with administering federal funds to furnish legal and other assistance to persons who appeal to the United States Court of Veterans Appeals (CVA or Court) but who are unable to afford the cost of representation. Pub. L. 102–229.

The Corporation hereby announces the availability of competitive grant funds, and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality legal assistance to eligible persons who appeal to the CVA. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar year 1999 have not been determined.

DATES: Request for Proposals (RFP) will be available after September 1, 1998. Grant proposals must be received at LSC offices by 5:00 p.m. EDT, October 30, 1998.

ADDRESSES: Legal Services Corporation—Veterans Pro Bono Program, 750 First St., NE, 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of Program Operations, Competitive Grants—Service Desk (202) 336–8900; FAX (202) 336–7272.

SUPPLEMENTARY INFORMATION: LSC seeks proposals from any organization or consortium of organizations with the demonstrated ability to carry out the provisions of this solicitation.

The solicitation package, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available by contacting the Corporation by letter, phone or FAX. LSC will not FAX the solicitation package to interested parties; however, solicitation packages may be requested by FAX.

Dated: August 31, 1998.

Patricia M. Hanrahan,

Program Counsel, Office of Program Operations.

[FR Doc. 98–23845 Filed 9–3–98; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company and Haddam Neck Plant; Exemption

I

Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) is the holder of Facility Operating License No. DPR–61, which authorizes the licensee to possess the Haddam Neck Plant (HNP). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized-water reactor located at the licensee's site in Middlesex County, Connecticut. The facility is permanently shut down and defueled and the licensee is no longer authorized to operate or place fuel in the reactor.

II

Section 50.54(q) requires power reactor licensees to follow and maintain in effect emergency plans that meet the standards of Section 50.47(b) and the requirements of Appendix E to 10 CFR Part 50.

Pursuant to 10 CFR 50.12(a), NRC may grant exemptions from the requirements of the regulations, which are (1) authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security, and (2) present special circumstances. Special circumstances exist when application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)). The underlying purpose of Section 50.54(q) is to ensure that licensees follow and maintain in effect emergency plans which provide reasonable assurance that adequate protective measures can and will be taken in the event of an emergency at a nuclear reactor.

III

By letter dated May 30, 1997, CYAPCO requested an exemption from the provision of 10 CFR 50.54(q) that requires emergency plans to meet all of the standards of 10 CFR 50.47(b) and all of the requirements of Appendix E of Part 50. The request for exemption was based on the substantially reduced the risk to public health and safety resulting from the permanently shutdown and defueled condition of the Haddam Neck Plant (HNP). In addition, the licensee submitted a proposed Defueled Emergency Plan (DEP) for NRC approval. The DEP proposed to discontinue offsite emergency planning activities and to reduce the scope of onsite emergency planning, which met only a portion of the standards and requirements. Thus, an exemption is required from the provision of 10 CFR 50.54(q) that requires emergency plans to meet all of the standards of 10 CFR 50.47(b) and all of the requirements of Appendix E of Part 50. By letter dated September 19, 1997, the licensee submitted the Emergency Action Levels that it proposed to use with the DEP. By letter dated September 26, 1997, the licensee submitted the results of an assessment of the ability of the HNP spent fuel to heat up in the absence of water in the spent fuel pool (SFP). By letter dated October 21, 1997, the licensee submitted additional information on certain aspects of the DEP and identified the specific standards and requirements of 10 CFR 50.47(b) and Appendix E of Part 50 which the proposed DEP would no longer meet. By letters dated December 18, 1997, January 22, March 25, June 19, and July 31, 1998, the licensee sent additional information on the proposed DEP. Tables 1 and 2 of Attachment 2 of the licensee's March 25, 1998 letter revised and consolidated the list of standards and requirements of 10 CFR 50.47(b) and Appendix E to Part 50 that would remain in effect.

The licensee stated that special circumstances exist at HNP because of the plant's permanently shutdown and defueled condition. With the plant in this condition, most of the design-basis accidents postulated for operating reactors are no longer possible.

However, CYAPCO postulated two design-basis accidents that are relevant to the permanently shutdown condition: (1) a release from combustible radioactive ion exchange resin, and (2) fuel handling accidents. With the exception of Kr-85, the noble gas and iodine nuclides that contribute to the dose consequences of releases from operating reactors have decayed to a negligible amount. CYAPCO calculated doses due to resin handling and fuel handling accidents and concluded that doses at the residence nearest to HNP would not exceed the Environmental Protection Agency (EPA) Protective Action Guides (PAGs) for activation of the offsite emergency response organization.

In addition, the licensee has evaluated the potential consequences of a beyond-

design-basis event that would completely remove the spent fuel pool water inventory. The analysis demonstrated that, even with no cooling by water, the decay heat load has decreased to the point that air cooling would maintain fuel cladding temperatures low enough to ensure the integrity of the cladding material.

In the permanently shutdown and defueled condition, the source term of nuclides that are readily dispersible in air and the energy available to propel radioactive materials off site are significantly reduced in comparison to an operating plant. The staff has evaluated the potential for a permanently shutdown plant with spent fuel stored in the spent fuel pool to generate a release of radioactive material that would result in offsite dose consequences. The two source terms of primary concern are low-level radioactive waste generated by decommissioning activities and the spent fuel.

The first source term, from low-level radioactive waste at the site, is much lower than the one from the spent fuel. However, the potential dose consequences of a release from a low-level waste container have been evaluated. An event that would provide a motive force for the release and transport of airborne activity offsite is a fire in low-level radioactive waste. The bounding accident for low-level radioactive wastes present on site is a fire in ion exchange resins used to process wastes from a reactor coolant system chemical decontamination. While they are in use, the resins are immersed in water. Upon depletion, used ion exchange resins are placed in containers called liners for dewatering prior to shipment to a disposal site. The licensee calculated that a fire in a resin liner, loaded with wastes having the maximum activity allowed by procedure, would result in an offsite dose which does not exceed the EPA PAGs. The staff reviewed the calculational methods and assumptions used by the licensee to determine the consequences of a resin fire and found them to be acceptable. The staff concludes that the consequences of a resin liner fire at HNP would not exceed the EPA PAGs.

The second source term considered is spent fuel. However, wet storage of spent fuel possesses inherently large safety margins due to the simplicity and robustness of the SFP design. The design basis includes the ability to withstand an earthquake and retain the ability to hold sufficient water to adequately cool and shield the spent fuel. Thus, the loss of all the water from the Haddam Neck SFP is a beyond-design-basis event, with a very low probability of occurring.

However, there are two potential consequences from a beyond-design-basis event that postulates the complete removal of water from the SFP. In the absence of water cooling, during the period that decay heat generation is relatively high the fuel could heat up to such a degree that a release could occur. In the absence of water shielding, the radiation from the fuel could cause radiation exposure to individuals offsite from the scatter of gamma rays streaming up from the pool.

In order for a release that would result in offsite dose consequences to occur, a motive force must exist to cause radioactive material to move into an unrestricted area. At a permanently shutdown and defueled plant, decay heat in the spent fuel could provide this force. However, decay heat decreases over time, and at some point it can no longer overcome the ability of the fuel cladding to retain fission products. When decay heat can no longer cause the fuel to heat to the point where fission products could be released, a significant release off the site is no longer possible by this means.

The licensee analyzed the heatup characteristics of the spent fuel in the absence of SFP water, when cooling depends on the natural circulation of air through the spent fuel racks. By letter dated September 26, 1997, the licensee presented the results of an analysis showing that as of October 1, 1997, decay heat could not heat the spent fuel cladding above 538° C, in the event all water was drained from the SFP. The licensee's heat up analysis was based on a particular configuration of the spent fuel in the SFP. By letter dated December 18, 1997, the licensee stated, that as of October 23, 1997, the spent fuel had been moved into a configuration consistent with the analysis. The staff evaluated the licensee's analysis by performing heat up calculations using computer codes validated to be accurate to within 15°C of actual peak fuel cladding temperatures. The licensee's value for peak fuel cladding temperature was found to be acceptable. On the basis of a previous staff determination that fuel cladding will remain intact if its temperature remains below 565°C, the staff concluded that it is no longer possible for a complete loss of water from the Haddam Neck SFP to result in a release offsite that exceeds the early phase EPA PAGs.

Although a significant release of radioactive material from the spent fuel is no longer possible, in the absence of water cooling, a potential exists for radiation exposure to an offsite individual in the event that shielding of the fuel is lost. Water and the concrete pool structure serve as radiation shielding on the sides of the pool. However, water alone provides most of the shielding above the spent fuel. A loss of shielding above the fuel could increase the radiation levels offsite because of the gamma rays streaming up out of the pool being scattered back to a receptor at the site boundary. The licensee calculated the offsite radiological impact of a postulated complete loss of SFP water and determined that the dose rate at the residence nearest to HNP would be 0.016 rem per hour. At that rate, it would take 2.6 days for the event to exceed the EPA early phase PAG of 1 rem. The PAGs were developed to respond to a mobile airborne plume that could transport and deposit radioactive material over a large area. In contrast, the radiation field formed by scatter from a drained SFP would be stationary, rather than moving, and would not cause transport or deposition of radioactive materials. The 2.6 days available for action allows sufficient time to develop and implement mitigative actions and provides confidence that additional offsite measures could be taken without planning, if efforts to reestablish shielding over the fuel are delayed.

The staff has evaluated the radiological consequences, onsite emergency organization, facilities, equipment, procedures, and support resources of the licensee's proposed DEP. The staff reviewed the licensee's proposed DEP against the planning standards in 10 CFR 50.47(b) and (d), the requirements of Appendix E to 10 CFR Part 50, the acceptance criteria in NUREG–0654/FEMA-REP–1, Revision 1, and the guidance contained in NUMARC/NESP–007, Revision 2. The staff review took into consideration the permanently shutdown and defueled status of the facility, the configuration of the stored fuel, and the length of time since power operation.

IV

The NRC staff has completed its review of the licensee's request for an exemption from the requirement of 10 CFR 50.54(q) that emergency plans must meet all of the standards of 50.47(b) and all of the requirements of Appendix E of 10 CFR Part 50. Standards and requirements that remain in effect are listed in Tables 1 and 2 of Attachment 2 to the licensee's letter dated March 25, 1998 (Docket No. 50–213, Accession No. 9804020370). On the basis of this

review, the NRC staff finds that the radiological consequences of accidents possible at HNP are substantially lower than those at an operating plant. The analyses submitted by the licensee are consistent with the commitment made in their Post Shutdown Decommissioning Activities Report, which stated that any radiation exposure to an offsite individual will be bounded by the EPA PAGs. The upper bound of offsite dose consequences limits the highest attainable emergency class to the alert level. In addition, due to the reduced consequences of radiological events still possible at the site, the scope of the onsite emergency preparedness organization may be reduced. Thus, the underlying purpose of the regulations will not be adversely affected by eliminating offsite emergency planning activities or reducing the scope of onsite emergency planning.

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, elimination of the offsite emergency planning activities and implementation of the DEP will not present an undue risk to public health and safety and is consistent with the common defense and security. Further, special circumstances are present as stated in 10 CFR 50.12(a)(2)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment (63 FR 43967, dated August 17, 1998).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 28th day of August 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–23878 Filed 9–3–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Receipt of Petition for U.S. Nuclear Regulatory Commission Action

Notice is hereby given that by petition dated July 28, 1998, the Natural Resources Defense Council (NRDC) has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the U.S. Department of Energy's (DOE's) Savannah River Site (SRS). Petitioner requests that NRC assume and exercise immediate licensing authority over all high-level radioactive waste (HLW) that is stored in the 51 underground tanks located at SRS. DOE plans to remove the bulk of the waste from each tank, then fill each tank with grout to close it in place. DOE believes that the residual tank wastes can be classified as ''incidental'' waste outside the definition of ''high-level waste'' in appendix F of 10 CFR part 50. Consistent with the requirements of the Energy Reorganization Act of 1974, the facilities used for disposal of DOE wastes that are not HLW are not subject to NRC licensing authority.

As the basis for this request, petitioner states that although DOE claims that residual tank wastes can be classified as incidental, there is no legal basis for such a term. Furthermore, NRDC states that even if the definition of the term ''incidental waste'' were acceptable, the residual tank waste at SRS does not meet the definition as the term is currently interpreted by DOE. The petition requests immediate response by NRC.

The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. A copy of the petition is being sent to DOE, and DOE is being given the opportunity to comment. Appropriate action will be taken on this petition within a reasonable time. For further information, contact John Greeves, Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. NRC, (301) 415–7437. A copy of the petition is available for inspection at the Commission's Public Document Room at 2121 L Street, N.W., Washington, DC 20555.

Dated at Rockville, Maryland, this 27th day of August, 1998.

For the Nuclear Regulatory Commission.

John T. Greeves,

Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–23877 Filed 9–3–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26913]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 28, 1998.

Notice is hereby given that the following filings) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 21, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 21, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70–9397)

New England Electric System (''NEES''), a registered holding company, and New England Power Company (''NEP''), a wholly owned subsidiary of NEES, have filed an application-declaration under sections 9(a), 10, and 12 of the Act and rules 43 and 44 under the Act.

NEP proposes to buy back up to 5 million shares of its common stock from NEES, in one or more separate transactions through December 31, 2000, from the proceeds of the expected sales on September 1, 1998 of its nonnuclear generation business to USGen New England, Inc. (''Sale''). NEP will receive approximately $1.59 billion plus certain reimbursements (approximately $160 million) upon completion of the Sale. NEP states that it will use a portion of such proceeds to defease its mortgage bond obligations, to retire other debt and preferred stock of NEP, to pay state and Federal taxes, and to pay for other transactions associated with the divestiture. NEP proposes to reduce its common equity, through stock repurchases, in order to keep its capital structure balanced.

Jersey Central Power & Light Company, et al. (70–7862)

Jersey Central Power & Light Company (''JCP&L''), Metropolitan Edison Company (''Met-Ed'') and Pennsylvania Electric Company

(''Penelec''), all located at 2800 Pottsville Pike, Reading Pennsylvania 19605 (together, ''GPU Companies''), and each an electric utility subsidiary of GPU, Inc., a registered holding company, have filed an application under section 6(a), 7, 9(a) and 10 of the Act rule 54 under the Act.

By orders dated August 15, 1991 (HCAR No. 25361) and October 25, 1995 (HCAR No. 26400) (together, ''Orders'') the Commission authorized JCP&L, Met-Ed and Penelec to, among other things, acquire an interest in nuclear fuel for Three Mile Island Unit 1 nuclear generating station (''TMI–1'') and the Oyster Creek nuclear generating station (''Oyster Creek''). The GPU Companies jointly own TMI–1 in the following percentages: Met-Ed—50%; JCP;L—25%; and Penelec—25%. JCP&L owns 100% of Oyster Creek.

Under the Orders, a nuclear fuel trust was established to be the sole stockholder of two nonassociate corporations, TNI–1 Fuel Corporation and Oyster Creek Fuel Corporation (together, ''Fuel Companies''), which own nuclear fuel assemblies and component parts (''Nuclear Material'') for TMI–1 and Oyster Creek. The GPU Companies entered into separate lease agreements (''Existing Lease Agreements'') with the Fuel Companies to pay for the use of the Nuclear Material for TMI–1 and Oyster Creek.

The Existing Lease Agreements provide for an initial term of up to 20 years, subject to early termination on the occurrence of certain events. Under the Existing Lease Agreements, each GPU Company pays to the lessor a monthly rental payment consisting of two components. The first is an amount based on the rate of nuclear fuel consumption. The second component, which is payable on the unamortized cost of the Nuclear Material, is based on the rates on outstanding notes or commercial paper issued by the Fuel Companies. The Fuel Companies' commercial paper credit is enhanced by the issuance by the Union Bank of Switzerland (''UBS'') of letters of credit (''LCs'') in an aggregate face amount of up to $210 million outstanding at any one time. Each Fuel Company has agreed to reimburse UBS for any drawings it makes under the LCs, in accordance with existing credit facilities between UBS and the Fuel Companies.

The GPU Companies and the Fuel Companies have obtained a commitment for a new credit facility with The First National Bank of Chicago and PNC Bank, N.A. (''New Credit Facilities''). The New Credit Facilities provide for aggregate borrowings by the Fuel Companies of up to $190 million under a revolving note credit facility or through the sale of commercial paper. The GPU Companies now propose to amend the Existing Lease Agreements to conform its provisions with those of the New Credit Facilities.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23852 Filed 9–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23419]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 28, 1998.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August, 1998. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 22, 1998, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 25049.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, DC 20549.

John Hancock Limited Term Government Fund [File No. 811–1678]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 5, 1997, applicant transferred its assets to John Hancock Intermediate Maturity Government Fund, a series of John Hancock Bond Trust (''Bond Trust''), based on the relative net asset values per share. Applicant and Bond Trust paid approximately $88,325 and $91,699, respectively, in expenses in connection with the reorganization.

Filing Date: The application was filed on July 21, 1998.

Applicant's Address: 101 Huntington Avenue, Boston, Massachusetts 02199–7603.

ND Insured Income Fund, Inc. [File No. 811–6238]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 2, 1998, applicant's sole remaining shareholder redeemed his shares at net asset value. All other shareholders redeemed their shares of applicant at net asset value prior to April 2, 1998. Applicant's investment adviser will pay any expenses incurred in connection with the liquidation.

Filing Date: The application was filed on July 21, 1998.

Applicant's Address: 1 North Main, Minot, North Dakota 58703.

Putnam Investment Grade Intermediate Municipal Trust [File No. 811–7628]

Putnam Intermediate Tax Exempt Fund [File No. 811–7151]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On August 7, 1995, Putnam Investment Grade Intermediate Municipal Trust transferred its assets and liabilities to Putnam Intermediate Tax Exempt Fund (the ''Tax Exempt Fund''), based on the relative net asset value per share of each fund. Applicant and Tax Exempt Fund paid approximately $118,948, and $27,987, respectively, in expenses related to the reorganization. On May 10, 1996, Putnam Intermediate Tax Exempt Fund transferred its assets and liabilities to Putnam Tax Exempt Income Fund (the''Income Fund''), based on the relative net asset value per share of each fund. Applicant and the Income Fund paid approximately $51,248, and $63,752, respectively, in expenses related to the reorganization.

Filing Date: Each application was filed on July 21, 1998.

Applicant's Address: One Post Office Square, Boston, Massachusetts 02109.

Qualivest Fund [File No. 811–8526]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 21, 1997, six of applicant's series—Small Companies Value Fund, Large Companies Value Fund, Optimized Stock Fund, Intermediate Bond Fund,

Diversified Bond Fund, and International Opportunities Fund—each transferred all of their assets and liabilities to corresponding series of First American Investment Funds, Inc. (''FAIF''), based on the relative net asset value per share. On November 21, 1997, and November 26, 1997 (with respect to the Tax-Free Money Market Fund), three of applicant's series—Money Market Fund, U.S. Treasury Money Market Fund, and Tax-Free Money Market Fund—each transferred all of their assets and liabilities to corresponding series of First American Funds, Inc. (''FAF''), based on the relative net asset value per share. On November 26, 1997, four of applicant's series—Allocated Conservative Fund, Allocated Balanced Fund, Allocated Growth Fund, and Allocated Aggressive Growth Fund—each transferred all of their assets and liabilities to corresponding series of First American Strategy Funds, Inc. (''FASF''), based on the relative net asset value per share. U.S. Bank National Association, investment adviser to applicant and FAIF, FAF, and FASF, paid approximately $218,044 in the aggregate in connection with the reorganizations.

Filing Date: The application was filed on July 31, 1998.

Applicant's Address: 3435 Stelzer Road, Columbus, Ohio 43219–3035.

TCW/DW Strategic Income Trust [File No. 811–7693]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 9, 1998, applicant distributed its assets to its securityholders at the net asset value per share. Morgan Stanley Dean Witter Advisors Inc., the parent company of applicant's manager, paid approximately $16,000 in connection with the liquidation and paid any unamortized organizational expenses.

Filing Dates: The applicant was filed on July 7, 1998 and amended on August 19, 1998.

Applicant's Address: Two World Trade Center, New York, New York 10048.

Steadman Technology and Growth Fund [File No. 811–1542]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 10, 1998, applicant distributed all of its assets to Steadman Security Corporation (''Steadman''), applicant's investment adviser and transfer agent, for distribution to shareholders. Steadman distributed applicant's assets to shareholders at net asset value by June 12, 1998. Applicant paid approximately $11,000 in expenses in connection with the liquidation.

Filing Dates: The application was filed on June 30, 1998, and amended on July 23, 1998, and August 13, 1998.

Applicant's Address: 1730 K Street, N.W., Washington, D.C. 20006.

FMB Funds, Inc. [File No. 811–6420]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 6, 1998, applicant completed the transfer of all of its assets to corresponding series of The Monitor Funds at net asset value. Applicant's investment adviser, The Huntington National Bank, paid $350,000 in expenses in connection with the transaction.

Filing Dates: The application was filed on June 24, 1998 and amended on August 11, 1998.

Applicant's Address: 41 South High Street, Columbus, Ohio 43287.

The Walnut Street Funds, Inc. [File No. 811–7552]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 29, 1998, applicant completed distribution of its net assets to its shareholders at net asset value. Applicant's investment adviser, Conning Asset Management Company, Paid $78,734 in expenses in connection with the liquidation.

Filing Dates: The application was filed on June 17, 1998 and amended on August 14, 1998.

Applicant's Address: 400 South Fourth Street, Suite 1000, St. Louis, Missouri 63102.

Hartford U.S. Government Money Market Fund, Inc. [File No. 811–3661]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 1997, applicant transferred all of its assets and liabilities to HVA Money Market Fund, based on the relative net asset value per share of each fund. Hartford Life Insurance Company, applicant's sponsor, paid approximately $40,000 in connection with the reorganization.

Filing Date: The application was filed on August 22, 1997.

Applicant's Address: Hartford Plaza, Hartford, Connecticut 06115.

Management of Managers Money Market Fund [File No. 811–3754]

Management of Managers Special Equity Fund [File No. 811–3751]

Management of Managers Capital Appreciation Fund [File No. 811–3752]

Management of Managers International Equity Fund [File No. 811–3746]

Management of Managers Short and Intermediate Bond Fund [File No. 811–3753]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 1987, applicants transferred all of their assets to corresponding series of the Management of Managers Group of Funds (''Trust'') based on net asset value per share. Reorganization expenses were paid pro rata by each series of the Trust in connection with the transaction.

Filing Dates: Management of Managers Money Market Fund and Special Equity Fund filed applications on May 21, 1998 and Management of Mangers Capital Appreciation Fund, International Equity Fund and Short and Intermediate Bond Fund filed applications on June 17, 1998. All applications were amended on August 3, 1998.

Applicant's Address: 25 Sylvan Road, Westport, Connecticut 06880.

G.T. Global Developing Markets Fund, Inc. [File No. 811–8138]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 1997, G.T. Global Developing Markets Fund Inc., a closed-end investment company, was converted into GT Global Developing Markets Fund (''New Fund''), a series of G.T. Investment Fund, Inc., an open-end investment company. Applicant transferred all of its assets and liabilities to the New Fund for its Class A shares based on net asset value per share. Applicant and New Fund paid $131,706 and $225,973, respectively, in expenses in connection with the transaction.

Filing Dates: The application was filed on March 3, 1998 and amended on May 27, 1998 and August 21, 1998.

Applicant's Address: 50 California Street, 27th Floor, San Francisco, CA 94111.

Templeton Latin America Small Cap Fund, Inc. [File No. 811–8864]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make

a public offering or engage in business of any kind.

Filing Date: The application was filed on August 7, 1998.

Applicant's Address: 500 East Broward Boulevard, Ft. Lauderdale, Florida 33394.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23851 Filed 9–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40380; File No. SR–NASD–98–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Include Closed-End Funds in Nasdaq's Mutual Fund Quotation System

August 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 1998,[3] the National Association of Securities Dealers, Inc. (''NASD'') through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD and Nasdaq are proposing to amend NASD Rule 6800 to include closed-end funds in Nasdaq's Mutual Fund Quotation Service (''MFQS'' or ''Service''). Below is the text of the propose rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule 6800. Mutual Fund Quotation Service

(a) No change

(b) Eligibility Requirements

To be eligible for participation in the Mutual Fund Quotation Service, a fund shall:

(1) be registered with the Commission as an open-end *(''open-end fund'') or a closed-end (''closed-end fund'')* [management] investment company pursuant to the Investment Company Act of 1940.

(2)–(4) **No change.**

(c) News Media List[s]

(1) (A) An eligible *open-end* fund shall be authorized for inclusion in the News Media List[s] released by the Association if it has at least 1,000 shareholders or $25 million in net assets.

(B) An eligible closed-end fund shall be authorized for inclusion in the News Media List released by the Association if it has at least $100 million in net assets.

[B]*(C)* Compliance with subparagraphs (1)(A) *and (B)* shall be certified by the fund to the Association at the time of initial application for inclusion in the List[s].

(2) (A) An authorized *open-end* fund shall remain included in the News Media List[s] if it has either 750 shareholders or $15 million in net assets.

(B) An authorized closed-end fund shall remain included in the News Media List if it has $60 million in net assets.

[B]*(C)* Compliance with subparagraphs (2)(A) *and (B)* shall be certified to the Association upon written request by the Association.

(d) Supplement List

An eligible *open-end or closed-end* fund shall be authorized for inclusion in the Supplement List released to vendors of Nasdaq Level 1 Service if:

(1) The fund has net assets of $10 million or more; or

(2) Has had two full years of operation.

(e) No change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD and Nasdaq are proposing to amend NASD Rule 6800 to establish minimum requirements for the inclusion of closed-end funds in Nasdaq's MFQS.

Currently, MFQS collects daily price and related data for open-end funds and money market funds, and publicly disseminates the information to the news media and market data vendors. To assist the news media and market data vendors in determining which funds have the broadest appeal to the investing public, Nasdaq divides the participating funds into two separate lists: the ''News Media List'' and the ''Supplemental List.'' Open-end funds on the News Media List are eligible for inclusion in the fund tables of newspapers nationwide, as well as for dissemination over Nasdaq's Level 1 data feed service distributed by market data vendors. Open-end funds on the Supplemental List are disseminated over Nasdaq's Level 1 date feet service, thus providing significant visibility for funds that do not qualify for the News Media List. NASD Rule 6800 contains initial inclusion (minimum eligibility) requirements for both the News Media List and the Supplement List, and contains maintenance (continued inclusion) requirements for the News Media List. Closed-end funds, however, are not currently eligible for inclusion in the MFQS under NASD Rule 6800.

In the past, closed-end funds have expressed an interest in being able to enter their daily prices into the Service for dissemination to the newspapers, market data vendors, and news wires. Previously, the MFQS application did not support closed-end funds because it did not accommodate some of the data attributes needed for closed-end funds. Nasdaq, however, has recently re-designed and upgraded the MFQS. The improved Service, which should be implemented in the third quarter of 1998, will include the data attributes necessary to support closed-end funds. Accordingly, Nasda is proposing to add to Rule 6800 new standards for the inclusion of closed-end funds in the MFQS.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq filed an amendment to the proposed rule change on August 27, 1998, the substance of which is incorporated into this notice. *See* Letter from Robert E. Aber, Senior Vice President and General Counsel, Office of the General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 26, 1998 (''Amendment No. 1'').

[4] Under the improved MFQS, Nasdaq plans to disseminate on a daily basis a closed-end fund's net asset value and closing share price (as applicable).

The proposed standards contain initial inclusion requirements for the News Media List and the Supplemental List, and also contain maintenance requirements for the News Media List. Specifically, the criteria for the News Media List will be $100 million in assets for initial inclusion and $60 million in assets for maintenance. The criteria for initial inclusion in the Supplemental List will be $10 million or two full years of operation; there will be no maintenance requirement for the Supplemental List.[5]

The NASD and Nasdaq note that the proposed initial inclusion and maintenance requirements for the News Media List for closed-end funds are higher than the current requirements for open-end funds.[6] The NASD and Nasdaq believe that this differential is warranted because the nature of closed-end funds differs from open-end funds.[7] This is, the asset base of a closed-end fund is fixed upon initiation whereas open-end funds' asset base often starts small and grows over time; thus, closed-end tend to have higher initial asset bases than open-end funds. Furthermore, the proposed requirements for the News Media List for closed-end funds take into consideration the reality of a growing shortage of newspaper print space. Specifically, over the past several years, the number of funds has grown significantly, causing a shortage of newspaper print space. Accordingly, there are times when a fund qualifies for the News Media List but the fund's net asset value and closing price are not printed in the newspaper due to a shortage of print space. Thus, by proposing meaningful standards for closed-end funds, the NASD and Nasdaq hope to provide a manageable and selective list of closed-end funds and to avoid having closed-end funds pay the higher annual fee for the News Media List (the fee for the Supplemental List is lower)[8] when there is no guarantee that a qualifying fund will be printed by a newspaper at a given time.

The NASD and Nasdaq note that these requirements have received a positive response throughout the investment company community, and have also received support from the Investment Company Institute (''ICI''). The NASD and Nasdaq also note that the proposed standards would make approximately 75% of closed-end funds eligible to be printed in the newspaper.[9] Finally, the NASD and Nasdaq are making a technical change to NASD Rule 6800 to clarify that there is a single News Media List, not multiple lists as the current rule language suggests.

The NASD and Nasdaq believe that the proposed rule change is consistent with Section 15A(b)(6) of the Act.[10] Section 15A(b)(6) of the Act requires the rules of a national securities association to foster coordination with persons engaged in processing information with respect to securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The NASD and Nasdaq believe that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act because it protects investors and the public interest by promoting better processing of price information in closed-end funds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq do not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–53 and should be submitted by September 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23850 Filed 9–3–98; 8:45 am]

BILLING CODE 8010–01–M

Additionally, Nasdaq will disseminate information relating to a fund's unallocated distributions. Each fund will provide the aforementioned information to Nasdaq on a daily basis through an interface of the MFQS. *See* Amendment No. 1, *supra* note 3.

[5] This is consistent with the current standards for the Supplemental List for open-end funds. *See generally* NASD Rule 6800.

[6] Under the News Media List criteria for open-end funds, a fund must have $25 million in assets or 1,000 shareholders for initial inclusion, and $15 million or 750 shareholders for maintenance. *See* NASD Rule 6800(c)(1)(A) and (c)(2)(A).

[7] The NASD and Nasdaq note that by contract a closed-end fund that wishes to be included in the MFQS agrees to calculate and disseminate the fund's net asset value to Nasdaq on a daily basis. This information will be disseminated over the Nasdaq Level 1 data feed service on a daily basis. *See* Amendment No. 1, *supra* note 3.

[8] Funds in the MFQS are assessed an annual fee of $275 per fund authorized for the News Media List and $200 per fund authorized for the Supplemental List. *See* NASD Rule 7090.

[9] According to the ICI, as of December 31, 1997, there were approximately 502 closed-end funds of record, of which 379 had at least $100 million in assets. Thus, under the proposed standards, 379 funds would qualify for the News Media List and the remaining 123 would qualify for the Supplemental List. (All closed-end funds tracked by the ICI have at least $10 million in assets.)

[10] U.S.C. 78*o*–3(b)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40382; File No. SR–NASD–98–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating To Trade Reporting

August 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend the trade reporting rules of the NASD, to extend to market makers an exception to the reporting of riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap, Nasdaq convertible debt, and non-Nasdaq OTC equity securities. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

4632. Transaction Reporting

(a) through (c) No Change

(d) Procedures for Reporting Price and Volume

(1) through (3)(A) No Change

(B) Exception: A ''riskless'' principal transaction in which a member [that is not a market maker in the security] after having received [from a customer] an order to buy *a security*, purchases the security as principal [from another member or customer] *at the same price* to satisfy the order to buy or, after having received [from a customer] an order to sell, sells the security as principal [to another member or customer] *at the same price* to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, *commission-equivalent, or other fee.*

(e) through (f) No Change

* * *

4642. Transaction Reporting

(a) through (c) No Change

(d) Procedures for Reporting Price and Volume

(1) through (3)(A) No Change

(B) Exception: A ''riskless'' principal transaction in which a member [that is not a market maker in the security] after having received [from a customer] an order to buy *a security*, purchases the security as principal [from another member or customer] *at the same price* to satisfy the order to buy or, after having received [from a customer] an order to sell, sells the security as principal [to another member or customer] *at the same price* to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, *commission-equivalent, or other fee.*

(e) through (f) No Change

* * *

4652. Transaction Reporting

(a) through (c) No Change

(d) Procedures for Reporting Price and Volume

(1) through (3)(A) No Change

(B) Exception: A ''riskless'' principal transaction in which a member [that is not a market maker in the security] after having received [from a customer] an order to buy *a security*, purchases the security as principal [from another member or customer] *at the same price* to satisfy the order to buy or, after having received [from a customer] an order to sell, sells the security as principal [to another member or customer] *at the same price* to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, *commission-equivalent, or other fee.*

(e) through (f) No Change

* * *

6620. Transaction Reporting

(a) through (c) No Change

(d) Procedures for Reporting Price and Volume

(1) through (3)(A) No Change

(B) Exception: A ''riskless'' principal transaction in which a member [that is not a market maker in the security] after having received [from a customer] an order to buy *a security*, purchases the security as principal [from another member or customer] *at the same price* to satisfy the order to buy or, after having received [from a customer] an order to sell, sells the security as principal [to another member or customer] *at the same price* to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, *commission-equivalent, or other fee.*

(e) No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The rules for reporting trades in Nasdaq securities have long existed in their current form. The rules were broadly designed to capture all trading activity by broker-dealers, both dealer to dealer trades and trades with customers. These rules, and the trade reports that result, serve several important purposes. They form the basis for public dissemination of ''last sale'' transaction prices to the tape, thus providing transparency. Trade reports also are an integral part of the audit trail used by the NASD in its regulatory efforts to surveil and regulate firms' activities. Given the historical structure of the dealer markets and the need to provide a comprehensive view of all trading, and because market makers were always deemed to be ''at risk'' when trading from their principal accounts, NASD trade reporting rules have required the reporting of all principal trades by market makers.

Non-market makers, however, generally do not report all principal trades under current rules, to the extent the trades are defined as ''riskless''—that is, they involve a trade with another member, usually a market maker, which is used to offset a trade with a customer. This riskless principal exception to the general rule of reporting all principal trades results in one trade report even though the non-market maker firm is involved in two separate trades against its principal account.

In light of the growth and evolution of the structure of the Nasdaq market, and in particular the recent implementation of the SEC Order Handling Rules, which require market makers to match certain orders in an agency-like fashion, it is believed appropriate to extend this riskless

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

principal exception to market makers as well. Thus, certain matching principal trades involving a market maker would be explicitly included within the riskless definition, and reported to the public tape only once.

For example, under the SEC Order Handling Rules, market makers now display customer limit orders in their public quotes. Those orders are often filled by the market maker when that quote is accessed by another market participant.[3] Because market makers generally trade exclusively from a principal account, it is necessary to engage in two separate principal trades: one with the other market participant, and then another directly with the customer. Both of these trades are reported by market makers under current rules. In effect, however, these two trades can be viewed as one event—the execution of a customer order upon the execution of an offsetting transaction obtained by the market maker. Under the proposed rule change, these two trades are reported only once.

A riskless principal trade can also be viewed as one that involves two orders, the execution of one being dependent upon the receipt or execution of the other, hence there is no ''risk'' in this particular transaction. Only when that condition or dependency has been satisfied is there a transaction and hence a singly reported trade. Such condition may involve an institutional customer order, the execution of which is dependent upon finding the other side, in whole or in part, or a transaction dependent upon the execution of all or a part of the order placed with another firm or market. To the extent that any of the order is offset with another principal execution, that portion is deemed riskless and should be reported only once.

The effect of the proposed rule change can be illustrated in the following examples. A market maker (MM1) holds a customer limit order that is displayed in its quote to buy 1000 shares of ABCD at $10. MM2 sells 1000 shares to MM1 at $10. MM2 reports the sale of 1000 shares as required under current rules.[4] MM1 then fills its customer order for 1000 shares. Under the proposal, the first trade would continue to be reported (by the selling firm MM2 in this case, as required under current rules), but the second leg between MM1 and the customer would not be reported again, as it is deemed riskless. If the first execution were through a Nasdaq facility which automatically generates a trade report to the tape, such as SOES or SelectNet, no member would report at all. Of course, members may still need to submit a ''clearing only'' entry into ACT to complete the transaction with the customer, but these submissions are not to be entered for reporting purposes and thus there will be no public trade report for this leg of the transaction.

