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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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–361–AD; Amendment 39–11502; AD 2000–01–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes. That AD currently requires repetitive inspections and tests of the thrust reverser control and indication system on each engine, and corrective actions, if necessary; installation of a terminating modification; and repetitive operational checks of that installation, and repair, if necessary. This amendment is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in significant reduction in airplane controllability. The actions specified in this AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane. This action identifies certain repetitive operational checks that were inadvertently omitted from the existing AD, and revises certain procedures for accomplishment of the operational checks and certain follow-on corrective actions.

DATES: Effective January 24, 2000.

The incorporation by reference of certain publications as listed in the regulations was approved previously by the Director of the Federal Register as of September 15, 1999 (64 FR 47365, August 31, 1999).

Comments for inclusion in the Rules Docket must be received on or before March 7, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–361–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On August 19, 1999, the FAA issued AD 99–18–03, amendment 39–11269 (64 FR 47365, August 31, 1999), applicable to certain Boeing Model 747 series airplanes. That AD requires repetitive inspections and tests of the thrust reverser control and indication system on each engine, and corrective actions, if necessary; installation of a terminating modification; and repetitive operational checks of that installation, and repair, if necessary. That AD was prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in significant reduction in airplane controllability. The actions required by that AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–18–03, the FAA finds that it inadvertently omitted reference to the accomplishment of repetitive operational checks; however, the Summary and Explanation of Requirements of the Rule sections both specified accomplishment of the repetitive operational checks. The FAA's intent in paragraph (d) of that AD was to require operators to perform repetitive operational checks at intervals not to exceed 3,000 flight hours following accomplishment of the initial operational check. Paragraph (d) of this AD has been revised accordingly.

The FAA also has determined that the procedures in the Airplane Maintenance Manual (AMM) are inadequately defined to allow for accomplishment of the operational checks; therefore, the procedures are included in an appendix to this AD. Accordingly, this action revises paragraphs (d) and (e) of that AD to remove all references to the AMM for accomplishment of the operational checks, and replace those references with references to Appendix 1 (including Figure 1) of this AD, which describes the Gearbox Lock and Air Motor Brake Test procedures required for accomplishment of the operational checks.

In addition, all references to the procedures specified in the Master Minimum Equipment List and the Dispatch Deviation Guide in paragraphs (b) and (e) of the existing AD have been removed because the FAA is unable to determine that an airplane is safe for operation if the thrust reverser functional tests are not successfully passed, or if the tests are unable to be performed. These procedures are retracted by the FAA because failure of the functional test might indicate that a fault or faults are present, which could lead to an uncommanded deployment of a thrust reverser during flight.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 99–18–03 to continue to require repetitive inspections and tests of the thrust reverser control and indication system on each engine, and corrective actions, if necessary; installation of a terminating modification; and repetitive operational checks of that installation, and repair, if necessary. The actions are required to be accomplished in

accordance with the service bulletins described previously, except as discussed below.

Repetitive operational checks to detect discrepancies of the gearbox locks and the air motor brake are required to be accomplished in accordance with the procedure included in Appendix 1 (including Figure 1) of this AD. Correction of any discrepancy detected is required to be accomplished in accordance with the procedures described in the Boeing 747 Airplane Maintenance Manual.

Cost Impact

None of the Model 747 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future:

It would require approximately 24 work hours (6 work hours per engine) to accomplish the required inspections and tests, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections and tests required by this AD would be approximately $1,440 per airplane, per inspection/test cycle.

It would require approximately 392 work hours to accomplish the required installation of provisional wiring, at an average labor rate of $60 per work hour. Required parts would cost approximately $22,298 per airplane. Based on these figures, the cost impact of this modification required by this AD would be approximately $45,818 per airplane.

It would require approximately 306 work hours to accomplish the required installation of the locking gearbox, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation required by this AD would be approximately $18,360 per airplane.

It would require approximately 2 work hours to accomplish the required operational check, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational check required by this AD would be approximately $120 per airplane, per check.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–361–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11269 (64 FR 47365, August 31, 1999), and by adding a new airworthiness directive (AD), amendment 39–11502, to read as follows:

2000–01–05 Boeing: Amendment 39–11502. Docket 99–NM–361–AD. Supersedes AD 99–18–03, Amendment 39–11269.

Applicability: Model 747–100B, –200, –300, and SP series airplanes, equipped with Rolls Royce RB211–524B2, C2, and D4 engines; certificated in any category, as listed in the following service bulletins:

- Boeing Alert Service Bulletin 747–78A2148, dated June 1, 1995;
- Boeing Service Bulletin 747–78A2148, Revision 1, dated July 20, 1995;
- Boeing Service Bulletin 747–78–2136, dated May 11, 1995; and
- Boeing Service Bulletin 747–78–2156, dated October 31, 1996.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the

effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 99–18–03

Repetitive Inspections and Tests

(a) Within 90 days after September 15, 1999 (the effective date of AD 99–18–03, amendment 39–11269): Perform the applicable inspections and tests of the thrust reverser control and indication system on each engine, in accordance with Part III.A. through III.G. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2148, dated June 1, 1995, or Boeing Service Bulletin 747–78A2148, Revision 1, dated July 20, 1995. Repeat the applicable inspections and tests thereafter at intervals not to exceed 18 months, until accomplishment of paragraph (c) of this AD.

Corrective Actions

(b) If any inspection or test required by paragraph (a) of this AD cannot be successfully performed as specified in the service bulletin, or if any discrepancy is detected during any inspection or test, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 747–78A2148, dated June 1, 1995, or Boeing Service Bulletin 747–78A2148, Revision 1, dated July 20, 1995. Additionally, prior to further flight, any failed inspection or test required by paragraph (a) of this AD must be repeated and successfully accomplished.

Modification

(c) Within 36 months after September 15, 1999: Install an additional locking system on the thrust reversers in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2156, dated October 31, 1996. Prior to or concurrent with accomplishment of Boeing Service Bulletin 747–78–2156, dated October 31, 1996: Accomplish Boeing Service Bulletin 747–78–2136, dated May 11, 1995; and Rolls-Royce Service Bulletins RB.211–71–B545, Revision 2, dated August 8, 1997, RB.211–71–B551, Revision 1, dated March 20, 1998, and RB.211–78–B552, dated June 21, 1996.

Accomplishment of these actions constitutes terminating action for the repetitive inspections and tests required by paragraph (a) of this AD.

Operational Checks

(d) Within 3,000 flight hours after accomplishing the modification required by paragraph (c) of this AD, or within 1,000 flight hours after September 15, 1999, whichever occurs later: Perform operational checks of the number 2 and number 3 gearbox locks and of the air motor brake, in accordance with the procedures described in Appendix 1 (including Figure 1) of this AD. Repeat the operational checks thereafter at intervals not to exceed 3,000 flight hours.

Corrective Actions

(e) If any operational check required by paragraph (d) of this AD cannot be successfully performed as specified in the procedures described in Appendix 1 (including Figure 1) of this AD, or, if any discrepancy is detected during any operational check, prior to further flight, repair in accordance with the procedures specified in the Boeing 747 Airplane Maintenance Manual. Additionally, prior to further flight, any failed operational check required by paragraph (d) of this AD must be repeated and successfully accomplished. Continue to repeat the operational checks thereafter at intervals not to exceed 3,000 flight hours.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(h) Except as provided by paragraphs (d) and (e) of this AD, the actions shall be done in accordance with the applicable service bulletins:

- Boeing Service Bulletin 747–78–2136, dated May 11, 1995;
- Boeing Alert Service Bulletin 747–78A2148, dated June 1, 1995;
- Boeing Service Bulletin 747–78A2148, Revision 1, dated July 20, 1995;
- Boeing Service Bulletin 747–78–2156, dated October 31, 1996;
- Rolls-Royce Service Bulletin RB.211–78–B552, dated June 21, 1996;
- Rolls-Royce Service Bulletin RB.211–71–B545, Revision 2, dated August 8, 1997; or
- Rolls-Royce Service Bulletin RB.211–71–B551, Revision 1, dated March 20, 1998.

This incorporation by reference was approved previously by the Director of the Federal Register as of September 15, 1999 (64 FR 47365, August 31, 1999). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment becomes effective on January 24, 2000.

Appendix 1—

Gearbox Lock and Air Motor Brake Test

A. General

To do the test of the gearbox locks and air motor brake, you must do the steps that follow:

(a) Do the deactivation procedure of the thrust reverser system.

(b) Do the test of the air motor brake.

(c) Do the test of the gearbox locks.

(d) Do the activation procedure of the thrust reverser system.

B. Equipment

(1) CP30784—INA Access Platform, Rolls-Royce

(2) CP30769—Protection Pads, Rolls-Royce

(3) CP30785—Access Stools, Rolls-Royce

(4) UT1293/1—Load Tool, Rolls-Royce (2 required)

C. Procedure (Fig. 1)

Warning: Do the Deactivation Procedure of the Thrust Reverser System, Which Must Include the Installation of Lock Bars (or Blockers), to Prevent the Accidental operation of the Thrust Reverser. The Accidental Operation of the Thrust Reverser Could Cause Injury to Persons and Damage to Equipment.

(1) Do the deactivation procedure of the thrust reverser in the forward thrust position for ground maintenance.

(2) Use a 0.25-inch (6.4-mm) square drive to turn the manual lock release screw to release the No. 2 and No. 3 gearbox locks.

Note: It is not always easy to turn the manual lock release screws. This is because of a preload in the systems. To release the preload, lightly turn the manual cycle and lockout shafts in the stow direction.

(a) Make sure the lock indicators are extended at gearboxes No. 2 and No. 3.

(3) Do a test of the air motor brake:

(a) If You Use the Load Tools;

Try to move the translating cowl in the extend direction as follows:

(1) Remove the lock bars that you installed in the deactivation procedure.

(2) Install the load tools through the cutouts and into the No. 2 and No. 3 gearboxes.

(3) Attach the torque wrenches to the load tools.

(4) Try to move the translating cowl in the extend direction.

(b) If You Do Not Use the Load Tools;

Try to move the translating cowl in the extend direction as follows:

(1) Remove the lock bars that you installed in the deactivation procedure.

(2) Put the 0.25-inch (6.4-mm) square drive extensions into the manual cycle and lockout shaft at the No. 2 and No. 3 gearboxes.

(a) Attach the standard drive tools.

(3) Try to move the translating cowl in the extend direction.

(c) If the translating cowl moves, replace the air motor and shutoff valve.

(4) Do a test of the gear box locks:

Note: The steps that follow are for the No. 3 gearbox. Then, do these steps again for the No. 2 gearbox.

(a) Install the lock bars in the manual cycle and lockout shafts at the No. 2 and No. 3 gearboxes.

(b) Install the INA access platform in the exhaust mixer duct.

(c) Install the protection pads and the access stools.

(d) Release the air motor brake:

(1) Open the air motor access and pressure relief panel.

(2) Pull the air motor brake release handle forward and turn it counterclockwise to lock the handle in its position.

(e) Turn the manual lock release screw clockwise to engage the No. 3 gearbox lock.

(1) Make sure that the lock indicator is retracted (under the surface) at gearbox No. 3.

(f) Make sure No. 2 gearbox lock is released.

(1) Make sure the lock indicator is extended at gearbox No. 2.

(g) If You Use the Load Tools;

Do a check of the lock dogs as follows:

(1) Remove the lock bars from the No. 2 and No. 3 gearboxes.

(2) Install the load tool through the cutout and into the No. 3 gearbox.

(3) Attach the torque wrench to the load tool.

Caution: Do Not Apply a Torque Load of More Than 30 Pound-Inches (3.4 Newton-Meters) to the Manual Cycle and Lock Out Shaft. A Larger Torque Load Can Cause Damage to the Mechanism.

(4) Apply a torque counterclockwise through the manual wind position of the No. 3 gearbox.

(a) If the translating cowl does not move, the lock bar touched one of the two lock dogs.

(b) If the translating cowl moved, lock the thrust reverser until the No. 3 gearbox is replaced.

(5) Turn the manual lock release screw counterclockwise to release the gearbox lock.

(a) Make sure that the indication rod comes out of the No. 3 gearbox.

(6) Turn the manual cycle and lockout shaft counterclockwise ¼ turn.

(7) Turn the manual lock release screw clockwise to engage the No. 3 gearbox lock.

(a) Make sure that the indication rod is fully retracted (under the surface).

Caution: Do Not Apply a Torque Load of More Than 30 Pound-Inches (3.4 Newton-Meters) to the Manual Cycle and Lockout Shaft. A Greater Torque Load Can Cause Damage to the Mechanism.

(8) Apply a torque counterclockwise through the manual wind position of the No. 3 gearbox.

(a) If the manual cycle and lockout shaft can not be turned more than approximately ¼ turn, the second lock dog is serviceable.

(b) If the manual cycle and lockout shaft can be turned more than approximately ¼ turn, the second lock dog is unserviceable. Lock the thrust reverser until the No. 3 gearbox is replaced.

Note: The two lock dogs are found ½ turn apart when you use the manual cycle and lockout shaft. If necessary, do the check again to make sure that the lock dogs are serviceable.

(9) Do the procedure given above for the No. 2 gearbox lock.

(h) If You Do Not Use the Load Tools;

Do a check of the lock dogs as follows:

(1) Remove the lock bars from the No. 2 and No. 3 gearboxes.

(2) Put the 0.25-inch (6.4-mm) square drive extensions into the manual cycle and lockout shaft at the No. 2 and No. 3 gearboxes.