In another example, an institutional customer presents a large order to a market maker (MM1) to sell 100,000 shares of XYZZ, with instructions to work the order, subject to a price limit, rather than execute it immediately in its entirety. The market maker may attempt to solicit interest from other parties to fill the institutional order, in whole or in part. The market maker may find a willing buyer, but for only 75,000 shares, at a price of $12 per share. The market maker may determine to fill the entire customer order for 100,000 shares at $12 per share at that time (exclusive of any markdown, commission equivalent, or other fee), by trading the 25,000 share balance out of inventory. Here, there will still be two separate trade reports under the proposal because only a portion of the customer execution is deemed riskless. The size of the trade reports, however, will be adjusted to exclude the riskless portion. Specifically, instead of MM1 reporting these as a market maker sell transaction of 75,000 shares and then a market maker buy from the customer for 100,000 shares, these trades would be reported under the proposal as a market maker sell transaction of 75,000 shares and then a market make buy from the customer of only 25,000 shares.[5]

In another variation of the previous example, market maker MM1, while holding the institutional customer order and working it on their behalf, may obtain several executions to satisfy the order by selling to other market participants at varying prices throughout the trading day. In this example, assume that the entire order is filled with these individual executions. Because market maker MM1 is the seller in these executions, it has the trade reporting responsibility and will continue to report under current rules each individual ''component'' trade with other market participants as they occur. Under the proposal, however, MM1 would not report a transaction with the customer, as the execution used to satisfy the order already have been reported to the tape, although the transactions may be confirmed out to the customer at an average price of the component executions, to the extent permissible under Exchange Act Rule 10b-10.[6]

In addition, the NASD also is clarifying the riskless principal trade reporting provision to ensure its consistent application to any order received by a member, regardless of the person or entity that it was received from. Specifically, while the current rule refers to orders received from a ''customer'', the proposed rule simply refers to ''an order.'' Thus a transaction can be defined as riskless when the market maker is holding an order from a customer, another member, the customer of another member, or any other entity including non-member broker-dealers. Furthermore, the text of the rule is being amended to more clearly provide that such trades are reported exclusive of any fee.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[7] in that the proposed rule change will result in more accurate, reliable, and informative information regarding last sale transaction reports. Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to

[3] In fact, NASD Rule IM–2110–2 (Limit Order Protection Rule) requires market makers to execute customer limit orders (regardless of whether the customer is theirs or that of another member) when trading as principal at prices that would satisfy the customer's limit order. In addition, pursuant to best execution obligations articulated by the SEC under the SEC Order Handling Rules, market makers generally must pass along any price improvement obtained when executing an incoming order at its published quote while holding an undisplayed limit order priced better than that quote.

[4] *See, e.g.,* NASD Rule 4632(b), which requires the selling market maker to report in a transaction between two market makers.

[5] It should be noted that in this particular example, the market maker with the order is responsible for reporting both legs of the transaction. If the customer were *buying* stock in the same example, and the market maker first buys 75,000 shares from another market maker, the 75,000 share trade would be reported by the selling market maker under current NASD rules (*i.e.,* seller reports in a trade between two market makers). The market maker with the customer order would still report the 25,000 share trade.

[6] *See, e.g.,* SEC No-action letter from Catherine McGuire, SEC, to Eugene Lopez, The Nasdaq Stock Market, dated May 6, 1997 (permitting the issuance of a single confirmation at an average price and with multiple capacities for a single customer order effected with multiple executions).

[7] 15 U.S.C. 78*o*–3(b)(6).

permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–59 and should be submitted by September 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[8] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–23879 Filed 9–3–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 et seq.), the FAA invites public comment on one currently approved public information collection which will be submitted to OMB for renewal.

DATES: Comments must be received on or before November 3, 1998.

ADDRESSES: Comments on this collection may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Corporate Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on this current collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following is a short synopses of the currently approved public information collection activity, which will be submitted to OMB for review and renewal:

2120–0593, Commuter Operations and General Certification and Operations Requirements

The regulation requires that certain commuter operators conduct their operations under part 121 instead of part 135. Affected operators include those conducting scheduled, passenger-carrying operations with airplanes with 10–30 seats. The reporting requirements are similar but different between parts 121 and 135. This submission reflects only the additional burden associated with part 135 carriers transitioning to part 121 standards.

There will be a change to the collection of information. The transition portion of this rule is complete. However, Part 119 continue to cover new carriers and some ongoing requirements. The burden associated with the transition portion will be removed, and only burden associated with new carriers and ongoing requirements will be reflected in the updated submission. The new total burden is being estimated at this time and is not available for this notice. It should be less than the original submission in 1995 of 36,048 hours which included the transition of some 135 carriers to part 121 rules.

Issued in Washington, DC., on August 31, 1998.

Steve Hopkins,

Manager, Corporation Information Division, APF–100.

[FR Doc. 98–23897 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Williamson and Travis Counties, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed new location highway/tollway project in Williamson and Travis Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Walter C. Waidelich, District Engineer Federal Highway Administration, Room 850, Federal Building, 300 East 8th Street, Austin, Texas 78701. David Kopp, P.E. Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701–2483.

SUPPLEMENTARY INFORMATION: State Highway 130, as currently envisioned, is a proposed controlled access highway which will extend from IH 35 at State Highway 195 north of Georgetown in Williamson County, Texas, to IH 10 near Sequin in Guadalupe County, Texas. State Highway 130 will be located generally parallel to and east of Interstate Highway 35 and the urban areas of Austin, San Marcos, and New Braunfels. The total length of the proposed facility is 143.5 kilometers (89 miles). The proposed State Highway 130 facility is being developed by the FHWA in cooperation with the Texas Turnpike Authority Division (TTA) of the Texas

Department of Transportation (TxDOT). It is being developed in three segments with each segment having logical termini and independent utility. FHWA and TTA will prepare an Environmental Impact Statement for each of the three independent segments.

This Notice of Intent (NOI) focuses on the northern segment, Segment A, of State Highway 130 and supersedes an NOI issued by the FHWA on January 5, 1995. As announced herein, the FHWA in cooperation with TTA will prepare an Environmental Impact Statement on a proposal to construct the Segment A of State Highway 130. Segment A of proposed State Highway 130 extends from the junction of Interstate 35 and State Highway 195 north of Georgetown in Williamson County, Texas, to U.S. Highway 290 east of Austin in Travis County, Texas. The length of Segment A varies depending on the selected alternative, from approximately 41.5 kilometers (25.7 miles) to 46.6 kilometers (28.9 miles). The proposed action is intended to relieve congestion on Interstate 35 by providing an alternative route for those who commute between Austin and surrounding areas as well as drivers desiring to bypass the central business areas of Austin, Round Rock and Georgetown. The proposed action will also provide improved access and increased mobility to urbanized areas in the proposed corridor, help support planned business and residential growth in various areas throughout the project corridor, and provide needed freeway access from surrounding areas to the proposed Austin Bergstrom International Airport.

A Major Investment Study, addressing the entire length of the proposed State Highway 130, was adopted in July 1997 by the Austin Transportation Study Policy Advisory Committee, the metropolitan planning organization for the Austin, Texas area.

As currently envisioned the proposed Segment A facility will be a controlled access toll road; thus, in conjunction with the EIS and selection of a preferred alternative, the TTA will conduct a toll feasibility study to evaluate the viability of developing the selected alternative as a toll road and financing it, in whole or part, through the issuance of revenue bonds. The toll road designation will not influence the selection of a preferred alternative. Proposed alternatives, including alternative alignments, will be evaluated for how well they meet the stated purpose and need for the proposed project. Any impacts owing to the toll road designation will be discussed in the environmental impact statement.

The draft EIS for Segment A will address a build alternative including multiple alternative alignments. Alternatives to the proposed action, which will also be discussed in the EIS, will include (1) taking no action, or the ''no build'' alternative, and (2) improving existing roadways in the project area. The build alternatives include multiple alternative alignments along new location rights-of-way connecting Interstate 35 to U.S. Highway 290.

Impacts caused by the construction and operation of Segment A of State Highway 130 will vary according to the alternative alignment utilized. Generally, impacts would include the following: transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction and operation of the roadway; water quality impacts from construction areas and roadway stormwater runoff; impacts to waters of the United States including wetlands from right-of-way encroachment; and impacts to residents and businesses.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. Public meetings for the Segment A project were held on October 25, 1994, at Everett Williams Elementary School in Georgetown, Texas; on October 27, 1994, at Manor High School in Manor Texas; on April 9, 1996, at Bluebonnet Trail Elementary School in Austin, Texas; on July 15, 1997, at Park Crest Middle School in Pflugerville, Texas; and on July 17, 1997, and February 3, 1998, at Hopewell Middle School in Round Rock, Texas. At these meetings, public comments on the proposed action and alternatives were requested. In addition, a public hearing will be held after publication of the Draft EIS. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to proposed Segment A of State Highway 130 are addressed and all significant issues identified, comments and suggestions are invited from all parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or TTA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Walter C. Waidelich,

District Engineer.

[FR Doc. 98–23853 Filed 9–3–98; 8:45 am]

BILLING CODE 4901–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Proposed Resort Corridor Fixed Guideway Project Between Cashman Field, Las Vegas, NV and McCarran International Airport, Clark County, NV

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), as Federal lead agency, and the Regional Transportation Commission of Clark County (RTC), as local lead agency, intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) on a proposal by RTC to further study the proposed implementation of a fixed guideway (urban rail) system within a corridor, known as the Resort Corridor, 9 miles long and 4 miles wide between Cashman Field in the City of Las Vegas and McCarran International Airport in Clark County.

The EIS will evaluate the following alternatives adopted as part of the fixed guideway element of the Transportation Master Plan for the Resort Corridor as defined in the Resort Corridor Major Investment Study (MIS), Final Evaluation Report, dated October 9, 1997; (1) The Fixed Guideway Element Initial Operating Segment (IOS). This alternative includes an elevated fixed guideway system 5.2 miles long, 10 fixed guideway stations, a supporting bus transit system element, and is also known as Phase 1 of the Report Corridor Transportation Master Plan. (2) The Fixed Guideway Element Core System. This alternative includes an elevated fixed guideway system 15.6 miles long, 27 fixed guideway stations, and a supporting bus transit system element. (3) The Fixed Guideway Element Core System with an extension along Harmon Avenue to McCarran International Airport. This alternative includes an elevated fixed guideway system 18.4 miles long, 31 fixed guideway stations, and a supporting bus transit system element. (4) The Fixed Guideway Core System with an extension along Tropicana Avenue to McCarran

International Airport. This alternative includes an elevated fixed guideway system 18.0 miles long, 28 fixed guideway stations, and a supporting bus transit system element. (5) A No Build alternative, which involves no change to transportation services or facilities in the Resort Corridor beyond already committed projects. Potential new feasible alternatives or revisions to the above alternatives generated through the scoping process will also be considered.

Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, State, and local agencies; and two public scoping meetings.

DATES: Comment Due Date: Written comments on the scope of the alternatives and impacts to be considered should be submitted by October 16, 1998. Written comments should be sent to Mr. Lee Gibson, Planning Manager, RTC, 301 E. Clark Avenue, Suite 300, Las Vegas, NV 89101. Written comments may also be made at the public scoping meetings scheduled below: The public scoping meetings will take place on: (1) Tuesday, September 22, 1998 from 4:00 p.m. to 7:00 p.m. at Cashman Field and (2) Tuesday, September 29, 1998 from 4:00 p.m. to 7:00 p.m. at Clark County Flamingo Library. See **ADDRESSES** below.

People with special needs should contact Lee Gibson at RTC at the address below or by calling (702) 455–4481. The buildings in which the scoping meetings will be conducted are accessible to people with disabilities.

The meetings will be held in an ''open-house'' format, and representatives will be available to discuss the project throughout the time periods given. Information displays and written material will also be available throughout the time periods given.

ADDRESSES: Written comments should be sent to Mr. Lee Gibson, Planning Manager, RTC, 301 E. Clark Avenue, Suite 300, Las Vegas, NV 89101. Written comments may also be made at the public scoping meetings scheduled below. The Scoping Meetings will take place at the following locations: (1) Tuesday, September 22, 1998 from 4:00 p.m. to 7:00 p.m. at Cashman Field, 850 Las Vegas Boulevard North, Las Vegas, NV 89101 and (2) Tuesday, September 29, 1998 from 4:00 p.m. to 7:00 p.m. at the Clark County Flamingo Library, 1401 E. Flamingo Road, Las Vegas, NV 89119.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Gibson, Planning Manager, RTC, 301 E. Clark Avenue, Suite 300, Las Vegas, NV 89101, (702) 455–4481, or fax (702) 455–2937.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and RTC invite interested individuals, organizations, and Federal, State, and local agencies to participate in defining the fixed guideway and supported bus system alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the results of the Resort Corridor major Investment Study, the Transportation Master Plan for the Resort Corridor, the purpose of the project, the project location, the proposed alternatives, and the impact areas to be evaluated is being mailed to affected Federal, State, and local agencies. Other interested parties may request the scoping materials by contacting Mr. Lee Gibson, Planning Manager, RTC, 301 E. Clark Avenue, Suite 300, Las Vegas, NV 89101, (702) 455–4481, or fax (702) 455–2937. Scoping comments may be made in writing at the public scoping meetings. See the Scoping Meeting section above for the locations and times. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are less costly or less environmentally damaging while meeting the identified mobility needs. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on the preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact: Mr. Lee Gibson, Planning Manager, RTC, 301 E. Clark Avenue, Suite 300, Las Vegas, NV 89101, (702) 455–4481, or fax (702) 455–2937.

II. Description of Study Area and Project Need

The study area, called the Resort Corridor, is bounded on the north by Washington Avenue, on the east by Maryland Parkway and Eastern Avenue, on the south by Windmill Lane, and on the west by Valley View Boulevard. The Resort Corridor is approximately 9 miles long and 4 miles wide and represents approximately 10 percent of the urbanized Las Vegas Valley land area. The Resort Corridor encompasses the geographical center and the economic focal point of the Las Vegas metropolitan area with 50 percent of the region's employment.

The study corridor contains the key activity, employment, and transportation facilities in the Las Vegas area such as: the Grant Sawyer State Office Building, Cashman Field and Convention Center, downtown Las Vegas, Downtown Transit Center, Clark County and City of Las Vegas government office complexes, Federal office buildings, Fremont Street Experience, major hospital complexes, 90,000 plus hotel rooms (The Strip), three major regional shopping centers, Las Vegas Convention Center, University of Nevada at Las Vegas (UNLV), Thomas and Mack Center, South Resort Corridor Transit Center, and McCarran International Airport.

This EIS is the logical next step in transportation planning and project development following RTC's completion of a Major Investment Study (MIS) of the mobility needs in the study area. This MIS employed a far-reaching public involvement program, continuous coordination with affected and interested agencies and community stakeholders, and a detailed evaluation of a wide range of alternatives to meet the mobility needs identified in the MIS. The following findings of need in the Resort Corridor over the 20-year planning period were identified and guided the development and evaluation of the alternatives for the MIS:

- Between 1995 and 2020 the number of jobs in the Resort Corridor will increase from 238,000 (50 percent of the region's jobs) to 492,000 (44 percent of the region's jobs).
- Between 1995 and 2020 the region's population will increase from 950,000 to almost 2 million (over 100 percent increase).
- Between 1995 and 2020 the full implementation of the Regional Transportation Plan (RTP) will increase roadway capacity by only 27 percent. During this same period, demand for vehicle travel will increase approximately 54 percent.
- Should the community attempt to provide for mobility in its traditional manner of building streets, highways, and freeways to accommodate the travel demand, the equivalent of 20 east-west and 18 north-south arterial lanes of roadways will have to be built in the Resort Corridor. Such arterial lanes would be added to the roadway projects already programmed in the RTP.
- The RTP will consume all existing roadway rights-of-way and will complete the roadway infrastructure improvement program for the Resort Corridor. If new roadway construction, or widening of existing travel ways, is to occur beyond those identified in the

RTP, additional right-of-way will have to be acquired.

- Regional vehicle travel, especially residential trips to and from work in the Resort Corridor, contribute significantly to the travel demands placed on the Resort Corridor's roadways.
- Regional utilization of public bus transit (Citizens Area Transit or CAT) increased 175 percent between 1993 and 1997. Attempting to solve the roadway congestion conditions in the Resort Corridor solely by expanding the ridership on CAT will be virtually impossible unless substantial infrastructure improvements are also implemented to increase the ability of buses to operate on the roadways.
- Meeting the mobility demands within the Resort Corridor will require the establishment of a multi-modal, fully integrated set of transportation solutions.
- Travel volumes, land use densities, and employment concentration will warrant the consideration of establishing a higher order of public transit that operates in a separate right-of-way.
- Programs directed at reducing the amount of travel in private vehicles and encouraging the use of public transit within the Resort Corridor and between the Resort Corridor and the remainder of the community are needed.

The MIS process developed a number of alternatives to address the above statement of needs. Detailed analysis at a conceptual engineering level was completed for a set of multi-modal alternatives to identify cost, ridership, cost-effectiveness measures, and environmental benefits and impacts. The results led to the development and adoption of a Transportation Master Plan for the Resort Corridor that includes four components: a fixed guideway element, an enhanced bus program, a transportation demand management element, and a street and highway element along with the adoption of a Phase 1 fixed guideway element and supporting bus system component. This EIS focuses on the fixed guideway element and the supporting bus system component.

III. Alternatives

The EIS will evaluate the following alternatives adopted as part of the fixed guideway element of the Transportation Master Plan for the Resort Corridor as defined in the Resort Corridor Major Investment Study (MIS), Final Evaluation Report, dated October 9, 1997: (1) The Fixed Guideway Element Initial Operating Segment (IOS). This alternative includes an elevated fixed guideway system 5.2 miles long, 10 fixed guideway stations, a supporting bus transit system element, and is also known as Phase 1 of the Resort Corridor Transportation Master Plan. (2) The Fixed Guideway Element Core System. This alternative includes an elevated fixed guideway System 15.6 miles long, 27 fixed guideway stations, and a supporting bus transit system element. (3) The Fixed Guideway Element Core system with an extension along Harmon Avenue to McCarran International Airport. This alternative includes an elevated fixed guideway system 18.4 miles long, 31 fixed guideway stations, and a supporting bus transit system element. (4) The Fixed Guideway Core System with an extension along Tropicana Avenue to McCarran International Airport. This alternative includes an elevated fixed guideway system 18.0 miles long, 28 fixed guideway stations, and a supporting bus transit system element. (5) A No Build alternative, which involves no change to transportation services or facilities in the Resort Corridor beyond already committed projects. In addition, special consideration will be given to evaluating three alternative technology groups for the elevated fixed guideway system. These technologies include light rail transit (LRT), automated guideway transit (AGT), and large monorail transit systems. Potential new feasible alternatives or revisions to the above alternatives generated through the scoping process will also be considered.

IV. Probable Effects

FTA and RTC will evaluate, in the EIS, all significant social, economic, and environmental impacts of the alternatives. The previous MIS study evaluated these impacts at level of detail sufficient to adopt the components of the Transportation Master Plan and to identify the alternatives and issues to be addressed in the EIS. Among the primary transit issues to be evaluated in the EIS are the expected increase in transit ridership including visitor trips and residents trips, the expected increase in mobility for the transit dependent population, the support of the region's air quality goals, the economic benefits, satisfying the overall transportation needs of the Resort Corridor, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, the impacts of any private urban transit-grade fixed guideway projects, and the financial impacts on the funding agencies. Potentially affected environmental and social resources proposed for further analyses and re-evaluation in the EIS include, land use and neighborhood impacts, residential and business displacements and relocations, traffic and parking impacts near stations and along the alignments, visual impacts, noise and vibration impacts, major utility relocation impacts, and impacts on cultural and archaeological resources. Impacts on air quality, water quality, and hazardous waste sites will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be considered.

V. FTA Procedures

The EIS alternatives with conceptual engineering detail and the Preliminary Engineering level of detail for the Phase 1, Initial Operating Segment (IOS) alternative will be prepared simultaneously. The EIS/conceptual engineering process will assess the social, economic, and environmental impacted of the proposed alternatives while refining their design to minimize and mitigate any adverse impacts. After its publication, the Draft EIS will be available for public review and comment, and public hearings will be held. On the basis of the Draft EIS and comments received, RTC will select a refined Fixed Guideway Element and a refined fixed guideway IOS project definition. RTC will then select the refined IOS project alternative that will be carried into the Final EIS and will complete the preliminary engineering. Following this action by RTC, RTC will request FTA authorization to proceed with the Final EIS and to complete the preliminary engineering activities.

Issued on: September 2, 1998.

Leslie T. Rogers,

Regional Administrator.

[FR Doc. 98–24025 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–98–4403]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request approval for three years of a new information collection entitled Customer Service Surveys.

DATES: Comments should be submitted on or before November 3, 1998.

FOR FURTHER INFORMATION CONTACT: James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, MAR–500, Room 8126, 400 Seventh Street, SW, Washington, D.C. 20590. Telephone 202–366–0364 or fax 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Customer Service Survey.

Type of Request: Approval of a new information collection.

OMB Control Number: 2133–

Form Number: MA–1016; MA–1017.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and the level of their satisfaction with existing services. This collection covers MARAD forms used to carry out such surveys covering MARAD programs and services.

Need and Use of the Information: (1) Responses to the Customer Service Questionnaire are needed to obtain prompt customer feedback on the quality of specific services/products provided to the customer by MARAD. The information provided will be used to ascertain the customer's level of satisfaction. (2) Responses to the Program Performance Survey are needed to obtain customers' views on MARAD's major programs and activities with which the customers were involved during the preceding year. The information provided will be used by MARAD's senior management and MARAD's program managers to monitor the overall level of customer satisfaction and to identify areas for improvement in program service or product delivery.

Description of Respondents: Individuals/Entities directly served by MARAD.

Annual Responses: 8250 responses.

Annual Burden: 300 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

Dated: September 1, 1998.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 98–23909 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP98–005

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety. The petition is hereinafter identified as DP98–005.

FOR FURTHER INFORMATION CONTACT: Dr. George Chiang, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5206.

SUPPLEMENTARY INFORMATION: Mr. Jeff Glick of Seattle, Washington, submitted a petition dated May 14, 1998, requesting that an investigation be initiated to determine whether Model Year (MY) 1994 Ford Probe vehicles contain a defect related to motor vehicle safety within the meaning of 49 U.S.C. Chapter 301. The petition alleges that MY 1994 Ford Probes have a defective oil pump that can fail, and that such a failure can pose a safety hazard. In addition, the petitioner alleges that the oil pump contains a safety-related defect as described in Technical Service Bulletin (TSB) No. 96–21–3 issued by Ford Motor Company (Ford).

TSB No. 96–21–3 concerns the oil pump in MY 1993 through 1996 Ford Probe vehicles with a 2.0 liter engine (the subject vehicles). An uneven wear pattern on the oil pump control plunger can cause the plunger to stick and fail to properly regulate the oil pressure in the engine. If the oil pressure is too low, it may cause the hydraulic lash adjuster to bleed down. This will produce a metallic ''ticking'' noise at idle. If the oil pressure is too high, the hydraulic lash adjusters may pump up, causing the cylinder head valves to stay open. This may be accompanied by rough running, missing, reduced power, and at times stalling. Ford modified the oil pump with an improved oil pump plunger to reduce the possibility of sticking. The new oil pump is used in MY 1997 and later MY Probes and as well as the replacement part for the subject vehicles. The new oil pump has part number F72Z–6600–AA.

A review of agency data files, including information reported to the Auto Safety Hotline by consumers, indicated that aside from the petition, there was a complaint report submitted by the petitioner in February of this year concerning loss of power and stalling, possibly due to failure or malfunction of the oil pump. The agency has received no other complaints regarding oil pump problems in the subject vehicles.

Ford provided information to ODI on July 30, 1998, stating that it has received 1,552 complaint reports concerning ''ticking/clicking'' or other engine noise concerns in the subject vehicles. (A total of 192,563 subject vehicles were produced in MY 1993–1996.) Ford reported only 48 alleged vehicle ''stalling'' or engine ''dies'' complaints that may be associated with the defective oil pump, and none report injuries or crashes.

The petitioner alleged that failure of the oil pump can cause a safety hazard because it can cause loss of engine power and stalling.

Based on the TSB, the problem may be noticed as an engine ''ticking'' noise. The petitioner affirms this symptom as well as the oil pressure gauge showing a high pressure reading. The noise and or high oil pressure gauge reading may alert the owner to bring the vehicle in for repair. The high ratio of reported engine noise ''ticking/clicking'' complaints (1,552) compared to those of ''stalling'' or ''dies'' (48) suggests that the problem often produces significant symptoms noticed by drivers, but only rarely leads to stalling.

The agency has analyzed the available information concerning the problem alleged in the petition, including the information obtained from the evaluation of the ODI and Ford complaints and an analysis of potential failure mode. While stalling may have a significant adverse effect on safety, particularly where the incidence rate is high or there is no warning, here the malfunctioning of the Ford oil pump plunger has not been shown to result in a substantial rate of stalling incidents

and is unlikely to have a significant adverse effect on safety.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 98–23860 Filed 9–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20928]

Coach USA, Inc.—Continuance in Control—Salt Lake Coaches, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier that controls motor passenger carriers, has filed an application under 49 U.S.C. 14303 to continue in control of Salt Lake Coaches, Inc. (SLC), upon SLC becoming a motor passenger carrier. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subparts B and C. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. If opposing comments are timely filed, this tentative grant of authority will be deemed vacated, and the Board will consider the comments and any replies and will issue a further decision on the application.

DATES: Comments must be filed by October 19, 1998. Applicants may file a reply by November 3, 1998. If no comments are filed by October 19, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20928 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach currently controls 54 motor passenger carriers,[1] and owns all of the stock of SLC, a noncarrier that intends to apply to the Federal Highway Administration (FHWA) to register as an interstate motor passenger carrier, upon approval of this continuance in control application. Following registration with FHWA, SLC intends to commence charter and special operations in interstate commerce from a Salt Lake City, Utah base of operations. SLC also intends to provide intrastate services within Utah, including airport shuttle services. SLC will use for its interstate and intrastate services buses that it leases from another non-carrier Coach affiliate, Coach Leasing, Inc.

Coach states that its proposed continuance in control of SLC, once that entity becomes a carrier, will not materially reduce competitive options available to the traveling public. According to Coach, SLC will be a relatively small carrier and will face substantial competition from other bus companies and modes of transportation.[2]

Coach also states that granting the application will produce substantial benefits, including interest cost savings from the restructuring of debt and relatively low operating costs deriving from Coach's enhanced volume purchasing power. Specifically, Coach claims that SLC will benefit from the lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Coach indicates that it will provide SLC with centralized legal and accounting functions and coordinated purchasing services. In addition, Coach states that vehicle sharing arrangements will be facilitated through Coach to ensure maximum use and efficient operation of equipment and that, with Coach's assistance, coordinated driver training services will be provided, enabling SLC to allocate driver resources in the most efficient manner possible. Coach also states that the proposed transaction will benefit the employees of SLC.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies will be enhanced further by these subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby further enhancing the benefits resulting from these control transactions.

SLC is not currently a carrier and therefore is not at present rated by the U.S. Department of Transportation. Applicant certifies that: (1) It will maintain sufficient liability insurance; (2) SLC is not domiciled in Mexico or owned or controlled by persons of that country; and (3) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. We find, based on the application, that the proposed transaction is consistent with the public interest and should be authorized.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

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

It is ordered:

1. The proposed continuance in control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

[1] In addition to the instant application, Coach has three other pending control applications: *Coach USA, Inc.—Control—Kansas City Executive Coach, Inc. and Le Bus, Inc.*, STB Docket No. MC–F–20923 (STB served July 24, 1998), in which it seeks to acquire control of two additional motor passenger carriers; *Coach USA, Inc.—Control—Brunswick Transportation Company d/b/a The Maine Line; Mini Coach of Boston; Olympia Trails Bus Co., Inc.; Stardust Tours, Inc. d/b/a Gray Line Tours of Memphis; and Valen Transportation, Inc.*, STB Docket No. MC–F–20926 (STB served August 14, 1998), in which it seeks to acquire control of five additional motor passenger carriers; and *Coach USA, Inc.—Control—Chenango Valley Bus Lines, Inc.; Colonial Coach Corp.; GL Bus Lines, Inc.; Gray Line Air Shuttle, Inc.; Gray Line New York Tours, Inc.; Hudson Transit Corporation; Hudson Transit Lines, Inc.; and International Bus Services, Inc.*, STB Docket No. MC–F–20927 (filed July 31, 1998), in which it seeks to acquire control of eight additional motor passenger carriers.

[2] Coach states that many of the services that SLC will provide are currently being offered by another company controlled by Coach, K-T-Contract Services, Inc. (KT), and if the proposed transaction is granted and SLC is successfully registered by FHWA, SLC will assume control of those operations from KT, which will terminate its role in providing these particular services.

3. This decision will be effective on October 19, 1998, unless timely opposing comments are filed.

4. A copy of notice will be served on: (1) The U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024; and (2) the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530.

Decided: August 24, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–23793 Filed 9–3–98; 8:45 am]

BILLING CODE 4915–00–p

INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, September 17, 1998, 9:00 a.m.–5:30 p.m.

LOCATION: 1550 M Street, NW, M Street Lobby Conference Room, Washington, DC 20005.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: September 1998 Board Meeting; Approval of Minutes of the Eighty-Fifth Meeting (June 4–6, 1998) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Fiscal Years 1999 and 2000 Budget Review; Review of Unsolicited Grant Applications; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: September 1, 1998.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 98–23994 Filed 9–2–98; 10:36 am]

BILLING CODE 6820–AR–M

Federal Register

Friday
September 4, 1998

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska: Recordkeeping and Reporting Requirements Revisions; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980112009–8196–02; I.D. 110697B]

RIN 0648–AK36

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

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

ACTION: Final rule.

SUMMARY: NMFS revises permiting, recordkeeping, and reporting requirements for fisheries of the Exclusive Economic Zone (EEZ) off Alaska. The revisions made by this rule clarify and simplify existing text, facilitate management of the fisheries, promote compliance with the regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

DATES: Effective October 5, 1998, except for §679.5(l)(2)(vi), which contains information collection requirements that have not been approved by the Office of Management and Budget. NMFS will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228, or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the EEZ off Alaska according to the FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C., 1801 *et seq.* The FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H of 50 CFR part 600.

On February 19, 1998, NMFS published proposed revisions to several sections of the implementing regulations for these FMPs that pertain to permitting, recordkeeping, and reporting (63 FR 8389). While some of the proposed revisions were substantive, most were technical edits and clarifications of definitions. Most of these changes were needed to simplify the language. A description of these revisions and their justification are presented in the preamble to the proposed rule. Public comment was invited through March 6, 1998. No letters of comment were received by the end of the comment period.

A description of the substantive changes follows:

ADF&G Fish Tickets. The regulations require all motherships to submit ADF&G fish tickets.

Groundfish as bait. This regulation formalizes a policy into regulations that has been in effect since 1992 by adding an exemption from R&R requirements. A catcher vessel that participates in a crab fishery and that takes groundfish in non-groundfish pot gear for use as bait on board that vessel is not required to comply with recordkeeping and reporting requirements if the bait is neither transferred nor sold.

Product Transfer Report. This regulation requires that motherships and shoreside processors receiving groundfish product documented on a product transfer report (PTR) for subsequent reprocessing must record the resultant reprocessed product in their DCPL to fully account for groundfish product inventory and report the reprocessed product to NMFS on a WPR. The submittal deadline for the PTR is revised.

Logsheet Maintenance and Storage. The final rule revises the logsheet submittal instructions to indicate that the logbooks must now be submitted to NOAA Enforcement Division in Juneau, AK, and to indicate the new address in the regulations.

Although no written comments on the proposed rule were received, many oral comments were received by NMFS staff during recordkeeping and reporting discussions at two meetings and two workshops held in Seattle, WA, and in Anchorage, AK. These comments pointed out the need for additional nonsubstantive changes to the regulations, which have been incorporated in the final rule. Those comments that recommended substantive changes will be included in the 1999 recordkeeping and reporting proposed rule, as appropriate (e.g., how to document ''pumping'' of fish; develop a new discard category for adulterated fish; develop secondary product code level that defines condition of end product (i.e., frozen blocks, grades of surimi), add community development quota (CDQ) delivery number to logbooks, and develop combined NMFS/International Pacific Halibut Commission (IPHC) logbook for fixed gear).

Changes to the Final Rule From the Proposed Rule

The final rule includes the following changes from the proposed rule.

Figures

Figure 14, Scallop Registration Areas, is removed in compliance with 63 FR 38501 published July 27, 1998, which removed scallops off Alaska from Federal management. Figures 15 and 16 are designated as Figures 14 and 15, respectively.

Catcher Vessel Operating Area (CVOA)

Figures 2 and 9 to part 679 are revised to correct an error that occurred in the printing of the coordinates for the CVOA. These coordinates are corrected from ''168°'' to read ''167°30′.''

Chinook Salmon Savings Area of the CVOA

Figure 8a to part 679 is revised to add numbers to the three separate salmon savings areas to clarify the coordinates presented in Figure 8b to part 679.

Tables

Table 1—Product codes. NMFS continues to strive for standard definitions of species and product codes with ADF&G for simplicity of recording by the fishing industry and for comparisons and summaries of the agencies' databases. Table 1 to part 679 is revised as follows:

Product code 02. The definition of code 02 is revised to read: ''Whole fish/bait. Processed for bait. Sold.''

Product code 92. Code 92 is revised to read: ''Whole fish/onboard bait. Whole fish used as bait on board vessel. Not sold.''

Product code 32. The definition of code 32 is clarified to read ''Fish meal. Meal from whole fish or fish parts; includes bone meal.'' Product code 32 may be either a primary or ancillary product and is used when meal is created from whole fish or fish byproducts by an onsite processor. The distinction between meal made from whole fish or fish parts under code 32 is indicated through the use of product designations A, meaning ancillary (made from parts) or P, meaning primary (made from whole fish).

Product code 33. The definition of code 33 is clarified to read: ''Fish oil. Rendered oil from whole fish or fish parts.''

Product codes 41 and M99. Paragraph 679.5(g)(1)(ii) and Table 1 to part 679

are revised to remove code M99 and to replace it with a new product code 41, ''whole fish destined for offsite fish meal production.'' The ADF&G fish ticket data base is set up to use 2-digit numeric codes and cannot use M99. Code M99 originally was set up by NMFS for use by shoreside processors in Kodiak, AK, that transferred product to the meal plant in Kodiak. Since the implementation of the increased retention/increased utilization program (IR/IU), motherships and catcher/processors, as well as other shoreside processors, are transferring product to offsite facilities for meal production in locations other than Kodiak, and a new code is needed to describe this activity.

Product code 86. The title of code 86 is revised from ''Donated salmon'' to ''Donated prohibited species,'' and the definition is revised to read: ''Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program.'' This change is necessary to accommodate the addition by NMFS of a halibut donation program and other future programs.

Product codes 94 and 95. Code 94, currently used for consumption of fish, is eliminated. Code 95 is added to read ''Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait.'' Historically, NMFS used code 95 to mean discards made by a shoreside processor after receipt of groundfish from a catcher vessel but prior to production. This discard procedure was later incorporated into code 99 to mean discard at any time by a shoreside processor, and code 95 was not used by NMFS for several years.

ADF&G historically used code 95 to mean personal consumption of fish but NMFS used code 94 to mean personal consumption of fish. Because the use of the two codes to mean the same procedure caused confusion within the fishing industry, NMFS adopts ADF&G's use of code 95 to mean personal consumption of fish.

Product code 99. The definition of code 99 is clarified to read ''Discard, onshore. Discard after delivery and before processing by Shoreside Processors and Buying Stations delivering to Shoreside Processors and in-plant discard of whole groundfish and prohibited species during processing.''

Product Designation R. The definition of product designation R is revised in Table 1 to part 679 to include not only product that is reprocessed, but also product that is rehandled. Rehandled product is fish that is not processed but is handled in some manner before shipment, such as packed in totes of ice.

Reorder codes. Table 1 to part 679 is revised by reordering the placement of codes so that codes describing whole fish are grouped together. An instructive note is added to this grouping to indicate that round weights must be recorded for these codes rather than product weight.

Table 2—Species codes. Table 2 to part 679 is updated to include the Latin family names (codes 207, 208, 210, 511, 516, 772, 774) and one order name (code 800) for the species identified as forage fish in a final rule published in the **Federal Register** (63 FR 13009, March 17, 1998).

Species code 135 is corrected from ''greenstripe rockfish'' to read ''greenstriped rockfish,'' which is the correct common name for this species as used in the specifications, fishery management plans, and fish reference books.

Table 3—Product recovery rates for groundfish species and conversion rates for Pacific halibut. The footnotes of Table 3 to part 679 are updated regarding removal of black rockfish and blue rockfish from Gulf of Alaska (GOA) FMP management, as published in the **Federal Register** (63 FR 11167, March 6, 1998).

Alignment for the row containing FMP species, Bering Sea & Aleutian Islands Area (BSAI) Greenland turbot, is corrected. Starting with species code 134, values for columns 1 through 12 move left one column.

Alignment for the row containing FMP species, BSAI Yellowfin sole, is corrected. Values for columns 21 through 31 move left one column.

The title for column 1 is revised from ''Whole food fish 1'' to read ''Whole fish 1, 2, 41, 92, and 94,'' and column 2 is removed. All of the codes in revised column 1 describe whole fish product with the same product recovery rate (PRR) value. The different codes describe different uses of the whole fish product. Additionally, codes 92 and 94, describing discard codes, are removed from the last column and added to column 1 because these codes describe product rather than discards. Code M99 is removed from the last column because this code is replaced with code 41. Code 41 is added to column 1 because it is a whole fish product. Due to these revisions, the last column, ''Discards,'' includes only codes 98 and 99—whole fish discards.

Regulatory text published in the **Federal Register** (62 FR 60667, November 12, 1997) introduced ice and slime values for product codes 5, 51, 54, 55, 57, and 58; however, codes 05 and 55 were inadvertently omitted from Table 3 to part 679 in that rule. The recordkeeping and reporting proposed rule included those codes in Table 3 to part 679. NMFS did approve the ice and slime values for product codes 05 and 55 and this final rule corrects their omission from Table 3 to part 679.

Alignment for the row containing FMP species, Skates, is corrected. Values for columns 7 and 12 move right one column.

Values for FMP species under column 14, Roe, are added. These values were inadvertently omitted from the proposed rule but were previously established by other final rules. A value of 0.08 is added for FMP species 118, 119, 120, 122, 123, 125, 127, and 134.

A footnote is added to explain that the product weight of groundfish is divided by a PRR to obtain round weight, and the round weight of halibut is multiplied by the conversion rate to obtain product weight.

Table 7—Communities determined to be eligible to apply for community development quotas. Table 7 to part 679 is revised to correct the spelling of a community from ''Ugashi'' to ''Ugashik.''

Tables 10 and 11—Current GOA retainable percentages and current BSAI retainable percentages. Tables 10 and 11 to part 679 are updated to include changes published in the **Federal Register** (63 FR 13009, March 17, 1998) that add ''aggregate forage fish'' species as a bycatch species.

Table 10 to part 679 is updated to include changes to the footnotes regarding rockfish published in the **Federal Register** (63 FR 11167, March 6, 1998).

Table 11 to part 679 is updated to include the addition of shortraker/rougheye rockfish in the Aleutian Islands as a bycatch species published in the **Federal Register** (63 FR 15334, March 31, 1998).

Reporting Areas

COBLZ or RKCSA area. Paragraphs at §679.5(a) are revised to clarify recording requirements for C. opilio Bycatch Limitation Zone (COBLZ) or Red King Crab Savings Area (RKCSA) entries:

Paragraph (a)(7)(v)(B) is revised to include a cross reference to Figures 1 and 3 to part 679, which describe reporting areas of the GOA and BSAI.

Paragraph (a)(7)(v)(B)(*1*) is added to clarify what must be reported when a haul or set occurs in more than one reporting area. Paragraph (a)(7)(v)(B)(*1*) is redesignated and revised by dividing the two sentences of the paragraph into paragraphs (a)(7)(v)(B)(*2*) and (a)(7)(v)(B)(*2*)(*i*);

Paragraph (a)(7)(v)(B)(*2*)(*ii*) is added to clarify instructions on recording the COBLZ or RKCSA areas on a WPR.

Paragraph (a)(7)(v)(B)(*2*) is redesignated as (*3*) and revised to clarify instructions on recording the COBLZ or RKCSA areas on a check-in/check-out report.

Because the COBLZ and RKCSA areas instructions are very detailed in paragraph (a)(7), redundant text was removed from paragraphs (a)(8)(i), (a)(9)(i), and (a)(10)(i)(A).

Recording Weight

Paragraphs at §679.5 are revised to clarify recording requirements for weight information:

Paragraph (a)(6)(iii)(H) is removed as redundant, since weight reporting information is found at (a)(8)(i)(B), (8)(ii)(A) and (B), (9)(i)(B), (9)(ii)(A) and (B), (10)(i)(B), and (10)(ii)(A) through (D).

Paragraphs (a)(8)(ii)(A), (a)(9)(ii)(A), and (a)(10)(ii)(A) are revised to clarify that the accuracy required for reporting is to the nearest pound (lb) and that the appropriate units of weight must be indicated with a check mark in the appropriate box whether records are in lb or in metric tons.

Paragraphs (c)(2)(i)(A) and (ii)(A) are revised to synchronize the estimate of total catch weight of groundfish between the regulatory text and the logbooks.

Paragraph (g)(3)(iii)(E) is revised to add a cross reference to paragraph 679.5(a)(9)(i).

Definitions—Section 679.2

Added Definitions. Definitions are added for the terms, ''Primary product,'' ''Reprocessed or rehandled product,'' and ''Unsorted codend.''

Revised Definitions. The definition for the term ''Fishing trip'' is revised by adding titles to definition paragraphs (1), (2), and (3); and by revising text of paragraph (3) by changing the words ''part E'' to read ''subpart E.''

The term ''Transfer'' is revised to clarify two uses of the term: For purposes of groundfish fisheries of the GOA and BSAI and for purposes of the IFQ/CDQ fisheries.

Removed Definition. The definition for ''Processor'' is removed because this term is a vestige of the Observer Research Plan, not applicable for other regulatory uses, and confusing to the industry.

Applicability, Federal Fisheries Permit—Section 679.5(a)(1)

The paragraph title ''Exemption for vessels less than 60 ft LOA'' is added to paragraph (a)(1)(iii) for format consistency because the other exemption under this paragraph was given a title in the proposed rule.

Paragraph (a)(1)(iv)(D) is removed as not applicable to Federal regulations.

Responsibility—Section 679.5(a)(3)

Paragraph (a)(3)(iii) is revised to clarify a requirement that the logbook be signed by noon of the day following the week-ending date of the weekly reporting period.

Participant Identification Information—Section 679.5(a)(5)

Paragraph (a)(5)(v) is removed since the information ''geographic location of operations'' is no longer required. Paragraphs (a)(5)(vi) through (viii) are redesignated as (a)(5)(v) through (vii).

Redesignated paragraph (a)(5)(vi) is revised to clarify the recording of representative information on logbooks and forms.

Maintenance of Records—Section 679.5(a)(6)

Duplication occurred often in the current regulatory text of paragraphs (a)(7), (a)(8), and (a)(9). To avoid the confusion that often results from duplication, several paragraphs are removed or revised for economy of space.

Page numbering. Paragraph (a)(6)(iii)(A) is revised to include instructions on numbering pages through two or more logbooks per year. Page numbers are to be consecutive from one logbook to the next, so the new logbook will start with the page number that follows consecutively the last page number of the first logbook.

Date. Paragraph (a)(6)(iii)(B) is revised to combine the text of four paragraphs concerning catcher vessel and shoreside processor date information in two different locations on the logsheet.

Processor type. Paragraph (a)(6)(iii)(I) is removed as redundant, because processor type information is required at paragraph (h)(3)(i)(E) for a mothership or catcher/processor check-in/check-out report, at paragraph (i)(3) for the WPR, and at paragraph (j)(4) for the daily production report (DPR).

Reporting area. Paragraph (a)(6)(iii)(E) is removed as redundant because reporting area information is required at paragraph (a)(7)(v)(B).

Species codes. Paragraph (a)(6)(iii)(F) is removed as redundant because species code information is required at paragraphs (a)(8)(i)(A), (a)(9)(i)(A), and (a)(10)(i)(A).

Original/revised report. Paragraph (a)(6)(iii)(G) is redesignated as paragraph (a)(6)(iii)(E) because current paragraphs (E) and (F) are removed for the reasons stated above. Newly designated paragraph (a)(6)(iii)(E) is revised to exempt the DFL, DCL, or DCPL, since these logbooks do not have this data requirement.

Active and Inactive Periods—Section 679.5(a)(7)

Paragraph (a)(7) is reconstructed to integrate regulatory text from several sections into this one section, to group similar topics together, to remove duplicate text, to add paragraph titles for visual clarity, and to create format consistency in regulatory text in order to increase readability.

Paragraph titles are added to paragraphs (a)(7)(i) through (7)(vi) and (a)(7)(v)(A) through (E).

Paragraphs (a)(7)(i), (iii), (iv), and (vi)(A) through (D) are revised to specify the requirement is for entries in the DFL, DCL, and DCPL.

Paragraph (a)(7)(v)(C) is revised to clarify the requirement to record number of observers.

Inactive period. Paragraph (a)(14)(i)(B) is redesignated as paragraph (a)(7)(iii)(B), and paragraph (a)(7)(iii) is now paragraph (a)(7)(iii)(A).

Gear type. Paragraph (a)(7)(v)(A)(*2*) is revised to be consistent in format with the other paragraphs of this section.

Paragraph (a)(7)(v)(A)(*4*) is revised to incorporate requirements for both a catcher/processor and a mothership when more than one gear type is used to harvest groundfish in the same reporting area.

A new paragraph (a)(7)(v)(A)(*5*) is added to clarify that a shoreside processor can use the gear type ''PTR TRANSFER'' in the DCPL, but cannot record this gear type in a WPR.

Delivery information. Paragraph (a)(7)(v)(F), which describes buying station delivery information, is redesignated as (a)(15)(x) and revised to remove duplicate text.

Active, no fishing activity. Paragraph (a)(7)(vi) is redesignated as paragraph (a)(7)(vi)(A), and a paragraph title is added. Paragraphs (a)(7)(vii) through (ix) are redesignated as (a)(7)(vi)(B) through (D), and paragraph titles are added.

Landings Information—Section 679.5(a)(8)

Paragraph titles are added to paragraphs (a)(8)(i) and (a)(8)(ii).

Paragraph (a)(8)(i) is redesignated as paragraph (a)(8)(i)(A).

Paragraphs (i)(3)(ii) and (j)(4)(ii) are combined and redesignated as paragraph (a)(8)(i)(B) to clarify requirements for reporting landings on a WPR and DPR.

Paragraph (a)(8)(iii), which provides requirements for reporting ''no landings,'' is redesignated as (a)(8)(i)(C).

Introductory paragraph (a)(8) is redesignated as introductory paragraph (a)(8)(i).

Paragraph (a)(8)(ii) is revised to remove time-limit language that is required at paragraph (f)(2).

Paragraph (a)(8)(ii)(A) is revised to clarify that daily landings, if recorded in lb, must be recorded to the nearest lb, or to at least the nearest 0.001 mt, and to indicate with a check mark in the appropriate box whether records are in lbs or in metric tons.

Paragraph (a)(8)(ii)(B) is removed, because the format of the shoreside processor DCPL currently allows for records for one weekly reporting period to appear on one page, if all factors are the same.

Paragraph (a)(8)(ii)(C) is revised to clarify calculation requirements and is redesignated as paragraph (a)(9)(ii)(B).

Paragraph titles are added to paragraphs (a)(8)(ii)(A) and (B).

Product Information—Section 679.5(a)(9)

Paragraph (a)(9)(i) is redesignated as (a)(9)(i)(A) and is revised by removing the text ''whether in Alaska State waters or Federal waters'' and by adding the text ''COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section.''

Introductory paragraph (a)(9) is redesignated as (a)(9)(i) and is revised. The words ''where required'' are removed because the paragraph is reorganized so that each paragraph addresses a separate requirement.

Paragraphs (g)(3)(iii)(E), (i)(3)(iv) and (j)(4)(iii) are combined and redesignated as paragraph (a)(9)(i)(B) to clarify requirements for reporting product information on a WPR or DPR or products shipped or received on a PTR.

Paragraph (a)(9)(ii) is redesignated as (a)(9)(ii)(A).

A new introductory paragraph (a)(9)(ii) is added.

Paragraph (a)(9)(v), which provides requirements for reporting ''no production,'' is redesignated as (a)(9)(i)(C).

Paragraph (a)(9)(iii) is redesignated as (a)(9)(ii)(B) and revised to clarify calculation of cumulative total weight.

Paragraph (a)(9)(iv) is redesignated as (a)(9)(iii).

Discard or Donate Information—Section 679.5(a)(10)

Introductory paragraph (a)(10) is added.

Paragraph (a)(10)(i)(A) is revised to include a cross reference to prohibited species information.

Paragraph (a)(10)(i)(B), which provides requirements for reporting no discards or donations, is redesignated as (a)(10)(i)(C).

A new paragraph (a)(10)(i)(B) is added, which incorporates various regulatory requirements for reporting discards or donations on a WPR or DPR that also appear in the logbook instruction manuals and on the WPR and DPR.

Paragraph (a)(10)(ii)(A) is incorporated into (c) introductory paragraph.

Paragraph (a)(10)(ii)(B) is redesignated as (c)(6)(i).

Paragraph (a)(10)(ii)(C) is redesignated as (c)(6)(ii).

Paragraphs (a)(10)(i)(C)(*1*) through (*3*) are redesignated as (a)(10)(ii)(A) through (C).

Paragraphs (a)(10)(ii)(A) and (B) are revised to emphasize discard or donation weight accuracy requirements and to clarify that the cumulative summaries for the weekly reporting period are to be by species, reporting area, gear type, COBLZ or RKCSA area if applicable, and CDQ number. Also the instruction to make a check mark in the box to indicate lb or metric tons is added from the instructions on the logsheets.

Paragraph (a)(10)(i)(C)(4) is redesignated as (a)(10)(ii)(D).

Paragraph titles are added to (a)(10)(ii)(A) through (D).

Paragraph (a)(10)(iii)(B) is removed as redundant, since the same information is found at (d)(2)(ii).

Paragraph (a)(10)(iii)(C) is redesignated as (d)(2)(ii)(B), which presents time limits for submittal of the blue discard DFL copy and is clarified.

Paragraph (a)(10)(iv) is removed as redundant since the same information is found at (c)(2)(ii)(B).

Paragraph (a)(10)(v)(A) is removed as redundant since the same information is found at (e)(1)(ii).

Paragraph (a)(10)(v)(B) is removed as redundant since the same information is found at (a)(10)(ii).

Paragraphs (a)(10)(v)(C) through (E) are redesignated as (e)(2)(iii)(A) through (C) and (f)(2)(iii)(A) through (C).

Contract processing—Section 679.5(a)(11)

Paragraph (a)(11) is revised to require that either a fisheries permit or a processor permit number must be recorded rather than both and to add notations that a WPR or DPR are maintained in the same manner as the DCPLs.

The information contained in paragraph (a)(11)(ii) is integrated into (a)(11)(i)(A) and (B), and paragraph (a)(11)(ii) is removed.

Submittal, Retention, and Distribution of Logbooks and Forms—Section 679.5(a)(14)

In response to industry's, U.S. Coast Guard's, and NMFS Enforcement's requests for a simpler procedure for logbook distribution requirements, paragraph (a)(14) is revised to consolidate materials from paragraphs (a)(14), (a)(15), and (a)(16) and from several other sections of the regulations. This consolidation provides instructions on logbook and forms submittal, records retention, and integration of buying station records. In addition, duplicate text is removed from the regulations. Paragraphs (a)(15) and (a)(16) are removed.

The titles of paragraphs (a)(14) and (a)(14)(i) are revised to change the words ''reports and forms'' to read ''forms,'' because there are no reports due to NMFS other than forms.

Descriptions of logbooks are added and a requirement is revised to clarify that, if a catcher vessel delivers an unsorted codend, the catcher vessel's blue DFL copy should be removed from the logbook and discarded.

Delivery Information—Buying Station, Mothership, and Shoreside Processor—Section 679.5(a)(15)

In response to requests for a simpler procedure for delivery information requirements, a new paragraph (a)(15) is added to consolidate delivery information requirements for buying stations, motherships, and shoreside processors by combining delivery text from (d)(2)(ii)—buying station, (e)(2)—mothership, and (f)(2)—shoreside processor. Additionally, redundant text is removed from the regulations, and paragraph (a)(15)(ii) is added to clarify documentation requirements for transfer of groundfish products between processors.

Catcher Vessel DFL and Catcher/Processor DCPL—Section 679.5(c)

Introductory paragraph (c) is added.

The titles of paragraphs (c)(2)(i) and (c)(2)(ii) are revised to add references to DFL and DCPL, respectively.

Paragraph (c)(2)(i)(D) is revised to change the cross reference to a discard exemption paragraph from (a)(10)(ii)(B) to (c)(6)(i).

Paragraph (c)(5) is revised to specify that the requirements in this paragraph are for vessels using fixed gear.

Paragraphs (c)(5)(i) and (ii) are revised to clarify that IFQ information is recorded in the DFL in two categories: (1) identification of permits and (2) landings.

Paragraph (c)(6) is added, incorporating information from

paragraph (a)(10) and is clarified to indicate that the blue DFL copy should be removed and discarded if catcher vessel delivery is an unsorted codend.

Buying Station DCL—Section 679.5(d)

Paragraphs (d)(2)(i) and (ii) are incorporated into paragraph (a)(15).

Paragraph (d)(1) is redesignated as (d)(2).

Paragraph (d)(1)(i) is redesignated as (d)(2)(i) and is revised to simplify regulatory language regarding delivery information.

Paragraph (d)(1)(ii) is split and redesignated as (d)(2)(ii), incorporating language regarding discard or donation time-limit information, and as (d)(2)(iii) incorporating time-limit language regarding recording of all other information.

New paragraph (d)(2)(ii) is revised to incorporate discard or donation information found in paragraph (a)(10)(iii) and in the 1998 instruction manual.

A new paragraph (d)(1) is added to provide recording requirements for discard or donation information specific to a buying station, formerly paragraph (a)(10)(iii)(A).

Mothership DCPL—Section 679.59(e)

Paragraph (e)(2) is incorporated into (a)(15).

Paragraph (e)(1) is redesignated as (e)(2).

A new paragraph (e)(1) is added to attain structural uniformity with other sections of the regulations and to incorporate discard or donation recording requirements specific to a mothership found in paragraph (a)(10)(v).

Redesignated paragraph (e)(2)(i) is revised to provide an exemption from recording IR/IU species information in logbooks within the time limit of 2 hours after receipt of each groundfish delivery. This time limit was not intended to apply to these species, but, by placement in the logbook format, the IR/IU was unintentionally included in the 2-hour time limit.

Redesignated paragraph (e)(2)(ii) is revised to incorporate a time limit for recording product information formerly found in paragraph (a)(9)(ii).

Paragraph (e)(2)(iii) is added to incorporate a time limit for recording discard or donation information formerly found in paragraphs (a)(10)(v)(A) and (a)(16)(iv) and to clarify the existing intention that catcher vessel and buying station discard or donation information be incorporated into the mothership DCPL within existing time limits.

Paragraph (e)(2)(iv) is added to incorporate a time limit for recording all other information formerly found in paragraph (e)(1)(ii).

Shoreside Processor DCPL—Section 679.5(f)

Paragraph (f)(2)(i) is incorporated into (a)(15).

Paragraph (f)(1) is redesignated as (f)(2), and an introductory paragraph is added.

Paragraphs (f)(1)(i) and (ii) are redesignated as (f)(2)(i) and (ii), respectively, and redesignated paragraph (f)(2)(ii) is revised to separate recording requirements for discard or donation information specific to a shoreside processor that was formerly found in paragraphs (a)(8)(ii), (a)(9)(ii), and (f)(1)(ii).

Paragraph (f)(2)(iii) is added to incorporate a time limit for recording discard or donation information that was formerly found in paragraphs (f)(1)(ii), (a)(10)(v)(A), and (a)(16)(iv) and to clarify the existing intention that catcher vessel and buying station discard or donation information be incorporated into the shoreside processor DCPL within existing time limits.

Paragraph (f)(2)(iv) is added to incorporate a time limit for recording all other information formerly found in paragraph (f)(1)(ii).

Product Transfer Report (PTR)—Section 679.5(g)

Paragraph (g)(1)(i) is redesignated as (g)(1) and is revised to clarify that a PTR is required for transfer of donated prohibited species and to reference existing exemptions to the PTR requirement.

Paragraphs (g)(1)(ii) and (iii) are redesignated as (g)(1)(i) and (ii), respectively.

Redesignated paragraph (g)(1)(i) is revised to replace code M99 (defined as ''discard, offsite transfer. Discarded fish that are transferred to any offsite facility for reduction to fish meal or fish oil'') with code 41 (defined as ''whole fish/destined for offsite fish meal production''). Paragraph (g)(1)(i) is further revised to clarify that a PTR is not required for transfer of code 41 groundfish products or of code 99 discards.

Paragraph (g)(1) is revised to clarify and simplify PTR requirements and to remove the requirement for completion of one PTR for each transfer of groundfish in the specific cases of daily aggregated bait sales (paragraph (g)(1)(ii)) and daily aggregated over-the-counter sales for human consumption (paragraph (g)(1)(iii)). This removal of the requirement is accompanied by revision or addition of the following paragraphs that address the recording of aggregated bait transfer or over-the-counter sales on a PTR: (g)(3)(ii)(C)(*2*) and (*3*) to integrate specific requirements for recording ''agent;'' (g)(3)(ii)(D)(*4*) and (5) to integrate specific requirements for recording ''intended first destination;'' (g)(3)(ii)(E)(*1*)(*i*) and (*ii*) and (g)(3)(ii)(E)(*2*)(*iv*) and (*v*) to include former paragraph (g)(1)(iii) for recording start and finish ''date and time of product transfer.''

Paragraph (g)(1)(iv) is added to remove the requirement for completion of a PTR for each transfer of IFQ or CDQ sablefish in the specific case of a processor operator or manager that is also an IFQ registered buyer. This change relieves a duplicate reporting burden.

Paragraph (g)(2)(iii) is added to clarify that a PTR copy does not accompany a groundfish shipment or an offload.

Paragraph (g)(3)(i) is revised to achieve uniform paragraph structure within the regulations and to include cross references to paragraphs 679.5(a) and (b).

Paragraphs (g)(3)(i)(A) and (D) are removed, since this information has been included in paragraphs (a)(6)(iii)(E) and (a)(5)(vi), respectively.

Paragraphs (g)(3)(i)(B), (C), and (E) are redesignated as (g)(3)(i)(A) through (C), respectively.

Paragraph (g)(3)(i)(C) is revised to remove reference to participation information found at paragraph (a)(5).

Paragraph (g)(3)(ii)(C) is revised to remove ''transport company'' from the definition of the term ''Agent'' so that the term refers only to ''buyer or distributor.'' This change allows NMFS to determine the name of the processor or the buying station receiving the shipment.

Paragraphs (g)(3)(ii)(E)(*1*) and (*2*) are revised to add a cross reference to exceptions.

A title is added to paragraphs (g)(3)(ii)(E)(*1*) through (*3*) for clarity and uniform paragraph structure.

Paragraph (g)(3)(ii)(E)(*2*)(*ii*) is revised to add the words ''of the day'' between ''truck'' and ''leaves.''

Paragraph (g)(3)(ii)(E)(*2*)(*iii*) is revised to remove a cross reference to paragraph (a)(6)(iii).

Paragraph (g)(3)(ii)(F) is revised to require that ''position coordinates'' be more accurately defined in terms of latitude and longitude in degrees and minutes as stated in the instruction manual.

Check-in/Check-out Report—Section 679.5(h)

Paragraphs (h)(2)(i)(B)(i) and (ii) and (h)(2)(ii)(B)(i) and (ii) are redesignated as (h)(2)(i)(B)(*1*) and (*2*) and (h)(2)(ii)(B)(*1*) and (*2*), respectively, to correct paragraph designations.

Paragraphs (h)(3)(i)(A)(*5*) and (h)(3)(i)(B)(*5*) are added to request processor type. This information was formerly included in paragraph (h)(3)(i)(D) before the proposed rule revisions.

The terms ''date,'' ''time,'' and ''position coordinates'' are removed throughout § 679.5(h), and the terms ''date (month-day-year),'' ''time (to the nearest hour, A.l.t.),'' and ''latitude and longitude of position in degrees and minutes'' are added to clarify these terms.

Weekly Production Report—Section 679.5(i)

Paragraph (i)(3) is revised to reformat the paragraph and to request processor type. This information was formerly included in paragraph (i)(3)(i)(D) before the proposed rule revisions.

Paragraphs (i)(3)(ii) through (iv) are consolidated, respectively, into paragraphs (a)(8) through (10).

Paragraph (i)(3)(v) is consolidated into paragraph (a)(15).

Daily Production Report—Section 679.5(j)

Paragraph (j)(4) is revised to request processor type.

Paragraphs (j)(4)(i) through (iii) are consolidated into paragraphs (a)(8) through (10), respectively.

U.S. Vessel Activity Report—Section 679.5(k)

Paragraphs (k)(2)(i)(A) through (C) are consolidated, respectively, into paragraphs (a)(6)(iii)(E), (a)(5), and (a)(5)(vi).

The requirement, formerly at paragraph (k)(2)(i)(C), for recording the date the VAR was completed is removed because this no longer appears on the VAR.

Paragraphs (k)(2)(i)(D) through (I) are redesignated as (k)(2)(i)(A) through (F).

A sentence is added at the end of both redesignated paragraphs (k)(2)(i)(A) and (B) to clarify the terms ''return'' and ''depart,'' respectively.

Redesignated paragraph (k)(2)(i)(C) is revised to clarify the recording of ''port of landing.''

Redesignated paragraph (k)(2)(i)(E) is revised to clarify that the time is recorded in Greenwich mean time.

Redesignated paragraph (k)(2)(i)(F) is revised to clarify the recording of latitude and longitude of position.

IFQ Recordkeeping and Reporting Requirements—Section 679.5(l)

This section is reorganized to clarify the requirements.

The term that means NMFS Enforcement Division, Alaska Region in Juneau, Alaska, is standardized to read ''NMFS Enforcement, Juneau,'' wherever it appears.

Some requirements on the back of the Registered Buyer Permit that were referred to in regulations are moved into regulatory text.

Introductory paragraph (l) is revised by adding types of reports discussed in the section.

The title to paragraph (l)(1) is revised to read ''Prior Notice of IFQ Landing.''

The title of paragraph (l)(1)(i) is revised to read ''Applicability.''

Paragraph (l)(1)(i)(A) is redesignated as (l)(1)(ii), the title ''time limits'' is added; and the word ''notification'' is replaced with ''prior notice.''

Paragraph (l)(1)(i)(B) is redesignated as (l)(1)(iii), the title ''information required'' is added; the word ''notification'' is replaced with ''prior notice''; and the words ''to whom the IFQ halibut or IFQ sablefish will be landed'' are replaced with ''who will be responsible for completion and submission of the IFQ landing report(s).''

Paragraph (l)(1)(i)(C) is redesignated as (l)(1)(iv); a title ''Exemption'' is added; the word ''IFQ'' is added before the word ''weight''; and a cross reference is corrected to read § 679.42(c)(2).

Paragraph (l)(1)(i)(D) is redesignated as (l)(1)(v), and the title ''Revision to prior notice'' is added.

Paragraph (l)(1)(ii) is redesignated as (l)(2) and the title is revised to read ''Landing report.''

Paragraph (l)(1)(ii)(A) is redesignated as (l)(2)(i) and the title ''Applicability'' is added.

A new paragraph (l)(2)(ii) is added with the title ''Electronic reporting.''

A new paragraph (l)(2)(ii)(A) is added from the back of the Registered Buyer Permit, the first three sentences from the first paragraph under the title ''Manner of reporting; the first term ''NMFS'' is replaced with ''NMFS Enforcement, Juneau'' and the second and third ''NMFS'' are replaced with ''NMFS, Alaska Region;'' the terms ''local NMFS Enforcement Clearing Officer'' are replaced with ''clearing officer'' to standardize the term.

A new paragraph (l)(2)(ii)(B) is added from the back of the Registered Buyer Permit, the second sentence from the second paragraph under the title ''Manner of reporting.''

A new paragraph (l)(2)(ii)(C) is added from the back of the Registered Buyer Permit, the third paragraph under the title ''Manner of reporting;'' the first sentence is reorganized; the words ''until the IFQ account(s) is properly debited'' are added; the word ''properly'' is added before the word ''debited'' in the second and third sentences; and the words ''pursuant to paragraph (l)(7) of this section'' are added to the last sentence.

New paragraphs (l)(2)(iii) and (iii)(A) are added from the back of the Registered Buyer Permit; the last sentence of the first paragraph under the title ''Manner of reporting;'' the words ''pursuant to paragraph (l)(2)(ii) of this section'' are added after the word ''granted''; and the word ''Once'' is replaced by ''If'' at the beginning of the first paragraph.

A new paragraph (l)(2)(iii)(B) is added from the manual landing report to indicate required signatures.

Paragraph (l)(1)(ii)(B) is redesignated as (l)(2)(iv); the title ''Time limits and submittals'' is added; and the word ''IFQ'' is added before the words ''cardholder'' and ''cardholder's.''

Paragraphs (l)(1)(ii)(B)(*1*) and (B)(*2*) are renumbered to (l)(2)(iv)(A)(*1*) and (*2*), respectively; paragraph (l)(2)(iv)(A)(*2*) is revised by adding the word ''IFQ'' before the word ''weight;'' the cross reference is corrected to read § 679.42(c)(2).

A new paragraph (l)(2)(iv)(B)) is added from the back of the Registered Buyer Permit, last part of the first sentence of the second paragraph under the title ''Manner of reporting;'' the words ''and the IFQ accounts properly debited as defined in paragraph (l)(2)(ii)(C) of this section'' are added after the word ''completed;'' and the words ''offload of IFQ landing'' are changed to read ''IFQ landing.''

Paragraph (l)(1)(iii)(A) is redesignated as (l)(2)(v).

Paragraph (l)(1)(iii)(B) is redesignated as (l)(3)(i)(C).

Paragraph (l)(1)(iv) is redesignated as (l)(2)(vi) and is revised by removing ''product type landed'' and ''scale weight of the product at the time of landing'' and by adding ''the harvesting vessel's ADF&G number; the Alaska State fish ticket number(s) for the landing; the ADF&G statistical area of harvest by the IFQ cardholder; if ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder; for each ADF&G statistical area of harvest reported by the IFQ cardholder, the product code landed and initial accurate scale weight made at the time offloading

commences for IFQ species sold and retained.''

Paragraph (l)(2) is redesignated as (l)(3), and the title is revised to read ''Shipment report.''

Paragraphs (l)(2)(i) and (l)(2)(i) (A) and (B) are consolidated and redesignated as (l)(3)(i) and (l)(3)(i)(A) respectively, and, the title of (l)(3)(i) is revised to read ''Requirement.''

A new paragraph (l)(3)(i)(B) is added from the back of the Registered Buyer Permit, fourth paragraph under the title ''Manner of reporting'' is revised by changing the words ''of IFQ species commenced to leave the landing site'' to read ''commenced.''

Paragraph (l)(2)(i)(C) is redesignated as (l)(3)(i)(C), and paragraph (l)(2)(i)(D) is redesignated as (l)(3)(iii).

Paragraph (l)(2)(ii)(A) is removed since the requirements in the back of the Registered Buyer are incorporated into the regulations with this final rule.

Paragraph (l)(2)(ii)(B) is redesignated as (l)(3)(ii); a title is added to read ''Information required.''

Paragraph (l)(2)(ii)(C) is removed as duplicate.

Paragraphs (l)(2)(iii), (iii)(A), (iii)(B), and (iii)(C) are removed as duplicates.

Paragraph (l)(2)(iv)(C) is redesignated as (l)(3)(iv); a title is added to read ''Dockside sale;'' the words ''A registered buyer conducting dockside sales must issue in lieu of a shipment report'' are added at the beginning of the sentence; and the words ''through a dockside sale'' are removed.

Paragraphs (l)(2)(iv)(A), (B), and (D) are removed as duplicate.

Paragraph (l)(2)(v) is redesignated as (l)(4), and the title is revised to read ''Transshipment authorization.''

Paragraph (l)(3) is redesignated as (l)(5); the title is revised to read ''Vessel clearance;'' and the words ''the clearing'' are replaced with ''a clearing.''

Paragraph (l)(3)(i) is redesignated as (l)(5)(i), and the words ''a person'' are replaced with ''the vessel operator'' to clarify the requirement.

A new paragraph title ''Location of clearance'' is added as (l)(5)(iii).

Paragraph (l)(3)(ii) is redesignated as (l)(5)(iii)(A); the words ''A vessel obtaining prelanding written clearance'' are replaced with ''A vessel operator intending to obtain a prelanding written clearance for the vessel;'' and the word ''first'' is added before the word ''provide.''

Paragraph (l)(3)(iii) is redesignated as (l)(5)(iii)(B), and the title is revised to read ''State other than Alaska, Departure report.''

Paragraph (l)(3)(iii)(A) is redesignated as (l)(5)(iii)(B)(*1*).

Paragraph (l)(3)(iii)(B) is redesignated as (l)(5)(iii)(B)(*2*) and a title is added.

Paragraph (l)(3)(iv) is redesignated as (l)(5)(iii)(C); and the article ''a'' is added between ''obtain'' and ''vessel.''

Paragraph (l)(3)(v) is redesignated as (l)(5)(iv)(D).

Title for paragraph (l)(3)(vi) is removed.

Paragraph (l)(3)(vi)(A) is redesignated as (l)(5)(ii)(A).

Paragraph (l)(3)(vi)(C) is redesignated as (l)(5)(ii)(B).

Paragraph (l)(3)(vi)(B) is redesignated as (l)(5)(iv), and a title is added to read ''Permits and cards.''

Paragraphs (l)(3)(vii) and (viii) are redesignated as (l)(5) (v) and (vi).

Consolidated Weekly ADF&G Fish Tickets From Motherships—Section 679.5(m)

Paragraphs (m)(2)(i), (m)(2)(i)(A), and (m)(2)(iv)(F) are revised to clarify that the permit referred to is a Commercial Fisheries Entry Commission, or a CFEC, permit.

Paragraph (m)(3)(ii) is revised to clarify that a fax copy of the fish ticket from motherships is unacceptable. This clarification conforms with ADF&G regulations for submittal of fish tickets.

Prohibited Species Bycatch Management—Section 679.21

Paragraph (e)(7)(iv) is revised to correct a cross reference from (e)(3) to (e)(4) in two places.

Closures—Section 679.22

Paragraph (a)(3) is revised to correct a cross reference from paragraph 679.21(e)(3)(ii)(B) to 679.21(e)(4)(ii)(B).

Paragraph (a)(5) is revised to add a cross reference to Figure 2—CVOA.

Paragraph (a)(6) is revised to add the article ''the'' immediately before ''Pribilof Island Area Habitat Conservation Zone.''

Paragraph (h) is added as a cross reference to forage fish closures at §679.20(i)(3).

Seasons—Section 679.23

The **Federal Register** instructional text at paragraph 10 in the proposed regulatory text omitted an instruction to revise paragraph (g)(3). Therefore, the instructional text is revised.

Classification

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. The collections of information have been approved by the Office of Management and Budget (OMB), under OMB Control Numbers 0648–0206 and 0648–0213. OMB Control Number 0648–0272 has been approved except for four data elements. See paragraphs below for details. Public comment is sought regarding: Whether these proposed data elements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or deliver to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, Attn: Lori Gravel, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

1. *Approved under 0648–0206—Alaska permits.* There are no new forms or revisions to forms. The information collection requirements for the Federal processor permit are repeated in this rule and have an estimated response time of 0.33 hour per response.