(a) Attach the standard drive tools.

Caution: Do Not Apply a Torque Load of More Than 30 Pound-Inches (3.4 Newton-Meters) to the Manual Cycle and Lockout Shaft. A Larger Torque Load Can Cause Damage to the Mechanism.

(3) Apply a torque counterclockwise through the manual wind position of the No. 3 gearbox.

(a) If the translating cowl does not move, the lock bar touched one of the two lock dogs.

(b) If the translating cowl moved, lock the thrust reverser until the No. 3 gearbox is replaced.

(4) Turn the manual lock release screw counterclockwise to release the gearbox lock.

(a) Make sure that the indication rod comes out of the No. 3 gearbox.

(5) Turn the manual cycle and lockout shaft counterclockwise ¼ turn.

(6) Turn the manual lock release screw clockwise to engage the No. 3 gearbox lock.

(a) Make sure that the indication rod is fully retracted (under the surface).

Caution: Do Not Apply a Torque Load of More Than 30 Pound-Inches (3.4 Newton-Meters) to the Manual Cycle and Lockout Shaft. A Greater Torque Load Can Cause Damage to the Mechanism.

(7) Apply a torque counterclockwise through the manual wind position of the No. 3 gearbox.

(a) If the manual cycle and lockout shaft can not be turned more than approximately ¼ turn, the second lock dog is serviceable.

(b) If the manual cycle and lockout shaft can be turned more than approximately ¼ turn, the second lock dog is unserviceable. Lock the thrust reverser until the No. 3 gearbox is replaced.

Note: The two lock dogs are found ½ turn apart when you use the manual cycle and lockout shaft. If necessary, do the check again to make sure that the lock dogs are serviceable.

(8) Do the procedure given above for the No. 2 gearbox lock.

(5) Install the lock bars in the manual cycle and lockout shafts at the No. 2 and No. 3 gearboxes.

(6) Apply the air motor manual brake:

(a) Turn the air motor brake release handle clockwise and then release.

(b) Close the air motor access and pressure relief panel.

(7) Make sure the No. 2 and No. 3 gearbox locks are released.

(a) Make sure the lock indicator rods are extended at the No. 2 and No. 3 gearboxes.

(8) If You Use the Load Tools;

Try to move the translating cowl in the extend direction as follows:

(a) Remove the lock bars from the No. 2 and No. 3 gearboxes.

(b) Install the load tools through the cutouts and into the No. 2 and No. 3 gearboxes.

(c) Attach the torque wrenches to the load tools.

(d) Try to move the translating cowl in the extend direction.

(9) If You Do Not Use the Load Tools;

Try to move the translating cowl in the extend direction as follows:

(a) Remove the lock bars from the No. 2 and No. 3 gearboxes.

(b) Put the 0.25-inch (6.4-mm) square drive extensions into the manual cycle and lockout shaft at the No. 2 and No. 3 gearboxes.

(1) Attach the standard drive tools.

(c) Try to move the translating cowl in the extend direction.

(10) If the translating cowl moves, do the full test again.

(a) If the translating sleeve moves again, lock the thrust reverser until you can replace the two locking gearboxes and the air motor and shutoff valve.

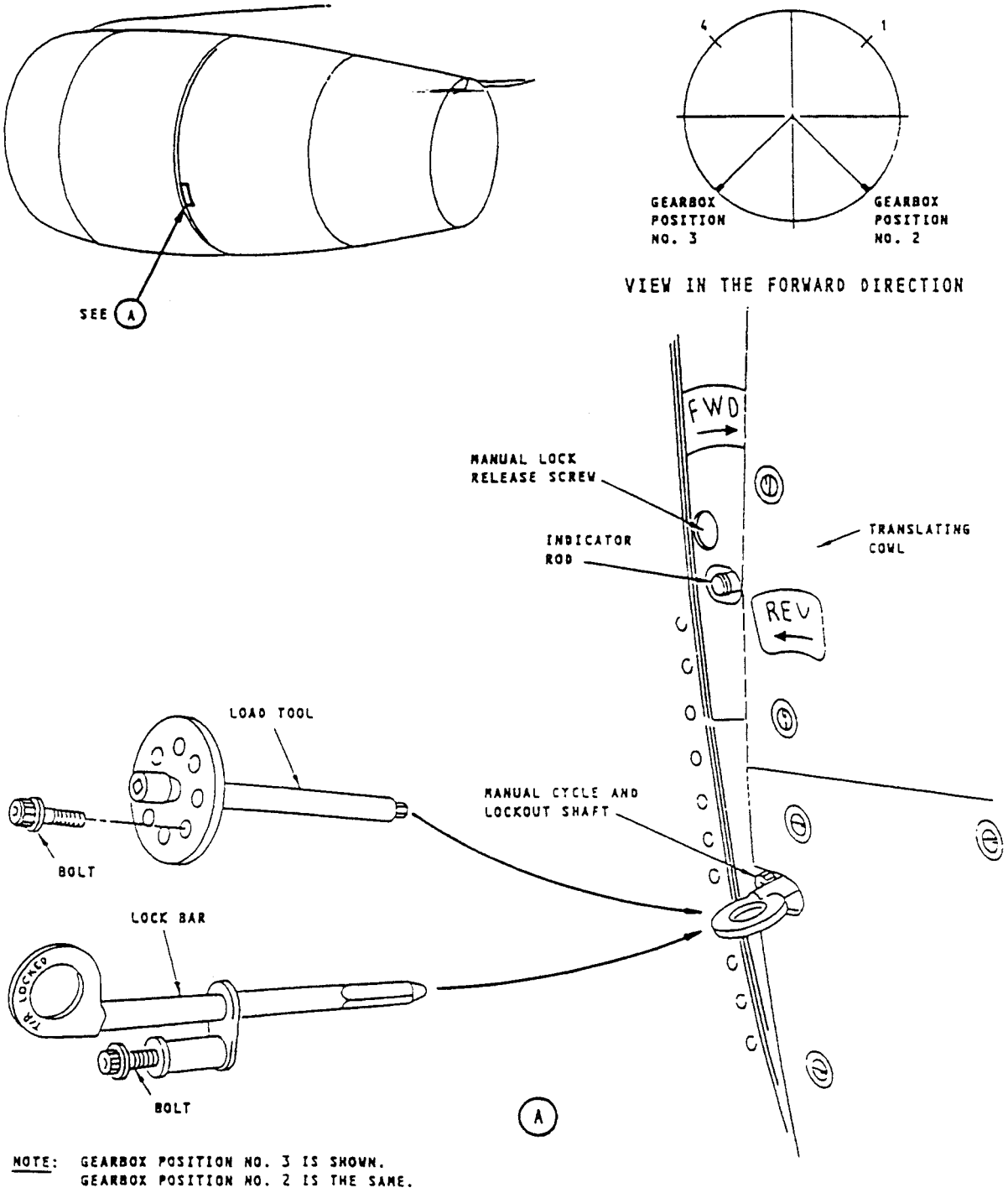
(11) Remove the access stools and protection pads.

(12) Remove the INA access platform from the exhaust mixer duct.

(13) Do the activation procedure of the thrust reverser system.

(14) Do the functional test of the thrust reverser system.

BILLING CODE 4910–13–U



Lock Bar/Load Tool Installation and Gearbox Manual Lock Release
Figure 1

Issued in Renton, Washington, on January 3, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–374 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 49 and 602

[TD 8855]

RIN 1545–AV63

Communications Excise Tax; Prepaid Telephone Cards

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations

SUMMARY: This document contains final regulations relating to the application of the communications excise tax to prepaid telephone cards (PTCs). The regulations implement certain changes made by the Taxpayer Relief Act of 1997. They affect certain telecommunications carriers, resellers, and purchasers of PTCs.

DATES: *Effective Dates:* These regulations are effective January 7, 2000.

Applicability Dates: For the date of applicability, see § 49.4251–4(f).

FOR FURTHER INFORMATION CONTACT: Bernard H. Weberman (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1628. Responses to this collection of information are required to obtain a tax benefit.

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

The estimated average burden per respondent is 0.25 hour. The estimated average annual burden per recordkeeper is 1.2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

On December 17, 1998, a notice of proposed rulemaking (REG–118620–97) was published in the **Federal Register** (63 FR 69585). Three written comments were received but no hearing was held because no requests to speak were received. The proposed regulations are adopted as revised by this Treasury decision.

The principal concerns of the commenters related to the rules for determining the face amount of an untariffed unit card transferred to a transferee reseller. The proposed regulations provide that the face amount can be determined by reference to actual retail sales by the carrier, by reference to the price at which the PTC is sold to the transferee reseller, or by reference to the minutes of domestic communications service provided by the PTC. One commenter requested additional explanation of the basis for these rules. Another suggested that in many situations, particularly in the case of high-denomination (for example, multi-hour) PTCs, none of the proposed methods for determining the face amount will accurately reflect the true retail value of the PTC. This commenter also suggested that if a carrier can substantiate the actual retail price of a PTC it should have the option of treating that price as the face amount.

The final regulations modify the rules relating to untariffed unit cards in three respects. First, they clarify that when the face amount is determined by reference to actual retail sales by the carrier, the retail sales taken into account are sales of PTCs that provide the same type and amount of communications service. The final regulations also modify the markup percentage used when the face amount is determined by reference to the price at which the carrier sells the PTC to the transferee reseller. The proposed regulations apply a markup of 65 percent. Under the final regulations, the markup is reduced to 35 percent to correspond more closely to markups in the retail sector generally. Lastly, the final regulations modify the rule for determining the face amount by reference to the minutes of domestic communications service provided by the PTC. The proposed regulations provide that the face amount may be determined by multiplying the number of minutes by a flat $0.30 per-minute rate. As noted in the comments, however, a high-denomination PTC generally provides lower cost service on a per-minute basis than an otherwise equivalent low-denomination PTC. Accordingly, the final regulations provide that the per-minute rate used to determine face amount is reduced from $0.30 per minute to $0.20 per minute as the amount of domestic communications service provided by a PTC increases from 40 to 240 minutes.

For sales to transferee resellers, the final regulations do not permit carriers that can substantiate the actual retail price of a PTC to use that price as the face amount. The IRS and Treasury Department believe that the modifications to the methods for determining face amount address concerns that the prescribed methods may overstate the face amount. Moreover, a system based on the actual retail sale price when the retail sale is made by a person other than the carrier could prove very difficult for the IRS to administer because of the difficulty of verifying the prices at which PTCs are sold by large numbers of small retailers that may have acquired the PTCs indirectly through one or more transferee resellers.

Commenters also suggested that state and local taxes should be excluded from the face amount even if they are not separately stated. In general, the comments propose an exclusion based on the average amount of state and local taxes imposed on the carrier's PTCs. These suggestions were not adopted. Section 4254(c) excludes from the section 4251 tax base only those state and local taxes that are imposed on the sale or furnishing of communications services and that are separately stated in the bill. A tax that is not separately stated (because, for example, it is imposed after the taxable sale of the PTC and its amount is not known at the time of the sale) does not qualify for this exclusion.

The regulations apply to PTCs transferred by carriers in calendar quarters beginning after January 7, 2000. Carriers and transferees may, however, rely on the regulations in determining the tax treatment of PTCs transferred in quarters beginning on or before that date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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. It is hereby certified that the collection of information in these regulations will not

have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the time required to prepare or retain the notification is minimal and will not have a significant impact on those small entities that are required to provide notification. Furthermore, notification is provided only once to each seller. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Bernard H. Weberman, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 49

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 49 and 602 are amended as follows:

PART 49—FACILITIES AND SERVICES EXCISE TAXES

Paragraph 1. The authority citation for part 49 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Section 49.4251–4 also issued under 26 U.S.C. 4251(d).

Par. 2. Section 49.4251–4 is added to read as follows:

§ 49.4251–4 Prepaid telephone cards.

(a) *In general.* In the case of communications services acquired by means of a prepaid telephone card (PTC), the face amount of the PTC is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred by any carrier to any person that is not a carrier. This section provides rules for the application of the section 4251 tax to PTCs.

(b) *Definitions.* The following definitions apply to this section:

Carrier means a telecommunications carrier as defined in 47 U.S.C. 153.

Comparable PTC means a currently available dollar card or tariffed unit card (other than a PTC transferred in bulk or under special circumstances, such as for promotional purposes) that provides the same type and amount of communications services as the PTC to which it is being compared.

Dollar card means a PTC the value of which is designated by the carrier in dollars (even if also designated in units of service), provided that the designated value is not less than the amount for which the PTC is expected to be sold to a holder.

Holder means a person that purchases other than for resale.

Prepaid telephone card (PTC) means a card or similar arrangement that permits its holder to obtain a fixed amount of communications services by means of a code (such as a personal identification number (PIN)) or other access device provided by the carrier and to pay for those services in advance.

Tariff means a schedule of rates and regulations filed by a carrier with the Federal Communications Commission.

Tariffed unit card means a unit card that is transferred by a carrier—

(1) To a holder at a price that does not exceed the designated number of units on the PTC multiplied by the carrier's tariffed price per unit; or

(2) To a transferee reseller subject to a contractual or other arrangement under which the price at which the PTC is sold to a holder will not exceed the designated number of units on the PTC multiplied by the carrier's tariffed price per unit.

Transferee means the first person that is not a carrier to whom a PTC is transferred by a carrier.

Transferee reseller means a transferee that purchases a PTC for resale.

Unit card means a PTC other than a dollar card.

Untariffed unit card means a unit card other than a tariffed unit card.