2. *Approved under 0648–0213—Alaska Region Logbook Family of Forms.* Revisions to existing logbooks and forms have the following effects: Estimated time for an operator of a catcher vessel with fixed gear to complete a DFL decreases from 0.38 hour per response to 0.30 hour per response; estimated time for an operator of a catcher vessel with gear other than fixed gear to complete a DFL decreases from 0.37 hour per response to 0.30 hour per response; estimated time for an operator of a catcher/processor with fixed gear to complete a catcher/processor DCPL decreases from 0.58 hour per response to 0.50 hour per response; estimated time for an operator of a catcher/processor with gear other than fixed gear to complete a catcher/processor DCPL decreases from 0.56 hour per response to 0.50 hour per

response; estimated time for an operator of a mothership to complete a mothership DCPL decreases from 0.55 hour per response to 0.52 hour per response; estimated time for a manager of a shoreside processor to complete a shoreside processor DCPL decreases from 0.45 hour per response to 0.40 hour per response; estimated time for a manager or operator of a buying station to complete a buying station DCL decreases from 0.42 hour per response to 0.38 hour per response; estimated time for a manager or operator of a processor to complete a WPR decreases from 0.30 hour per response to 0.28 hour per response; estimated time for a manager or operator of a processor to complete a DPR increases from 0.17 hour per response to 0.18 hour per response; estimated time for a manager or operator of a processor to complete a check-in/check-out report decreases from 0.13 hour per response to 0.12 hour per response for vessel processors and remains constant at 0.13 hour per response for shoreside processors; estimated time for a manager or operator of a buying station to complete a check-in/check-out report decreases from 0.10 hour per response to 0.08 hour per response; estimated time for an operator of a vessel to complete a VAR decreases from 0.25 hour per response to 0.23 hour per response; removal of voluntary submittal of an ADF&G Alaska Commercial Operator's Annual Report results in a decrease of 6 hours per response; addition of the requirement for motherships to submit ADF&G fish tickets results in an increase of 0.58 hour per response.

The estimated times for completion were printed incorrectly in the shoreside processor, mothership, catcher vessel, catcher/processor, and buying station logbooks, and represent a longer estimated time than is approved under OMB control number 0648–0213. Refer to the inside cover of the instruction manuals for the correct time estimates that agree with those given above.

3. *Approved under 0648–0272—IFQs for Pacific halibut and sablefish.* There are no new forms. A request has been submitted to the Office of Management and Budget (OMB) for approval of addition of the following data elements to the landings report (§679.5(l)(2)(v): harvesting vessel's ADF&G number; Alaska State fish ticket number for the landing; ADF&G statistical area of the harvest reported by the IFQ cardholder; if ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder. The information collection requirements for the IFQ Program are repeated in this rule and have the following response times: prior notice of landing (0.20 hour per response); landings report (0.20 hour per response); shipment report (0.20 hour per response); transshipment notice (0.10 hour per response); and vessel clearance (0.10 hour per response).

This action has been determined to be not significant for purposes of E.O. 12866. This determination is based on the information gathered within the Regulatory Impact Review prepared for regulatory amendments to recordkeeping and reporting requirements (November 14, 1997) and on a finding of non-significance made for proposed rulemaking.

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 Part CFR 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 13, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* and 3631 *et seq.*

2. In §679.2, the definition for ''processor'' is removed; the definitions for ''C. Opilio Crab Bycatch Limitation Zone (COBLZ),'' ''Manager,'' ''Reporting area,'' and ''Transfer'' are revised; the definition of ''Fishing trip'' is amended by adding headings to paragraph (1) and (2) and revising the introductory text of paragraph (3), and definitions for ''Ancillary product,'' ''Bled codend,'' ''Catch,'' ''Central Gulf or GOA Central Regulatory Area,'' ''Deep water flatfish,'' ''Discard,'' ''Eastern Gulf or GOA Eastern Regulatory Area,'' ''Groundfish product or fish product,'' ''Other flatfish,'' ''Other red rockfish,'' ''Other rockfish,'' ''Primary product,'' ''Reprocessed or rehandled product,'' ''Retain on board,'' ''Shallow water flatfish,'' ''Unsorted codend,'' and ''Western Gulf or GOA Western Regulatory Area'' are added in alphabetical order to read as follows:

§679.2 Definitions.

* * * * *

Ancillary product means a product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

* * * * *

Bled codend means a form of discard by vessels using trawl gear wherein some or all of the fish are emptied into the sea from the net before fish are brought fully on board.

* * * * *

Catch (see 50 CFR 600.10.)

* * * * *

Central Gulf or GOA Central Regulatory Area means that portion of the GOA EEZ that is contained in Statistical Areas 620 and 630 (see Figure 3 to this part).

* * * * *

C. Opilio Crab Bycatch Limitation Zone (COBLZ) (see §679.21(e) and Figure 13 to this part.

* * * * *

Deep water flatfish (see annual final specifications published in the **Federal Register** pursuant to §679.20(c).)

* * * * *

Discard (see §600.10.)

* * * * *

Eastern Gulf or GOA Eastern Regulatory Area means the Reporting Areas 649 and 659 and that portion of the GOA EEZ that is contained in Statistical Areas 640 and 650 (see Figure 3 to this part).

* * * * *

Fishing trip means:

(1) *Groundfish directed fishing closures or the IR/IU Program.* * * *

(2) *IFQ program.* * * *

(3) *Groundfish observer program.* With respect to subpart E of this part, one of the following periods:

* * * * *

Groundfish product or fish product means any species product listed in Tables 1 and 2 to this part, excluding the prohibited species listed in Table 2 to this part.

* * * * *

Manager, with respect to any shoreside processor or land-based buying station, means the individual responsible for the operation of the shoreside processor or land-based buying station.

* * * * *

Other flatfish (see annual final specifications published in the **Federal Register** pursuant to §679.20(c).)

Other red rockfish (see annual final specifications published in the **Federal Register** pursuant to §679.20(c); see also ''rockfish'' at § 679.2.)

Other rockfish (see annual final specifications published in the **Federal Register** pursuant to § 679.20(c); see also ''rockfish'' at § 679.2.)

* * * * *

Primary product means a product, such as fillets, made from each fish, with the highest recovery rate (see Table 1 to this part).

* * * * *

Reporting area (see Figures 1 and 3 to this part) means:

(1) An area that includes a statistical area of the EEZ off Alaska and any adjacent waters of the State of Alaska;

(2) The reporting areas 300, 400, 550, and 690, which do not contain EEZ waters off Alaska or Alaska state waters; or

(3) Reporting areas 649 and 659, which contain only waters of the State of Alaska.

Reprocessed or rehandled product means a product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product (see Table 1 to this part).

Retain on board (see §§ 600.10 and 679.27 of this chapter.)

* * * * *

Shallow water flatfish (see annual final specifications published in the **Federal Register** pursuant to § 679.20(c).)

* * * * *

Transfer means:

(1) *Groundfish fisheries of the GOA and BSAI.* Any loading, offloading, shipment or receipt of any groundfish product by a mothership, catcher/processor, or shoreside processor, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, or at any offsite meal reduction plant.

(2) *IFQ/CDQ fisheries.* Any loading, offloading, shipment or receipt of any groundfish product, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, or at any offsite meal reduction plant.

* * * * *

Unsorted codend is a codend of groundfish that is not brought on board a catcher vessel and that is delivered to a mothership or shoreside processor without the potential for sorting. No other instance of catcher vessel harvest is considered an ''unsorted codend.'' All other catch that does not meet this definition is considered ''presorted'' whether or not sorting occurs.

* * * * *

*Western Gulf or GOA Western Regulatory Area*s means that portion of the GOA EEZ that is contained in Statistical Area 610 (see Figure 3 to this part).

* * * * *

3. In § 679.3, paragraph (b) is revised to read as follows:

§ 679.3 Relation to other laws.

* * * * *

(b) *Domestic fishing for groundfish.* (1) The conservation and management of groundfish in waters of the territorial sea and internal waters of the State of Alaska are governed by the Alaska Administrative Code at 5 AAC Chapter 28 and by the Alaska Statutes at Title 16.

(2) Alaska Administrative Code (5 AAC 39.130) governs reporting and permitting requirements using ADF&G ''Intent to Operate'' and ''Fish Tickets.''

* * * * *

4. In § 679.4, paragraph (f)(1) is amended by removing the final ''s'' from the word ''States'' that follows the word ''Alaska;'' and new paragraphs (i) and (j) are added to read as follows:

§ 679.4 Permits.

* * * * *

(i) *Experimental fisheries permits.* (See § 679.6.)

(j) *Salmon donation program permits.* (See § 679.26(a)(3).)

5. Section 679.5 is amended by revising paragraphs (a) through (l) and by adding paragraph (m) to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) *General requirements*—(1) *Applicability, Federal fisheries permit.* Except as provided in paragraphs (a)(1)(iii) and (iv) of this section, the following participants must comply with the recordkeeping and reporting requirements of this section:

(i) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(ii) Any shoreside processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4. A shoreside processor, mothership, or buying station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a Federal fisheries permit.

(B) Fish received under contract for handling or processing for another processor.

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

(iv) *Exemption for groundfish used as crab bait.* (A) Owners or operators of catcher vessels who take groundfish in crab pot gear for use as crab bait on board their vessels while participating in an open season for crab, and the bait is neither transferred nor sold, are exempt from Federal recordkeeping and reporting requirements contained in paragraphs (a) through (j) of this section.

(B) This exemption does not apply to fishermen who:

(*1*) Catch groundfish for bait during an open crab season and sell that groundfish or transfer it to another vessel, or

(*2*) Participate in a directed fishery for groundfish using any gear type during periods that are outside an open crab season for use as crab bait on board their vessel.

(C) No groundfish species listed by NMFS as ''prohibited'' in a management or regulatory area may be taken in that area for use as bait.

(2) *Applicability, Federal processor permit.* Any shoreside processor or vessel operating solely as a mothership in Alaska State waters that retains groundfish is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(3) *Responsibility.* (i) The operator of a catcher vessel, catcher/processor, mothership, or buying station receiving from a catcher vessel and delivering to a mothership (hereafter referred to as the operator) and the manager of a shoreside processor or buying station receiving from a catcher vessel and delivering to a shoreside processor (hereafter referred to as the manager) are each responsible for complying with the applicable recordkeeping and reporting requirements of this section.

(ii) The owner of a vessel, shoreside processor, or buying station is responsible for compliance and must ensure that the operator, manager, or representative (see paragraph (b) of this section) complies with the requirements given in paragraph (a)(3)(i).

(iii) The signature of the owner, operator, or manager on the DFL, DCL, or DCPL is verification of acceptance of the responsibility required in paragraphs (a)(3)(i) and (ii) and must be

signed by noon of the day following the week-ending date of the weekly reporting period.

(4) *Groundfish logbooks and forms.* The Regional Administrator will prescribe and provide groundfish logbooks and forms required under this section as shown in Table 9 to this part. The operator or manager must use these logbooks and forms or obtain approval from the Regional Administrator to use electronic versions of the logbooks and forms.

(5) *Participant identification information.* The operator or manager must record on all required records, reports, and logbooks, as appropriate:

(i) The name of the catcher vessel, catcher/processor, mothership, shoreside processor, or buying station as displayed in official documentation.

(ii) If a catcher vessel, the Federal fisheries permit number and ADF&G vessel number.

(iii) If a shoreside processor, the Federal processor permit number and ADF&G processor number.

(iv) If a buying station, the name and ADF&G vessel number (if a vessel) of the buying station, and the name, ADF&G processor code, and Federal processor permit number of associated shoreside processor, or the Federal fisheries permit number of the associated mothership.

(v) Except for a DFL, DCL, or DCPL, the following information describing a representative's identification: the representative's name, daytime business telephone number (including area code), and fax or telex number. In addition, if completing a DPR, a VAR, or a mothership or catcher/processor PTR or check-in/check-out report, the representative's COMSAT number.

(vi) If a mothership or catcher/processor, the ADF&G processor code and Federal fisheries permit number.

(vii) Signature of owner, operator, or manager (see paragraph (a)(3)).

(6) *Maintenance of records.* (i) The operator or manager must maintain all records, reports, and logbooks in a legible, timely, and accurate manner; in English; if handwritten, in indelible ink; if computer-generated, in a printed paper copy; and based on A.l.t.

(ii) The operator or manager must account for each day of the fishing year in the logbook, starting with January 1 and ending with December 31. Time periods must be recorded consecutively in the logbook.

(iii) When applicable, the operator or manager must record in each report, form, and logbook the following information:

(A) *Page number.* (*1*) Except as provided in paragraph (a)(6)(iii)(A)(*2*) of this section, the operator or manager must number the pages in each logbook consecutively, beginning with page 1 and continuing throughout the logbook for the remainder of the fishing year. If more than one logbook is used in a fishing year, the page numbers should follow the consecutive order of the previous logbook.

(*2*) The manager of a shoreside processor must number the DCPL pages within Part I and Part II separately, beginning with page 1.

(B) *Date,* presented as month-day-year.

(*1*) If a catcher vessel and the logsheet contains records for more than one day, enter the first day of the logsheet at the top of the logsheet and the date of each day in the ''catch'' and ''discard/donate'' sections of the DFL.

(*2*) If a shoreside processor, enter the week-ending date of the weekly reporting period at the top of the logsheet and the date of each day of the week in the ''landings'' and ''discard/donate'' sections of the DCPL.

(C) *Time,* in military format to the nearest hour, A.l.t.

(D) *Position coordinates,* latitude and longitude to the nearest minute (optional: record to the nearest second or fraction of minute).

(E) *Original/revised report.* Except for a DFL, DCL, or DCPL, if a report is the first one submitted to the Regional Administrator for a given date, gear type, and reporting area, the report should be labeled, ''ORIGINAL REPORT.'' If a report is a correction to a previously submitted report for a given date, gear type, and reporting area, the report should be labeled, ''REVISED REPORT.''

(7) *Active and inactive periods*—(i) Each day of fishing year. Account for each day of the fishing year in the DFL, DCL, or DCPL by checking the appropriate box to indicate active and inactive periods as defined under §679.2.

(ii) *Separate logsheet.* (A) If a mothership, catcher/processor, or buying station, use a separate logbook page for each day of an active period.

(B) If a catcher vessel, use a separate logbook page for each day or use one logbook page for up to 7 days.

(C) If a shoreside processor, use a separate logbook page for each day or use one logbook page for up to 7 days.

(iii) *Inactive period.* (A) Indicate in the DFL, DCL, or DCPL on one logbook page the first and last day of an inactive period.

(B) During an inactive period that extends across two or more successive quarters, the operator or manager must complete two logsheets: The one to indicate the last day of the first inactive quarter and the next page to indicate the first day of the second inactive quarter.

(iv) *Fishing activity.* Indicate in the DFL, DCL, or DCPL all fishing activity, which is defined for each type of vessel as follows:

(A) If a catcher vessel—harvest or discard of groundfish.

(B) If a catcher/processor—harvest, discard, or processing of groundfish.

(C) If a mothership or shoreside processor—receipt, discard, or processing of groundfish.

(D) If a buying station—receipt, discard, or delivery of groundfish.

(v) *Active and conducting fishing activity.* If in an active period and conducting fishing activity, the operator or manager must record in the DFL, DCL, or DCPL:

(A) *Gear type.* The gear type used to harvest the groundfish.

(*1*) If a catcher vessel or catcher/processor and using hook-and-line gear, the average number of hooks per skate.

(*2*) If a mothership or shoreside processor and groundfish shipment is received from a different processor through the use of a PTR, circle ''PTR TRANSFER.''

(*3*) If gear type is not an authorized fishing gear, circle ''OTHER.''

(*4*) If a mothership and groundfish are received in the same reporting area but were harvested with more than one gear type or if a catcher/processor and groundfish were caught in the same reporting area using more than one gear type, the operator must use a separate page in the DCPL for each gear type and must submit a separate check-in/check-out report, DPR (if required), and WPR for each gear type.

(*5*) If a shoreside processor and groundfish are received from the same reporting area but were harvested with more than one gear type, the manager must:

(*i*) Use a separate page in the DCPL for each gear type.

(*ii*) Except for gear type ''PTR TRANSFER,'' submit a separate check-in/check-out report, DPR (if required), and WPR for each gear type. The manager must not use the gear type ''PTR TRANSFER'' on a WPR.

(B) *Reporting Area.* The reporting area code where gear retrieval was completed (see Figures 1 and 3 to this part).

(*1*) If a haul or set occurs in more than one reporting area, record the reporting area code where gear retrieval was completed, regardless of where the majority of the haul or set took place.

(*2*) If a catcher vessel or catcher/processor using trawl gear, record whether catch was harvested in the COBLZ or in the RKCSA.

(*i*) If recording in DFL or DCPL, use two separate pages, the first to record the information from the reporting area that includes the COBLZ or RKCSA and the second to record the information from the reporting area that does not include the COBLZ or RKCSA.

(*ii*) If recording on a WPR, use two separate columns to record the part of the same reporting area that includes the COBLZ or RKCSA and the part that does not include the COBLZ or RKCSA.

(*3*) If a catcher/processor using trawl gear and recording on a check-in/check-out report, the operator must submit a separate check-in/check-out report to record the part of the same reporting area that includes the COBLZ or RKCSA and the part that does not include the COBLZ or RKCSA area.

(C) *Observers.* Except for a buying station, the number of observers aboard or on site.

(D) *Number of crew.* Except for a shoreside processor, the number of crew, excluding certified observer(s), on the last day of the weekly reporting period.

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

(vi) *Active, no fishing activity*—(A) *Catcher vessel.* If a catcher vessel, in an active period, and not harvesting or discarding groundfish, the operator must check ''ACTIVE, NOT FISHING'' in the DFL and briefly describe the reason.

(B) *Catcher/processor.* If a catcher/processor, in an active period, and not harvesting, discarding, or processing groundfish, the operator must record ''ACTIVE, NOT FISHING'' in the DCPL and briefly describe the reason.

(C) *Mothership or shoreside processor.* If a mothership or shoreside processor, in an active period, and not receiving, discarding, or processing groundfish, the operator or manager must record ''NO RECEIVING OR PROCESSING ACTIVITY'' in the DCPL and briefly describe the reason.

(D) *Buying station.* If a buying station, in an active period, and not receiving, discarding, or delivering groundfish, the operator or manager must record ''NO RECEIVING OR DELIVERING ACTIVITY'' in the DCL and briefly describe the reason.

(8) *Landings information*—(i) *General.* The manager of a shoreside processor must:

(A) Record and report groundfish landings by species codes and product codes as defined in Tables 1 and 2 to this part for each reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number.

(B) If recording landings on a WPR or DPR, report each groundfish landing only in metric tons to at least the nearest 0.001 mt.

(C) If no landings occurred, write ''NO LANDINGS'' for that day.

(ii) *DCPL.* The manager of a shoreside processor must record in the DCPL:

(A) *Daily landings.* The daily combined scale weight of landings retained for processing from a catcher vessel or from any associated buying station, to the nearest lb or to at least the nearest 0.001 mt. Use a check mark in the appropriate box to indicate whether records are in lbs or in metric tons.

(B) *Weekly landings.* At the end of each weekly reporting period, enter for each species and product code the cumulative total scale weight of landings for that week, summarized separately by reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number. The cumulative total weight is calculated by adding the daily totals for that week.

(9) *Product Information*—(i) *General.* The operator of a catcher/processor or mothership or the manager of a shoreside processor must:

(A) Record and report groundfish products by species codes, product codes, and product designations as defined in Tables 1 and 2 to this part for each reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number.

(B) If recording products on a WPR or DPR or recording products shipped or received on a PTR, the operator or manager must report each groundfish product only in metric tons to at least the nearest 0.001 mt.

(C) If no production occurred, write ''NO PRODUCTION'' for that day.

(ii) *DCPL.* The operator or manager must record in the DCPL:

(A) *Daily production.* The daily total, balance brought forward (except for shoreside processors), and cumulative total fish product weight for each groundfish product to the nearest lb or to at least the nearest 0.001 mt. Use a check mark in the appropriate box to indicate whether records are in lbs or in metric tons.

(B) *Weekly production.* At the end of each weekly reporting period, enter for each species and product code the cumulative total fish product weight for each groundfish product to the nearest lb or to at least the nearest 0.001 mt, summarized separately by reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number. The cumulative total fish product weight is calculated by adding the daily totals and total carried forward (except for a Shoreside Processor DCPL) for that week.

(iii) *Beginning of weekly reporting period.* At the beginning of each weekly reporting period, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

(10) *Discarded or donated species information.* The operator or manager must record or report discards or donations as follows:

(i) *General.* (A) Record and report prohibited species (see § 679.21(b)) and groundfish discards or donations by species and product codes as defined in Tables 1 and 2 to this part for each reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number.

(B) If recording discards or donations on a WPR or DPR, the manager or operator must record:

(*1*) The weekly cumulative total discard or donation for each species and product code of groundfish species, groundfish species group, or Pacific herring in metric tons to at least the nearest 0.001 mt.

(*2*) The weekly cumulative total estimated numbers of discard or donation for each species and product code of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab.

(C) If there were no discards or donations, write ''NO DISCARDS,'' ''0,'' or ''ZERO'' for that day.

(ii) *Logbook*—(A) *Groundfish and herring.* For each discard or donation of groundfish, groundfish species groups, and Pacific herring, record in the DCPL, DCL, or DFL the date of discard, the estimated daily total, balance brought forward (except for shoreside processor DCPL), and cumulative total estimated fish discards or donations weight to the nearest lb or to at least the nearest 0.001 mt for each fishing trip. Use a check mark in the appropriate box to indicate whether records are in lbs or in metric tons.

(B) *Prohibited species other than herring.* For each discard or donation of Pacific salmon, steelhead trout, halibut, king crab, and Tanner crab, record in the DFL, DCL, or DCPL, the date of discard, the estimated daily total, balance brought forward (except for shoreside processor DCPL), and cumulative total estimated numbers for discards or donations for each fishing trip.

(C) *Cumulative totals.* At the end of each fishing trip, calculate the

cumulative total by adding the daily total and balance forward (except for a Shoreside Processor DCPL), summarized separately by reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number.

(D) *Beginning of weekly reporting period.* At the beginning of each weekly reporting period, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

(11) *Contract processing.* The manager of a shoreside processor or operator of a mothership who receives groundfish to be handled or processed under contract for another processor or business entity must report these fish to the Regional Administrator consistently throughout a fishing year using one of the following two methods:

(i) *Combined records.* Record landings (if applicable), discards, and products of contract-processed groundfish routinely in the DCPL, WPR, or DPR without separate identification; or

(ii) *Separate records.* Record landings (if applicable), discards, and products of contract-processed groundfish in a separate DCPL, WPR, or DPR identified by the name, Federal processor permit number or Federal fisheries permit number, and ADF&G processor code of the associated business entity.

(12) *Alteration of records.* (i) The operator, manager, or any other person may not alter or change any entry or record in a logbook, except that an inaccurate or incorrect entry or record may be corrected by lining out the original and inserting the correction, provided that the original entry or record remains legible.

(ii) No person except an authorized officer may remove any original page of any logbook.

(13) *Inspection of records.* The operator or manager must make all logbooks, reports, and forms required under this section available for inspection upon the request of an authorized officer.

(14) *Submittal, retention, and distribution of logbooks and forms*—(i) *Submittal of forms.* Forms other than logbooks and mothership fish tickets may be submitted by the operator or manager by:

(A) Using the NMFS printed form and faxing it to the fax number on the form; or

(B) Transmitting a data file with required information and forms to NMFS by modem or satellite (specifically INMARSAT standards A, B, or C).

(ii) *Submittal of logbooks.* (A) For recordkeeping and reporting in the groundfish fisheries of the EEZ off Alaska, the operator of a catcher vessel, mothership, catcher/processor, or of a buying station delivering to a mothership, or the manager of a shoreside processor or of a buying station delivering to a shoreside processor is required to use the logbooks issued per paragraph (a)(4) of this section, retain the logbooks per paragraph (a)(14)(vii) of this section, and submit the logbooks and logsheets to NMFS per paragraphs (a)(14)(iv), (v), and (vi) of this section.

(B) The operator or manager of a buying station must maintain a separate DCL for each mothership or shoreside processor to which the buying station delivers groundfish during a fishing year.

(iii) *Logbook descriptions.* The copy sets of each logbook are described below:

(A) *Catcher vessel DFL.* White, blue, and yellow copies.

(B) *Catcher/processor DCPL.* White and yellow copies.

(C) *Mothership DCPL.* White and yellow copies.

(D) *Shoreside processor DCPL.* White and yellow copies.

(E) *Buying station DCL.* White, pink, and yellow copies.

(iv) *Logsheet distribution and retention.* The operator or manager must distribute or retain the multiple copies of each logsheet as follows:

(A) *White, original logsheet.* The white copy remains permanently in the logbook.

(B) *Yellow logsheet—(1) DFL or DCPL.* The yellow DFL or DCPL copy is submitted to NMFS per paragraphs (a)(14) (v) and (vi) of this section.

(2) *DCL*—(I) *Buying station.* The operator or manager of a buying station must submit upon delivery of catch the yellow DCL copy to the associated mothership or shoreside processor, along with the ADF&G fish tickets for that delivery.

(*ii*) *Mothership or shoreside processor.* The operator or manager of the associated mothership or shoreside processor receiving a delivery from a buying station must submit the yellow DCL copy to NMFS per paragraphs (a)(14)(v) and (vi) of this section after photocopying each DCL yellow copy. The manager or operator of the associated mothership or shoreside processor must retain these photocopies until the original DCL is received from the associated buying station at the conclusion of fishing or no later than February 1 of the following fishing year.

(C) *Blue discard logsheet, DFL—(1) Catcher vessel.* Except when delivering an unsorted codend (see paragraph (c)(6)(i) of this section), the operator of a catcher vessel must submit the blue DFL copy to the buying station, mothership, or shoreside processor that receives the groundfish harvest.

(*2*) *Buying station.* The operator or manager of a buying station must submit upon delivery of catch to an associated mothership or shoreside processor any blue DFL copies received from catcher vessels delivering groundfish to the buying station.

(*3*) *Mothership or shoreside processor.* The operator of a mothership or the manager of a shoreside processor must retain the blue DFL copies submitted by operators of catcher vessels through the last day of the fishing year during which the records were made.

(D) *Pink logsheet, DCL.* The operator or manager of a buying station must retain the pink DCL copies for each associated mothership or shoreside processor for 3 years after the end of the fishing year during which the records were made.

(v) *Logsheet submittal address.* The yellow copies described in paragraph (a)(14)(iv)(B) of this section must be submitted on a quarterly basis to: NMFS Office of Enforcement, Alaska Region Logbook Program, P.O. Box 21767, Juneau, AK 99802–1767.

(vi) *Yellow logsheet submittal schedule.* The yellow copies described in paragraph (a)(14)(iv)(B) of this section must be submitted to NMFS on the following schedule: Yellow copies from the first quarter, by May 1 of that fishing year; yellow copies from the second quarter, by August 1 of that fishing year; yellow copies from the third quarter, by November 1 of that fishing year; and yellow copies from the fourth quarter, by February 1 of the following fishing year.

(vii) *Retention of logbooks and forms.* (A) The operator of a catcher vessel must retain the original (white) copy of all DFLs per paragraph (a)(14)(vii)(E) of this section.

(B) The operator of a catcher/processor or mothership or the manager of a shoreside processor must retain the white copy of all DCPLs per paragraph (a)(14)(vii)(E) of this section.

(C) The operator of a mothership or the manager of a shoreside processor must retain the white copy of the DCL from each associated buying station per paragraph (a)(14)(vii)(E) of this section.

(D) The operator of a catcher/processor or mothership or the manager of a shoreside processor must retain a paper copy of all forms submitted to NMFS, including those forms that were originally submitted electronically per paragraph (a)(14)(vii)(E) of this section.

(E) The operator of a catcher/processor or mothership or the manager of a shoreside processor must make the logbook copies and paper forms required in paragraphs (a)(14)(vii)(A) through (D) of this section available for inspection by an authorized officer:

(*1*) On site until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded in the logbooks and forms are retained.

(*2*) For 3 years after the end of the fishing year during which the records were made.

(15) *Delivery information for buying station, mothership, and shoreside processor.* The operator of a mothership or buying station delivering to a mothership or the manager of a shoreside processor or buying station delivering to a shoreside processor must record the following information in the ''delivery information section'' of the Buying Station DCL, Mothership DCPL, or Shoreside Processor DCPL:

(i) If groundfish delivery was made by a catcher vessel or buying station, write ''CV'' or ''BS,'' respectively.

(ii) If groundfish delivery was made by another processor, record:

(A) A dash (—) in the CV/BS column, in the receive/discard column, and in the fish ticket column.

(B) Name and ADF&G code of the processor that delivered the groundfish.

(C) Time the delivery was completed.

(D) Estimated total round weight of the groundfish. Option: record actual weights by species, if known.

(iii) If groundfish delivery is from a catcher vessel, whether the blue DFL copies were submitted at time of delivery. If not submitted, record the response ''NO'' and a ''P'' to indicate the catcher vessel does not have a Federal fisheries permit; an ''L'' to indicate the catcher vessel is under 60 ft (18.3 m) length overall (LOA); or a ''U'' to indicate the catcher vessel delivered an unsorted codend. If a catcher vessel is under 60 ft (18.3 m) LOA and also does not have a Federal fisheries permit, record a ''P.''

(iv) Name and ADF&G vessel number (if applicable) of the catcher vessel or buying station delivering the groundfish.

(v) Date and time (to the nearest hour, A.l.t.) when receipt of groundfish catch is completed.

(vi) If a mothership, latitude and longitude (to the nearest minute) of the mothership position when the groundfish catch is received. Option: Record to nearest second or fraction of minute.

(vii) Estimated total groundfish delivery weight of the groundfish catch to the nearest lb or to the nearest mt.

(viii) ADF&G fish ticket numbers issued to catcher vessels for the weekly reporting period, including the fish ticket numbers issued by an associated buying station.

(ix) If a shoreside processor and located in a state other than Alaska, the manager must record the fish ticket number issued through that state. If a state fish ticket system is unavailable, the manager must record the catch receipt number.

(x) If a buying station, the name and ADF&G processor code of the associated mothership or shoreside processor to which groundfish deliveries were made.

(b) *Representative.* The operator of a catcher vessel, mothership, catcher/processor, or buying station delivering to a mothership or manager of a shoreside processor or buying station delivering to a shoreside processor may identify one person to fill out and sign the logbook, to complete the recordkeeping and reporting forms, and to identify the contact person for inquiries from NMFS. Designation of a representative under this paragraph does not relieve the owner, operator, or manager of responsibility for compliance under paragraph (a)(3) of this section.

(c) *Catcher vessel DFL and catcher/processor DCPL.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or catcher/processor must record:

(1) *Pair trawls.* If two catcher vessels are dragging a trawl between them (pair trawl), a separate DFL must be maintained by each vessel. Each vessel operator must log the amount of the catch retained by that vessel and any fish discarded by the vessel.

(2) *Time limit and submittal*—(i) *Catcher vessel DFL.* The operator of a catcher vessel must record in the DFL:

(A) The time, position, and estimated total catch weight of groundfish within 2 hours after gear retrieval.

(B) Discard or donation information as described at paragraph (a)(10) of this section each day on the day they occur; all other information required in the DFL by noon of the day following gear retrieval.

(C) Notwithstanding other time limits, all information required in the DFL within 2 hours after the vessel's catch is offloaded.

(D) Except as provided at paragraph (c)(6)(i) of this section, within 2 hours of completion of catch delivery information, the operator must submit the blue DFL copies with delivery of the harvest to the operator of a mothership or a buying station delivering to a mothership, or to the manager of a shoreside processor or buying station delivering to a shoreside processor.

(ii) *Catcher/processor DCPL.* The operator of a catcher/processor must record in the DCPL, for each haul or set:

(A) The time, position, and estimated total catch weight of groundfish within 2 hours after gear retrieval.

(B) Product and discard or donation information as described at paragraphs (a)(9) and (a)(10) of this section each day on the day they occur; all other information required in the DCPL by noon of the day following completion of production.

(C) Notwithstanding other time limits, record all information required in the DCPL within 2 hours after the vessel's catch is offloaded.

(3) *Haul/set information.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or catcher/processor must record the following information for each haul or set:

(i) The number of haul or set, sequentially by year;

(ii) If the vessel is using hook-and-line gear, the number of skates set. If the vessel is using longline pot or single pot gear, the total number of pots set;

(iii) The date (month-day-year), begin time (to the nearest hour) and position coordinates (to the nearest minute) of gear deployment;

(iv) The date (month-day-year), end time (to the nearest hour), and position coordinates (to the nearest minute) of gear retrieval;

(v) The average sea depth and average gear depth, recorded to the nearest meter or fathom;

(vi) The estimated total round catch weight of the groundfish catch in lbs or to the nearest mt. If fishing in IFQ halibut fishery, enter the estimated total weight of groundfish bycatch;

(vii) The round catch weight of pollock and Pacific cod;

(viii) If fishing in an IFQ fishery, the estimated round catch weight of IFQ sablefish;

(ix) If fishing in an IFQ fishery, the round catch weight of rockfish and Pacific cod; and

(x) When fishing in an IFQ fishery and the fishery for Pacific cod or rockfish is closed to directed fishing in that reporting area as described in § 679.20, the operator must record up to and including the maximum retainable bycatch amount for Pacific cod or rockfish as defined in Table 10 or 11 to this part; quantities over this amount must be recorded in the discard or donation section.

(4) *Catcher vessel delivery information.* The operator of a catcher vessel must record:

(i) The date of delivery.

(ii) The name, ADF&G processor code, and ADF&G fish ticket number(s) provided by the operator of the mothership or of the buying station delivering to a mothership, or by the manager of a shoreside processor or of a buying station delivering to a shoreside processor.

(5) *IFQ data.* The operator of a catcher vessel or catcher/processor using fixed gear must record IFQ information as follows:

(i) *IFQ Identification.* (A) Check ''YES'' or ''NO'' to record if persons aboard have authorized IFQ permits.

(B) If ''YES,'' record the following:

(*1*) Vessel operator's (captain's) name and IFQ permit number, if any.

(*2*) Name of each IFQ holder aboard the vessel and each holder's IFQ permit number.

(ii) *IFQ landings.* If IFQ landings are made, the operator must record the following:

(A) Month and day of landing.

(B) Name of registered buyer.

(C) Name of unloading port.

(6) *Discard or donation information, catcher vessel.* In addition to the requirements in paragraph (a)(10) of this section, the operator of a catcher vessel must record in the DFL:

(i) *Unsorted codends.* If deliveries to a mothership or shoreside processor are unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue DFL copy (discards copy) for that delivery (see paragraph (a)(14)(iv)(C) of this section). The operator must check the box entitled ''unsorted codend'' and must remove and discard the blue DFL copy.

(ii) *Presorted delivery.* Except as provided at § 679.27(d), if the deliveries of a catcher vessel are presorted at sea or if the catcher vessel has ''bled'' a codend prior to delivery to a mothership, shoreside processor, or buying station, the operator must:

(A) Check the ''presorted delivery'' box.

(B) Enter the estimated amount of discards or donations by species in the DFL.

(d) *Buying station DCL*—(1) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator or manager of a buying station must record discard or donation information in the DCL that:

(i) Are reported on a blue DFL copy by a catcher vessel delivering to a buying station.

(ii) Occur after receipt of harvest from a catcher vessel.

(iii) Occur prior to delivery of harvest to a mothership or shoreside processor.

(2) *Time limits.* The operator or manager of a buying station must record:

(i) Catcher vessel ''delivery information'' within 2 hours after completion of receipt of each groundfish delivery.

(ii) Discard or donation information as described at paragraph (a)(10) of this section:

(A) Each day on the day discards or donations occur:

(*1*) After receipt of harvest from a catcher vessel is completed; and

(*2*) Prior to delivery of harvest to a mothership or shoreside processor.

(B) On the day the blue DFL copy is received from a catcher vessel delivering groundfish to the buying station;

(iii) All other information required in the DCL by noon of the day following the day the receipt of groundfish was completed.

(e) *Mothership DCPL*—(1) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership must record discard or donation information in the DCPL that:

(i) Is reported on a blue DFL copy by a catcher vessel or on a yellow DCL copy by a buying station delivering groundfish to a mothership.

(ii) Occurs on site after receipt of groundfish from a catcher vessel or buying station.

(iii) Occurs during processing of groundfish.