(c) *Determination of face amount*—(1) *Dollar card.* The face amount of a dollar card is the designated dollar value.

(2) *Tariffed unit card.* The face amount of a tariffed unit card is the designated number of units on the PTC multiplied by the tariffed price per unit.

(3) *Untariffed unit card*—(i) *Transfer to holder.* The face amount of an untariffed unit card transferred by a carrier to a holder is the amount for which the carrier sells the PTC to the holder.

(ii) *Transfer to transferee reseller*—(A) *In general.* The face amount of an untariffed unit card transferred by a carrier to a transferee reseller is at the option of the carrier—

(*1*) The highest amount for which the carrier sells a PTC that provides the same type and amount of communications services to a holder that ordinarily would not be expected to buy more than one such PTC at a time (if the carrier makes such sales on a regular and arm's-length basis) or the face amount of a comparable PTC (if the carrier does not make such sales on a regular and arm's-length basis);

(*2*) 135 percent of the amount for which the carrier sells the PTC to the transferee reseller (including in that amount, in addition to any sum certain fixed at the time of the sale, any contingent amount per unit multiplied by the designated number of units on the PTC); or

(*3*) If the PTC is of a type that ordinarily is used entirely for domestic communications service, the maximum number of minutes of domestic communications service on the PTC multiplied by the applicable rate.

(B) *Applicable rate.* The applicable rate under paragraph (c)(3)(ii)(A)(*3*) of this section with respect to a PTC is $0.30 reduced (but not below $0.20) by $0.01 for each full 20 minutes by which the maximum number of minutes of domestic communications service on the PTC exceeds 40 minutes.

(C) *Sales not at arm's length.* In the case of a transfer of an untariffed unit card by a carrier to a transferee reseller otherwise than through an arm's-length transaction, the fair market retail value of the PTC shall be substituted for the amount determined in paragraph (c)(3)(ii)(A)(*2*) of this section.

(4) *Exclusion.* The amount of any state or local tax imposed on the furnishing or sale of communications services that is separately stated in the bill or on the face of the PTC and the amount of any section 4251 tax separately stated in the bill or on the face of the PTC are disregarded in determining, for purposes of this paragraph (c), the amount for which a PTC is sold.

(d) *Liability for tax*—(1) *In general.* Under section 4251(d), the section 4251(a) tax is imposed on the transfer of a PTC by a carrier to a transferee. The person liable for the tax is the transferee. Except as provided in paragraph (d)(2) of this section, the person responsible for collecting the tax is the carrier transferring the PTC to the transferee. If a holder purchases a PTC from a transferee reseller, the amount the holder pays for the PTC is not treated as an amount paid for communications services and thus tax is not imposed on that payment.

(2) *Effect of statement that purchaser is a carrier*—(i) *On transferor.* A carrier that transfers a PTC to a purchaser is not

responsible for collecting the tax if, at the time of transfer, the transferor carrier has received written notification from the purchaser that the purchaser is a carrier, and the transferor has no reason to believe otherwise. The notification to be provided by the purchaser is a statement, signed under penalties of perjury by a person with authority to bind the purchaser, that the purchaser is a carrier (as defined in paragraph (b) of this section). The statement is not required to take any particular form.

(ii) *On purchaser.* If a purchaser that is not a carrier provides the notification described in paragraph (d)(2)(i) of this section to the carrier that transfers a PTC, the purchaser remains liable for the tax imposed on the transfer of the PTC.

(3) *Exemptions.* Any exemptions available under section 4253 apply to the transfer of a PTC from a carrier to a holder. Section 4253 does not apply to the transfer of a PTC from a carrier to a transferee reseller.

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Unit card; sold to individual. (i) On May 1, 2000, A, a carrier, sells a card it calls a prepaid telephone card at A's retail store to P, an individual, for P's use in making telephone calls. A provides P with a PIN. The value of the card is not denominated in dollars, but the face of the card is marked 30 minutes. The sales price is $9. A tariff has not been filed for the minutes on the card. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because P purchased from a carrier other than for resale, P is a holder. The card provides its holder, P, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, for which P pays in advance of obtaining service; therefore, the card is a PTC. Because the value of the PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, the PTC is an untariffed unit card. Because it is transferred by the carrier to the holder, the face amount is the sales price ($9).

(iii) The card is a PTC; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from A to P. Accordingly, at the time of transfer, P is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is $0.27 (3% × the $9 face amount). Thus, the total paid by P is $9.27, the $9 sales price plus $0.27 tax. A is responsible for collecting the tax from P.

Example 2. Unit card; given to individual. (i) The facts are the same as in *Example 1*, except that instead of selling a card, A gives a 30 minute card to P.

(ii) Although the card provides P with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, P does not pay for the service. Therefore, the card is not a PTC, even though it is called a prepaid telephone card by A.

(iii) Because the card is not a PTC, section 4251(d) does not apply. Furthermore, no tax is imposed by section 4251(a) because no amount is paid for the communications services.

Example 3. Unit card; adding value. (i) After using the card described in *Example 2*, P arranges with A by telephone to have 30 minutes of toll telephone service added to the card. The sales price is $9. P is told to continue using the PIN provided with the card.

(ii) Because P purchased from a carrier other than for resale, P is a holder. The arrangement provides its holder, P, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN, for which P pays in advance of obtaining service; therefore, the arrangement is a PTC. Because the value of the PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, the PTC is an untariffed unit card. Because it is transferred by the carrier to the holder, the face amount is the sales price ($9).

(iii) The arrangement is a PTC; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from A to P. Accordingly, at the time of transfer, P is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is $0.27 (3% × the $9 face amount). Thus, the total paid by P is $9.27, the $9 sales price plus $0.27 tax. A is responsible for collecting the tax from P.

Example 4. Dollar card; sold other than for resale. (i) On May 1, 2000, B, a carrier, sells 100,000 cards it calls prepaid telephone cards to Q, an auto dealer, for $50,000. Q will give away a card to each person that visits Q's dealership. B provides Q with a PIN for each card. The face of each card is marked $3. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because Q purchased from a carrier other than for resale, Q is a holder. Each card provides its holder, Q, with a fixed amount of communications services ($3 of toll telephone service) to be obtained by means of a PIN, for which Q pays in advance of obtaining service; therefore, each card is a PTC even though Q's visitors do not pay for the cards. The value of each PTC is designated in dollars; therefore, each PTC is a dollar card. Because the PTC is a dollar card, the face amount is the designated dollar value ($3).

(iii) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTCs are transferred from B to Q. Accordingly, at the time of transfer, Q is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is $9,000 (3% × the $3 face amount × 100,000 PTCs). Thus, the total paid by Q is $59,000, the $50,000 sales price plus $9,000 tax. B is responsible for collecting the tax from Q.

Example 5. Tariffed unit card; sold to transferee reseller. (i) On May 1, 2000, C, a carrier, sells 1,000 cards it calls prepaid telephone cards to R, a convenience store owner, for $7,000. C provides R with a PIN for each card. The value of the cards is not denominated in dollars, but the face of each card is marked 30 minutes and a tariff of $0.33 per minute has been filed for the minutes on each card. R agrees that it will sell the cards to individuals for their own use and at a price that does not exceed $0.33 per minute. R actually sells the cards for $9 each (that is, at a price equivalent to $0.30 per minute). The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because R purchased from a carrier for resale, R is a transferee reseller. Because R's customers will purchase other than for resale, they will be holders. Each card sold by R provides its holder, R's customer, with a fixed amount of communications services (30 minutes of toll telephone service) to be obtained by means of a PIN provided by the carrier, for which R's customer pays in advance of obtaining service; therefore, each card is a PTC. Because the value of each PTC is not designated in dollars and C sells the PTCs to R subject to an arrangement under which the price at which the PTCs are sold to holders will not exceed the designated number of minutes on the PTC multiplied by C's tariffed price per minute, each PTC is a tariffed unit card. Because the PTCs are tariffed unit cards, the face amount of each PTC is $9.90, the designated number of minutes on the PTC multiplied by the tariffed price per minute (30 × $0.33), even though the retail sale price of each card is $9.

(iii) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTC is transferred from C to R. Accordingly, at the time of transfer, R is liable for the 3 percent tax imposed by section 4251(a). The amount of the tax is $297 (3% × the $9.90 face amount × 1,000 PTCs). Thus, the total paid by R is $7,297, the $7,000 sales price plus $297 tax. C is responsible for collecting the tax from R.

Example 6. Unit card; sold to transferee reseller. (i) On May 1, 2000, D, a carrier, sells 10,000 cards it calls prepaid telephone cards to S, a convenience store owner, for $60,000. D provides S with a PIN for each card. The value of the cards is not denominated in dollars, but the face of each card is marked 30 minutes. A tariff has not been filed for the minutes on each card. S will sell the cards to individuals for their own use for $9 each. D also sells a card that provides 30 minutes of the same type of communications service at its retail store for $9. The toll telephone service acquired by purchasing the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Because S purchased from a carrier for resale, S is a transferee reseller. Because S's customers will purchase other than for resale, they will be holders. Each card sold by S provides its holder, S's customer, with a fixed amount of communications services (30 minutes of toll telephone service) to be

obtained by means of a PIN provided by the carrier, for which S's customer pays in advance of obtaining service; therefore, each card is a PTC. Because the value of each PTC is not designated in dollars and a tariff has not been filed for the minutes on the PTC, each PTC is an untariffed unit card.

(iii) The PTCs are untariffed unit cards transferred by the carrier to a transferee reseller. Thus, the face amount is determined under paragraph (c)(3)(ii) of this section, which permits D to choose from three alternative methods. Under paragraph (c)(3)(ii)(A)(*1*) of this section, the face amount of each PTC would be $9, the highest amount for which D sells to holders purchasing a single PTC. Alternatively, under paragraph (c)(3)(ii)(A)(*2*) of this section, the face amount of each PTC would be $8.10, computed as follows: 135% × the $60,000 sales price × 10,000 PTCs. Finally, under paragraph (c)(3)(ii)(A)(*3*) of this section (assuming the PTCs are of a type that ordinarily is used entirely for domestic communications services), the face amount of each PTC would be $9 ($0.30 × 30 minutes).

(iv) The cards are PTCs; thus, under section 4251(d), the face amount is treated as an amount paid for communications services and that amount is treated as paid when the PTCs are transferred from D to S. Accordingly, at the time of transfer, S is liable for the 3 percent tax imposed by section 4251(a). Assuming that D chooses to determine the face amount as provided in paragraph (c)(3)(ii)(A)(*2*) of this section, the amount of the tax is $2,430 (3% x the $8.10 face amount x 10,000 PTCs). Thus, the total paid by S is $62,430, the $60,000 sales price plus $2,430 tax. D is responsible for collecting the tax from S.

Example 7. Transfer of card that is not a PTC. (i) On May 1, 2000, E, a carrier, provides a telephone card to T, an individual, for T's use in making telephone calls. E provides T with a PIN. The card provides access to an unlimited amount of communications services. E charges T $0.25 per minute of service, and bills T monthly for services used. The communications services acquired by using the card will be obtained by entering the PIN and the telephone number to be called.

(ii) Although the communications services will be obtained by means of a PIN, T does not receive a fixed amount of communications services. Also, T cannot pay in advance since the amount of T's payment obligation depends upon the number of minutes used. Therefore, the card is not a PTC.

(iii) Because the card is not a PTC, section 4251(d) does not apply. However, the 3 percent tax imposed by section 4251(a) applies to the amounts paid by T to E for the communications services. Accordingly, at the time an amount is paid for communications services, T is liable for tax. E is responsible for collecting the tax from T.

(f) *Effective date.* This section is applicable with respect to PTCs transferred by a carrier on or after the first day of the first calendar quarter beginning after January 7, 2000.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
49.4251–(4)(d)(2)	1545–1628
* * * * *	

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

Approved: December 13, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–56 Filed 1–6–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8845]

RIN 1545–AW20

Adequate Disclosure of Gifts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Friday, December 3, 1999, 64 FR 67767, relating to the valuation of prior gifts in determining estate and gift tax liability, and the period of limitations for assessing and collecting gift tax.

DATES: This correction is effective December 3, 1999.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622–3090, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 6501 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8845) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8845), which were the subject of FR Doc. 99–30944, is corrected as follows:

§ 301.6501(c)–1 [Corrected]

1. On page 67772, column 3, § 301.6501(c)–1(f)(5), line 9 from the top of the column, the language ''transfer will not be subject to inclusion'' is corrected to read ''transfer will be subject to inclusion''.

2. On page 67772, column 3, § 301.6501(c)–1(f)(5), line 11 from the top of the column, the language ''purposes. On the other hand, if the'' is corrected to read ''purposes only to the extent that a completed gift would be so included. On the other hand, if the''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–57 Filed 1–6–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–146–FOR; State Program Amendment No. 98–3]

Indiana Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed to add a new section to its rules. The new section requires permittees of coal mine operations to submit an annual report of affected area to the director of the Indiana Department of Natural Resources (IDNR). Indiana intends to revise its program to improve operational efficiency. We are also taking this opportunity to make a technical correction to 30 CFR 914.16(ii) and to remove the required amendments codified at 30 CFR 914.16(b) and 914.16(ii)(b).

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Submission of the Proposed Amendment

By letter dated August 31, 1999 (Administrative Record No. IND–1668), Indiana sent us an amendment to its program under SMCRA. Indiana sent the amendment at its own initiative. Indiana proposed to amend the Indiana Administrative Code (IAC) by adding 310 IAC 12–5–159, which requires permittees to submit an annual report of affected area to the director of IDNR.