(2) *Time limits.* The operator of a mothership must record:

(i) Except for records of round weight catch for IR/IU species pollock and Pacific cod, ''delivery information'' in the DCPL within 2 hours after receipt of each groundfish delivery.

(ii) Product information as described at paragraph (a)(9) of this section each day on the day they occur.

(iii) Discard or donation information as described at paragraphs (a)(10) and (e)(1) of this section:

(A) Each day on the day they occur:

(*1*) On site after receipt of groundfish from a catcher vessel.

(*2*) During processing of groundfish.

(B) On the day the blue DFL copy is received from a catcher vessel delivering groundfish to the mothership.

(C) On the day the yellow DCL copy is received from a buying station delivering groundfish to a mothership.

(iv) All other information required in the DCPL by noon of the day following the day of production completion.

(f) *Shoreside processor DCPL*—(1) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the manager of a shoreside processor must record in the DCPL:

(i) The management area (BSAI or GOA) for the product where the groundfish was harvested on each section of the Part II logsheet.

(ii) Discard or donation information in the DCPL that:

(A) Is reported on a blue DFL copy by a catcher vessel or on a yellow DCL copy by a buying station delivering groundfish to a mothership.

(B) Occurs on site after receipt of groundfish from a catcher vessel or buying station.

(C) Occurs during processing of groundfish.

(2) *Time limits.* The manager of a shoreside processor must record:

(i) All catcher vessel or buying station ''delivery information'' within 2 hours after completion of receipt of each groundfish delivery.

(ii) Landings and product information as described at paragraphs (a)(8) and (a)(9), respectively, of this section each day on the day they occur.

(iii) Discard or donation information as described at paragraph (a)(10) of this section:

(A) Each day on the day they occur:

(*1*) On site after receipt of groundfish from a catcher vessel.

(*2*) During processing of groundfish.

(B) On the day the blue DFL copy is received from a catcher vessel delivering groundfish to a shoreside processor.

(C) On the day the yellow DCL copy is received from a buying station delivering groundfish to a shoreside processor.

(iv) All other information required in the DCPL by noon of the day following the day of production completion.

(g) *Groundfish Product Transfer Report (PTR)*—(1) *Requirement.* Except as provided in paragraphs (g)(1) (i) through (iv) of this section, the operator of a mothership or catcher/processor or the manager of a shoreside processor must record each transfer of groundfish product or donated prohibited species on a separate PTR.

(i) *Product codes 41 and 99.* The operator or manager does not report those fish products, defined as product code 41 in Table 1 to this part, that are destined for offsite fish meal production or those fish products, defined as product code 99 in Table 1 to this part that are subsequently transferred for discard at sea.

(ii) *Bait sales.* The operator or manager may aggregate individual sales or transfers of groundfish to vessels for bait purposes during a day onto one PTR when recording the amount of such bait product leaving a facility that day.

(iii) *Over-the-counter groundfish sales.* The operator or manager may aggregate individual over-the-counter sales of groundfish for human consumption in quantities less than 10 lb (0.0045 mt) per sale during a day onto one PTR when recording the amount of such over-the-counter product leaving a facility that day.

(iv) *IFQ registered buyer.* If the operator of a mothership or catcher/processor or the manager of a shoreside processor possesses a registered buyer permit issued per § 679.4(d)(2), the operator or manager is not required to submit a PTR to document shipment of IFQ or CDQ sablefish product. However, a shipment report as described at paragraph (l)(3) of this section is required for each shipment of IFQ or CDQ sablefish product.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor or manager of a shoreside processor must:

(i) Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) Submit by fax a copy of each PTR to the NMFS Alaska Enforcement Division by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the transfer occurred.

(iii) A PTR is not required to accompany a shipment or offload.

(3) *Information required*—(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership or catcher/processor or the manager of a shoreside processor must record on a PTR:

(A) Page numbers must be numbered consecutively, starting with the first transfer of the fishing year as page 1 and continuing throughout the remainder of the fishing year.

(B) ''RECEIPT,'' if product (including raw fish) is received; ''OFFLOAD,'' if product (including raw fish) is offloaded from a mothership or catcher/processor; ''SHIPMENT,'' if product (including raw fish) is shipped from a shoreside processor.

(C) If a catcher/processor or mothership, the USCG documentation number.

(ii) *Transfer information.* The operator of a catcher/processor or mothership or manager of a shoreside processor must record on each page the following information for each transfer:

(A) *Vessel name.* If another vessel is involved with the transfer, the name and call sign of the vessel receiving or delivering groundfish or groundfish products.

(B) *Port of landing.* If a mothership or catcher/processor and the transfer takes place in port, the port of landing and country, if a foreign location.

(C) *Agent.* (*1*) Except as provided in paragraphs (g)(3)(ii)(C)(*2*) and (g)(3)(ii)(C)(*3*) of this section, enter the agent's name, which, for purposes of this section, is defined as the buyer or the distributor.

(*2*) If groundfish bait transfer or sales are aggregated onto a PTR for a given day as described at paragraph (g)(1)(ii) of this section, enter ''fishing vessels.''

(*3*) If groundfish over-the-counter sales are aggregated onto a PTR for a given day as described at paragraph (g)(1)(iii) of this section, enter ''over-the-counter sales.''

(D) *Intended first destination of product.* (*1*) If an offload or shipment, the intended destination of the vessel or agent receiving the groundfish or groundfish product.

(*2*) If an offload or shipment has several destinations, the first intended destination.

(*3*) If offload or shipment has a single destination but requires loading on multiple vans, trucks, or airline flights, the transfer may be recorded on a single PTR page.

(*4*) If groundfish bait sales are aggregated onto a PTR for a given day as described at paragraph (g)(1)(ii) of this section, enter ''bait.''

(*5*) If groundfish over-the-counter sales are aggregated onto a PTR for a given day as described at paragraph (g)(1)(iii) of this section, enter ''over-the-counter sales.''

(E) *Date and time of product transfer*—(*1*) *Start.* Except as provided in paragraphs (g)(3)(*ii*)(E)(*1*)(*i*) and (ii) of this section, the date and time, as described in paragraph (a)(6)(iii) of this section the transfer starts.

(*i*) *Bait sales.* If groundfish bait sales are aggregated onto a PTR for a given day, the transfer start time is the time of the first bait sale.

(*ii*) *Over-the-counter sales.* If groundfish over-the-counter sales are aggregated onto a PTR for a given day, the transfer start time is the time of the first over-the-counter sale.

(*2*) *Finish.* Except as provided in paragraphs (g)(3)(ii)(E)(*2*)(*i*) through (*v*) of this section, the date and time, as described in paragraph (a)(6)(iii) of this section, the transfer is completed.

(*i*) *Individual van or flight.* If shipment is an individual van load or flight, the date and time when each shipment leaves the plant.

(*ii*) *Multiple vans or trucks.* If shipment involves multiple vans or trucks, record date and time when the last van or truck of the day leaves the plant.

(*iii*) *Multiple airline flights.* If shipment involves multiple airline flights, record date and time when the last airline flight shipment of the day leaves the plant.

(*iv*) *Bait sales.* If PTR is for aggregated groundfish bait sales for a given day, the transfer finish time is the time of the last bait sale.

(*v*) *Over-the-counter sales.* If PTR is for aggregated groundfish over-the-counter sales for a given day, the transfer finish time is the time of the last over-the-counter sale.

(F) *Position transferred.* If a catcher/processor or mothership and transfer of product is made at sea, the latitude and longitude of the transfer position in degrees and minutes.

(iii) *Products and quantities offloaded, shipped, or received.* The operator of a catcher/processor or mothership or manager of a shoreside processor must record the following information:

(A) If a catcher/processor or mothership, the harvest zone code of the area in which groundfish were harvested as defined in Table 8 to this part.

(B) The species code and product code for each product transferred as defined in Tables 1 and 2 to this part.

(C) The number of cartons or production units transferred.

(D) The average net weight of one carton for each species and product code in kilograms or lbs.

(E) The total net weight (fish product weight, to the nearest 0.001 mt) of the products transferred.

(iv) *Total or partial offload.* If a catcher/processor or mothership, whether the transfer is a total or partial offload. If partial offload, the total fish product weight, to the nearest 0.001 mt, of the products (by harvest zone, species and product codes) remaining on board after this transfer.

(h) *Check-in/check-out report*—(1) *Applicability*—(i) *Transit between reporting areas.* If a vessel is transiting through a reporting area and is not fishing or receiving fish, a check-in or check-out report is not required from that area.

(ii) *Multiple vessel operations categories*—(A) *Check-in report.* If a catcher/processor is functioning simultaneously as a mothership in the same reporting area, the operator must submit a separate check-in report for each vessel operations category.

(B) *Check-out report.* Upon completion of each activity, the operator must submit a check-out report for each vessel operations category.

(2) *Time limits and submittal*—(i) *Check-in report (BEGIN message)*—(A)

Catcher/processor—(*1*) *Using hook-and-line or pot gear.* (*i*) Before the operator of a catcher/processor using hook-and-line or pot gear sets gear for groundfish in any reporting area except 300, 400, 550, or 690, the operator must submit a check-in report (BEGIN message) by fax to the Regional Administrator.

(*ii*) The operator of a catcher/processor using hook-and-line or pot gear may be checked-in to more than one area simultaneously.

(*2*) *Using other than hook-and-line or pot gear.* (*i*) Before the operator of a catcher/processor using other than hook-and-line or pot gear commences fishing for groundfish in any reporting area except 300, 400, 550, or 690, the operator must submit a check-in report (BEGIN message) by fax to the Regional Administrator.

(*ii*) The operator of a catcher/processor using other than hook-and-line or pot gear may be checked-in to only one area at a time.

(B) *Mothership, shoreside processor, buying station.* (*1*) Before a mothership, shoreside processor, or buying station commences receipt of groundfish from any reporting area except 300, 400, 550, or 690, the operator or manager must submit a check-in report (BEGIN message) by fax to the Regional Administrator.

(*2*) The operator of a mothership may be checked into more than one area simultaneously.

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

(ii) *Check-out report (CEASE message)*—(A) *Catcher/processor*—(*1*) *Using hook-and-line or pot gear.* (*i*) If a catcher/processor using hook-and-line or pot gear departs a reporting area and gear retrieval is complete from that area, the operator must submit by fax a check-out report to the Regional Administrator within 24 hours after departing a reporting area.

(*ii*) If a catcher/processor using hook-and-line or pot gear is checked-in to multiple reporting areas, the operator must submit a check-out report for each reporting area by fax.

(*2*) *Using other than hook-and-line or pot gear.* If a catcher/processor using other than hook-and-line or pot gear departs a reporting area, the operator must submit by fax a check-out report to the Regional Administrator within 24 hours after departing a reporting area but prior to checking-in another reporting area.

(B) *Mothership or buying station delivering to a mothership.* (*1*) If a mothership or buying station delivering to a mothership completes receipt of groundfish, the operator must submit a check-out report by fax to the Regional Administrator within 24 hours after departing a reporting area.

(*2*) If a mothership is checked-in to multiple reporting areas, the operator must submit a check-out report for each reporting area by fax.

(C) *Shoreside processor.* If a shoreside processor, the manager:

(*1*) Must submit a check-out report by fax to the Regional Administrator within 48 hours after the end of the applicable weekly reporting period that a shoreside processor ceases to process groundfish for the fishing year.

(*2*) May submit a check-out report by fax to the Regional Administrator when receipt or processing of groundfish is temporarily halted during the fishing year for a period of at least two weekly reporting periods.

(D) *Buying station delivering to a shoreside processor.* If a land-based buying station delivering to a shoreside processor, the manager:

(*1*) Must submit a check-out report by fax to the Regional Administrator within 24 hours after delivery of groundfish ceases for the fishing year.

(*2*) May submit a check-out report by fax to the Regional Administrator when receipt of groundfish is temporarily halted during the fishing year for a period of at least two weekly reporting periods.

(E) *End of fishing year.* If a check-out report has not previously been submitted during a fishing year, the operator or manager must submit a check-out report at the end of that fishing year, December 31.

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

(3) *General information.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor, mothership, or of a buying station delivering to a mothership or the manager of a shoreside processor or buying station delivering to a shoreside processor must record:

(i) *BEGIN message*—(A) *Mothership.* (*1*) Date (month-day-year) and time (to the nearest hour, A.l.t.) that receipt of groundfish begins.

(*2*) Latitude and longitude of position in degrees and minutes where groundfish receipt begins.

(*3*) Reporting area code where groundfish receipt begins and whether mothership is receiving groundfish in the COBLZ or RKCSA area.

(*4*) Primary and secondary species expected to be received the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(*5*) Whether acting as a mothership or catcher/processor.

(B) *Catcher/processor.* (*1*) Date (month-day-year) and time (to the nearest hour, A.l.t.) that gear is deployed.

(*2*) Latitude and longitude of position in degrees and minutes where gear is set.

(*3*) Reporting area code where gear deployment begins and whether catcher/processor is located in the COBLZ or RKCSA area.

(*4*) Primary and secondary species expected to be harvested the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(*5*) Whether acting as a mothership or catcher/processor.

(C) *Shoreside processor.* (*1*) Date (month-day-year) the facility will begin to receive groundfish.

(*2*) Whether checking in for the first time at the beginning of the fishing year or checking in to restart receipt and processing of groundfish after filing a check-out report.

(D) *Buying station.* (*1*) If delivering to a mothership, reporting area code where groundfish receipt begins.

(*2*) Date (month-day-year) facility will begin to receive groundfish.

(*3*) Whether checking in at the beginning of the fishing year or checking in to restart after filing a check-out report.

(*4*) Intended primary target species expected to be received the following week. A change in intended target species within the same reporting area does not require a new BEGIN message.

(ii) *CEASE message*—(A) *Mothership.* Date (month-day-year), time (to the nearest hour, A.l.t.), and latitude and longitude of position in degrees and minutes where the last receipt of groundfish was made.

(B) *Catcher/processor.* Date (month-day-year), time (to the nearest hour, A.l.t.), and latitude and longitude of position in degrees and minutes where the vessel departed the reporting area.

(C) *Shoreside processor.* Date (month-day-year) that receipt of groundfish ceased.

(D) *Buying station.* (*1*) If delivering to a mothership, date (month-day-year), time (to the nearest hour, A.l.t.), and latitude and longitude of position in degrees and minutes where the vessel departed the reporting area.

(*2*) If delivering to a shoreside processor, date (month-day-year) that receipt of groundfish ceased.

(iii) *Fish or fish product held at plant.* The manager of a shoreside processor must report the weight of all fish or fish products held at the plant in lbs or to the nearest 0.001 mt by species and product codes on each check-in report and on each check-out report.

(i) W*eekly Production Report (WPR)*—(1) *Applicability.*

(i) The operator of a catcher/processor or mothership or the manager of a shoreside processor must submit a WPR for any week the mothership, catcher/processor, or shoreside processor is checked in pursuant to paragraph (h)(2)(i) of this section.

(ii) The operator of a vessel that is authorized to conduct operations as both a catcher/processor and as a mothership must submit separate WPRs to report production and discard as a catcher/processor and production and discard as a mothership.

(2) *Time limits and submittal.* The operator or manager must submit a WPR by fax to the Regional Administrator by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period.

(3) *Information required.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or manager of a shoreside processor must record:

(i) The date (month-day-year) the WPR was completed.

(ii) The primary and secondary target codes for the following week.

(iii) If a mothership or catcher/processor, record the processor type.

(j) *Daily Production Report (DPR)*—(1) *Notification.* If the Regional Administrator determines that DPRs are necessary to avoid exceeding a groundfish TAC or prohibited species bycatch allowance, NMFS may require submission of DPRs from motherships, catcher/processors, and shoreside processors for reporting one or more specified species, in addition to a WPR. NMFS will publish notification in the **Federal Register** specifying the fisheries that require DPRs and the dates that submittal of DPRs are required.

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

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

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

(3) *Time limit and submittal.* The operator or manager must submit a DPR by fax to the Regional Administrator by 1200 hours, A.l.t., the day following each day of landings, discard, or production.

(4) *Information required.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher/processor or mothership, or the manager of a shoreside processor must record the processor type.

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Applicability.* The operator of a catcher vessel, catcher/processor, or of a mothership regulated under this part must submit a VAR by fax to NMFS Alaska Enforcement Division, Juneau, AK, before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(2) *Information required*—(i) *General.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of each catcher vessel, catcher/processor, or mothership must record:

(A) If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, the operator must indicate a ''return'' report. ''Return,'' for purposes of this paragraph, means coming back to Alaska.

(B) If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, the operator must indicate a ''depart'' report. ''Depart,'' for purposes of this paragraph, means leaving Alaska.

(C) Port of landing. If no fish on board, indicate first destination.

(D) Whether the vessel is returning from fishing or departing to fish in the Russian Zone.

(E) Date (month-day-year) and time (Greenwich mean time) the vessel will cross the seaward boundary of the EEZ off Alaska or the U.S.-Canadian international boundary between Alaska and British Columbia.

(F) Latitude and longitude of position in degrees and minutes at the point of crossing the seaward boundary of the EEZ off Alaska or U.S.-Canadian international boundary between Alaska and British Columbia.

(ii) *Fish or fish products.* The operator of a catcher vessel, catcher/processor, or mothership must record the fish or fish products on board the vessel when crossing the seaward boundary of the EEZ off Alaska or U.S.-Canadian international boundary as follows:

(A) The harvest zone code of the area in which groundfish were harvested as defined in Table 8 to this part.

(B) The species code and product code for each species on board as defined in Tables 1 and 2 to this part.

(C) The fish product weight of products on board in lbs or to the nearest 0.001 mt.

(l) *IFQ recordkeeping and reporting requirements.* In addition to the recordkeeping and reporting requirements in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to §300.62 of chapter III of this title, the following IFQ reports are required, when applicable: prior notices of landing, landing report, shipment report, transshipment authorization, vessel clearance report, and departure report.

(1) *Prior notice of IFQ landing*—(i) *Applicability.* Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify the NMFS Enforcement, Juneau, no fewer than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer.

(ii) *Time limits.* Prior notice of an IFQ landing must be made to the toll-free telephone number specified on the IFQ permit between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(iii) *Information required.* Prior notice must include the following: Name of the registered buyer(s) who will be responsible for completion and submission of the IFQ Landing Report(s); the location of the landing; vessel identification; estimated weight of the IFQ halibut or IFQ sablefish that will be landed; identification number(s) of the IFQ card(s) that will be used to land the IFQ halibut or IFQ sablefish; and the date and time that the landing will take place.

(iv) *Exemption.* The operator of a category B, C, or D vessel, as defined at §679.40(a)(5), making an IFQ landing of IFQ halibut of 500 lb (0.227 mt) or less of IFQ weight determined pursuant to §679.42(c)(2) and concurrent with a legal landing of salmon is exempt from the prior notice of landing required by this section.

(v) *Revision to prior notice.* The operator of any vessel wishing to land

IFQ halibut or IFQ sablefish before the date and time reported in the prior notice or later than 2 hours after the date and time reported in the prior notice must submit a new prior notice of IFQ landing as described in paragraphs (l)(1)(i) through (iii) of this section.

(2) *Landing report*—(i) *Applicability.* A registered buyer must report an IFQ landing within 6 hours after all such fish are landed and prior to shipment or departure of the delivery vessel from the landing site.

(ii) *Electronic landing report.* (A) Electronic landing reports must be submitted to NMFS Enforcement, Juneau, using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals and printers driven by custom-designed software, as provided and/or specified by NMFS, Alaska Region. It is the responsibility of the registered buyer to locate or procure a transaction terminal and report as required. Waivers from the electronic reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer.

(B) The IFQ cardholder must initiate a landing report by using his or her own magnetic card and personal identification number (PIN).

(C) Once landing operations have commenced, the IFQ cardholder and the harvesting vessel may not leave the landing site until the IFQ account is properly debited. The offloaded IFQ species may not be moved from the landing site until the IFQ landing report is received by NMFS Enforcement, Juneau, and the IFQ cardholder's account is properly debited. A properly concluded transaction terminal receipt or manual landing report receipt received by fax from NMFS Enforcement, Juneau, constitutes confirmation that NMFS received the landing report and that the cardholder's account was properly debited. After the registered buyer enters the landing data in the transaction terminal and a receipt is printed, the IFQ cardholder must sign the receipt. Legible copies of the receipt must be retained by both the registered buyer and the IFQ cardholder pursuant to paragraph (l)(7) of this section.

(iii) *Manual landing report.* (A) If a waiver has been granted pursuant to paragraph (l)(2)(ii) of this section, manual landing instructions must be obtained from NMFS Enforcement, Juneau, at (800) 304–4846 or (907) 586–7163. Completed manual landing reports must be submitted by fax to NMFS Enforcement, Juneau, at (907) 586–7313.

(B) The manual landing report must be signed by the registered buyer, the IFQ cardholder, and the NMFS representative to show that the IFQ cardholder's account was properly debited.

(iv) *Time limits and submittals.* (A) An IFQ landing may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless:

(*1*) Permission to land at a different time is granted in advance by a clearing officer; or

(*2*) IFQ halibut of 500 lb (0.227 mt) or less of IFQ weight determined pursuant to §679.42(c)(2) is landed concurrently with a legal landing of salmon by a category B, C, or D vessel, as defined at §679.40(a)(5).

(B) An IFQ landing report must be completed and the IFQ account(s) properly debited, as defined in paragraph (l)(2)(ii)(C) of this section, within 6 hours after the completion of the IFQ landing.

(v) *Landing verification and inspection.* Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification, inspection, and sampling by authorized officers, clearing officers, or observers. Each IFQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

(vi) *Information required.* The registered buyer must enter accurate information contained in a complete IFQ landing report as follows: Date, time, and location of the IFQ landing; name and permit number of the IFQ card holder and registered buyer; the harvesting vessel's ADF&G number; the Alaska State fish ticket number(s) for the landing; the ADF&G statistical area of harvest reported by the IFQ cardholder; if ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder; for each ADF&G statistical area of harvest reported by the IFQ cardholder, the product code landed and initial accurate scale weight made at the time offloading commences for IFQ species sold and retained.

(3) *Shipment report*—(i) *Requirement.* Each registered buyer, other than those conducting dockside sales must:

(A) Complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish from that registered buyer before the fish leave the landing site.

(B) Assure that a shipment report is submitted to, and received by, NMFS Enforcement, Juneau, by fax to (907) 586–7313 or mail to P.O. Box 21767, Juneau, AK 99802–1767, within 7 days of the date shipment commenced.

(C) Assure that a copy of the shipment report or a bill of lading containing the same information accompanies the shipment of IFQ species from the landing site to the first destination beyond the location of the IFQ landing.

(ii) *Information required.* A shipment report must specify the following: Species and product type being shipped, number of shipping units, fish product weight, names of the shipper and receiver, names and addresses of the consignee and consignor, mode of transportation, and intended route.

(iii) *Revision to shipment report.* Each registered buyer must ensure that, if any information on the original Shipment Report changes prior to the first destination of the shipment, a revised shipment report is submitted to NMFS Enforcement, Juneau, clearly labeled ''Revised Shipment Report'' and that the revised shipment report be received by NMFS Enforcement, Juneau, within 7 days of the change.

(iv) *Dockside sale or outside landing—(A) Dockside sale.*(*1*) A registered buyer conducting dockside sales must issue a receipt in lieu of a shipment report, that includes the date of sale or transfer, the registered buyer permit number, and the fish product weight of the IFQ sablefish or halibut transferred to each individual receiving IFQ halibut or IFQ sablefish.

(*2*) A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish to a person who has not been issued a registered buyer permit.

(B) *Outside landing.* A person holding a valid IFQ permit, IFQ card, and registered buyer permit may conduct an IFQ landing outside an IFQ regulatory area or the State of Alaska to a person who does not hold a registered buyer permit.

(C) *Landing report.* The person making such an IFQ landing as described in paragraph (l)(3)(iv)(A) or (B) of this section must submit an IFQ landing report in the manner prescribed in paragraph (l)(2) of this section before any fish are sold, transferred, or removed from the immediate vicinity of the vessel with which they were harvested.

(4) *Transshipment authorization.* No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence. Requests for authorization must specify the date and location of the transshipment.

(5) *Vessel clearance*—(i) *Applicability.* The vessel operator who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the vessel from a clearing officer and provide the weight of IFQ halibut and IFQ sablefish on board to the clearing officer.

(ii) *Responsibility.* (A) A vessel operator must land and report all IFQ species on board at the same time and place as the first landing of any species harvested during an IFQ fishing trip.

(B) A vessel operator having been granted a vessel clearance must submit an IFQ landing report, required under this section, for all IFQ halibut, IFQ sablefish and products thereof that are on board the vessel at the first landing of any fish from the vessel.

(iii) *Location of clearance*—(A) *State of Alaska.* The vessel operator that obtains prelanding written clearance for the vessel at a port in the State of Alaska must obtain that clearance prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska.

(B) *State other than Alaska, Departure Report.* (1) A vessel operator intending to obtain a prelanding written clearance for the vessel at a port in a state other than Alaska must first provide a departure report to NMFS Enforcement, Juneau, prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska.

(*2*) *Information required.* The departure report must include the weight of the IFQ halibut or IFQ sablefish on board and the intended date and time the vessel will obtain prelanding written clearance at that port in a state other than Alaska.

(C) *Foreign port other than Canada.* A vessel operator who lands IFQ species in a foreign port must first obtain a vessel clearance from a clearing officer located at a primary port in the State of Alaska as described in paragraph (l)(5)(vi) of this section.

(D) *Canadian ports.* No person shall make an IFQ landing in Canada other than at the ports of Port Hardy, Prince Rupert, or Vancouver, British Columbia.

(iv) *Permits and cards.* A vessel operator obtaining a vessel clearance must have a registered buyer permit and one or more IFQ cardholders on board with IFQ holdings equal to or greater than all IFQ halibut and IFQ sablefish on board.

(v) *Inspection.* A vessel for which a vessel operator is seeking clearance is subject to inspection of all fish, logbooks, permits, and other documents on board the vessel at the discretion of the clearing officer.

(vi) *Primary ports.* Unless specifically authorized on a case-by-case basis, vessel clearances will be issued only by clearing officers at the following primary ports:

Port	North latitude	West longitude
Akutan	54°08′05″	165°46′20″
Bellingham	48°45′04″	122°30′02″
Cordova	60°33′00″	145°45′00″
Craig	55°28′30″	133°09′00″
Dutch Harbor/ Unalaska.	53°53′27″	166°32′05″
Excursion Inlet	58°25′00″	135°26′30″
Homer	59°38′40″	151°33′00″
Ketchikan	55°20′30″	131°38′45″
King Cove	55°03′20″	162°19′00″
Kodiak	57°47′20″	152°24′10″
Pelican	57°57′30″	136°13′30″
Petersburg	56°48′10″	132°58′00″
St. Paul	57°07′20″	170°16′30″
Sand Point	55°20′15″	160°30′00″
Seward	60°06′30″	149°26′30″
Sitka	57°03′	135°20′
Yakutat	59°33′	139°44′

(6) *Record retention.* A copy of all reports and receipts required by this section must be retained by registered buyers and be made available for inspection by an authorized officer or a clearing officer for a period of 3 years.

(m) *Consolidated weekly ADF&G fish tickets from motherships*—(1) *Requirement.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a mothership must ensure that the combined catch for each catcher vessel is summarized at the end of each weekly reporting period by species on a minimum of one ADF&G groundfish fish ticket when the mothership receives any groundfish from a catcher vessel that is issued a Federal fisheries permit under §679.4. (An ADF&G fish ticket is further described (see §679.3) at Alaska Administrative Code, 5 AAC Chapter 39.130).

(2) *Information required.* (i) The operator of a mothership must ensure that the following information is imprinted or written legibly on the consolidated weekly ADF&G fish ticket from the catcher vessel operator's State of Alaska, Commercial Fisheries Entry Commission (CFEC) permit card in order to describe the CFEC permit holder:

(A) *Vessel name.* Name of the catcher vessel delivering the groundfish.

(B) *Name.* Name of CFEC permit holder. If more than one operator is on the same vessel during the same weekly reporting period, complete a fish ticket for each operator.

(C) *Permit number.* CFEC permit number.

(D) *ADF&G No.* ADF&G catcher vessel number.

(ii) The operator of a mothership must ensure that the following information is imprinted or written legibly on the consolidated weekly ADF&G fish ticket from the mothership's CFEC processor plate card in order to describe the mothership:

(A) *Processor code.* ADF&G processor code of mothership.

(B) *Company.* Identification of mothership.

(iii) The operator of a mothership must record on the consolidated weekly ADF&G groundfish fish ticket the following information obtained from the catcher vessel operator:

(A) *ADF&G No.* The ADF&G number of the catcher vessel delivering fish to the mothership, if the catcher vessel is different from the vessel identified in the CFEC permit card.

(B) *Date landed.* The week-ending date of the weekly reporting period during which the mothership received the groundfish from the catcher vessel.

(C) *Port of landing or vessel transshipped to.* ''FLD,'' a code which means floating processor.

(D) *Type of gear used.* Write in one of the following gear types used by the catcher vessel to harvest groundfish received:

(*1*) Hook and line.
(*2*) Pot.
(*3*) Nonpelagic trawl.
(*4*) Pelagic trawl.
(*5*) Jig/troll.
(*6*) Other.

(iv) The operator of a mothership is responsible for ensuring that the following information is recorded on an ADF&G fish ticket for each catcher vessel:

(A) *Code.* Species code for each species from Table 2 to this part, except species codes 144, 168, 169, or 171.

(B) *Statistical area.* ADF&G 6-digit statistical area in which groundfish were harvested. If more than the allowed eight statistical areas per fish ticket is exceeded in a weekly reporting period, complete a second fish ticket. These statistical areas are defined in a set of charts obtained at no charge from Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game, 211 Mission Road, Kodiak, AK, 99615–6399.

(C) *Condition code.* The product code from Table 1 to this part which describes the condition of the fish received by the mothership from the

catcher vessel. In most cases, this will be product code 1, whole fish.

(D) *Pounds.* The landed weight of each species to the nearest lb.

(E) *Permit holder's signature.* The signature of the catcher vessel CFEC permit holder.

(F) *Fish received by.* The signature of the mothership operator.

(3) *Time limit and submittal.* (i) The operator of a mothership must complete the consolidated weekly ADF&G groundfish fish ticket for each catcher vessel by 1200 hours, A.l.t., on Tuesday following the end of the applicable weekly reporting period.

(ii) The operator of a mothership must submit the original consolidated weekly ADF&G groundfish fish tickets (fax copy is not acceptable) to Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game, 211 Mission Road, Kodiak, AK, 99615–6399, within 30 days after landings are received.

6. In § 679.7, paragraphs (a)(1) and (a)(2) and the heading of paragraph (a)(5) are revised and paragraphs (a)(15) and (a)(16) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(1) *Federal fisheries permit.* Fish for groundfish in the GOA or BSAI with a vessel of the United States that does not have on board a valid Federal fisheries permit issued pursuant to § 679.4.

(2) *Inseason action or adjustment.* Conduct any fishing contrary to notification of inseason action or adjustment issued under § 679.20, § 679.21, or § 679.25.

* * * * *

(5) *Prohibited species bycatch rate standard.* * * *

* * * * *

(15) *Federal Processor Permit.* Receive or process groundfish harvested in the GOA or BSAI by a shoreside processor or vessel of the United States operating solely as a mothership in Alaska State waters that does not have on site a valid Federal processor permit issued pursuant to § 679.4(f).

(16) *Retention of groundfish bycatch species.* Exceed the maximum retainable groundfish bycatch amount established under § 679.20(e).

* * * * *

7. In § 679.20, paragraphs (d)(1)(ii)(A), (g)(2)(iii), and (g)(3) introductory text are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) *Inseason adjustments.* The category allocations or apportionments established under paragraph (c) of this section may be revised by inseason adjustments, as defined at § 679.25, for a given species or species group or pollock allowance, as identified by regulatory area, subarea, or district, and, if applicable, as further identified by gear type.

* * * * *

(g) * * *

(2) * * *

(iii) The primary pollock product must be distinguished from ancillary pollock products in the DCPL required under § 679.5(a)(9).

(3) *Pollock product recovery rates (PRRs).* Use the product types and standard PRRs for pollock found in Table 3 to this part to calculate round-weight equivalents for pollock for purposes of this paragraph (g):

* * * * *

8. In § 679.21, paragraphs (e)(7)(iv)(B), (e)(7)(vii)(B), and (e)(7)(viii)(B) are removed, and paragraphs (e)(7)(iv)(A), (e)(7)(vii)(A), and (e)(7)(viii)(A) are redesignated as paragraphs (e)(7)(iv), (e)(7)(vii), and (e)(7)(viii), respectively, and revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(7) * * *

(iv) *COBLZ.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the COBLZ bycatch allowance, or seasonal apportionment thereof, of *C. Opilio* specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the **Federal Register** the closure of the COBLZ, as defined in Figure 13 to this part, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

* * * * *

(vii) *Chum salmon.* If the Regional Administrator determines that 42,000 non-chinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA, defined under § 679.22(a)(5) and in Figure 2 to this part, NMFS will prohibit fishing with trawl gear for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9, to this part.

(viii) *Chinook salmon.* When the Regional Administrator determines that 48,000 chinook salmon have been caught by vessels using trawl gear in the BSAI during the time period from January 1 through April 15, NMFS will prohibit fishing with trawl gear for the remainder of that period within the Chinook Salmon Savings Area as defined in Figure 8 to this part.

* * * * *

9. In § 679.22, paragraphs (a)(3), (a)(5)(i), (a)(6), and (a)(9) are revised; in paragraphs (a)(7)(ii), (a)(8)(ii), and (b)(2)(ii) the cross-reference ''§ 679.20'' is changed to read ''§ 679.20(d);'' a new heading is added to paragraph (a)(10); and a new paragraph (i) is added to read as follows:

§ 679.22 Closures.

(a) * * *

(3) *Red King Crab Savings Area (RKCSA).* Directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear is prohibited at all times, except as provided at § 679.21(e)(4)(ii)(B), in that part of the Bering Sea subarea defined as RKCSA in Figure 11 to this part.

* * * * *

(5) * * *

(i) *Inshore component.* The CVOA (see Figure 2 to this part) is established annually from the beginning of the second season of directed fishing for pollock defined at § 679.23(e) until either the date that NMFS determines that the pollock quota for processing by the inshore component has been harvested, or December 31, whichever is earlier.

* * * * *

(6) *Pribilof Island Area Habitat Conservation Zone.* Trawling is prohibited at all times in the area defined in Figure 10 to this part as the Pribilof Island Area Habitat Conservation Zone.

* * * * *

(9) *Nearshore Bristol Bay Trawl Closure.* Directed fishing for groundfish by vessels using trawl gear in Bristol Bay, as described in the current edition of NOAA chart 16006, is closed at all times in the area east of 162°00′ W. long., except that the Nearshore Bristol Bay Trawl Area defined in Figure 12 to this part is open to trawling from 1200 hours A.l.t., April 1 to 1200 hours A.l.t., June 15 of each year.

(10) *Chum Salmon Savings Area.*

* * *

* * * * *

(i) *Forage fish closures.* See § 679.20(i)(3).

10. In § 679.23, the headings of paragraphs (a), (d), and (e) and paragraph (g)(3) are revised and the term ''Western Alaska Community Development Quota'' is replaced with ''CDQ'' in paragraphs (e)(2)(ii) (C) and (D) to read as follows.

§ 679.23 Seasons.

(a) *Groundfish, general.* * * *

* * * * *

(d) *GOA groundfish seasons.* * * *

(e) *BSAI groundfish seasons.* * * *

* * * * *

(g) * * *

(3) Catches of sablefish in excess of the maximum retainable bycatch amounts and catches made without IFQ must be treated in the same manner as prohibited species as defined at § 679.21(b).

11. In § 679.41, the section heading is revised, and the headings to paragraphs (e)(1) through (3) are added to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(e) * * *

(1) *General.* * * *

(2) *Sablefish.* * * *

(3) *Halibut.* * * *

12. In § 679.42, paragraphs (c)(1)(iv), (c)(2) introductory text, and (c)(2)(ii) are revised and a heading is added to paragraph (c)(2)(i) to read as follows:

679.42 Limitations on use of QS and IFQ.

* * * * *

(c) * * *

(1) * * *

(iv) Sign the IFQ landing report required by §§ 679.5(l)(2)(ii)(C) and (iii)(B).