We announced receipt of the amendment in the September 15, 1999, **Federal Register** (64 FR 50026). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on October 15, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. 310 IAC 12–5–159 Annual Report

Indiana added 310 IAC 12–5–159 to require permittees of surface coal mining and reclamation operations to submit an annual report of affected area to the director of IDNR. The permittees must include information on mined land as well as surface disturbed land. Indiana defined the term ''mined land'' at subsection (a) and defined the term ''surface disturbed land'' at subsection (b). Mined land includes land from which coal has been extracted, land from which overburden has been removed, and land upon which overburden or spoil has been deposited. Mined land does not include land where only auger mining has occurred. Surface disturbed land is land, other than mined land, that is disturbed by surface coal mining and reclamation operations. It includes areas where only topsoil is removed. When the surface disturbance will be reaffected by future overburden removal or deposition, the permittee need not report surface disturbed land in advance of the highwall. Subsection (c) requires permittees to submit an annual report of affected areas for each permit for surface coal mining and reclamation operations. The permittee must report acres mined and disturbed during the period from November 1 through October 31 of each year. The permittee must submit the report to the Director of IDNR no later than 90 days after October 31 of each year. The report must include the name and address of the permittee and, if different from the permittee, the name and address of the person or persons conducting the mining. It must also include the permit number and a summary of acres mined and disturbed during the reporting period. The acreage summary must include acres of mined land, acres of surface disturbed land, and total permit acres. It must also include acres of coal extraction by surface, auger, and highwall mining. Subsection (d) requires the permittee to submit with the report a dated aerial photograph of the surface coal mining and reclamation operation taken between September 1 and December 31 of the reporting year. The photograph must be of the same scale as the permit maps. The photograph or a certified map must show the location of the permit boundary; acres reported; section, township, and range lines; all public roads within the permit area that are not permanently closed; all areas where coal has been removed by surface, auger, or highwall mining methods; and the highwall face as of November 1 of the reporting year. After all mining has been completed, subsection (e) requires that when the acres are available on a computer-aided design (CAD) or other digital data format, the permittee must submit a report that includes a summary of pre-mining land use acreage for the mined and surface disturbed area. Subsection (f), requires maps, whether separate from or created upon the photograph, to be prepared by or under the direction of and certified by a qualified registered professional engineer or certified professional geologist with assistance from experts in related fields such as land surveying or landscape architecture. At subsection (g), permits issued and land affected before the effective date of 310 IAC 12–5–159 and for which a report of affected area has not been filed, the initial photograph must show all areas disturbed since permit issuance. The permittee does not have to distinguish between mined land and surface disturbed land on the initial report form, photograph, or map. When available, the extent of auger areas must be shown. At subsection (h), the permittee does not have to submit an annual report if no additional acres have been disturbed during the reporting year.

There are no direct counterpart Federal regulations concerning an annual report of affected acreage. However, section 517(b)(1) of SMCRA requires the regulatory authority, for the purpose of administration and enforcement of a State program or permit, to require a permittee to establish and maintain appropriate records and to provide any information about surface coal mining and reclamation operations that is considered reasonable and necessary. Therefore, we find that Indiana's new section at 310 IAC 12–5–159 will not make Indiana's rules less stringent than SMCRA or less effective than the Federal regulations.

B. IC 14–34–2–6(b) and (c) Conflict of Interest; 30 CFR 914.16(b)

By letter dated March 18, 1988 (Administrative Record No. IND–0559A), Indiana submitted an amendment under 30 CFR 732.17. The amendment included Senate Enrolled Act No. 45 that revised Indiana Code (IC) 14–34–2–6(b) and (c) [formerly IC 13–4.1–2–3]. IC 14–34–2–6(b) requires that in addition to the filings required under IC 35–44–1, each member of the Indiana Natural Resources Commission (commission) must file annually with the director of the Indiana Department of Natural Resources (department) a statement of employment and financial interest on a form prescribed by the department.

IC 14–34–2–6(c) contains a recusal provision that does not allow a member of the commission to participate in a proceeding that may affect the member's direct or indirect financial interests.

In the December 15, 1989, **Federal Register** (54 FR 51388), we did not

approve the language in IC 14–34–2–6(b) because it implied that commission members may not be employees of the department. The department is the designated State regulatory authority for Indiana. We did not approve the language in IC 14–34–2–6(c) because it implied that members of the commission may have direct or indirect financial interests in coal mining operations. Section 517(g) of SMCRA states that ''[n]o employee of the State regulatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation.'' Based on the information we had available, we found that members of the commission must be considered employees of the department. Therefore, we codified the following required amendment at 30 CFR 914.16(b):

> By May 15, 1990, Indiana shall submit revisions to IC 13–4.1–2–3 [IC 14–34–2–6(b) and (c)] or otherwise propose to amend its program to be in accordance with SMCRA at section 517(g) and consistent with the Federal regulations at 30 CFR Part 705 which require that no employee of the State regulatory authority performing any function or duty under SMCRA shall have a direct or indirect financial interest in any underground or surface coal mining operation.

By letter dated June 4, 1999 (Administrative Record No. IND–1657), Indiana provided additional justification for its provisions at IC 14–34–2–6(b) and (c). Indiana stated that there is a legal and statutory distinction between the department and the commission. Indiana referenced IC 14–10, which established the commission as a separate legal entity from the department and lists the commission's powers and duties. Indiana indicated that the function of the commission is somewhat analogous to that of the Indiana General Assembly, although each is part of a different branch of government. Indiana maintained that under IC 14–34–2–6(a), an employee of the ''department'' cannot have a direct or indirect financial interest in a surface coal mining operation. Further, the term ''department'' is specifically defined in IC 14–8–2–67 to mean the Indiana Department of Natural Resources. IC 14–8–2–6(b) applies to the commission, whose members are required to file a financial statement. Indiana stated that the procedure followed for commission members complies with section 517(g) of SMCRA and the implementing regulations at 30 CFR Part 705.

The underlying issue is whether members of the commission must be considered ''employees'' for purposes of conflict of interest reporting. Primarily, Indiana's justification statements indicate that the financial disclosure requirements under section 517(g) of SMCRA for employees of the State regulatory authority do not apply to members of the commission who are not employed by the department. Those members of the commission who are not employees would be categorized as members of a multi-interest commission under the Federal definition of ''employee'' at 30 CFR 705.5. The Federal regulations at 30 CFR Part 705 provide separate conflict of interest requirements for members of commissions who are not deemed employees of the State regulatory authority.

After reviewing the Indiana Code and the October 17, 1986, preamble for changes made to 30 CFR Part 705 (51 FR 37118), we agree that there is a legal and statutory distinction between the department and the commission. We also agree that the commission represents multiple interests. IC 14–10–1 established the commission. The commission consists of 12 members, including five citizen members appointed by the Governor. At least two of the five citizens must have knowledge, experience, or education in the environment or in natural resource conservation. The remaining seven members are specified in the statute to include: the Commissioner of the Indiana Department of Transportation, Commissioner of the Indiana Department of Environmental Management, Director of the Department of Commerce, Director of the Indiana Department of Natural Resources, Chairman of the Advisory Council for the Bureau of Water and Resource Regulation, Chairman of the Advisory Council for the Bureau of Lands and Cultural Resources, and the President of the Indiana Academy of Science. The powers and duties of the commission are defined in IC 14–10–2 to include the authority to create a division of hearings, appoint administrative law judges, and adopt rules. The commission assumes these powers and duties for most of the natural resource bureaus and divisions within the State, including reclamation, fish and wildlife, forestry, state parks, and historic preservation and archeology. IC 14–9–1 created the department. Under IC 14–9–2 the governor must appoint the director of the department. The director may appoint deputy directors. However, under IC 14–9–7 other employees of the department are employed by the director through the state personnel department.

As discussed in the preamble for changes made to 30 CFR Part 705 on October 17, 1986:

> The definition of employee consistently has been construed to exclude members of multi-interest boards and commissions even if those members perform decision-making functions in accordance with state law. . . . Such groups are not covered by Section 517(g), which generally prohibits decision makers from having any interest in coal mining operations. Under the definition of employee, members of a board established in accordance with State law or regulations to represent various interests such as the coal mining industry, forestry, conservation, agriculture, environmentalists, or landowners, would be considered multi-interest board members.

Based on our review of the State statutes and the October 17, 1986, preamble discussion, we find that the members of the commission are not employees of the department, and we are removing the required amendment at 30 CFR 914.16(b).

Indiana's statute at IC 14–34–2–6(b) requires each member of the commission to file an annual statement of employment and financial interest with the director of the Indiana Department of Natural Resources. This is consistent with the Federal regulation requirements at 30 CFR 705.11(a) for members of commissions established in accordance with State law to represent multiple interests. Indiana's statute at IC 14–34–2–6(c) stipulates that a member of the commission may not participate in a proceeding that may affect the member's direct or indirect financial interests. This is consistent with the Federal regulation at 30 CFR 705.4(d), which requires multi-interest commission members to recuse themselves from any proceeding which may affect their direct or indirect financial interests. Therefore, we are approving IC 14–34–2–6(b) and (c).

C. 310 IAC 12–3–127(c)(4) Permit Reviews; Approval for Transfer, Assignment, or Sale of Permit Rights; 30 CFR 914.16(ii)(b)

By letter dated September 26, 1994 (Administrative Record No. IND–1401), Indiana submitted an amendment under 30 CFR 732.17. The amendment included revisions to 310 IAC 12–3–127(c)(4) that required the director of IDNR to not grant approval for a transfer, sale, or assignment of rights under a permit except upon a written finding that a ''surface coal mining and reclamation operation owned or control by the applicant is not currently in violation of a federal or state statute, rule, or regulation.'' In the October 29,

1996, **Federal Register** (61 FR 55743), we approved Indiana's revisions with the requirement, codified at 30 CFR 914.16(ii)(b), that the State amend the introductory paragraph of 310 IAC 12–3–127(c)(4) to include the phrase ''or by any person who owns or controls the applicant'' after the word ''applicant'' in line 3, and the phrase ''or person who owns or controls the applicant'' after the word ''applicant'' in line 7. In the April 21, 1997, **Federal Register** (62 FR 19450), we amended our criteria for permit issuance at 30 CFR 773.15(b) that addressed ownership and control information and compliance review requirements. This action was taken in response to a decision by the U.S. Court of Appeals for the District of Columbia Circuit that invalidated the previous rules as inconsistent with SMCRA. The court held that SMCRA authorizes the regulatory authority to block issuance of a permit only for unabated violations incurred by the applicant or entities owned or controlled by the applicant, not for violations incurred by a person who owns or controls the permittee. Based on this court decision, we are removing the required amendment codified at 30 CFR 914.16(ii)(b).

At the request of the Office of the Federal Register, we are also making corrections to the subparagraph numbering under 30 CFR 914.16(ii). We are changing subparagraphs (a) through (b) to subparagraphs (1) through (3).

IV. Summary and Disposition of Comments

Public Comments

OSM requested public comments on the proposed amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1669). By letter dated September 20, 1999, the Mine Safety and Health Administration commented that the proposed regulation did not conflict with its regulations or policies (Administrative Record No. IND–1674).

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. IND–1669). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On September 9, 1999, we requested comments on Indiana's amendment (Administrative Record No. IND–1669), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Indiana on August 31, 1999. We approve the rules that Indiana proposed with the provision that they be published in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 914, which codify decisions concerning the Indiana program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Indiana to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

We are also making some editorial corrections to 30 CFR Part 914.16(ii) and removing the required amendments at 30 CFR Part 914.16(b) and 914.16(ii)(b).

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 17, 1999.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 914 is amended as set forth below:

PART 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

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

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
August 31, 1999	January 7, 2000	310 12–5–159; IC 14–34–2–6(b) and (c).

3. Section 914.16 is amended by removing and reserving paragraph (b) and revising paragraph (ii) to read as follows:

§ 914.16 Required program amendments.

* * * * *

(ii) By April 28, 1997, Indiana shall submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to address the following:

(1) Amend the Indiana program at 310 IAC 12–3–49/83(e)(3) to add the requirement concerning stability analysis of each structure as is required by 30 CFR 780.25(f) and 784.16(f).

(2) [Reserved]

(3) The Director is requiring that Indiana further amend 310 IAC 12–5–24/90(a)(9)(E) to clarify that the term ''subsection'' should be ''clause.''

[FR Doc. 00–420 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–115–FOR]

Virginia Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of an amendment to the Virginia Abandoned Mine Land Reclamation (AMLR) Program (hereinafter referred to as the Virginia Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The amendment makes changes to the Ranking and Selection section by adding a subsection concerning reclamation projects receiving less than 50 percent government funding. The amendment is intended to incorporate the additional flexibility afforded by the revised Federal regulations.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

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

I. Background on the Virginia Plan

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 946.20 and 946.25.

II. Submission of the Proposed Amendment

By letter dated September 10, 1999 (Administrative Record No. VA–981), the Virginia Division of Mined Land Reclamation (DMLR) submitted a proposed Program Amendment to the Virginia Program. The proposed amendment revises the ''Ranking and Selection 884.13(c)(2)'' section by adding a subsection entitled ''Reclamation Projects Receiving Less Than 50% Government Funding.'' This amendment is intended to revise the Virginia program to incorporate the additional flexibility afforded by the revised Federal regulations.

OSM announced receipt of the proposed amendment in the October 8, 1999, **Federal Register** (64 FR 54843), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 8, 1999. No public hearing was requested, so none was held. On October 22, 1999 (Administrative Record No. VA–997), the State submitted a correction to a typographical error in a citation on Page 15 of the amendment.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed plan amendment submitted by Virginia on September 10, 1999, and amended on October 22, 1999, meets the requirements of the corresponding Federal regulations and is consistent with SMCRA.

Ranking and Selection 884.13(c)(2)

In this section, Virginia added a new subsection titled ''Reclamation Projects Receiving Less Than 50% Government Funding.'' The new language is as follows:

Reclamation Projects Receiving Less Than 50% Government Funding

An abandoned mine land reclamation project may be considered for government-financed construction under Virginia program § 4 VAC 25–130 Part 707. If the level of government funding for the construction will be less than fifty percent of the total cost because of planned coal extraction, the procedures of this section apply. Such coal removal will be conducted in conformity with Virginia program § 4 VAC 25–130 Part 707 and the regulatory definitions for the terms ''extraction of coal as an incidental part,'' ''government financing agency,'' and ''government-financed construction'' contained within the Virginia regulatory program regulations at 4–VAC–25–700.5.

In considering such AML construction, the DMLR AML Section (Title IV authority) will consult with the DMLR Reclamation Services Section (Title V authority) to make the following determinations:

1. The likelihood of the coal being mined under a Title V permit. The determination will take into account available information such as:

- Coal reserves from existing mine maps or other sources;
- Existing environmental conditions;
- All prior mining activity on or adjacent to the site;
- Current and historic coal production in the area; and
- Any known or anticipated interest in mining the site.

2. The likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

3. The likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

After the above consultation, if it is decided that a government-financed reclamation project is to proceed, then the DMLR AML Section and DMLR Reclamation Services Section must concur to in the following determinations:

1. The limits on any coal refuse, coal waste, or other coal deposits which can be extracted under 4–VAC–25–130 Part 707 and the Virginia regulatory definition of ''government-financed construction'' at § 4–VAC–25–130–700.5; and

2. The delineation of the boundaries of the AML project.

All of the above determinations, the information taken into account in making the determinations, and the names of the parties making the determinations will be documented in the AML project file. For each project, DMLR AML Section will:

- Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic material, and hydrologic balance;
- Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R;
- Develop specific-site reclamation requirements, including performance bonds when appropriate in accord with State procedures; and
- Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

The contractor shall be required to obtain a coal surface mining permit under the Virginia Coal Surface Mining Reclamation Regulations (Title 4 of the Virginia Administrative Code) for any coal extracted beyond the limits of the incidental coal specified in the AML project file.

On October 22, 1999 (Administrative Record No. VA–997), DMLR provided a typographic correction to the regulatory citation found on the last line of Page 15 of the amendment to fully reflect that the regulatory definition for the terms ''extraction of coal as an incidental part,'' ''government-financing agency,'' and ''government-financed construction'' are contained within the Virginia regulatory program regulations at § 4 VAC 25–130–700.5. In the original submittal, the ''130'' was omitted from the citation.

We find that the provisions of this amendment are substantively identical to and no less effective than the Federal regulations at 30 CFR 874.17 concerning the AML agency procedures for reclamation projects receiving less than 50 percent government funding. Therefore, we are approving the amendment. We also note that OSM has just approved a definition of ''government-financed construction'' at 4 VAC 25–130–700.5 that is substantively identical to the Federal definition of ''government-financed construction'' at 30 CFR 707.5.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received.

Federal Agency Comments

Pursuant to 884.14(a)(2) and 884.15(a), OSM solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Virginia plan (Administrative Record number VA–982). The U.S. Department of Agriculture, Natural Resources Conservation Service responded (Administrative Record number VA–992) and concurred with the amendment and recommended that it be approved. As noted above in the Findings, we are approving the amendment. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded (Administrative Record number VA–991) and stated that there appears to be no conflict with MSHA regulations or policy.

The Environmental Protection Agency responded (Administrative Record Number VA–996), and stated that the amendment appears to comply with the Clean Water Act, and that it does not have any specific comments.

V. Director's Decision

Based on the above finding, we are approving the proposed AMLR plan amendment as submitted by Virginia on September 10, 1999, and amended on October 22, 1999.

The Federal regulations at 30 CFR Part 946.25, codifying decisions concerning the Virginia plan amendments, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribal, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a

substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 23, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

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

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

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

2. Section 946.25 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 946.25 Approval of Virginia abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
September 10, 1999	January 7, 2000	Revisions to the Virginia State Reclamation Plan corresponding to 30 CFR 884.13(c)(2)—Ranking and Selection: Reclamation Projects Receiving Less Than 50% Government Funding.

[FR Doc. 00–421 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–130]

RIN 2115–AA97

Safety Zone: New York Harbor and Hudson River Fireworks.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing five permanent safety zones for fireworks displays located on Upper and Lower New York Bay, the Hudson River, and Raritan Bay. This action is necessary to provide for the safety of life on navigable waters during the events. This action establishes permanent exclusion areas that are only active prior to the start of the fireworks display until shortly after the fireworks display is completed, and is intended to restrict vessel traffic in a portion of Upper and Lower New York Bay, the Hudson River, and Raritan Bay.

DATES: This rule is effective February 7, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–99–130) and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, room 205, between 8 a.m. e.s.t. and 3 p.m. e.s.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 6, 1999, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: New York Harbor and Hudson River Fireworks in the **Federal Register** (64 FR 54252). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

On October 25, 1999, we published a correction notice entitled Safety Zone: New York Harbor and Hudson River Fireworks in the **Federal Register** (64 FR 57419). This notice corrected the Latitude position of the barge location east of Ellis Island.

Background and Purpose

The Coast Guard is establishing five permanent safety zones that will be activated for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these five locations. The five locations are east of Liberty and Ellis Islands in Upper New York Bay; east of South Beach, Staten Island in Lower New York Bay; west of Pier 60, Manhattan, on the Hudson River; and Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West). The number of events held in these locations has increased from three in 1996 to 21 in 1998. The Coast Guard has received 16 applications for fireworks displays in these areas to date in 1999. In the past, temporary safety zones were established with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing permanent safety zones by notice and comment rulemaking gave the public the opportunity to comment on the safety zone locations, size, and length of time the zones will be active. The Coast Guard has received no prior notice of any impact caused by the previous events.

The five safety zones are as follows:

The safety zone at Liberty Island includes all waters of Upper New York Bay within a 360-yard radius of the fireworks barge located in Federal Anchorage 20–C, in approximate position 40°41′16.5″N 074°02′23″ W (NAD 1983), about 360 yards east of Liberty Island. The safety zone prevents vessels from transiting a portion of Federal Anchorage 20–C and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage 20–C. Federal Anchorages 20–A and 20–B, to the north, and Federal Anchorages 20–D and 20–E, to the south, are also available for vessel use. Marine traffic will still be able to transit through

Anchorage Channel, Upper Bay, during the event as the safety zone only extends 125 yards into the 925-yard wide channel. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone at Ellis Island includes all waters of Upper New York Bay within a 360-yard radius of the fireworks barge located between Federal Anchorages 20–A and 20–B in approximate position 40°41′45″ N 074°02′09″ W (NAD 1983), about 365 yards east of Ellis Island. The safety zone prevents vessels from transiting a portion of Federal Anchorages 20–A and 20–B and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorages 20–A and 20–B. Federal Anchorages 20–C, 20–D, and 20–E, to the south, are also available for vessel use. Marine traffic will still be able to transit through Anchorage Channel, Upper Bay, during the event as the safety zone only extends 150 yards into the 900-yard wide channel. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone east of South Beach, Staten Island includes all waters of Lower New York Bay within a 360-yard radius of the fireworks barge located in approximate position 40°35′11″ N 074°03′42″ W (NAD 1983), about 350 yards east of South Beach, Staten Island. The safety zone prevents vessels from transiting a portion of Lower New York Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Lower New York Bay during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone.

The safety zone off Pier 60, Manhattan includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″ N 074°01′02″ W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 150 yards of the 850-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this safety zone. Additionally, vessels are not precluded from mooring at or getting underway from Piers 59–62 or from the Piers at Castle Point, New Jersey due to this safety zone.

The safety zone in Raritan Bay includes all waters of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30′04″ N 074°15′35″ W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595). The safety zone prevents vessels from transiting a portion of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West). It is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 140 yards of the 230-yard wide Ward Point Bend (West) during the event. Traffic that can not transit through the closed Raritan River Cutoff can transit through Ward Point Bend (West) by using South Amboy Reach, Great Beds Reach, Ward Point Secondary Channel, and Ward Point Bend (East). Additionally, vessels will not be precluded from mooring at or getting underway from any marinas or piers at Perth Amboy, New Jersey due to this safety zone.

The actual dates that these safety zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information broadcasts will also be made for these events beginning 24 to 48 hours before the event is scheduled to begin. Facsimile broadcasts will also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent safety zone in this rulemaking will normally be made between thirty and fourteen days before the zone is actually activated. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled ''FIREWORKS BARGE''. This will provide on-scene notice that the safety zone the fireworks barge is located in is or will be activated on that day. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce each safety zone.

The effective period for each safety zone is from 8 p.m. e.s.t. to 1 a.m. e.s.t. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

This rule is being established to provide for the safety of life on navigable waters during the events. It also gave the marine community the opportunity to comment on the zone locations, size, and length of time the zones will be active.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. This Final rule is the same as the proposed rule except that the Latitude position of the barge location east of Ellis Island has been corrected. On Oct 25, 1999, we notified the public of this Latitude position change when we published a correction notice entitled Safety Zone: New York Harbor and Hudson River Fireworks in the **Federal Register** (64 FR 57419).

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. Vessels may safely anchor to the north and south of the zones by Liberty and Ellis Islands. Vessels may also still transit through Anchorage Channel, Lower New York Bay, the Hudson River, and Ward Point Bend (West) in Raritan Bay during these events. Vessels will not be precluded from getting underway, or mooring at, Piers 59–62 and the Piers at Castle Point, New Jersey during displays off

Pier 60, nor from marinas and piers at Perth Amboy, New Jersey during displays in the Raritan River Cutoff. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on the port and starboard side of the barge labeled ''FIREWORKS BARGE''. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. Additionally, the Coast Guard anticipates that these safety zones will only be activated 20–25 times per year. These safety zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to anchor in or transit through the affected portions of New York Harbor, and the Hudson River during the times these zones are activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. Vessels may safely anchor to the north and south of the zones by Liberty and Ellis Islands. Vessels may also still transit through Anchorage Channel, Lower New York Bay, the Hudson River, and Ward Point Bend (West) in Raritan Bay during these events. Vessels will not be precluded from getting underway, or mooring at, Piers 59–62 and the Piers at Castle Point, New Jersey during displays off Pier 60, nor from marinas and piers at Perth Amboy, New Jersey during displays in the Raritan River Cutoff. Before the effective period, we will issue maritime advisories widely available to users of the Port of New York/New Jersey by the local notice to mariners, marine information broadcasts, and facsimile.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order. No comments were received nor changes made to the NPRM.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate. No comments were received nor changes made to the NPRM.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were received nor changes made to the NPRM.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were received nor changes made to the NPRM.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits category 34(g) since implementation of this action will not result in any significant cumulative impacts on the human environment, substantial controversy or substantial change to existing environmental conditions, impacts which are more than minimal on properties protected under 4(f) of the DOT Act as superseded by Public Law 97–449, and section 106 of the National Historic Preservation Act; and inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.** No comments were received nor changes made to the NPRM.

List of Subjects

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.168 to read as follows:

§ 165.168 Safety Zones: New York Harbor and Hudson River Fireworks.

(a) *Liberty Island Safety Zone:* All waters of Upper New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°41′16.5″N 074°02′23″ W (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island.

(b) *Ellis Island Safety Zone:* All waters of Upper New York Bay within a 360-yard radius of the fireworks barge located between Federal Anchorages 20–A and 20–B, in approximate position 40°41′45″ N 074°02′09″ W (NAD 1983), about 365 yards east of Ellis Island.

(c) *South Beach, Staten Island Safety Zone:* All waters of Lower New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°35′11″ N 074°03′42″ W (NAD 1983), about 350 yards east of South Beach, Staten Island.

(d) *Pier 60, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge

in approximate position 40°44′49″ N 074°01′02″ W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York.

(e) *Raritan Bay Safety Zone:* All waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30′04″ N 074°15′35″ W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595).

(f) *Notification.* Coast Guard Activities New York will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS BARGE''. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background.

(g) *Effective Period.* This section is effective from 8 p.m. e.s.t. to 1 a.m. e.s.t. each day a barge with a ''FIREWORKS BARGE'' sign on the port and starboard side is on-scene in a location listed in paragraphs (a) through (e) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York or designated Coast Guard patrol personnel on scene.

(h) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard.

Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: December 14, 1999.

R.E. Bennis,

Captain, Coast Guard,

Captain of the Port, New York.

[FR Doc. 00–350 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–195–9947(a), TN–188–9959(a); FRL–6519–4]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Revision to Rule Governing Monitoring of Source Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 24, 1997, and May 8, 1997, the Tennessee Department of Environment and Conservation submitted revisions to the Tennessee State Implementation Plan (SIP). These revisions consisted of amendments to Rules 1200–3–12–.04 Monitoring Required for Determining Compliance of Certain Large Sources and 1200–3–10–.02 Monitoring of Source Emissions, Recording and Reporting of the Same are Required. Tennessee submitted these revisions to clarify the reporting requirements. EPA is approving the aforementioned changes to the SIP because they are consistent with the Clean Air Act and EPA requirements.