(2) The scale weight of the halibut or sablefish product actually measured at the time of landing, required by § 679.5(l)(2)(vi) to be included in the IFQ landing report, shall be the only source of information used by NMFS to debit an IFQ account. An IFQ account will be debited as follows:

(i) *Sablefish product.* * * *

(ii) *Halibut product.* For halibut product, multiplying the scale weight at the time of landing by the conversion factor found in Table 3 to this part that corresponds to the product code reported in the IFQ landing report.

* * * * *

13. In part 679, Tables 1, 2, 3, 7, 10, and 11 to this part and Figures 2 and 7 to this part are revised and Figures 8 through 15 to this part are added to read as follows:

BILLING CODE 3510–22–P

Table 1 to Part 679--Product Codes

Fish	Product Code
3.	Bled only. Throat, or isthmus, slit to allow blood to drain.
4.	Gutted, head on. Belly slit and viscera removed.
5.	Gutted, head off. IFQ Pacific halibut only.
6.	Head and gutted, with roe.
7.	Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed.
8.	Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.
10.	Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.
11.	Kirimi. Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.
12.	Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.
13.	Wings. On skates, side fins are cut off next to body.
14.	Roe. Eggs; either loose or in sacs, or skeins.
15.	Pectoral girdle. Collar bone and associated bones, cartilage and flesh.
16.	Heads. Heads only, regardless where severed from body.
17.	Cheeks. Muscles on sides of head.
18.	Chins. Lower jaw (mandible), muscles, and flesh.
19.	Belly. Flesh in region of pelvic and pectoral fins and behind head.
20.	Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.
21.	Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.
22.	Fillets with ribs and no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.
23.	Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.
24.	Deep-skin fillet. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.
30.	Surimi. Paste from fish flesh and additives.
31.	Minced. Ground flesh.
32.	Fish meal. Meal from whole fish or fish parts; includes bone meal.
33.	Fish oil. Rendered oil from whole fish or fish parts.
34.	Milt. (in sacs, or testes).
35.	Stomachs. Includes all internal organs.
36.	Octopus/squid mantles. Flesh after removal of viscera and arms.
37.	Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached.
39.	Bones (if meal, report as 32).
51.	Whole fish/food fish with ice and slime. IFQ sablefish only.

54. Gutted, head on, with ice and slime. Belly slit and viscera removed. IFQ Pacific halibut and sablefish only.
55. Gutted, head off, with ice and slime. IFQ Pacific halibut only.
57. Headed and gutted, Western cut, with ice and slime. IFQ sablefish only.
58. Headed and gutted, Eastern cut, with ice and slime. IFQ sablefish only.
86. Donated prohibited species. Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program.
97. Other retained product

WHOLE FISH CODES

When using the following codes, log round weights and not product weights, even if the whole fish is not used.

1. Whole fish/food fish.
2. Whole fish/bait. Processed for bait. Sold
41. Whole fish/destined for offsite fish meal production.
92. Whole fish/onboard bait. Whole fish used as bait on board vessel. Not sold.
95. Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait

DISCARD PRODUCT CODES

96. Previously discarded fish (decomposed) taken with trawl gear in current fishing efforts. Discarded.
98. Discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Buying Stations delivering to Motherships.
99. Discard, onshore. Discard after delivery and before processing by Shoreside Processors and Buying Stations delivering to Shoreside Processors and in-plant discard of whole groundfish and prohibited species during processing.

PRODUCT DESIGNATION (see 679.2)

A Ancillary.
P Primary.
R Reprocessed or rehandled.

Table 2 to Part 679--Species Codes

Code	Species
110	Pacific cod
120	Miscellaneous flatfish (all flatfish without separate codes)
121	Arrowtooth flounder and/or Kamchatka flounder
122	Flathead sole
123	Rock sole
124	Dover sole
125	Rex sole
126	Butter sole
127	Yellowfin sole
128	English sole
129	Starry flounder
131	Petrale sole
132	Sand sole
133	Alaska Plaice flounder
134	Greenland turbot
135	Greenstripe rockfish
136	Northern rockfish
137	Bocaccio rockfish
138	Copper rockfish
141	Pacific ocean perch (S. alutus only)
142	Black rockfish
143	Thornyhead rockfish (all Sebastolobus species)
145	Yelloweye rockfish
146	Canary rockfish
147	Quillback rockfish
148	Tiger rockfish
149	China rockfish
150	Rosethorn rockfish
151	Rougheye rockfish
152	Shortraker rockfish
153	Redbanded rockfish
154	Dusky rockfish
155	Yellowtail rockfish
156	Widow rockfish
157	Silvergray rockfish
158	Redstripe rockfish
159	Darkblotched rockfish
160	Sculpins
166	Sharpchin rockfish
167	Blue rockfish
175	Yellowmouth rockfish
176	Harlequin rockfish
177	Blackgill rockfish
178	Chilipepper rockfish
179	Pygmy rockfish
181	Shortbelly rockfish
182	Splitnose rockfish
183	Stripetail rockfish
184	Vermilion rockfish
185	Aurora rockfish
193	Atka mackerel
207	Gunnels (family Pholidae)
208	Pricklebacks, warbonnets, eelblennys, cockscombs and shannys (family Stichaeidae)
209	Bristlemouths, lightfishes, and anglemouths (family Gonostomatidae)
210	Pacific Sand fish (family Trichodontidae)
270	Pollock
510	Smelt
511	Eulachon and other smelts (family Osmeridae)
516	Capelin (family Osmeridae)
689	Sharks
700	Skates
710	Sablefish
772	Laternfishes (family Myctophidae)
773	Deep-sea smelts (family Bathylagidae)
774	Pacific Sand lance (family Ammodytidae)
800	Krill (order Euphausiacea)
870	Octopus
875	Squid
888	Mixed species tote (for use on Product Transfer Report only)
	GROUP CODES. These group codes may be used if individual species cannot be identified.
144	Slope rockfish (aurora, blackgill, Bocaccio, redstripe, silvergray, chilipepper, darkblotched, greenstriped, harlequin, pygmy, shortbelly, splitnose, stripetail, vermillion, yellowmouth, sharpchin)
168	Demersal shelf rockfish (china, copper, quillback, rosethorn, tiger, yelloweye, canary)
169	Pelagic shelf rockfish (dusky, yellowtail, widow)
171	Shortraker/rougheye rockfish
	PROHIBITED SPECIES CODES
000	Unspecified salmon
200	Pacific halibut
235	Pacific herring (Family of Clupeidae)
410	Salmon, Chinook
420	Salmon. Sockeye
430	Salmon, Coho
440	Salmon, Pink
450	Salmon, Chum
540	Steelhead trout
920	Unspecified king crab
921	Red king crab
922	Blue king crab
923	Gold/brown king crab
930	Unspecified tanner crab
931	Bairdi tanner crab
932	Opilio tanner crab

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut

FMP SPECIES	SPECIES CODE	PRODUCT CODE 1, 2, 41, 92, 94 WHOLE FISH	3 BLED	4 GUTTED HEAD ON	5 GUTTED HEAD OFF	6 H&G WITH ROE	7 H&G WESTERN CUT	8 H&G EASTERN CUT	10 H&G W/O TAIL	11 KIRIMI	12 SALTED & SPLIT	13 WINGS
PACIFIC COD	110	1.00	0.98	0.85	---	0.63	0.57	0.47	0.44	....	0.45	....
ARROWTOOTH FLOUNDER	121	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	....	....
ROCKFISH		1.00	0.98	0.88	....	---	0.60	0.50	....	....	....	....
SCULPINS	160	1.00	0.98	0.87	....	---	0.50	0.40	....	....	....	....
ATKA MACKEREL	193	1.00	0.98	0.87	---	0.67	0.64	0.61	....	....	....	....
POLLOCK	270	1.00	0.98	0.80	---	0.70	0.65	0.56	0.50	....	....	....
SMELTS	510	1.00	0.98	0.82	....	---	0.71	....	....	....	....	....
EULACHON	511	1.00	0.98	0.82	....	---	0.71	....	....	....	....	....
CAPELIN	516	1.00	0.98	0.89	....	---	0.78	....	....	....	....	....
SHARKS	689	1.00	0.98	0.83	....	---	0.72	....	....	....	....	....
SKATES	700	1.00	0.98	0.90	....	....	....	0.32	....	....	....	0.32
SABLEFISH	710	1.00	0.98	0.89	....	---	0.68	0.63	0.50	....	....	....
IFQ SABLEFISH	710	1.00	0.98	0.89	....	---	0.68	0.63	0.50	....	....	....
OCTOPUS	870	1.00	0.98	0.69	....	...	....	....	....	....	....	....
Target species categories GOA only												
DEEP WATER FLATFISH	118	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
FLATHEAD SOLE	122	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
REX SOLE	125	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
SHALLOW WATER FLATFISH	119	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
THORNYHEAD ROCKFISH	143	1.00	0.98	0.88	...	0.55	0.60	0.50	....	....	....	....
Target species categories BSAI only												
OTHER FLATFISH	120	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
ROCK SOLE	123	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
YELLOWFIN SOLE	127	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
GREENLAND TURBOT	134	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	
SQUID	875	1.00	0.98	0.69	....	...	....	....	....	....	....	....
Conversion rates for Pacific halibut												
PACIFIC HALIBUT	200	---	---	0.90	1.0	---	---	---	---	---	---	---

(continued)

Table 3 to Part 679 (continued)--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut

FMP SPECIES	SPECIES CODE	PRODUCT CODE 14 ROE	15 PECTORAL GIRDLE	16 HEADS	17 CHEEKS	18 CHINS	19 BELLY	20 FILLETS W/SKIN & RIBS	21 FILLETS SKIN ON NO RIBS	22 FILLETS W/RIBS NO SKIN	23 FILLETS SKNLESS/ BONELESS	24 FILLETS DEEP SKIN	30 SURIMI	31 MINCE
PACIFIC COD	110	0.05	0.05	....	0.05	....	0.01	0.45	0.35	0.25	0.25	....	0.15	0.5
ARROWTOOTH FLOUNDER	121	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
ROCKFISH	....	...	....	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	....	....	....
SCULPINS	160	...	....	....	....	....	....	....	....	....	....	....	....	....
ATKA MACKEREL	193	...	....	....	....	....	....	....	....	....	....	....	0.15	....
POLLOCK	270	0.07	....	0.15	....	....	....	0.35	0.30	0.30	0.21	0.16	0.16[1] 0.17[2]	0.22
SMELTS	510	...	....	....	....	....	....	....	0.38	....	....	....	....	....
EULACHON	511	...	....	....	....	....	....	....	0.38	....	....	....	....	....
CAPELIN	516	...	....	....	....	....	....	....	....	....	....	....	....	....
SHARKS	689	...	....	....	....	....	....	....	0.30	0.30	0.25	....	....	....
SKATES	700	...	....	....	....	....	....	....	....	....	....	....	....	....
SABLEFISH	710	...	....	....	0.05	....	....	0.35	0.30	0.30	0.25	....	....	....
IFQ SABLEFISH	710	...	....	....	0.05	....	....	0.35	0.30	0.30	0.25	....	....	....
OCTOPUS	870	...	....	....	....	....	....	....	....	....	....	....	....	....
Target species categories at GOA only														
DEEP WATER FLATFISH	118	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
FLATHEAD SOLE	122	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
REX SOLE	125	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
SHALLOW WATER FLATFISH	119	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
THORNYHEAD ROCKFISH	143	...	....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	....	....	....
Target species categories at BSAI only														
OTHER FLATFISH	120	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
ROCK SOLE	123	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
YELLOWFIN SOLE	127	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	0.18	....
GREENLAND TURBOT	134	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
SQUID	875	...	....	....	....	....	....	....	....	....	....	....	....	....
Conversion rates for Pacific halibut														
PACIFIC HALIBUT	200	----	----	----	----	----	----	----	----	----	----	----	----	

(continued)

Table 3 to Part 679 (continued)--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut

FMP SPECIES	SPECIES CODE	PRODUCT CODE 32 MEAL	33 OIL	34 MILT	35 STOMACHS	36 MANTLES	37 BUTTERFLY BACKBONE REMOVED	51 WHOLE FISH W/I&S	54 GUTTED HEAD ON W/I&S	55 GUTTED HEAD OFF W/I&S	57 H&G WESTERN W/I&S	58 H&G EASTERN W/I&S	96 DECOMPOSED FISH	98, 99 DISCARDS
PACIFIC COD	110	0.17	....	....	....	....	0.43	----	----	----	----	----	0.00	1.00
ARROWTOOTH FLOUNDER	121	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
ROCKFISH		....	....	....	....	....	----	----	----	----	----	----	0.00	1.00
SCULPINS	160	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
ATKA MACKEREL	193	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
POLLOCK	270	0.17	....	....	....	....	0.43	----	----	----	----	----	0.00	1.00
SMELTS	510	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
EULACHON	511	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
CAPELIN	516	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
SHARKS	689	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
SKATES	700	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
SABLEFISH	710	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
IFQ SABLEFISH	710	0.17	....	....	....	....	....	1.02	0.91	----	0.70	0.65	0.00	1.00
OCTOPUS	870	0.17	....	....	....	0.85	1.00	----	----	----	----	----	0.00	1.00
Target species categories at GOA only														
DEEP WATER FLATFISH	118	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
FLATHEAD SOLE	122	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
REX SOLE	125	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
SHALLOW WATER FLATFISH	119	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
THORNYHEAD ROCKFISH	143	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
Target species categories at BSAI only														
OTHER FLATFISH	120	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
ROCK SOLE	123	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
YELLOWFIN SOLE	127	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
GREENLAND TURBOT	134	0.17	....	....	....	....	....	----	----	----	----	----	0.00	1.00
SQUID	875	0.17	....	....	....	0.75	1.00	----	----	----	----	----	0.00	1.00
Conversion rates for Pacific halibut														
PACIFIC HALIBUT	200	----	----	----	----	----	----	----	0.88	0.98	----	----	----	----

[1]Standard pollock surimi rate during January through June.
[2]Standard pollock surimi rate during July through December.

Table 7 to Part 679--Communities Determined to be Eligible to Apply for Community Development Quotas

(Other communities that do not appear on this table may also be elgible.)

Aleutian Region

1. Akutan
2. Atka
3. False Pass
4. Nelson Lagoon
5. Nikolski
6. St. George
7. St. Paul

Bering Strait

1. Brevig Mission
2. Diomede/Inalik
3. Elim
4. Gambell
5. Golovin
6. Koyuk
7. Nome
8. Savoonga
9. Shaktoolik
10. St. Michael
11. Stebbins
12. Teller
13. Unalakleet
14. Wales
15. White Mountain

Bristol Bay

1. Alegnagik
2. Clark's Point
3. Dillingham
4. Egegik
5. Ekuk
6. Manokotak
7. Naknek
8. Pilot Point/Ugashik
9. Port Heiden/Meschick
10. South Naknek
11. Sovonoski/King Salmon
12. Togiak
13. Twin Hills

Southwest Coastal Lowlands

1. Alakanuk
2. Chefornak
3. Chevak
4. Eek
5. Emmonak
6. Goodnews Bay
7. Hooper Bay
8. Kipnuk
9. Kongiganak
10. Kotlik
11. Kwigillingok
12. Mekoryuk
13. Newtok
14. Nightmute
15. Platinum
16. Quinhagak
17. Scammon Bay
18. Sheldon's Point
19. Toksook Bay
20. Tununak
21. Tuntutuliak

Table 10 to Part 679--Current Gulf of Alaska Retainable Percentages

	BYCATCH SPECIES[1]												
	Pollock	Pacific Cod	Deep flatfish	Rex Sole	Flathead Sole	Shallow flatfish	Arrow-tooth	Sable-Fish	Aggregated rockfish[2]	DSR SEEO[4]	Aggregate Atka mackerel	Forage fish[5]	Other species
BASIS SPECIES[1]													
Pollock	na[3]	20	20	20	20	20	35	1	5	10	20	2	20
Pacific cod	20	na[3]	20	20	20	20	35	1	5	10	20	2	20
Deep flatfish	20	20	na[3]	20	20	20	35	7	15	1	20	2	20
Rex sole	20	20	20	na[3]	20	20	35	7	15	1	20	2	20
Flathead sole	20	20	20	20	na[3]	20	35	7	15	1	20	2	20
Shallow flatfish	20	20	20	20	20	na[3]	35	1	5	10	20	2	20
Arrowtooth	5	5	0	0	0	0	na[3]	0	0	0	0	2	0
Sablefish	20	20	20	20	20	20	35	na[3]	15	1	20	2	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
DSR-SEEO	20	20	20	20	20	20	35	7	15	na[3]	20	2	20
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	na[3]	2	20
Other species	20	20	20	20	20	20	35	1	5	10	20	2	na[3]
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	2	20

[1]For definition of species, see Table 1 to the Gulf of Alaska groundfish specifications.
[2]Aggregated rockfish means rockfish defined at 679.2 except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3]na = not applicable.
[4]SEEO = Southeast Outside District.
[5]Forage fish are defined at §679.2.

Table 11 to Part 679--Bering Sea and Aleutian Islands Management Area Retainable Percentages

	BYCATCH SPECIES[1]														
	Pollock	Pacific cod	Atka mackerel	Arrow-tooth	Yellowfin sole	Other flatfish	Rocksole	Flathead sole	Greenland turbot	Sable-fish	Short-raker/ rougheye (AI)	Aggregated rockfish[2]	Squid	Aggregate Forage Fish[3]	Other species
BASIS SPECIES[1]															
Pollock	na[4]	20	20	35	20	20	20	20	1	1	2	5	20	2	20
Pacific cod	20	na[4]	20	35	20	20	20	20	1	1	2	5	20	2	20
Atka mackerel	20	20	na[4]	35	20	20	20	20	1	1	2	5	20	2	20
Arrowtooth	0	0	0	na[4]	0	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na[4]	35	35	35	1	1	2	5	20	2	20
Other flatfish	20	20	20	35	35	na[4]	35	35	1	1	2	5	20	2	20
Rocksole	20	20	20	35	35	35	na[4]	35	1	1	2	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na[4]	35	15	7	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na[4]	15	7	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na[4]	7	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	na[4]	15	20	2	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Sharpchin/ Northern-AI	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Shortraker/ Rougheye-AI	20	20	20	35	20	20	20	20	35	15	na[4]	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	2	5	na[4]	2	20
Other species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na[4]
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

[1]For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2]Aggregated rockfish of the genera Sebastes and Sebastolobus except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.
[3]Forage fish are defined at § 679.2.
[4]na = not applicable.

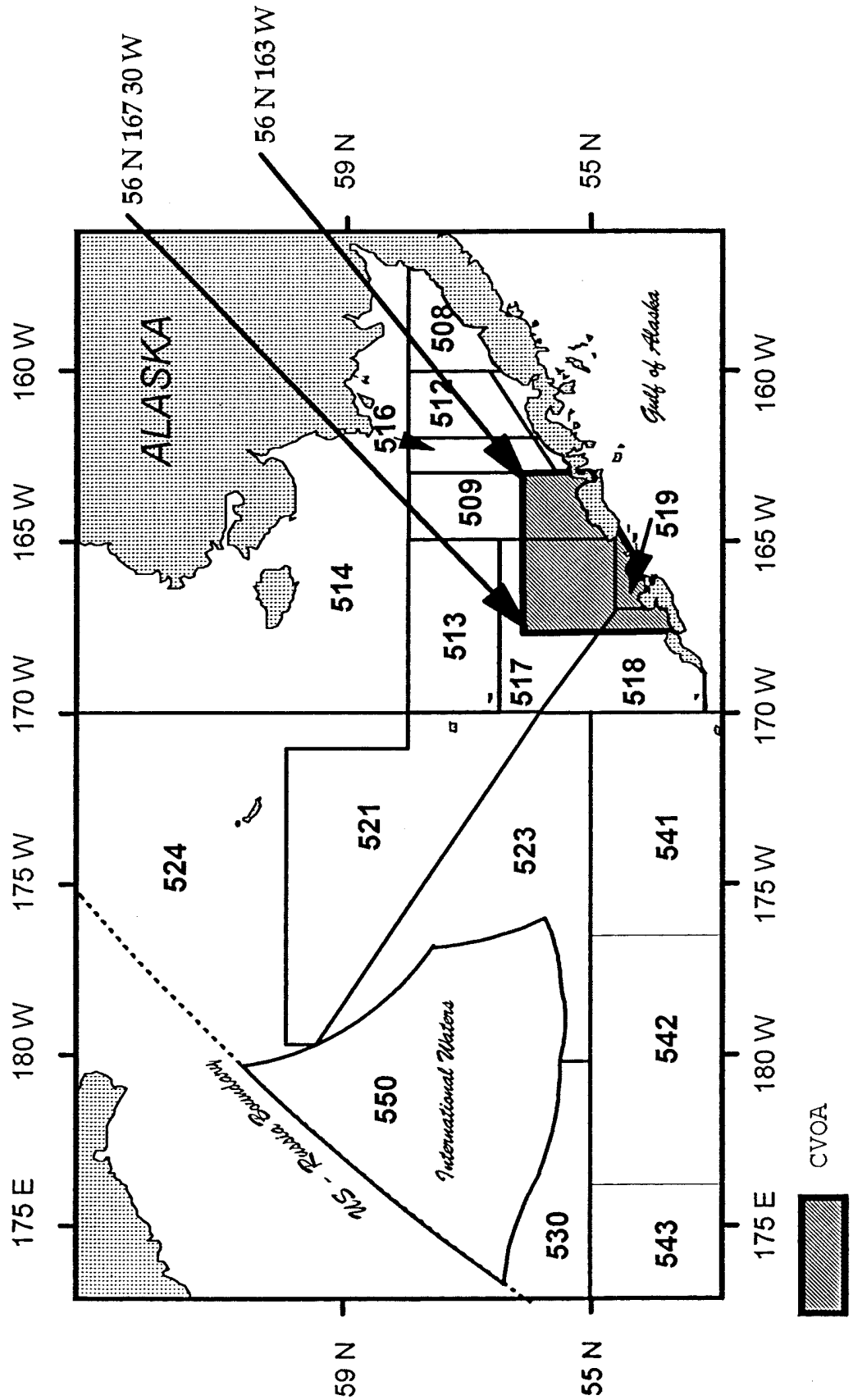

Figure 2 to Part 679. BSAI Catcher Vessel Operational Area (CVOA) (South of 56° 00' N. Lat. between 163° 00' W. and 167° 30' W. Long.)

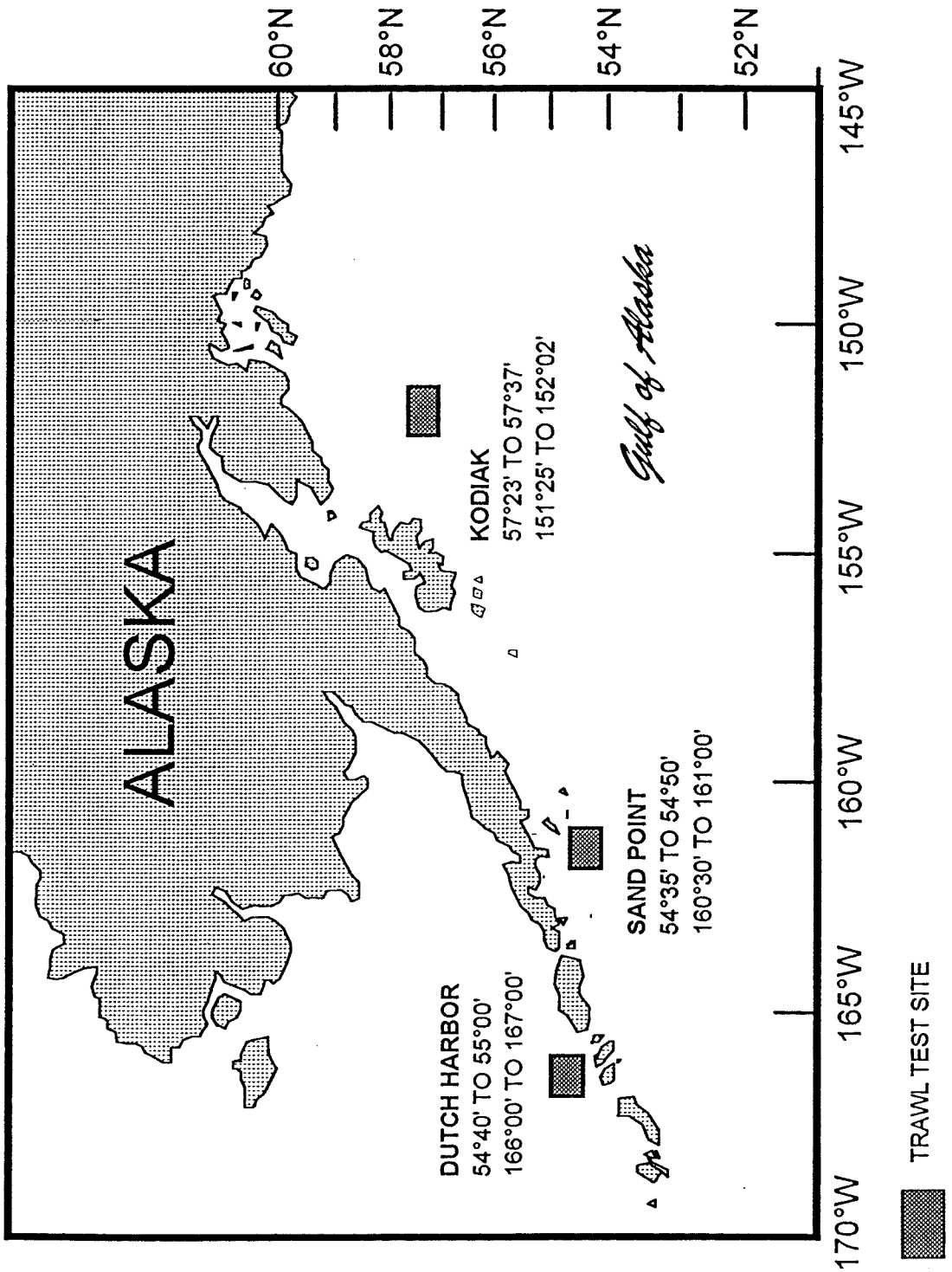

Figure 7 to Part 679. Location of Trawl Gear Test Areas in the GOA and the BSAI

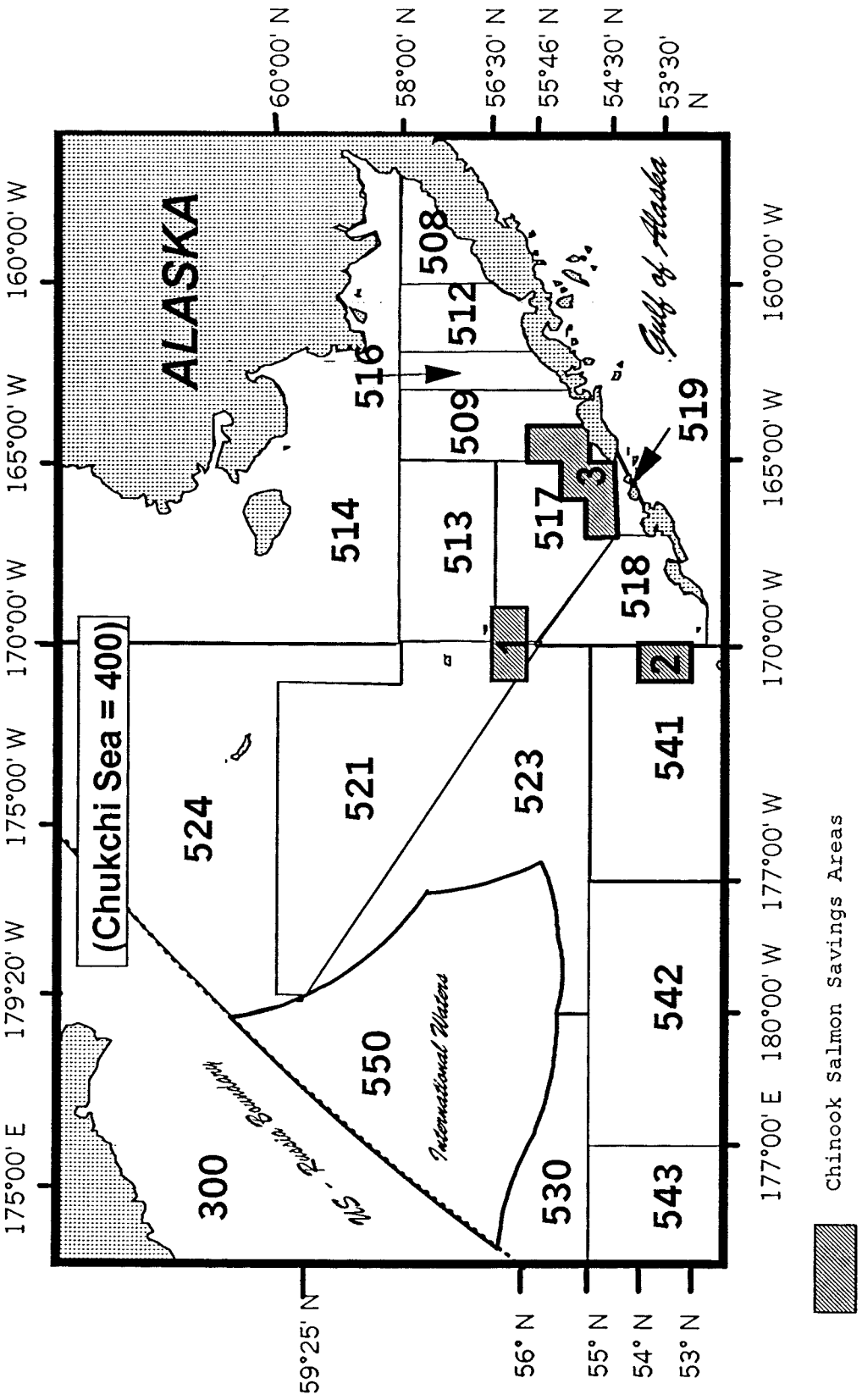

Figure 8 to Part 679. Chinook Salmon Savings Areas of the BSAI a. map

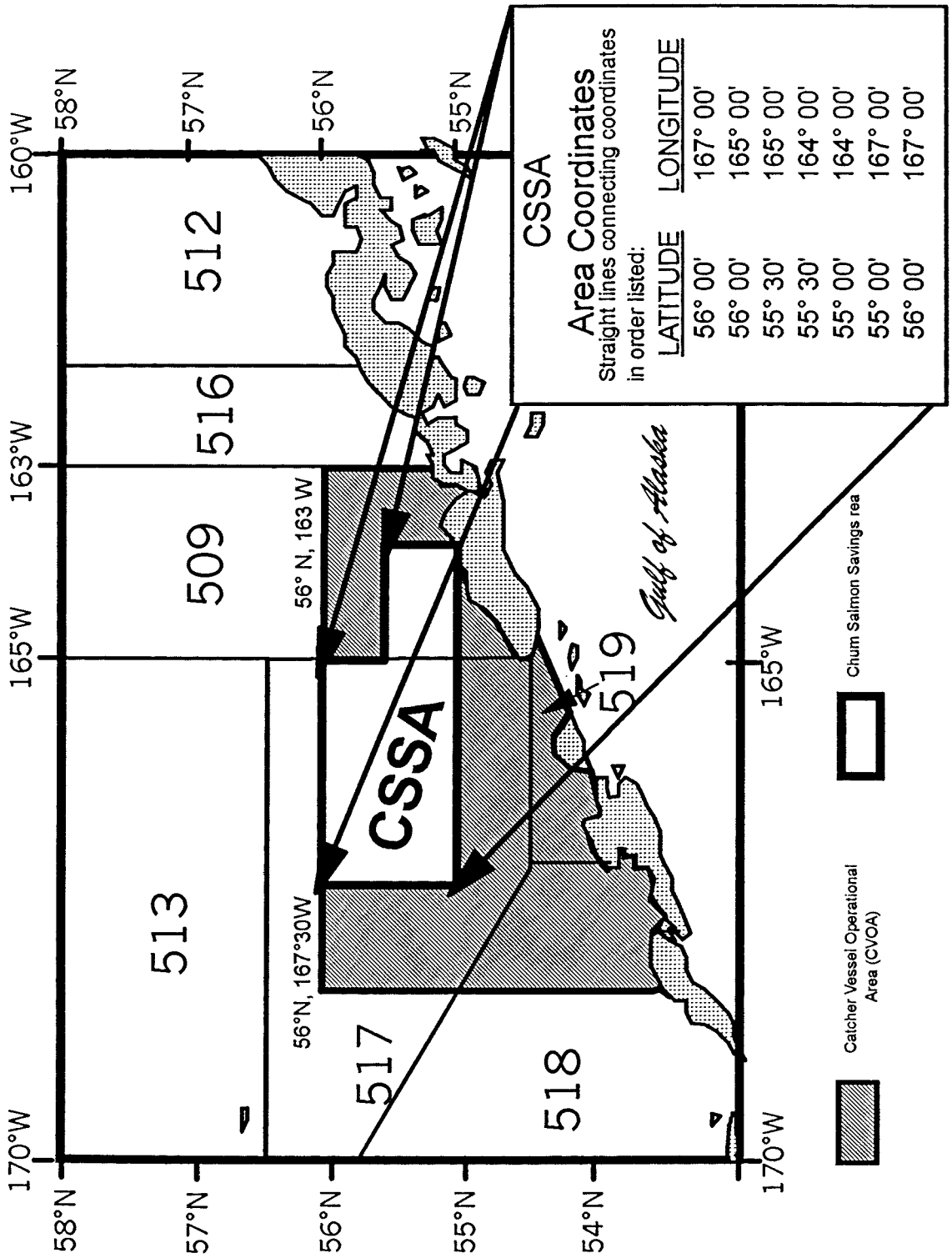

Figure 9 to Part 679. Chum Savings Area (CSSA) of the CVOA

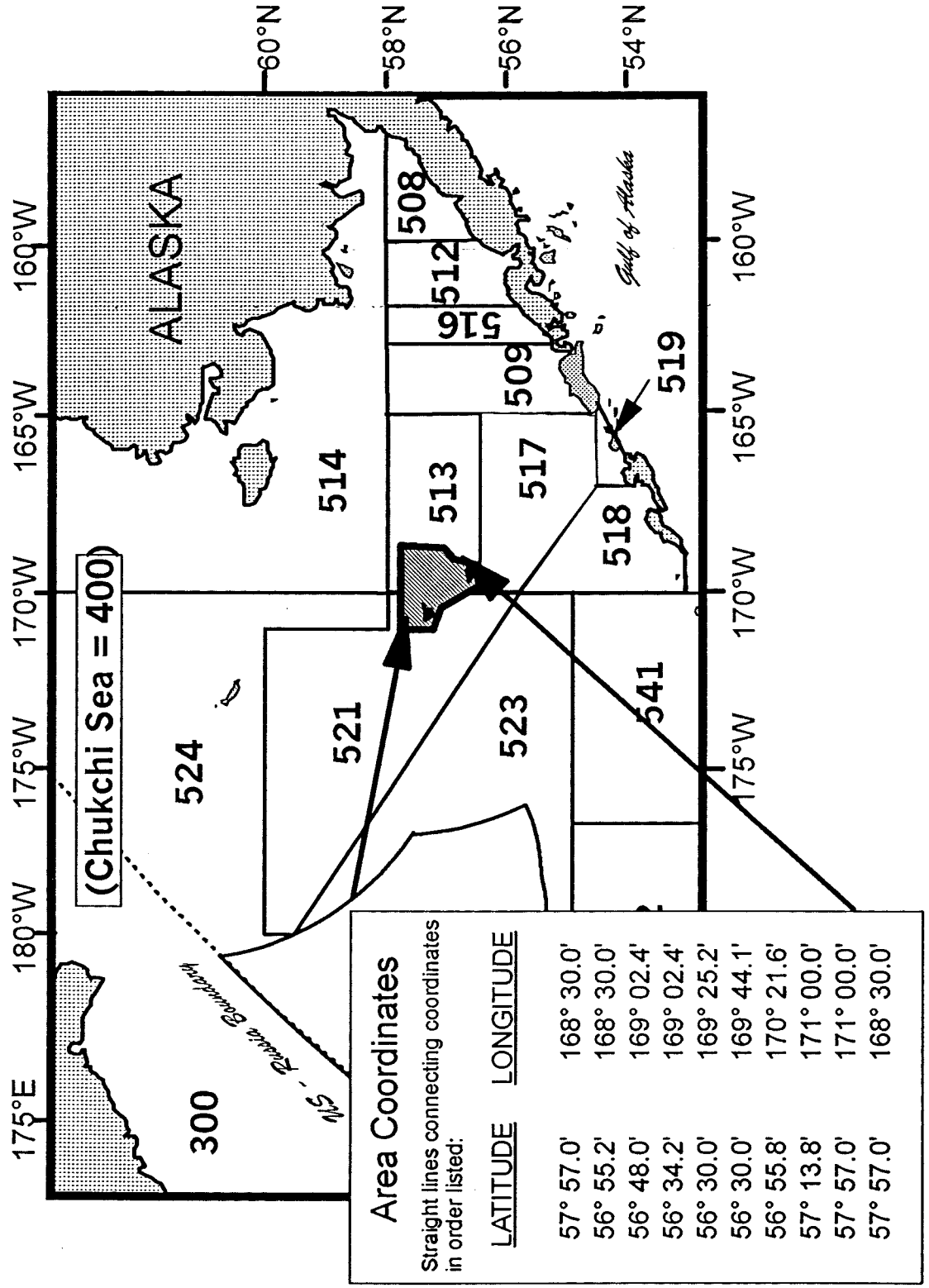

Figure 10 to Part 679. Pribilof Islands Area Habitat Conservation Zone

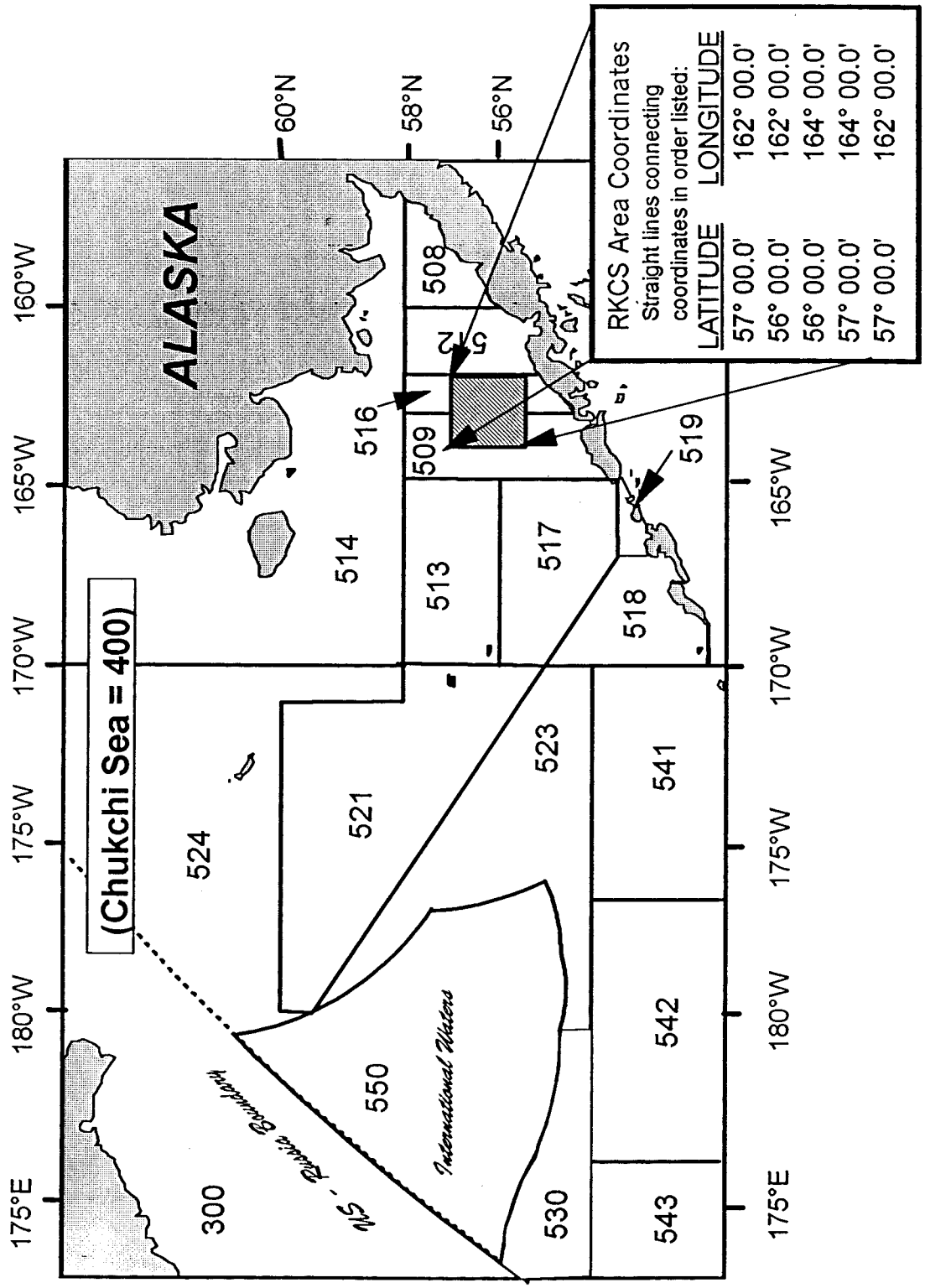

Figure 11 to Part 679. Red King Crab Savings Area (RKCSA). (Red King Crab Savings Subarea (RKCSS) is that portion of the RKCSA between 56°00' and 56°10')