DATES: This direct final rule is effective on March 7, 2000 without further notice, unless EPA receives adverse comment by February 7, 2000. 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: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Office of the **Federal Register**, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Tennessee Department of Environment and Conservation, 9th Floor L & C Annex, 401 Church St, Nashville, TN 37243–1531.

FOR FURTHER INFORMATION CONTACT: Randy Terry at the above Region 4 address or at 404–562–9032.

SUPPLEMENTARY INFORMATION: On February 24, 1997, the Tennessee Department of Environment and Conservation submitted a revision to paragraph (1) of rule 1200–3–12–.04. This revision was made to change an incorrect reference to a subparagraph (e) to the correct reference of subparagraph (d).

On May 8, 1997, the Tennessee Department of Environment and Conservation submitted revisions to Subpart (i) of part 1. of Subparagraph (c) of paragraph (2) of Rule 1200–3–10–.02 of the Tennessee SIP. These revisions delete the word ''or'' and add the language ''in excess of the applicable emission standard or all'' to the first sentence between the words ''averages'' and the number ''24'' so that as amended, the subpart shall read:

1. (i) The source owner or operator shall report all 3-hour averages in excess of the applicable emission standard or all 24-hour averages in units of the applicable emission standard. The 3-hour and 24-hour values shall be computed by taking the average of three contiguous or 24 contiguous one-hour values of sulfur dioxide emissions. The one-hour average values may be obtained by integration over the one-hour period or be computed from four or more data points equally spaced over each one-hour period. Data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included on the data averages.

Final Action

EPA is approving the aforementioned changes to the State Implementation Plan (SIP) because they are consistent with the Clean Air Act and EPA 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 March 7, 2000 without further notice unless the Agency receives relevant adverse comments by February 7, 2000.

If the 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. The 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 March 7, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

F. 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 annual 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 annual 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.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. 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 March 7, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 18, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. The entries for sections 1200–3–10–.02 and 1200–3–12–.04 in the table in § 52.2220 (c) are revised to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	Adoption date	EPA approval date	FEDERAL REGISTER notice
*	* * *	*	*	*
Section 1200–3–10–.02	Monitoring of Source Emissions, Recording, Reporting of the Same are Required.	02/14/96	01/07/00	[65 FR 1070]
*	* * *	*	*	*
Section 1200–3–12–.04	Monitoring Required for Determining Compliance of Certain Large Sources.	12/28/96	01/07/00	[65 FR 1070].
*	* * *	*	*	*

[FR Doc. 00–268 Filed 1–6–00; 8:45 am]

BILLING CODE 6560–50–P

EVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL 6517–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule to delete the D.L. Mud, Inc., Superfund Site from the National Priorities List and Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its direct final action to delete the D.L. Mud, Inc., Superfund Site (Site), located in Vermilion Parish, Louisiana, from the National Priorities List (NPL) and requests public comments on this deletion.

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final action to delete is being taken by EPA with the concurrence of the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ) because EPA has determined that all appropriate response actions under CERCLA have been completed and that the Site poses no significant threat to public health or the environment and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final rule will be effective March 7, 2000 unless EPA receives significant adverse or critical comments by February 7, 2000. If significant adverse or critical comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to: Ms. Janetta Coats, Community Involvement Coordinator (6SF–PO), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–7308 or 1–800–533–3508. Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Suite 12D13, Dallas, Texas 75202–2733, (214) 665–6524, Monday through Friday 8:00 a.m. to 12:00 p.m.; Vermilion Parish Library, 200 North Magdalen Square, Abbeville, Louisiana 70511, (318) 893–2674, Monday and Thursday 9:00 a.m. to 8:00

p.m.; Tuesday, Wednesday, and Friday 9:00 a.m. to 5:30 p.m.; and Saturday 9:00 a.m. to 1:00 p.m.; Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (225) 765–0487, Monday through Friday 8:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Katrina Higgins, Remedial Project Manager (6SF–LP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8143 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region 6 announces its direct final action to delete the D.L. Mud, Inc., Superfund Site from the NPL and requests public comments on this deletion.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

The EPA will accept comments concerning this direct final action to delete for 30 days after publication of this document in the **Federal Register**. If no significant adverse or critical comments are received, the Site will be deleted from the NPL effective March 7, 2000. However, if significant adverse or critical comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final action to delete within 60 days of publication of the original document. The EPA will prepare a response to the comments and continue with the rulemaking process on the basis of the proposal to delete filed simultaneously with this document and the comments already received.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the D.L. Mud, Inc., Superfund Site and demonstrates how it meets one of the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless significant adverse or critical comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA Section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with LDEQ on the deletion of the Site from the NPL prior to developing this direct final action to delete.

(2) LDEQ concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication this direct final action to delete, a notice of availability of this direct final action to delete is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the notice announces the 30-day public comment period concerning this deletion of the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If significant adverse or critical comments are received within the 30-day public comment period, EPA will publish a notice of withdrawal of this direct final action to delete within 60 days of the publication of this notice and will prepare a response to comments and continue with the rulemaking process on the basis the proposal to delete filed simultaneously with this notice and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

For deletion of this Site, EPA Region 6 will accept and evaluate comments on EPA's direct final action to delete before making a final decision to delete. If necessary, EPA will prepare a responsiveness summary to address any significant comments received. If none of the comments received during the public comment period are significantly adverse or critical, the Site will be deleted from the NPL effective on March 7, 2000.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

A. Site Location

The Site is located in a rural area of southern Louisiana, approximately 20 miles north of the Gulf of Mexico and approximately 3 miles southwest of Abbeville, Louisiana. The Site comprises approximately 12.8 acres in Range 3 East, Township 12 South, Sections 60, 58, 38, and 32 in Vermilion Parish. The surrounding property is chiefly agricultural consisting of livestock grazing, crawfish farming, and crop production. Approximately 116 residences are located within a one mile radius of the Site on Parish Road P–7–31 and Louisiana Highway 335.

B. Site History

The Site took its present form on October 1, 1980, when G.H. Fluid Services, Inc., sold 12.78 acres of the 25.56 acre parcel to GCVS (this later became the GCVS site). On February 11, 1981, G.H. Fluid Services, Inc., sold the remaining 12.78 acres to Dowell, a

division of the Dow Chemical Company. Ownership of the Site was transferred to Dowell Schlumber, Inc., (DSI) in April 1984. The Site was then sold to D.L. Mud, Inc., in March 1985 by DSI.

The 25.56 acre parcel was used for agricultural purposes prior to 1969. From 1969 to 1980 (prior to the division of the property), the portion of the property that later became the D.L. Mud, Inc., Site was used as a barium sulfate based drilling mud storage and formulating facility. The D.L. Mud, Inc., Site remained relatively inactive after 1980. A citizen's complaint through the Vermilion Association to Protect the Environment led to Site identification by EPA on June 27, 1980. After considerable investigation, the Site was proposed for inclusion on the NPL in June 1988, and inclusion was finalized on October 4, 1989, pursuant to Section 105 of CERCLA, qualifying the Site for investigation and remediation under CERCLA.

State Lead Removal

Some time in 1985 or 1986, DOW/DSI, by way of agreement with D.L. Mud, Inc., agreed to take responsibility for the cleanup of the Site in cooperation with LDEQ. Between April 18, 1986, and August 18, 1986, under the supervision of LDEQ, DOW/DSI constructed a security fence around the majority of the Site. At the same time, DOW/DSI began development of a tank sampling, analysis, and disposal plan for the 16 on-site tanks.

From April 14, 1987, through July 11, 1987, DOW/DSI performed a remediation of the drilling mud storage tank farm under the supervision of LDEQ by completing the following tasks:

Removal of tank contents and associated soils, destruction by incineration, and disposal of ash in a hazardous waste landfill,

- Decontamination and demolition of the tanks, supports and piping,
- Removal and disposal of approximately 800 cubic yards of contaminated soil from eight on-site areas, including tank pads, one ''bare'' area, and two areas identified by EPA in the southern portion of the Site, and
- Placement of clean off-site fill material on-site in the excavated areas.

The limits of excavation for the removal action were determined by LDEQ representative using an Hnu photoionization meter. Verification soil samples were collected from the eight excavated areas. On December 17, 1987, DOW/DSI submitted a report of decommissioning and restoration of the Site which was approved by LDEQ on February 29, 1988. It should be noted that the information used by EPA to list the Site on the NPL was gathered before the 1987 cleanup activities were completed.

Remedial Investigation and Feasibility Study (RI/FS)

DOW/DSI conducted the RI/FS pursuant to an administrative order on consent signed on June 20, 1990. The objectives of the RI, completed in December 1992, were to confirm the efficacy of prior remedial actions performed at the Site by DOW/DSI and determine the nature of residual Site contamination (if any) and associated public health and environmental risks. The objectives of the FS, completed in November 1993, were to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants from the Site.

Record of Decision Findings

On September 22, 1994, EPA signed a record of decision (ROD) for the Site. The remedy was chosen in accordance with CERCLA and the NCP. The decision was based on the administrative record for this Site and the State of Louisiana concurred on the selected remedy.

The Site was addressed as one operable unit. The principal concerns addressed at the Site were from surface soils contaminated with residual barium and contaminated subsurface soils associated with former impoundments. The major components of the selected remedy include:

- Imposition of institutional controls to address the low level threats posed by the residual barium contamination in the surface soils (such controls consisting of fencing and deed notices/restrictions to ensure that future residential use of the property does not occur),
- Excavation and off-site disposal of visually contaminated subsurface soils to eliminate the potential for migration of the contaminants into the ground water, and
- Ground water monitoring to ensure that waste excavation actions are successful and potential ground water degradation from residual surface soil contaminants does not occur.

The selected remedy is protective of public health and the environment, complies with federal and state requirements that are legally applicable or relevant and appropriate to the remedial action, and is cost effective. This remedy utilizes permanent solutions to the maximum extent practicable for this Site.

Because the remedy will result in hazardous substances remaining on-site above health-based concentration levels, a review will be conducted every five years after commencement of the remedial action to ensure that the remedy continues to provide adequate protection of public health and the environment.

C. Characterization of Risk

On June 16, 1998, the responsible parties placed deed notices in the property files associated with the Site in accordance with the remedial design/remedial action (RD/RA) consent decree (CD). The deed notices serve to notify future owners that the property is subject to certain land use restrictions and EPA access rights as stated in the CD.

Remedial action activities commenced with the baseline ground water sampling followed by the construction RA. Construction RA activities included the excavation of contaminated subsurface soils based on visual observations of soil staining. A total of 4,362 tons of non-hazardous solid waste materials were transported and disposed of off-site. After the subsurface materials were excavated, confirmatory samples were collected from the excavated bottom which verified that the Site has achieved the cleanup standards set forth in the ROD. The excavated area was backfilled with a total of 3,988 cubic yards of off-site fill material that also met ROD cleanup standards. The filled areas were graded to provide for uniform drainage of runoff from the Site. Removal of all discolored subsurface soil was completed and remediation equipment removed by November 13, 1998. The entire Site was fenced with a 6 foot tall chain link fence with triple strands of barbed wire in order to restrict access to the property and to address the low level threats posed by the residual barium contamination in the surface soils. Site fencing work was completed by February 5, 1999.

Upon review of the ground water data obtained in October 1998, it was noted that there were concentrations above the maximum contaminant levels (MCLs) for barium, chromium, lead, and cadmium. Although the ROD calls for annual ground water sampling, the ground water program during the operation and maintenance (O&M) phase was increased to quarterly monitoring based on the presence of barium, cadmium, chromium, and lead concentrations above MCLs. This increased frequency of sampling will

aid in the evaluation and assessment of statistical trends of the contaminants' concentrations.

This Site meets all the site completion requirements as specified in OSWER Directive 9320.2–09, ''Close Out Procedures for National Priorities List Sites'' (1995), and the June 1999 Site close out report.

D. Future Activity

Site O&M activities will include an annual engineer's inspection and report of the condition of the Site along with quarterly ground water monitoring. The responsible parties, as agreed upon in the CD and accompanying statement of work and as detailed in the remedial action report, have assumed all responsibility for O&M at the Site. Plans for O&M are in place and are sufficient to maintain the protectiveness of the remedy. The responsible parties are fulfilling obligations to perform the O&M.

Matters to be investigated during the annual inspections concern the integrity of land use restrictions and the perimeter fencing; the existing ground water wells will be monitored quarterly. These activities are required for a minimum of 30 years. If the integrity of any of these items is found to be unduly compromised, correction to a fully functional state is required. The annual inspection report will include information gathered during the inspections and ground water monitoring data from previous quarters. Every five years an additional ground water statistics report will be made to evaluate statistical trends and relationships with background data.

The ROD specifies that ground water monitoring will be conducted in existing wells in order to evaluate whether the post-construction RA has an impact on ground water quality beneath the Site. The ROD requires ground water analyses to include target compound list (TCL) volatiles, TCL semivolatiles, and target analyte list dissolved and total metals.

Because the remedy will result in hazardous substances remaining on-site above health-based concentration levels, five-year reviews will be conducted pursuant to OSWER Directive 9355.7–02, ''Structure and Components of Five-Year Reviews,'' May 23, 1991, and OSWER Directive 9355.7–02A ''Supplemental Five-Year Review Guidance,'' July 26, 1994 or other guidance where it exists. All reposonse activities have been completed at the Site other than O&M and five-year reviews.

E. Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Louisiana (LDEQ), has determined that the Site poses no significant threat to public health or the environment, that all appropriate responses under CERCLA have been completed, and that no further response actions, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior proposal. This action will be effective March 7, 2000 unless EPA receives significant adverse or critical comments by February 7, 2000. If significant adverse or critical comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final action to delete within 60 days from the date of publication of the original notice in the **Federal Register** and will prepare a response to comments and continue with the rulemaking process on the basis of the proposal to delete and the comments already received.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 21, 1999.

Lynda F. Carroll,

Acting Regional Administrator, EPA, Region 6.

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

PART 300—[AMENDED]

The authority citation for Part 300 continues to read as follows:

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

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under Louisiana (''LA'') by removing the site name ''D.L. Mud, Inc.'' and the city/county ''Abbeville''.

[FR Doc. 00–359 Filed 1–6–00; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 65, No. 5
Friday, January 7, 2000

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

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

[Docket No. 97–093–3]

Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposed rule to restrict the interstate movement of sheep and goats from States that do not follow effective flock management practices for scrapie, to require animal identification for sheep and goats moving interstate, and to reinstate a scrapie indemnity program to compensate owners of certain animals destroyed due to scrapie. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 97–093–2. We will consider all comments that we receive by January 14, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 97–093–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 97–093–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Sutton, Senior Staff Veterinarian, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1235; (301) 734–4363.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1999, we published in the **Federal Register** (64 FR 66791–66812, Docket No. 97–093–2) a proposal to amend the regulations in 9 CFR parts 54 and 79 to restrict the interstate movement of sheep and goats from States that do not follow effective flock management practices for scrapie. This proposed rule would also require animal identification for sheep and goats moving interstate and reinstate a scrapie indemnity program to compensate owners of certain animals destroyed due to scrapie.

Comments on the proposed rule were required to be received on or before December 30, 1999. Some commenters have indicated that it will be difficult for them to complete and submit comments during this period due to events of the holiday season. We are reopening and extending the comment period on Docket No. 97–093–2 for 15 days to January 14, 2000. This action will allow interested persons additional time to prepare and submit comments.

Internet Access

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Authority: 21 U.S.C. 111, 114, 114a, and 134a–134h; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 29th day of December 1999.

A.B. Cielo,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–303 Filed 1–6–00; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

[Notice 2000–1]

11 CFR Parts 100, 102, 103, 104, 106, 107, 109, 110, 114, and 116

Use of the Internet for Campaign Activity

AGENCY: Federal Election Commission.

ACTION: Extension of comment period.

SUMMARY: On November 5, 1999, the Commission published a Notice of Inquiry inviting comments on the use of the Internet to conduct campaign activity. The Commission has extended the deadline for submitting comments until January 7, 2000.

DATES: Comments must be filed on or before January 7, 2000.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to internetnoi@fec.gov, and should include the full name, electronic mail address and postal service address of the commenter. Additional information on electronic submission is provided below.

FOR FURTHER INFORMATION CONTACT: Rosemary C. Smith, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On November 5, 1999, the Commission published a Notice of Inquiry regarding the use of the Internet for campaign activity. 64 FR 60360 (Nov. 5, 1999). The November 5 Notice set forth a January 4, 2000 deadline for submission of comments. The Commission has decided to extend this comment period until January 7, 2000.

As indicated in the Notice of Inquiry, all comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW, Washington, DC 20463.

Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to internetnoi@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. All comments, regardless of form, must be submitted by January 7, 2000.

Dated: January 3, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–320 Filed 1–6–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–229–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 750 Citation X Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); rescission.

SUMMARY: This document proposes to rescind an existing airworthiness directive (AD), applicable to all Cessna Model 750 Citation X series airplanes, that currently requires repetitive in-flight functional tests to verify proper operation of the secondary horizontal stabilizer pitch trim system, and repair, if necessary. The actions specified by that AD are intended to detect and correct such contamination and damage, which could result in simultaneous failure of both primary and secondary pitch trim systems, and consequent reduced controllability of the airplane. Since the issuance of that AD, an improved part has been developed, which, if installed, would terminate the repetitive tests; that improved part has been installed on all affected airplanes or is being installed in production. Therefore, the identified unsafe condition no longer exists.

DATES: Comments must be received by February 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information pertaining to this proposed rule may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Joel M. Ligon, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4138; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–229–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–229–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 29, 1998, the FAA issued AD 98–16–17, amendment 39–10693 (63 FR 42206, August 7, 1998), applicable to all Cessna Model 750 Citation X series airplanes, to require repetitive in-flight functional tests to verify proper operation of the secondary horizontal stabilizer pitch trim system, and repair, if necessary. That action was prompted by reports of simultaneous failures of the primary and secondary horizontal stabilizer pitch trim system during flight, due to internal water contamination and corrosion damage in the system actuator. The requirements of that AD are intended to detect and correct such contamination and damage, which could result in simultaneous failure of both primary and secondary pitch trim systems, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has developed a modification (reference Cessna Service Bulletin SB750–27–23, dated February 2, 1999) that involves replacement of the horizontal stabilizer trim system actuator with an improved actuator incorporating a moisture condenser. The improved design will prevent internal water contamination and corrosion damage of the actuator. The FAA has determined that installation of this improved actuator will adequately address the unsafe condition identified in AD 98–16–17, and will eliminate the need for the repetitive in-flight functional tests required by that AD.

The manufacturer has verified that the modification has been accomplished on all affected airplanes, including those in production, and on all actuators in operators' inventories. Therefore, the unsafe condition cannot be reintroduced into the fleet.

FAA's Conclusions

Since all affected airplanes, including those in production, and all actuators in operators' inventories have been modified, the FAA has determined that it is necessary to rescind AD 98–16–17 in order to prevent operators from performing an unnecessary action.

This proposed action would rescind AD 98–16–17. Rescission of AD 98–16–17 would constitute only such action, and, if followed by a final action, would not preclude the agency from issuing another notice in the future, nor would it commit the agency to any course of action in the future.

Cost Impact

The FAA estimates that 52 airplanes of U.S. registry are affected by AD 98–

16–17. The actions that are currently required by that AD take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $6,240, or $120 per airplane. However, the adoption of this proposed rescission would eliminate those costs.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect 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, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10693.

Cessna Aircraft Company: Docket 99–NM–229–AD. Rescinds AD 98–16–17, Amendment 39–10693.

Applicability: All Model 750 Citation X series airplanes, certificated in any category.

Issued in Renton, Washington, on January 3, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–377 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[REG–103827–99]

RIN 1545–AX11

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document invites comments from the public on issues that the IRS may address in proposed regulations relating to the requirements for excise tax returns and deposits. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by April 6, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–103827–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–103827–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may send submissions electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or directly to the IRS Internet site at http://www.irs.ustreas.gov/tax__regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions, the Regulations Unit, (202) 622–7180; concerning the proposals, Susan Athy, (202) 622–3130 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Excise Tax Procedural Regulations (26 CFR part 40) set forth the requirements related to filing the Quarterly Federal Excise Tax Return, Form 720, and making deposits of excise taxes. Certain provisions of the current regulations are complicated. The IRS is interested in simplifying the filing and deposit rules both as to the timing and the calculation of the correct amount to deposit. Simplification would reduce recordkeeping burdens and costs for taxpayers, improve compliance, and facilitate proper administration of the excise taxes and trust funds. The IRS requests comments on how the regulations can be simplified; comments are requested in particular on the following issues.

Time for Filing Returns

The regulations currently provide that the Form 720 generally must be filed by the last day of the first calendar month following the quarter for which it is made. However, in the case of returns related to taxes imposed by chapter 33 (communications and air transportation) and section 4681 (ozone-depleting chemicals), the due date is the last day of the second calendar month following the quarter for which it is made.

The IRS requests comments on whether there should be one filing date for all Form 720 filers, such as 30 days after the end of the quarter. This would be a simple rule that would apply equally to all taxpayers.

Use of Government Depositaries

Background

The regulations currently provide that excise taxes must be deposited on a semimonthly basis. Generally, taxes must be deposited by the 9th day of the semimonthly period following the semimonthly period for which the deposit is made (the 9-day rule). There are, however, exceptions to this rule. Taxes on ozone-depleting chemicals must be deposited by the end of the second semimonthly period following the semimonthly period for which the deposit is made (the 30-day rule). In addition, for taxes imposed by section 4081 (gasoline, diesel fuel, and kerosene), communications taxes, and air transportation taxes, taxpayers may choose a deposit rule other than the 9-day rule. For section 4081 taxes, section 518 of the Highway Revenue Act of 1982 provides that a qualified person may deposit by the 14th day of the semimonthly period following the semimonthly period for which it is made if the deposit is made by electronic funds transfer (the 14-day rule). For communications and air transportation taxes, if a person computes the amount of tax to be reported and deposited on the basis of amounts considered as collected, the person may deposit the taxes considered as collected during a semimonthly period by the third banking day after the seventh day of the semimonthly period (the alternative method).

The regulations also provide that the amount of the deposit for a semimonthly period must equal the amount of net tax liability incurred during that period unless either the look-back quarter safe harbor rule or the current liability safe harbor rule applies. In general, the look-back quarter safe harbor rule is met if the deposits for each semimonthly period in the quarter are at least ⅙ of the net liability reported for that tax in the second calendar quarter preceding the current quarter, and the current liability safe harbor rule is met if the deposit for each semimonthly period is at least 95 percent of the net tax liability for the semimonthly period. Safe harbor rules apply separately to each class of tax. Each semimonthly deposit must be timely made at an authorized Government depository. Also, the amount of any underpayment must be paid by the due date of the return, without extension. A failure to meet all the deposit requirements of a safe harbor rule for any semimonthly period eliminates the availability of that safe harbor for the entire quarter.

As the above description of current regulations illustrates, the deposit rules are quite complicated, and taxpayers have experienced difficulty in complying with them. In addition, under existing safe harbor rules, penalties for failure to deposit may be imposed for all semimonthly periods in a quarter if a taxpayer fails to deposit timely and in the correct amount during any semimonthly period in that quarter.

Request for Comments

With respect to the deposit rules, the IRS specifically requests comments on the following issues:

1. Whether there should be a single deposit date for all excise taxes, such as 14 days after the end of the semimonthly period. (The IRS believes it would be appropriate to retain the alternative method allowing communications and air transportation tax collectors to file returns and make deposits based on amounts billed or tickets sold.)

2. Whether a taxpayer should have to deposit at least 95 percent of tax liability incurred for the corresponding semimonthly period (in lieu of the current requirement of 100 percent with safe harbor rules).

3. Whether the amount required to be deposited for a quarter should be computed without reduction for the amounts of any claims made on Schedule C of Form 720 for that quarter.

Judith C. Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 00–15 Filed 1–6–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–029]

RIN 2115–AE47

Drawbridge Operation Regulations; Merrimack River, MA.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operating regulations for the Newburyport US1 Bridge, mile 3.4, across the Merrimack River between Newburyport and Salisbury, Massachusetts. The bridge owner asked the Coast Guard to change the regulations to allow the bridge to open only on the hour and half hour, from Memorial Day through Labor Day. This action is expected to help reduce vehicular traffic delays on Route 1 by scheduling bridge opening times while still meeting the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before March 7, 2000.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA. 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except, Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–99–029), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Newburyport US1 Bridge, mile 3.4, across the Merrimack River has a vertical clearance of 35 feet at mean high water and 42 feet at mean low water in the closed position. The current regulations in 33 CFR 117.605(a) require the bridge to open on signal from May 1 through November 15, from 6 a.m. to 10 p.m. At all other times the draw must open on signal if at least a one-hour advance notice is given by calling the number posted at the bridge.

The bridge owner, the Massachusetts Highway Department (MHD), asked the Coast Guard to change the regulations to allow scheduled opening times to help alleviate vehicular traffic delays on Route 1 that occur from Memorial Day through Labor Day. During the summer months the bridge opens more frequently for vessel traffic while the volume of vehicular traffic on Route 1 is the heaviest. The traffic delays on Route 1 has prompted the local communities to ask for relief to help reduce the traffic delays during the summer months.

The Coast Guard, in response to the bridge owner's request for assistance, published a notice of temporary deviation from the operating regulations (64 FR 25438) on May 12, 1999. The purpose of the deviation was to test a new schedule for bridge openings for a period of 90 days from June 3, 1999, through August 31, 1999. The bridge operating schedule during the test

period was: (1) Monday through Friday, from 6 a.m. to 10 p.m., the bridge opened once an hour, on the half hour. (2) Saturday and Sunday, from 11 a.m. to 3 p.m., the bridge opened once an hour, on the half hour. From 6 a.m. to 11 a.m. and 3 p.m. to 10 p.m., the bridge opened two times an hour, on the hour and half hour. (3) At all other times the bridge opened on signal after a one-hour notice was given by calling the number posted at the bridge.

The Coast Guard evaluated the bridge opening log data for the past three years as well as the data collected during the 90 day test period in 1999. The data indicated that June, July and August are the months that have the greatest number of bridge openings and that the greater percentage of the bridge openings occurred on weekends.

TEST PERIOD 1999

Month	Total openings	Weekend openings	Percent on weekends
June	307	205	67
July	322	193	60
August ...	305	137	45

MONTHLY TOTAL BRIDGE OPENINGS

	1997	1998	1999
April	3	17	34
May	95	155	202
June	288	190	307
July	310	387	322
August	334	350	305
September	226	294	250
October	197	149	N/A

The Coast Guard has determined that scheduled bridge openings from Memorial Day through Labor Day, 6 a.m. to 10 p.m., should help alleviate the traffic delays on Route 1 and still meet the reasonable needs of navigation.