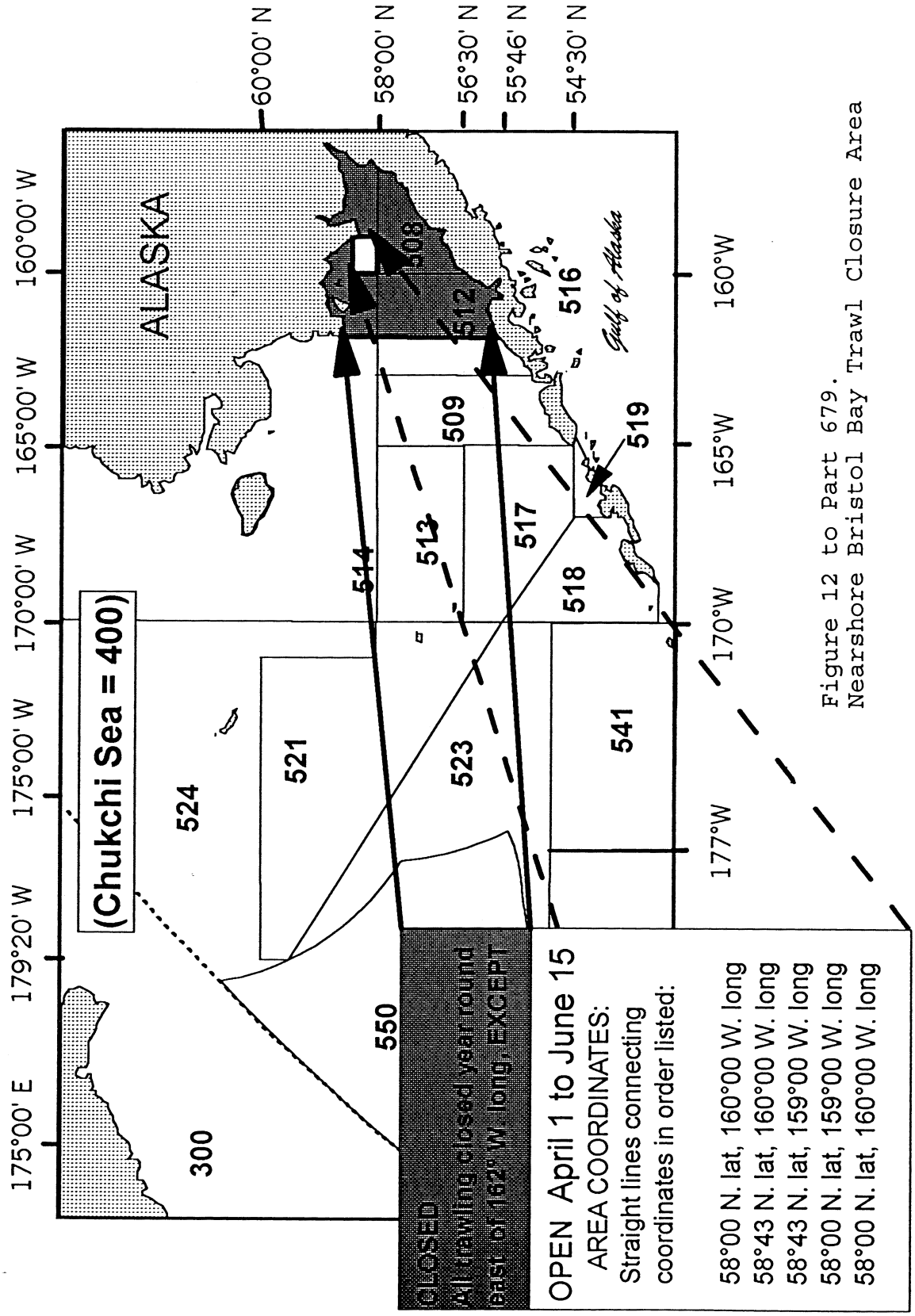

Figure 12 to Part 679.
Nearshore Bristol Bay Trawl Closure Area

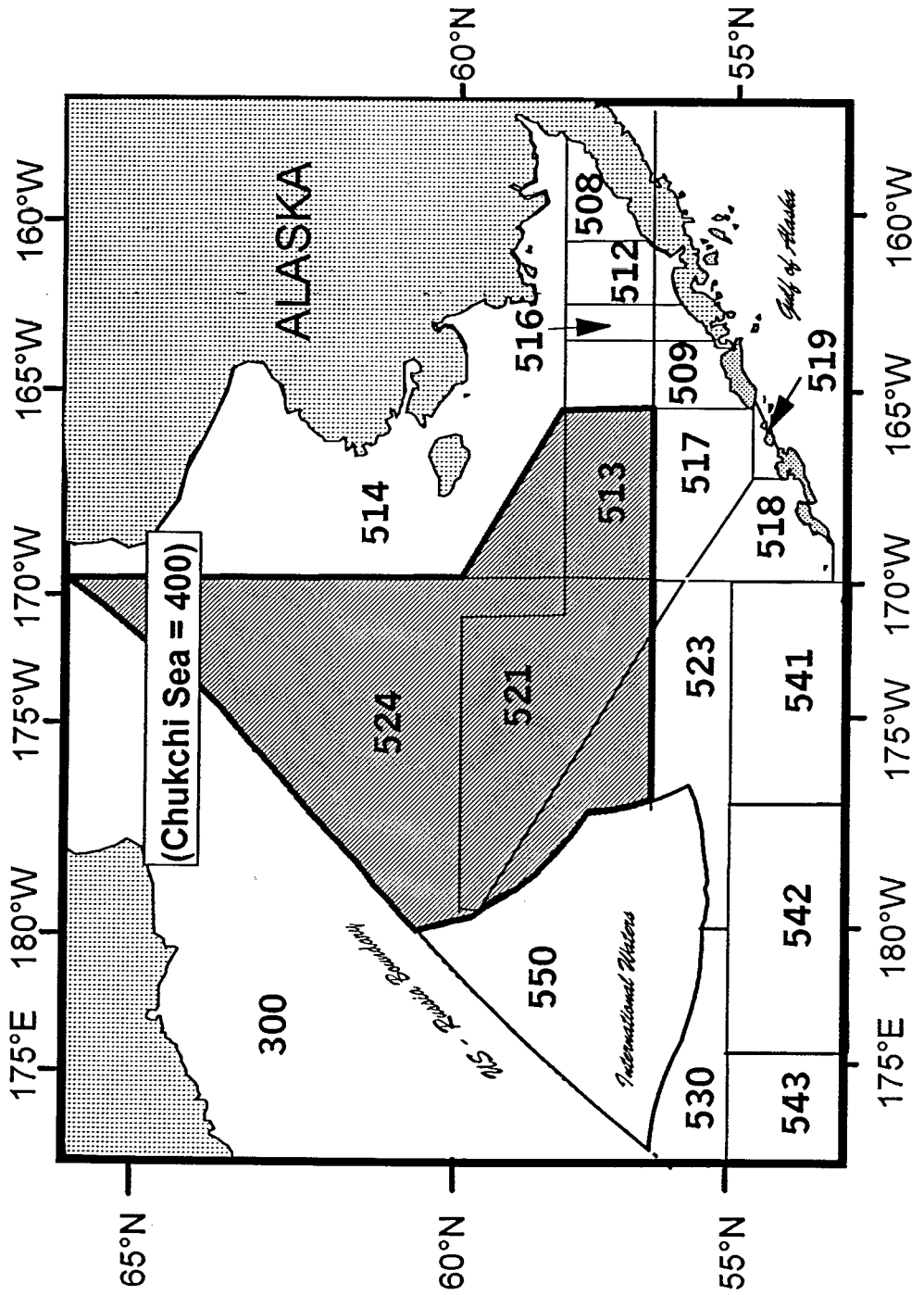

Figure 13 to Part 679. BSAI C. Opilio Tanner Crab Bycatch Limitation Zone (COBLZ)
a. Map

Figure 13 to Part 679. BSAI C. Opilio Tanner Crab Bycatch Limitation Zone (COBLZ)
b. Coordinates

The COBLZ is an area defined as that portion of the Bering Sea Subarea north of 56°30' N. lat. that is west of a line connecting the following coordinates in the order listed:

56° 30' N. lat.	165° 00' W. long.
58° 00' N. lat.	165° 00' W. long.
59° 30' N. lat.	170° 00' W. long.

and north along 170° 00' W. long. to its intersection with the U.S.-Russia Boundary.

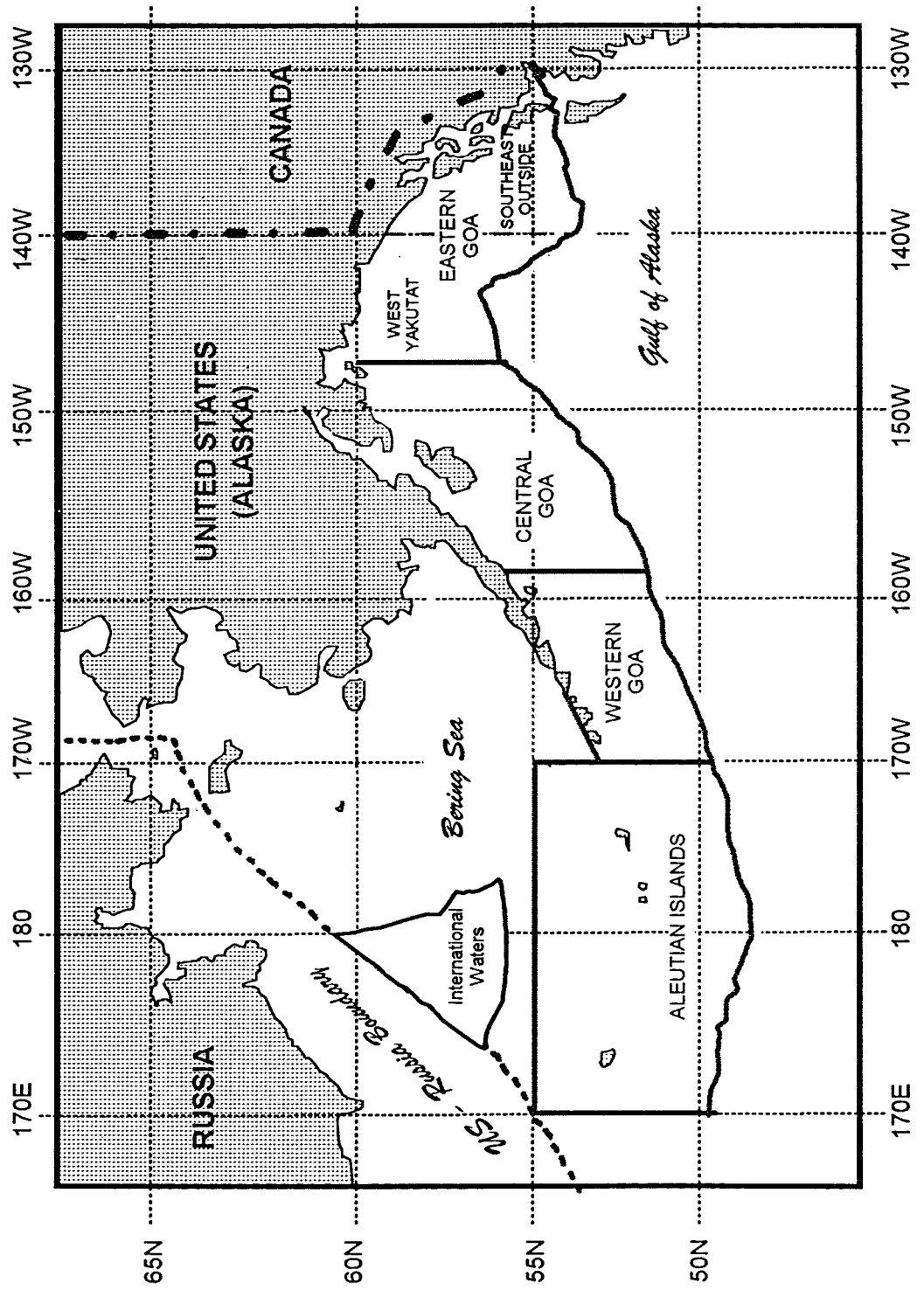

Figure 14 to Part 679. Sablefish Regulatory Areas

NOTE: Refer to Figures 1 and 3 for coordinates.

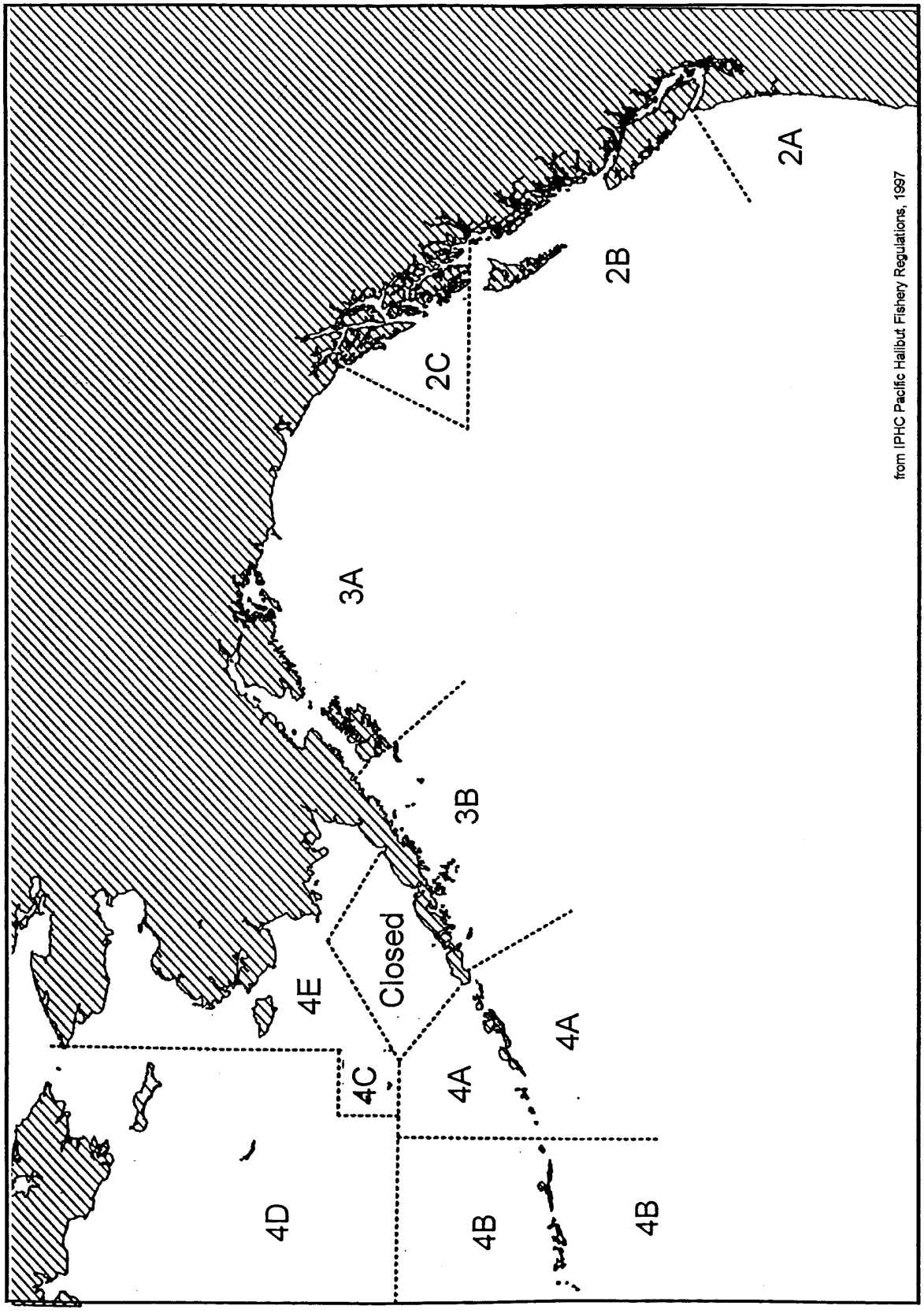

Figure 15 to Part 679. Regulatory Areas for the Pacific Halibut Fishery a. Map

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Figure 15 to Part 679. Regulatory Areas for the Pacific Halibut Fishery b. Coordinates

Area 2A includes all waters off the states of California, Oregon, and Washington;

Area 2B includes all waters off British Columbia;

Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′57″ N. lat., 136°38′18″ W. long.) and south and east of a line running 205° true from said light;

Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. lat., 155°35′00″ W. long.) to Cape Ikolik (57°17′17″ N. lat., 154°47′18″ W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. lat., 154°08′44″ W. long.), then 140° true;

Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. lat., 164°20′00″ W. long.) and south of 54°49′00″ N. lat. in Isanotski Strait;

Area 4A includes all waters in the GOA west of Area 3B and in the Bering Sea west of the closed area defined below that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.;

Area 4B includes all waters in the Bering Sea and the GOA west of Area 4A and south of 56°20′00″ N. lat.;

Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined below which are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.;

Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.;

Area 4E includes all waters in the Bering Sea north and east of the closed area defined below, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat.

Closed areas

All waters in the Bering Sea north of 54°49′00″ N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. lat., 164°55′42″ W. long.) to a point at 56°20′00″ N. lat., 168°30′00″ W. long.; thence to a point at 58°21′25″ N. lat., 163°00′00″ W. long.; thence to Strogonof Point (56°53′18″ N. lat., 158°50′37″ W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light.

In Area 2A, all waters north of Point Chehalis, WA (46°53′18″ N. lat.).

[FR Doc. 98 23732 Filed 9–3–98; 8:45 am]

BILLING CODE 3510–22–P

Friday
September 4, 1998

Part III

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–991]

Administration for Native Americans, Availability of Financial Assistance

AGENCY: Administration for Native Americans, ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiians, Alaska Natives and Native American Pacific Islanders.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1999 funds in three competitive areas:

(1) Governance and social and economic development;

(2) Governance and social and economic development for Alaska Native entities; and

Financial assistance provided by ANA in support of projects in these three areas is intended to promote the goal of self-sufficiency for Native Americans.

APPLICATION KIT: Application kits, approved by the OMB under control number 0980–0204, which expires August 31, 1999, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained:

By Mail: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans 370 L'Enfant Promenade, SW, Mail Stop HHH 348–F, Washington, D.C. 20447–0002, Attention: Aaron Sadler/Application Kit.

By Telephone: Call Janean Chambers, Telephone: (202) 690–6547.

By Telefax: Fax: (202) 690–7441.

By Word-Wide-Web: Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: http://www.acf.dhhs.gov/programs/ana/index.html

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

SUPPLEMENTARY INFORMATION:

Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1999 funds, authorized under the Native American Programs Act of 1974 (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in three competitive areas. Funding authorization is provided under sections 803(a), and 803(d) of the Native American Programs Act of 1974, as amended (Pub. L. 93–644, 88 Stat. 2324, 42 U.S.C. 2991b).

The Indian Environmental Regulatory Enhancement Act of 1990 (Pub. L. 101–408) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Administration for Native Americans assists eligible applicants for the three competitive areas to undertake 12 to 36 month development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

In order to streamline the application process for eligible applicants under three competitive areas, ANA is issuing a single program announcement for fiscal year 1999 funds. Information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for all three competitive areas is included in this announcement.

The Administration for Native Americans promotes the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. The Native American Programs Act also authorizes ANA to establish an additional program for environmental regulatory enhancement.

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 1999 and the availability of funds for the three competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

ANA continues a variety of requirements directed towards enforcing its policy that an eligible grant recipient may only have one active ANA grant awarded from a competitive area at any time. Therefore, while eligible applicants may compete for a grant in each of the three competitive areas, an applicant may only submit one application per competitive area and no applicant may receive more than one grant in each competitive area, including any existing ANA grant. Also, an Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the May closing date. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both.

ANA introduces two new requirements within the review criteria for budget proposals in applications. All applicants must clearly demonstrate a plan for an employee fringe benefit package which includes an employee retirement plan benefit, and the funding of travel for key personnel to attend post-award grant management and administration training sponsored by ANA.

This program announcement consists of three parts.

Part I ANA Policy and Goals

Provides general information about ANA's policies and goals for the three competitive areas. This section contains information pertaining to all applicants.

Part II ANA Competitive Areas

Describes the three competitive areas under which ANA is requesting applications:

- COMPETITIVE AREA 1: SOCIAL AND ECONOMIC DEVELOPMENT STRATEGIES (SEDS) PROJECTS;
- COMPETITIVE AREA 2: ALASKA-SPECIFIC SOCIAL AND ECONOMIC DEVELOPMENT STRATEGIES (SEDS) PROJECTS;
- COMPETITIVE AREA 3: INDIAN ENVIRONMENTAL REGULATORY ENHANCEMENT PROJECTS.

Each competitive area includes the following sections which provide information to be used to develop an application :

A. PURPOSE AND AVAILABILITY OF FUNDS
B. BACKGROUND
C. PROPOSED PROJECTS TO BE FUNDED
D. ELIGIBLE APPLICANTS
E. GRANTEE SHARE OF THE PROJECT
F. REVIEW CRITERIA
G. APPLICATION DUE DATE
H. CONTACT INFORMATION:

Part III General Application Information and Guidance

Provides important information and guidance that applies to all three competitive areas and that must be taken into account in developing an application for any of the three areas.

A. DEFINITIONS
B. ACTIVITIES THAT CANNOT BE FUNDED
C. MULTI-YEAR PROJECTS
D. INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS
E. THE APPLICATION PROCESS
F. THE REVIEW PROCESS
G. GENERAL GUIDANCE TO APPLICANTS
H. PAPERWORK REDUCTION ACT OF 1995 Act of 1995
I. RECEIPT OF APPLICATIONS

Part I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. *Governance:* To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

2. *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.

3. *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

Applicants must comply with certain the following administrative policies:

- Current grantees whose grant project period extends beyond September 30, 1999, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the same program area. Current SEDS or Alaska-specific SEDS grantees with project periods beyond September 30, 1999, may not compete for additional SEDS or Alaska-specific SEDS grants. Current Indian Environmental Regulatory Enhancement grantees with project periods beyond September 30, 1999, may not compete for additional Indian Environmental Regulatory Enhancement grants.
- Applicants for any competitive area may propose 12 to 36 month projects.
- Applicants must describe a locally-determined strategy to carry out a proposed project with fundable objectives and activities.
- Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- An applicant may submit a separate application under any of the competitive areas, as long as the applicant meets the eligibility requirements. However, for the May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.
- Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.
- Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.
- If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.
- Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for these organizations for the purpose of eligibility for ANA funds.
- Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% of the total $125,000 project cost).

As per 45 CFR Part 74.2, In-Kind contributions are defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party-in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services

directly benefiting and specifically identifiable to the project or program.''

In addition it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match and provided the source relates to the ANA project, examples follow:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

- If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.
- A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.
- Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Pub. L. 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, for the ANA grants under these announced programs, no match is required for grants to these insular areas.

Part II—ANA Competitive Areas

The three competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, special application requirements, and review criteria. The standard requirements necessary for each application, as well as standard ANA program guidance and technical guidance are described in Part III of this announcement.

ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

This competitive area promotes the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately $14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. ANA anticipates awarding approximately 120 competitive grants ranging from $30,000 to $1,000,000.

B. Background

ANA assists tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy uses the following definitions:

- *Governmental infrastructure* includes the constitutional, legal, and administrative development requisite for independent governance.
- *Economic infrastructure* includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- *Social infrastructure* includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

C. Proposed Projects To Be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives. The types of projects which ANA may fund include, but are not limited to, the following:

Governance

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or the development of tribal court systems);
- Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);
- Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, or of the United States;
- Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgement or in response to any obvious deficiencies cited by the Bureau of Acknowledgement and Research

(BAR), Department of Interior, in a petition from a Native group seeking Federal recognition; and

- Development of and/or amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

Economic Development

- Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure;
- Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, technology, fabrication and construction companies, housing and fisheries or aquaculture;
- Stabilizing and diversifying a Native community's economic base through business development ventures; and,
- Creation of microenterprises or private sector development.

Social Development

- Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;
- Developing local and intertribal models related to comprehensive planning and delivery of services;
- Developing programs or activities to preserve and enhance tribal heritage and culture; and
- Establishing programs which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

Other SEDS Relationships. ANA encourages projects designed to use the SEDS approach to help achieve current priorities of the Administration for Children and Families which are to:

- Address welfare reform initiatives such as moving families to work.
- Help ensure child support from both parents.
- Create access to affordable child care for low income working families.
- Reach children earlier to promote full development, including links to Head Start, Early Head Start and Child Care.
- Help enroll children in quality Head Start and prepare them to be ready to learn.
- Provide safety, permanency and well-being for children and double the number of adoptions from the public child welfare system.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and
- Tribally controlled community colleges, Tribally controlled cost-secondary vocational institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA SEDS grantees whose grant project period ends on or before September 30, 1999 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the ''Financial Assistance Award'' document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 1999.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the ACF share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals described in the Background section of this competitive area; include a social and economic development strategy which reflects the needs and specific circumstances of the local community; and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).
- In discussing their community-based, long-range goals, and the objectives for the proposed projects, non-Federally recognized and off-reservation groups must include a description of what constitutes their specific community.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, not merely letters of support. ''Letters of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources and therefore carry less significance.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications. (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Objective Work Plan and in the proposed budget. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 points)

The application proposes specific project Objective Work Plan(s) with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans

on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the planned ANA grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

- The plan must be ''qualified'', i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

G. Application Due Dates

The closing dates for submission of applications under this competitive area are: October 23, 1998, February 12, 1999 and May 21, 1999.

H. Contact Information

Leon McKoy, Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW, Mail Stop HHH 348–F, Washington, DC 20447, tel: (202) 690–6320, e-mail: LMcKoy@acf.dhhs.gov

Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects

A. Purpose and Availability of Funds

This competitive area funds Alaska Native social and economic development projects. Approximately $1.5 million of financial assistance is anticipated to be available for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 15–18 grants under this competitive area. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to $150,000, commensurate with approved multi-village objectives.

B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92–203.

While the Administration for Native Americans does not fund objectives or activities for the core administration of an organization. ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

C. Proposed Projects to be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

Governance

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;
- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;
- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and/or control to Native entities;
- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;
- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;
- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);

- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;
- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

Economic Development

- Assist villages in developing businesses and industries which: (1) use local materials; (2) create jobs for Alaska Natives; (3) are capable of high productivity at a small scale of operation; and (4) complement traditional and necessary seasonal activities;
- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;
- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;
- Assist in the establishment or expansion of new native-owned businesses; and
- Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

Social Development

- Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;
- Develop local models related to comprehensive planning and delivery of social services;
- Develop new service programs, initially established with ANA funds, which will be funded by local communities or the private sector for continued operation after the ANA grant expires.
- Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;
- Assist in obtaining licenses to provide housing or related services from State or local governments; and
- Develop businesses to provide relief for caretakers needing respite from human service-related care work.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA SEDS grantees in Alaska whose project period ends on or before September 30, 1999 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the ''Financial Assistance Award'' document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 1999.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use for-profit regional corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the ACF share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area 1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and

these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, not merely letters of support. ''Letters of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications. (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (45 points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the planned ANA grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate

the determination of cost allowability and the relevance of these costs to the proposed project; and

- Requests funds which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

- The plan must be ''qualified'', i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 21, 1999. Applicants are reminded that for this May closing, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both.

H. Contact Information

Christopher Beach, Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW, Mail Stop HHH 348–F, Washington, DC 20447, tel: (202) 401–7365, e-mail: CBeach@acf.dhhs.gov.

Competitive Area 3. Indian Environmental Regulatory Enhancement Projects

A. Purpose and Availability of Funds

This competitive area funds environmental regulatory enhancement projects. Approximately $3 million of financial assistance is anticipated to be available for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this competitive area. The funding level for a budget period of 12 months will be up to $250,000. An applicant may propose project periods of between 12 and 36 months.

B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before Congressional committees include:

- The need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- The lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- The lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality.

As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Pub. L. 101–408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

Environmental regulatory enhancement includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Development of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

C. Proposed Projects To Be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;

• Develop technical and program capability to meet tribal and Federal regulatory requirements;
• Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
• Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:
• Federally recognized Indian tribes;
• Incorporated non-federally and State recognized Indian tribes;
• Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
• Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
• Other tribal or village organizations or consortia of Indian tribes.
• Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

The following organizations are not eligible to apply based on the determination that they do not own or manage resources for which environmental regulatory projects are directed and therefore are not empowered to perform such projects:
• Urban Indian Centers;
• Incorporated nonprofit multi-purpose community-based Indian organizations;
• Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, Palau, or the Commonwealth of Northern Mariana Islands;
• Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
• National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Further information on eligibility requirements is presented in Part I, ANA Policy and Goals. Some important policies found in Part I are highlighted as follows:

Current ANA Indian Environmental Regulatory Enhancement project grantees whose grant project period ends on or before September 30, 1999 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the ''Financial Assistance Award'' document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 1999.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

E. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project; i.e. the sum of the ACF share and the non-Federal share. Further information on this requirement is presented in Part I, ANA Policy and Goals.

F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) Long-Range Goals and Available Resources. (15 points)

(a) The application describes the long-range goals and strategy, including:
• How specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
• How the community intends to achieve these goals;
• The applicant's specific environmental regulatory needs; and
• A clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

Similarly, a tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, not merely letters of support. ''Letters of

commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications. (15 points)

(a) The management and administrative structure of the applicant is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities. (40 points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected. (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) Budget. (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the planned ANA grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.
- Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

- The plan must be ''qualified'', i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate

proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

G. Application Due Dates

The closing date for submission of applications under this competitive area is March 5, 1999.

H. Contact Information

Jeanette Clyburn, Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW, Mail Stop HHH 348–F, Washington, DC 20447, tel: (202) 690–6326; e-mail: JClyburn@acf.dhhs.gov

Part III—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- A *multi-purpose community-based Native American organization* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- A *multi-year project* is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- *Budget Period* is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- *Core administration* is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.
- *Environmental regulatory enhancement* includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.
- *Real Property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- *Construction* is the term which specifies a project supported through a discretionary grant or a cooperative agreement, to support the initial building of a facility.
- *Core administration* is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered ''core administration'' and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

B. Activities that Cannot be Funded

The Administration for Native Americans does not fund:

- Projects that operate indefinitely or require ANA funding on a recurring basis.
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund the purchase of real property.
- ANA will not fund construction.
- Objectives or activities for the support of core administration of an organization.
- Costs of fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which 1) include the salaries of personnel, 2) occupy space, and 3) benefit from the organization's indirect costs.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section G, General Guidance to Applicants, below.

C. Multi-Year Projects

A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

D. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

E. The Application Process

1. Application Submission by Mail

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop HHH 326–F, Washington, DC 20447–0002, Attention: Lois B. Hodge, ANA No. 93612–991.

2. Application Submission by Courier

Hand delivered applications are accepted between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, if they are either received on or before the deadline date or postmarked on or before the established closing date at: Administration for Children and Families, ACYF/Office of Grants Management, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901, D Street, SW, Washington, DC 20024, Attention: Lois B. Hodge, ANA No. 93612–991.

2. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA. An incomplete application is one that is:
- Missing Form SF 424
- Does not have a signature on Form SF 424
- Does not include proof of non-profit status, if applicable
- The application (Form 424) must be signed by an individual authorized 1) to act for the applicant tribe or organization, and 2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and environmental issues, as appropriate, evaluate each application using the published criteria in each funding competitive area. As a result of the review, a normalized numerical score will be assigned to each application. A normalized score reflects the average score from the reviewers, adjusted to reflect the average score from the panels.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.
- Each tribe, Native American organization, or other eligible applicant may compete for a grant award in each of the three competitive areas. However, no applicant may receive more than one SEDS grant. The Administration for Native Americans will accept only one application per competitive area from any one applicant. Alaska Native entities may receive a grant under either competitive area 1 or 2, but not under both. Therefore, applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2, but not both at the same time.
- If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application is signed and submitted by the deadline explained in section G, Application Due Date, in each competitive area of this announcement.
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.

• Projects will not be ranked on the basis of general financial need.

• In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.

• In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific ''community.''

• Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For tribes, a current signed resolution from the governing body of the tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

• Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

• An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.

• The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

• Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.

• In the ANA Project Narrative, Section A of the application package, ''Resources Available to the Proposed Project,'' the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

• Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the approach for the implementation and marketing of the business. (ANA has included sample business plans in the application kit).

It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.

• Applications which were not funded under a previous closing date and revised for resubmission should make reference to the changes, or reasons for not making changes, in their current application which are based on ANA panel review comments.

2. Technical Guidance

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.

• For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian tribes which are not included on this list (e.g., those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.

• The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR Part 74 and Part 92.)

• Applicants proposing multi-year projects must fully describe each year's project objectives and activities.

Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. ''Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per ''unit.'' During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project by ANA.

• Applicants are encouraged to request a legibly dated receipt from a

commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Grant Administrative Guidance

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.
- An application with an original signature and two additional copies are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.
- Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.
- Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.

4. Projects or Activities That Generally Will Not Meet The Purposes of This Announcement

- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding ''wish lists'' of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.
- Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.
- Project goals which are not responsive to one or more of the funding competitive areas.
- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. Proposals from consortia of tribes should have individual objectives which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.
- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period. All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. ''Completed'' means that the project ANA funded is finished, and the desired result(s) have been attained. ''Self-sustaining'' means that a project will continue without outside resources. ''Supported by other than ANA funds'' means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.
- Once a tribe has been denied federal recognition through the BIA Federal Acknowledgment Process, ANA will not fund objectives relating to the attainment of federal recognition, unless the objectives deal specifically and exclusively with the formal appeal of a denial.
- ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.
- Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.
- Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

I. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section E, The Application Process. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Applications and related materials postmarked after the closing date will be classified as late.

1. Deadlines

- Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant, SW., Mail Stop HHH 326–F, Washington, DC 20447–0002, Attention: Lois B. Hodge ANA No. 93612–991.
- Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.
- Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8:00 am and 4:30 pm at: U. S. Department of

Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

- ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.
- No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late Applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of Deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; and 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality.)

Dated: August 26, 1998.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 98–23810 Filed 9–3–98; 8:45 am]

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Friday
September 4, 1998

Part IV

Environmental Protection Agency

40 CFR Parts 268 and 271

Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 268 and 271

[EPA #F–96–P32F–FFFFF; FRL–6154–5]

RIN 2050–ZA00

Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule revises the waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. The rule sets final alternative treatment standards for seven specific carbamate waste constituents for which there are no available analytical standards. This action, effective immediately, extends indefinitely the alternative treatment standards for the seven hazardous waste constituents and deletes the treatment standard for one additional constituent for which available analytical methods have not been shown to achieve reliable measurements. This rule also deletes these eight waste constituents as underlying hazardous constituents. In addition, because the temporary alternative standards for 40 carbamate waste constituents expire automatically on August 26, 1998, today's rule also amends the Code of Federal Regulations to clarify that numerical treatment standards for these 32 carbamate waste constituents will once again be effective.

Today's rule is necessary to allow generators the ability to identify all underlying hazardous constituents reasonably expected to be present in their wastes at the point of generation, and to allow waste treaters to certify that wastes have been treated in compliance with applicable land disposal restrictions. Faced with the inability to demonstrate waste and treatment residual content through analytical testing, these facilities face potential curtailment of operations.

Given the need for the regulated community to adjust its testing and compliance programs for the 32 constituents for which numerical treatment standards are being reinstated, the Agency is extending the current set of alternative treatment standards for these 32 constituents (and concomitantly delaying the effectiveness of the corresponding portion of today's final rule) for six months from the date of publication.

EFFECTIVE DATE: This rule is effective on August 26, 1998. Compliance dates:

—Treatment standards for the wastes specified in 40 CFR 261.33 as P185, P191, P192, P197, U364, U394, and U395: August 26, 1998;

—The existing alternative standards of 40 CFR 268.40 (g) continue to apply until March 4, 1999; and

—The numerical standards specified in 40 CFR 268.40 for the wastes specified in 40 CFR 261.32 as K156–K159, and K161, and in 40 CFR 261.33 as P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U373, U387, U389, U394–U395, U404, and U409–U411 and the numerical standards associated with the waste constituents in 40 CFR 268.48: March 4, 1999.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA. The Docket Identification Number is F–96–P32F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at 800–424–9346 (toll-free) or 703–412–9810 locally. For specific information about this rule, contact Rhonda Minnick, phone 703–308–8771 or John Austin, phone 703–308–0436.

SUPPLEMENTARY INFORMATION:

Availability of Rule on the Internet: Please follow these instructions to access the rule:

From the World Wide Web (WWW), type http://www.epa.gov/fedrgstr. For the text of the notice, choose: Year/Month/Day.

I. Background

The Phase III final rule established treatment standards for 64 listed hazardous wastes associated with carbamate waste production (61 FR 15583, April 8, 1996). The treatment standards were expressed as concentration limits that had to be met before land disposal could occur. All constituents were placed on the Universal Treatment Standard (UTS) list, found at 40 CFR 268.48. These regulations were corrected June 28, 1996 (61 FR 33683) in ways that are not germane to the subject of this rule. The prohibition on land disposal of carbamate wastes and the requirement to meet the treatment limits were effective July 8, 1996.

On November 1, 1996, the United States Court of Appeals for the District of Columbia Circuit, in *Dithiocarbamate Task Force* v. *EPA* (98 F.3d 1394), vacated certain of the listings of carbamate wastes. Accordingly, EPA removed from the Code of Federal Regulations those listings vacated by the court and all references to those listings. A substantial portion of carbamate listing rule was unaffected by the court's opinion [1] and remained in effect. See 62 FR 32973, June 17, 1997.

Today's final rule applies only to 40 of the waste constituents that are the components of the carbamate wastes that remain listed as hazardous wastes.

After promulgation of the Phase III rule on April 8, 1996, but shortly before the treatment standards took effect on July 8, 1996, several companies in the waste management industry contacted EPA, reporting that laboratory standards were not available for some of the carbamate waste constituents. The Agency confirmed this assertion, and realized that the waste management industry was unintentionally left in an unacceptable compliance situation: they were required to certify compliance with the carbamate waste treatment standards, but commercial laboratories were able to perform the necessary analyses only for some of the newly regulated constituents. Thus, it was impossible to document whether the treatment standards were or were not achieved for those 40 constituents that could not be analyzed.

The problem was complicated by the LDR rules that pertain to meeting treatment limits for underlying hazardous constituents (UHCs) in characteristic (or formerly characteristic) hazardous wastes. Whenever a generator sends a characteristic (or formerly characteristic) waste to a treatment facility, they must identify for treatment not only the hazardous characteristic, but also all UHCs reasonably expected to be present in the waste at the point of generation. (See 40 CFR 268.2(I).) Because new carbamate constituents were added to the UTS list by the Phase

[1] The court vacated the listings of 24 U wastes, one K-waste (K160), and three of the K-wastes (K156, K157 and K158) only to the extent that they apply to the chemical, 3-iodo-2-propynyl n-butylcarbamate (IPBC). Twenty-three of the vacated U wastes consisted of all the dithiocarbamates and thiocarbamates. The other vacated U waste was IPBC, a carbamate. Carbamates that were regulated as UHCs were unaffected by the court's decision, because the decision did not deal with carbamate or carbamate constituents as underlying hazardous constituents.

III rule, they became potential UHCs. Because of the lack of laboratory standards for some of the carbamate constituents, generators could not in all cases identify all of the UHCs reasonably expected to be present in their wastes, nor could treatment facilities or regulatory agencies monitor compliance with the standards for the carbamate UHCs. Thus, it would have been impossible to document that the treatment standards were or were not achieved for those 40 carbamate constituents that appear in the list of UHCs in 40 CFR 268.48.

In an emergency final rule promulgated on August 26, 1996 (61 FR 43924), EPA established temporary alternative treatment standards for 40 carbamate waste constituents for a one-year period. EPA believed that one year was sufficient time for laboratory standards to be developed and for laboratories to take appropriate steps to do the necessary analyses for these wastes. The temporary alternative standards promulgated in the August 26, 1996, rule provided waste handlers a choice of meeting the original Phase III numerical concentration limits or of using a specified treatment technology (the technology upon whose performance the numerical treatment standard was based) (See 61 FR 43925). Combustion was the specified technology for nonwastewaters; combustion, biodegradation, chemical oxidation, or carbon adsorption were the specified technologies for wastewaters. If the wastes are treated by a specified technology, the LDR rules do not require a generator or treater to measure compliance with treatment levels, thus avoiding the analytical problems for the 40 carbamate waste constituents at issue.

However, the problem was not resolved in one year and, on August 21, 1997, EPA promulgated a second emergency rule, which extended the alternative treatment standards by one additional year until August 26, 1998 (62 FR 45568, August 28, 1998). Today's rule makes a final disposition for all 40 of the carbamate waste constituents at issue.

II. Today's Carbamate Treatment Standards

This final rule: (1) Establishes revised treatment standards for seven problem carbamate waste constituents; (2) removes the treatment standard for one additional waste constituent; (3) reinstates numerical treatment standards for 32 other carbamate waste constituents; and (4) provides six months for the regulated community to arrange for testing and analysis of the 32 carbamate constituents for which numerical standards are being reinstated.

Treatment Standards for 8 Problem Waste Constituents

Since 1996, EPA and Waste Management Inc. have conducted studies to determine for which of the 40 carbamate constituents at issue there are neither analytical standards nor reliable analytical test methods. These studies have shown that seven constituents lack analytical reference standards. These constituents are A2213, Bendiocarb phenol, Diethylene glycol dicarbamate, Dimetilan, Formparanate, Isolan, and Tirpate. Therefore, EPA is promulgating alternative treatment standards for these seven constituents, and is reinstating the numerical standards for the remainder of the carbamate wastes as per the Phase III Rule. Further, these studies have shown that o-phenylenediamine was not able to be analyzed reliably by available analytical methods. For o-phenylenediamine, the constituent is being deleted as a 40 CFR 268.40 constituent of concern in K157. The Agency believes that regulation of the other carbamate waste constituents of concern should also provide adequate treatment of this constituent.

The Agency is also deleting the eight carbamate waste constituents listed below in Table 1 from the 40 CFR 268.48 Universal Treatment Standards (UTS) table. By removing these constituents from the UTS list, the need to identify and treat them is eliminated for the listed carbamate wastes. Furthermore, this removal from the UTS list eliminates the requirement to monitor compliance and to meet UTS levels when any of the eight constituents are present as UHCs in characteristic hazardous wastes.

TABLE 1.—PROBLEM ANALYTES

	Compound	CAS No.	Reason deleted
U394	A2213	30558–43–1	No Standard.
U364	Bendiocarb phenol	22961–82–6	No Standard.
U395	Diethylene glycol, dicarbamate	5952–26–1	No Standard.
P191	Dimetilan	644–64–4	No Standard.
P197	Formparanate	17702–57–7	No Standard.
P192	Isolan	119–38–0	No Standard.
P185	Tirpate	26419–73–8	No Standard.
	o-Phenylenediamine	95–54–5	Poor method performance.

The Phase III rule required that all carbamate wastes must meet specific numerical UTS limits prior to land disposal. The standards being promulgated today for the eight problem constituents are expressed both as numerical limits as well as specified technologies. These are alternative standards, and provide waste handlers with a choice of whether to satisfy LDR treatment standards either by meeting the Phase III numerical limits, or by using a specified treatment technology for these constituents. EPA is choosing to express the LDR treatment standards as alternative standards because this allows for maximum flexibility for generators and treaters as future circumstances develop (e.g., where analytical standards for one or more of the problem constituents might be developed and numerical treatment standards could therefore be shown to be achieved).

In terms of the specified technologies, these are the same as were contained in the Agency's two emergency rules in 1996 and 1997. Combustion is the specified technology for nonwastewaters. Combustion, biodegradation, chemical oxidation, or carbon adsorption are the specified technologies for wastewaters. These technologies are defined at 40 CFR 268.42, Table 1 (see technology codes: BIODG, CARBN, CHOXD, and CMBST). If the wastes are treated by a specified technology, there is no requirement to measure compliance with treatment levels (thus the analytical problems are

avoided). Because the performance of these Best Demonstrated Available Technologies (BDATs) was the basis of the originally promulgated treatment levels, EPA believes that allowing the use of these BDATs—without a requirement to monitor the treatment residues—fully satisfies the core requirement of the LDR program: unless treatment levels are already met, hazardous wastes must be effectively treated to minimize threats to human health and the environment before they are land disposed.

EPA considered completely replacing the numerical LDR treatment standards for the other 32 carbamate constituents with specified treatment methods, rather than providing the alternative approach being promulgated in this rule for only the eight problem analytes. This would have departed from the long-standing architecture of the LDR treatment standards, which are always expressed as numerical performance standards unless special circumstances exist (such as the lack of analytical standards or methods). Our traditional approach of using numerical performance standards, rather than dictating a specific technology, has the advantage of maximizing the flexibility of generators and treaters to meet the LDR standards by whatever technology they might choose. It also addresses an Agency concern that it may be necessary to provide more comprehensive design and operating parameters to assure continuous effective treatment of wastes by a specified technology. In order to assure the effectiveness of treatment, we determined to follow our traditional numerical approach for all the carbamate constituents (excepting of course the seven analytes lacking standards and the one with poor method performance) and to continue to provide industry with the option of selecting an appropriate treatment technology based on site-specific and company-specific factors. However, EPA has received a number of suggestions that establishing comprehensive design and operating parameters for specific technologies is a useful alternative and technically feasible. EPA is considering the possibility of pursuing such a project for many LDR-regulated wastes, including carbamates.

Although we have some reservations about departing from our established approach for the problem analytes, we believe that the specific circumstances of this rule justify deferring solely to the requirement of a specified technology without first evaluating the need for design and operating parameters for the technology. If EPA determines in the future that such parameters are needed, it will modify the treatment standard.

The Agency understands that, since 1996, generators and treaters have been using specified technologies to meet the LDR treatment standards for all 40 waste constituents that were the subject of both emergency rules. Today's rule will necessitate a change in approach for 32 of those 40 waste constituents, which will involve procuring the necessary sampling and analytical services so that compliance can be assured. To allow the regulated community adequate time to make arrangements to procure the necessary analytical capabilities, the Agency will extend the current emergency standards until six months after the publication of this final rule in the Federal Register. After that time, the alternative treatment standards will apply only to the eight problem carbamate constituents from wastes specified in 40 CFR 261.33 as EPA Hazardous Waste numbers P185, P191, P192, P197, U364, U394, and U395; and soil contaminated with these wastes.

Method Studies

For the analysis of the 32 carbamate waste constituents for which numerical standards are being reinstated by today's rule, six determinative methods have been evaluated. They are listed below. Except where noted, all of the methods are from the Third Edition of *SW–846 Test Methods for Evaluating Solid Wastes Physical/Chemical Methods.*

- Method 630 (EPA Office of Water) Total Dithiocarbamates
- Method 8260 Volatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS)
- Method 8141 Organophosphorus Compounds by Gas Chromatography
- Method 8270 Semivolatile Organic Compounds by Gas Chromatography/ Mass Spectrometry (GC/MS)
- Method 8318 N-Methylcarbamates by High Performance Liquid Chromatography (HPLC)
- Method 8321 Solvent Extractable Non-Volatile Compounds by High Performance Liquid Chromatography (HPLC)/Thermospray/ Mass Spectrometry (HPLC/TSP/MS) or Ultraviolet (UV) Detection.

Method 630 determines total dithiocarbamates after conversion of the dithiocarbamates to carbon disulfide and measurement of the carbon disulfide. The method does not distinguish individual dithiocarbamate compounds and was not further evaluated in the recent studies.

The only analyte evaluated by method 8260 was triethylamine. Analysis by purge and trap failed to have adequate sensitivity to detect triethylamine at the levels of the treatment standards. Analysis by direct injection to a flame ionization detector found that levels as low 0.001 mg/L or less could be measured.

Method studies centered on the remaining carbamate waste constituents and their amenability to analysis by Methods 8141, 8270, 8318, and 8321. Because of thermal lability, carbamates and carbamoyl oximes are generally not amenable to analysis by gas chromatography except where quantitative decomposition occurs. However, thiocarbamates as a class are amenable to analysis by gas chromatographic Methods 8141 using the nitrogen/phosphorous detector and 8270 GC/MS. Method 8318 was shown to be limited to only the analysis of n-methylcarbamates. Other than dithiocarbamates and triethlyamine, all other carbamate waste constituents were found to be amenable to analysis via High Performance Liquid Chromatography (HPLC)/Thermospray/ Mass Spectrometry (HPLC/TSP/MS) or Ultraviolet (UV) detection using method 8321. For more detailed method performance results, the reader is directed to the study reports, ''Carbamate Analysis Feasibility Study,'' Waste Management, 1998 and ''Carbamate Method Evaluation Report,'' SAIC, 1998, available in the docket for today's rule. To aid laboratories conducting analysis of these constituents, Table 2 presents a summary of the analytes amenable to methods 8141, 8270, 8318, and 8321. The Agency plans in future revisions of the SW–846 methods to incorporate the additional analytes for which methods 8141, 8270, 8318, and 8321 have been demonstrated to be amenable. Furthermore, any analytical methods capable of demonstrating compliance with the new standards can be used in addition to the ones noted above which are part of SW–846.

TABLE 2.—SUMMARY OF APPLICABLE METHODS

Compound	8141	8270	8318	8321 Thermospray	8321 254nm	8321 280nm
Butylate	Y	Y		Y		
EPTC	Y	Y		Y		
Molinate	Y	Y		Y		
Pebulate	Y	Y		Y		
Propham	Y	Y		Y	Y	Y
Prosulfocarb	Y	Y		Y	Y	
Triallate	Y	Y		Y	Y	
Vernolate	Y	Y		Y		
Carbofuran phenol		Y, a			Y	Y
Aldicarb			L	L		
Aldicarb sulfone			Y, L	Y		
Bendiocarb			Y	Y, L		Y
Carbaryl			Y, L	Y, L	Y	Y
Carbofuran		a	Y, L	Y, L		Y
Carbosulfan		a	C	Y	Y	Y
m-Cumenyl methyl carbamate			Y	Y	Y	
Formetanate hydrochloride			Y	Y	Y	Y
Methiocarb			Y, L	Y	Y	Y
Methomyl			Y, L	Y, L		
Metolcarb			Y	Y		
Mexacarbate			Y	Y	Y	Y
Oxamyl			Y, L	Y, L	Y	
Promecarb			Y, L	Y	Y	
Propoxur			Y, L	Y		Y
Thiodicarb			Y	Y	Y	
Barbam				Y	Y	Y
Benomyl				Y	Y	Y
Carbendazim				Y, L	Y	Y
Physostigmine				Y	Y	Y
Physostigmine salicylate				Y		Y
Thiophanate-methyl				Y	Y	Y

a—Compounds carbofuran phenol, carbofuran, & carbosulfan can not be distinguished.
Y—Compound amenable to analysis.
L—Compound listed as a method analyte.

III. Good Cause for Immediate Final Rule

This final rule is being issued without notice and opportunity for public comment. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), an agency may forego notice and comment in promulgating a rule when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons for that finding into the rule) that notice and public comments procedures are impracticable, unnecessary, or contrary to the public interest. For the reasons set forth below, EPA finds good cause to conclude that notice and comment would be unnecessary and contrary to the public interest, and therefore is not required by the APA.

First, the Agency has discovered an unanticipated and continued unavailability of analytical laboratory standards or adequate analytical method for eight of the carbamate waste constituents covered by the Phase III rule. As a practical matter, therefore, members of the regulated community cannot fully document compliance with the requirements of the treatment standard. For the same reason, EPA cannot ascertain compliance for these constituents. The same problem exists for certifying compliance and ascertaining compliance when these carbamate constitutents are underlying hazardous constiutents in characteristic (and formerly characteristic) prohibited wastes.

In addition, this unavailability of analytical standards has a significant potential to create a serious disruption in the production of at least some carbamate pesticides. Although the treatment of the restricted carbamate wastes through biodegradation, carbon adsorption, chemical oxidation (for wastewaters), or combustion is both possible and highly effective, certification that the treatment actually meets the treatment standard levels may not be possible in many instances given the lack of analytical standards for eight waste constituents of concern. Without the certification, disposal of the residuals left after treatment cannot legally occur. The Agency believes that this situation may impede production of certain pesticides, since legal disposal of some carbamate wastes would no longer be available. *See Steel Manufacturers Ass'n* v. *EPA*, 27 F.3d 642, 646–47 (D.C. Cir. 1994) (absence of a treatment standard providing a legal means of disposing of wastes from a process is equivalent to shutting down that process).

Today's rule removes an administrative hurdle that would impede sound management of these carbamate hazardous wastes. By altering the treatment standard to allow certification of compliance based on the use of specified treatment technologies without constituent-specific testing for the eight problem analytes, the Agency can ensure that effective treatment actually occurs without delay and can also assure that threats to human health and the environment are minimized.

Consequently, EPA today is preserving the core of the promulgated Phase III rule by ensuring that the restricted carbamate wastes are treated by a BDAT before they are land disposed. At the same time, EPA is eliminating the situation which could halt production of certain carbamate pesticides. The Agency concludes that this action must be taken immediately and that notice and comment would be contrary to the public interest in these

special circumstances. In addition, notice and comment are unnecessary because this emergency rule makes only conforming changes (for the 32 carbamate constituents that retain numerical standards) to the CFR needed to reflect expiration of the 1997 second emergency rule. For the seven carbamate constituents for which EPA is making permanent the technology standards, and the one constituent being deleted, EPA has had direct contact with the affected parties, and no objections were raised to these actions. For these reasons, EPA believes that there is good cause to issue this final rule immediately without prior notice and opportunity for comment.

IV. Good Cause Finding for Immediate Effective Date for Eight Carbamate Constituents and 6-Month Effective Date for the Remaining 32 Carbamate Constituents

For the eight problem analytes for which alternative treatment standards are being promulgated today, the Agency believes that the regulated community is in the untenable position of having to comply with treatment standards for which there is not an analytical way to measure compliance. Therefore, it is imperative that relief be immediately provided from the otherwise applicable treatment standards that would come into effect automatically on August 26, 1998, when the second emergency rule would expire by its own terms. In addition, today's rule does not create additional regulatory requirements; rather, it provides greater flexibility for compliance with treatment standards. For these reasons, EPA finds that good cause exists under section 3010(b)(3) of RCRA, 42 U.S.C. 6903(b)(3), to provide for an immediate effective date for the alternative standards being promulgated for the eight problem carbamate constituents. See generally 61 FR at 15662. For the same reasons, EPA finds that there is good cause under 5 U.S.C. 553(b)(3) to waive the requirement that regulations be published at least 30 days before they become effective.

For the other 32 waste constituents covered by the two emergency rules and for which the temporary alternative treatment standards expire on August 26, 1998, the Agency recognizes that today's rule will necessitate a change in approach for these 32 waste constituents. Compliance for these 32 waste constituents, as of August 27, 1998, would be based on numerical concentration limits for which sampling and analytical services will be necessary. As noted earlier, to allow the regulated community an adequate and reasonable time to make arrangements to procure the necessary analytical capabilities, the Agency will extend the current emergency standards until six months after the publication of this final rule in the **Federal Register**. After that time, the alternative treatment standards will apply only to the eight problem carbamate constituents, and the other 32 carbamate constituents will be subject to the numerical standards set forth in 40 CFR 268.40 and 268.48.

V. State Authority

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR Part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Today's rule is being promulgated pursuant to section 3004(m) of RCRA (42 U.S.C. 6924(m)). Therefore, the Agency is adding today's rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA. This rule is therefore effective in all states immediately pursuant to RCRA section 3006(g). States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorization

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because today's rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for final authorization are described in 40 CFR 271.21. All HSWA interim authorizations will expire January 1, 2003. (See § 271.24 and 57 FR 60132, December 18, 1992.)

VI. Regulatory Requirements

Analysis Under Executive Order 12866, Executive Order 12875, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, National Technology Transfer and Advancement Act of 1995, Executive Order 13045, and Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Today's rule reinstates the regulatory text that existed prior to the August 26, 1996, emergency final rule (61 FR 43924), and extends indefinitely the alternative standards applicable to the seven constituents identified as lacking analytical standards. Today's action has been deemed by the Agency as being a ''significant regulatory action'' for the purposes of Executive Order 12866, and has been reviewed by the Office of Management and Budget. This is not an economically significant regulatory action. Today's rule does not, however, impose obligations on State, local or tribal governments for the purposes of Executive Order 12875. In addition, this action does not impose annual costs of $100 million or more, will not significantly or uniquely affect small governments, and is not a significant federal intergovernmental mandate. The Agency thus has no obligations under sections 202, 203, 204 and 205 of the Unfunded Mandates Reform Act. Furthermore, this action is not subject to the Regulatory Flexibility Act since this rule is exempt from notice and comment rulemaking requirements for good cause which is explained in Section IV. The Administrator is, therefore, not required to certify under the RFA.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (PBMS), EPA has decided not to require the use of specific, prescribed analytic methods. Rather, the rule will allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

Today's rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this action is not an economically significant rule, and it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule revises waste treatment standards applicable to 40 waste constituents associated with the production of carbamate wastes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Submission to Congress and the General Accounting Office

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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor. 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Immediate Effective Date

The final alternative treatment standards for the seven carbamate waste constituents are effective upon publication of this final rule. Also effective upon publication is the deletion of the one constituent for which the method performance is poor. Because the regulated community does not need 6 months to come into compliance with these portions of the rule, EPA finds, pursuant to RCRA section 3010(b)(1), that these actions can be made effective in less than six months.

The reinstatement of treatment standards for the 32 carbamate waste constituents are effective 6 months after publication of this final rule. Also, EPA finds that good cause exists under 5 U.S.C. 553(d)(3) to waive the requirement that regulations be published at least 30 days before they become effective, for the reasons discussed earlier in section IV of this preamble.

List of Subjects

40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: August 26, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart D—Treatment Standards

2. Section 268.40 is amended in paragraph (g) by revising ''August 26, 1997 and August 26, 1998'' to read ''August 26, 1996 and March 4, 1999''; by adding paragraph (i); by revising in the table ''Treatment Standards for Hazardous Wastes'' the entries for K156–K159, K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U278–U280, U364, U367, U372, U373, U387, U389, U394–U395, U404, and U409–U411; and by revising footnote 10 to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

* * *

(i) Effective September 4, 1998, the treatment standards for the wastes specified in 40 CFR 261.33 as EPA Hazardous Waste numbers P185, P191, P192, P197, U364, U394, and U395 may be satisfied by either meeting the constituent concentrations presented in the table ''Treatment Standards for Hazardous Wastes'' in this section, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and, biodegradation as defined by the

technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and treatment/regulatory/subcategory [1]	Regulated hazardous constituent		Wastewaters Concentration in mg/L; [3] or technology code [4]	Nonwastewaters Concentration in mg/kg [5] unless noted as "mg/L TCLP" or technology code
		Common name	CAS [2] No.		
*	*	* *	*	*	*
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes.	Acetonitrile	75–05–8	5.6	1.8
		Acetophenone	96–86–2	0.010	9.7
		Aniline	62–53–3	0.81	14
		Benomyl	17804–35–2	0.056	1.4
		Benzene	71–43–2	0.14	10
		Carbaryl	63–25–2	0.006	0.14
		Carbenzadim	10605–21–7	0.056	1.4
		Carbofuran	1563–66–2	0.006	0.14
		Carbosulfan	55285–14–8	0.028	1.4
		Chlorobenzene	108–90–7	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		o-Dichlorobenzene	95–50–1	0.088	6.0
		Methomyl	16752–77–5	0.028	0.14
		Methylene chloride	75–09–2	0.089	30
		Methyl ethyl ketone	78–93–3	0.28	36
		Naphthalene	91–20–3	0.059	5.6
		Phenol	108–95–2	0.039	6.2
		Pyridine	110–86–1	0.014	16
		Toluene	108–88–3	0.080	10
		Triethylamine	121–44–8	0.081	1.5
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoly oximes.	Carbon tetrachloride	56–23–5	0.057	6.0
		Chloroform	67–66–3	0.046	6.0
		Chloromethane	74–87–3	0.19	30
		Methomyl	16752–77–5	0.028	0.14
		Methylene chloride	75–09–2	0.089	30
		Methyl ethyl ketone	78–93–3	0.28	36
		Pyridine	110–86–1	0.014	16
		Triethylamine	121–44–8	0.081	1.5
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoly oximes.	Benomyl	17804–35–2	0.056	1.4
		Benzene	71–43–2	0.14	10
		Carbenzadim	10605–21–7	0.056	1.4
		Carbofuran	1563–66–2	0.006	0.14
		Carbosulfan	55285–14–8	0.028	1.4
		Chloroform	67–66–3	0.046	6.0
		Methylene chloride	75–09–2	0.089	30
		Phenol	108–95–2	0.039	6.2
K159	Organics from the treatment of thiocarbamate wastes.	Benzene	71–43–2	0.14	10
		Butylate	2008–41–5	0.003	1.5
		EPTC (Eptam)	759–94–4	0.003	1.4
		Molinate	2212–67–1	0.003	1.4
		Pebulate	1114–71–2	0.003	1.4
		Vernolate	1929–77–7	0.003	1.4
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust and floor sweepings from the production of dithiocarbamate acids and their salts.	Antimony	7440–36–0	1.9	[11] 1.15
		Arsenic	7440–38–2	1.4	[11] 5.0
		Carbon disulfide	75–15–0	3.8	[11] 4.8
		Dithiocarbamates (total)	137–30–4	0.028	28
		Lead	7439–92–1	0.69	[11] 0.75
		Nickel	7440–02–0	3.98	[11] 11.0
		Selenium	7782–49–2	0.82	[11] 5.7
*	*	* *	*	*	*
P127	Carbofuran	Carbofuran	1563–66–2	0.006	0.14
P128	Mexacarbate	Mexacarbate	315–18–4	0.056	1.4
P185	Tirpate [10]	Tirpate	26419–73–8	0.056	0.28
P188	Physostigmine salicylate	Physostigmine salicylate	57–64–7	0.056	1.4
P189	Carbosulfan	Carbosulfan	55285–14–8	0.028	1.4
P190	Metolcarb	Metolcarb	1129–41–5	0.056	1.4
P191	Dimetilan [10]	Dimetilan	644–64–4	0.056	1.4
P192	Isolan [10]	Isolan	119–38–0	0.056	1.4
P194	Oxamyl	Oxamyl	23135–22–0	0.056	0.028

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and treatment/regulatory/subcategory [1]	Regulated hazardous constituent		Wastewaters Concentration in mg/L; [3] or technology code [4]	Nonwastewaters Concentration in mg/kg [5] unless noted as "mg/L TCLP" or technology code
		Common name	CAS [2] No.		
P196	Manganese dimethyldithliocarbamate.	Dithiocarbamates (total)	NA	0.028	28
P197	Formparanate [10]	Formparanate	17702–57–7	0.056	1.4
P198	Formetanate hydrochloride	Formetanate hydrochloride	23422–53–9	0.056	1.4
P199	Methiocarb	Methiocarb	2032–65–7	0.056	1.4
P201	Promecarb	Promecarb	2631–37–0	0.056	1.4
P202	m-Cumenyl methylcarbamate	m-Cumenyl methylcarbamate	64–00–6	0.056	1.4
P203	Aldicarb sulfone	Aldicarb sulfone	1646–88–4	0.056	0.28
P204	Physostigmine	Physostigmine	57–47–6	0.056	1.4
P205	Ziram	Dithiocarbamates (total)	NA	0.028	28
*	*	*	*	*	*
U271	Benomyl	Benomyl	17804–35–2	0.056	1.4
U278	Bendiocarb	Bendiocarb	22781–23–3	0.056	1.4
U279	Carbaryl	Carbaryl	63–25–2	0.006	0.14
U280	Barban	Barban	101–27–9	0.056	1.4
*	*	*	*	*	*
U364	Bendiocarb phenol [10]	Bendiocarb phenol	22961–82–6	0.056	1.4
U367	Carbofuran phenol	Carbofuran phenol	1563–38–8	0.056	1.4
U372	Carbendazim	Carbendazim	10605–21–7	0.056	1.4
U373	Propham	Propham	122–42–9	0.056	1.4
U387	Prosulfocarb	Prosulfocarb	52888–80–9	0.042	1.4
U389	Triallate	Triallate	2303–17–5	0.042	1.4
U394	A2213 [10]	A2213	30558–43–1	0.042	1.4
U395	Diethylene glycol, dicarbamate [10]	Diethylene glycol, dicarbamate	5952–26–1	0.056	1.4
U404	Triethylamine	Triethylamine	101–44–8	0.081	1.5
U409	Thiophanate-methyl	Thiophanate-methyl	23564–05–8	0.056	1.4
U410	Thiodicarb	Thiodicarb	59669–26–0	0.019	1.4
U411	Propoxur	Propoxur	114–26–1	0.056	1.4
*	*	*	*	*	*

Notes to the table:

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[8] These wastes, when rendered nonhazardous and then subsequently managed in CWA, CWA-equivalent, or Class I SDWA systems are not subject to treatment standards. (See § 148.1(d) and § 268.1(c)(3) and (4)).

[9] These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well are not subject to treatment standards. (See § 148.1(d)).

[10] The treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters.

[11] "mg/L TCLP".

4. In § 268.48, the table in paragraph (a) is revised by deleting the entries for: "A2213," "Bendiocarb phenol," "Diethylene glycol, dicarbamate," "Dimetilan," "Formparanate," "Isolan," "o-Phenylenediamine," and "Tirpate;" ; by removing footnote number "6" in column one, under the heading *Regulated Constituents/Common Name*, after the following chemical names: "Aldicarb sulfone," "Barban," "Bendiocarb," "Benomyl," "Butylate," "Carbaryl," "Carbenzadim," "Carbofuran," "Carbofuran phenol," "Carbosulfan," "m-Cumenyl methylcarbamate," "Dithiocarbamates (total)," "EPTC," "Formetanate hydrochloride," "Methiocarb,"

''Methomyl,'' ''Metolcarb,'' ''Mexacarbate,'' ''Molinate,'' ''Oxamyl,'' ''Pebulate,'' ''o-Phenylenediamine,'' ''Physostigmine,'' ''Physostigmine salicylate,'' ''Promecarb,'' ''Propham,'' ''Propoxur,'' ''Prosulfocarb,'' ''Thiodicarb,'' ''Thiophanate-methyl,'' ''Triallate,'' ''Triethylamine,'' and ''Vernolate;'' and by removing footnote 6.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

Subpart A—Requirements for Final Authorization

6. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by promulgation date in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
September 4, 1998	Emergency Revision of the Land Disposal Restrictions (LDR) Phase III Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	63 FR [Insert page numbers]	September 4, 1998.
*	*	*	*

* * * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	*	*	*
September 4, 1998	Emergency Revision of the Land Disposal Restrictions (LDR) Phase III Treatment Standards for Listed Hazardous Wastes from Carbamate Production.	3004(m)	63 FR [Insert page numbers].
*	*	*	*

[FR Doc. 98–23507 Filed 9–3–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Halon recycling and recovery equipment certification; comments due by 9-10-98; published 8-11-98

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Food and Drug Administration

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INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office

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