The time period for scheduled bridge openings, Memorial Day through Labor Day, was selected because it is the time period when vehicular traffic on Route 1 is the heaviest and the frequency of bridge openings are the greatest.

Discussion of Proposal

The Coast Guard proposes to revise 33 CFR 117.605(a) to require that the draw of the Newburyport US1 Bridge open on signal from May 1 through November 15, 6 a.m. to 10 p.m.; except that, from Memorial Day through Labor Day, the draw shall open on signal, 6 a.m. to 10 p.m., only on the hour and half hour. At all other times the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

Comments from the public were received until October 31, 1999, in response to the notice of temporary deviation. Seven comment letters and a petition with a total of 150 signatures were received. The five comment letters and the petition were in favor of scheduled bridge openings. Two comment letters opposed the scheduled bridge openings indicating that some sail boats had difficulty waiting for bridge openings when the bridge only opened once an hour.

The Coast Guard, in response to the sail boat operators comments, is proposing that the bridge shall open on signal, 6 a.m. to 10 p.m., Memorial Day through Labor Day, two times each hour, on the hour and half hour. This proposed change will reduce the time vessels wait for bridge openings and should also reduce traffic delays on Route 1 by preventing back to back bridge openings.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, Feb. 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge will still open on signal for marine traffic two times each hour, on the hour and half hour, from 6 a.m. to 10 p.m., Memorial Day through Labor Day.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge opens only for large recreational sail boats and power boats. Most vessels can pass under the bridge without a bridge opening as a result of the high vertical clearance of 35 feet at mean high water and 42 feet at mean low water.

The owners of the larger vessels may be required, depending on the stage of the tide, to wait for bridge openings for up to 25 minutes in the event that they miss a scheduled bridge opening. The impacts are believed not to be significant because the bridge will still open on signal for marine traffic two times each hour, on the hour and half hour, 6 a.m. to 10 p.m., Memorial Day through Labor Day.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.605(a) is revised as follows:

§ 117.605 Merrimack River

(a) The draw of the Newburyport US1 Bridge, mile 3.4, shall operate as follows:

(1) From May 1 through November 15, 6 a.m. to 10 p.m.; the draw shall open on signal; except that, from Memorial Day through Labor Day, the draw shall open on signal, 6 a.m. to 10 p.m., only on the hour and half hour.

(2) At all other times the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: December 17, 1999.

R.M. Larrabee,

Rear Admiral, Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–351 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD08–99–061]

RIN 2115–AE84

Termination of Regulated Navigation Area: Monongahela River, Mile 81.0 to 83.0

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to terminate the regulated navigation area contained in 33 CFR 165.819. The regulated navigation area on the Monongahela River from mile 81.0 to mile 83.0 was established to ensure the safety of vessel traffic and workers during the construction of Grays Landing Lock. Now that all construction on Grays Landing Lock has been completed and the river's width is no longer restricted in this area, the regulated navigation area is no longer required.

DATES: Comments must be received on or before March 7, 2000.

ADDRESSES: Comments can be mailed to Commanding Officer, Marine Safety Office Pittsburgh, Kossman Bldg., Suite 1150, 100 Forbes Ave., Pittsburgh, PA 15222–1371 or may be delivered to the same address between 8 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (412) 644–5808. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LT M. D. Evanish, Project Manager, telephone number (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–99–061], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The regulated navigation area was established on November 29, 1991 to ensure the safety of vessel traffic and workers during the construction of Grays Landing Lock. It restricted waterway traffic to one-way passage on the Monongahela River between miles 81.0 and 83.0 with downbound vessels having right of way. The need for the Regulated Navigation Area no longer exists because all construction on Grays Landing Lock has been completed and the river's width is no longer restricted in this area. Therefore, since the safety concerns that necessitated the regulation no longer exist, this rule proposes to remove the regulation establishing this Regulated Navigation Area in § 165.819.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under Executive Order 12866 and is not significant under the ''Department of Transportation Regulatory Policies and Procedures'' (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation in unnecessary. The impacts on routine navigation are expected to be minimal.

Collection of Information

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

Federalism Assessment

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal

Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C this proposal is categorically excluded from further environmental documentation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small business and not-for-profit organizations that are independently owned and operate, are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard expects no negative impact on small entities. Removal of this RNA will actually facilitate commerce by making it easier for commercial tows of all sizes to transit the area. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Safety measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

§ 165.819 [REMOVED]

2. Section 165.819 is removed in its entirety.

Dated: December 20, 1999.

Paul J. Pluta,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 00–352 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–195–9947(b), TN–188–9959(b); FRL–6519–5]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Revision to Rule Governing Monitoring Of Source Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 24, 1997, and May 8, 1997, the Tennessee Department of Environment and Conservation submitted to EPA revisions to the Tennessee State Implementation Plan (SIP). These revisions consisted of amendments to Rules 1200–3–12–.04 Monitoring Required for Determining Compliance of Certain Large Sources and 1200–3–10–.02 Monitoring of Source Emissions, Recording, and Reporting of the Same are Required. Tennessee submitted these revisions to clarify the reporting requirements. In the final rules section of this **Federal Register**, the EPA is approving the revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting should do so at this time.

DATES: Comments must be received by February 7, 2000.

ADDRESSES: Written comments on this action should be addressed to Randy Terry at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day and reference files TN–195–9947. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Tennessee Department of Environment and Conservation, 9th Floor L & C Annex, 401 Church St, Nashville, TN 37243–1531.

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Randy Terry, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303. The telephone number is (404) 562–9032.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: October 18, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–267 Filed 1–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL 6517–4]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule to Delete the D.L. Mud, Inc., Superfund Site from the National Priorities List and Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its proposal to delete D.L. Mud, Inc., Superfund Site (Site) located in Vermilion Parish, Louisiana, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed and that the Site poses no significant threat to public health or the environment. However, this deletion does not preclude future actions under Superfund.

DATES: Comments concerning this Site must be received by February 7, 2000.

ADDRESSES: Written comments should be addressed to: Ms. Janetta Coats, Community Involvement Coordinator, U.S. EPA (6SF–PO), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–7308 or 1–800–533–3508

FOR FURTHER INFORMATION CONTACT: Ms. Katrina Higgins, Remedial Project Manager, U.S. EPA (6SF–LP), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8143 or 1–800–533–3508 (Toll Free). *Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following address: U.S. EPA Region 6 Library, Suite 12D13, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6524, Monday through Friday 8:00 a.m. to 12:00 p.m.; Vermilion Parish Library, 200 North Magdalen Square, Abbeville, Louisiana 70511, (318) 893–2674, Monday and Thursday 9 a.m. to 8:00 p.m., Tuesday, Wednesday, and Friday 9 a.m. to 5:30 p.m.; and Saturday 9 a.m. to 1:00 p.m.; and, Louisiana Department of Environmental Quality, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (225) 765–0487, Monday through Friday 8 a.m. to 4 p.m.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule to delete which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

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

Dated: December 21, 1999.

Lynda F. Carroll,

Acting Regional Administrator, U.S. EPA, Region 6.

[FR Doc. 00–360 Filed 1–6–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1125–N]

Medicare Program; Meetings of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the dates and locations for the eighth meeting of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule. This meeting is open to the public.

The purpose of this committee is to develop a proposed rule that would establish a fee schedule for the payment of ambulance services under the Medicare program through negotiated rulemaking, as mandated by section 4531(b) of the Balanced Budget Act of 1997 (BBA '97).

DATES: The eighth meeting is scheduled for January 24, 2000 from 9:00 a.m. until 5:00 p.m., January 25, 2000 from 9 a.m. until 5 p.m., and January 26, 2000 from 8:30 a.m. until 4 p.m.

ADDRESSES: The 3-day January meeting will be held at the Turf Valley Hotel, 2700 Turf Road, Ellicott City, Maryland 21042; (410) 465–1500.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding these meetings should be addressed to Bob Niemann ((410) 786–4569) or Margot Blige ((410) 786–4642) for general issues related to ambulance services or to Lynn Sylvester ((202) 606–9140) or Elayne Tempel ((207) 780–3408), facilitators.

SUPPLEMENTARY INFORMATION: Section 4531(b)(2) of the Balanced Budget Act of 1997 (BBA '97) added a new section 1834(l) to the Social Security Act (the Act) which mandates by January 1, 2000, implementation of a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) of the BBA '97 also provides that, in establishing such fee schedule, the Secretary will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and
- Phase in the fee schedule in an efficient and fair manner.

The Negotiated Rulemaking Committee on the Ambulance Fee Schedule has been established to provide advice and make recommendations to the Secretary with respect to the text and content of a proposed rule that would establish a fee schedule for the payment of ambulance services under Part B of the Medicare program.

The first and second meetings were for organizational purposes solely. There were no significant decisions made in these two meetings.

The Committee held its third meeting on May 24 and 25, 1999. At this meeting, the Committee heard presentations from HCFA staff, including a data presentation. The Committee requested another presentation by HCFA's Office of the

Actuary to obtain clarification about its calculation of the fee schedule payment cap. Additionally, a Medical Issues workgroup was formed.

The Committee held its fourth meeting on June 28 and 29, 1999. At this meeting a presentation was made by a HCFA Office of the Actuary staff member. The presentation clarified that budget neutrality will be evaluated by using all ambulance claims for the most current year and comparing the results of the proposed models with those paid claims. HCFA staff presented more historical Medicare hospital and supplier ambulance billing data. Consensus was reached on one possible basic structure for the fee schedule. HCFA indicated that the fee schedule must be effective as soon as operationally possible after January 1, 2000. Subcommittees were formed to produce, by July 19, 2000 proposals for—

(1) A rural/urban adjustment; and

(2) A fee schedule model based on the structure agreed to at the June meeting, combined with relative values.

These proposals, along with the results of the medical issues workgroup, were to serve as the basis for the Committee's next meeting.

The Committee held its fifth meeting on August 2 and 3, 1999. At this meeting the Committee heard presentations from HCFA staff on the Medicare Physician Fee Schedule's Geographic Practice Cost Index (GPCI) and hospital wage index. The Committee is considering the GPCI and hospital wage index for possible use as a geographic cost adjuster for the ambulance fee schedule. The second presenter, a member of the HCFA negotiated rulemaking team, presented additional historical Medicare hospital and ambulance supplier billing data. The Committee was advised in a letter signed by HCFA's Deputy Administrator, Michael M. Hash, that it has until February 15, 2000 to conclude its business. The Committee reached consensus on the definitions for Basic Life Support, Advanced Life Support (ALS) Level-1, ALS Level-2, and the criteria that the service must meet in order for the emergency response modifier amount to be paid. During the October meeting, the Committee planned to work on defining the geographic and rural modifiers and establishing the relative values of the different levels of service.

The seventh meeting of the Negotiated Rulemaking Committee was held December 6 through 8, 1999. The Committee reached consensus on the relative values to be used for the different levels of ambulance service to be modeled for evaluation purposes. The physicians' fee schedule Geographic Practice Cost Index (practice expense component) will be used as the ambulance fee schedule geographic adjuster. An additional payment will be made for ambulance services if the point of pickup is in a rural area. Rural is defined as a location in a non-MSA (with Goldsmith modification, if possible). An additional payment for an emergency response will be paid if the condition as presented was an emergency condition and the supplier responded ''immediately''.

The Committee is expected to conclude its work by February 15, 2000. The main items remaining include evaluating the results of the rural modifier and preparing the Committee's official report.

The announced meeting is open to the public without advanced registration. Public attendance at the meeting may be limited to space available. Mail written statements to the following address: Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, Attention: Lynn Sylvester. Notice of future meetings will be published in the **Federal Register**. A summary of all proceedings will be available for public inspection in room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890), and can be accessed through the HCFA Internet site at http://www.hcfa.gov/medicare/ambmain.htm. Additional information related to the Committee will also be available on the web site.

Authority: Section 1834(l) of the Social Security Act (42 U.S.C. 1395m).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 4, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–423 Filed 1–6–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF80

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[I.D. 102299A]

RIN 0648–XA39

Endangered and Threatened Wildlife; Extension of Comment Period and Notice of Public Hearings on Proposed Endangered Status for a Distinct Population Segment of Anadromous Atlantic Salmon (*Salmo salar*) in the Gulf of Maine

AGENCIES: Fish and Wildlife Service (FWS), Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of public hearings and extension of comment period.

SUMMARY: NMFS and FWS (the Services) provide notice to cancel a scheduled public hearing on January 19, 2000, to schedule three new public hearings that will be held on the proposed determination of endangered status for a distinct population segment (DPS) of Atlantic salmon (*Salmo salar*) in the Gulf of Maine, and to extend the public comment period on the proposal.

DATES: There will be three public hearings. The first will be held from 10:00 a.m. to 1:00 p.m. on January 29, 2000; the second will be held from 6:00 p.m. to 9:00 p.m. on January 31, 2000; and the third will be held from 6:00 p.m. to 9:00 p.m on February 1, 2000. The public comment period originally closed on February 15, 2000. The Services are extending the public comment period to March 15, 2000.

ADDRESSES: The January 29, 2000, public hearing will be held at the University of Maine at Machias, 9 O'Brien Avenue, Machias, Maine, in the Performing Arts Center. The January 31, 2000, public hearing will be held at Ellsworth Middle School, 20 Forrest Avenue, Ellsworth, Maine, in the cafeteria. The February 1, 2000, public hearing will be held at the Rockland District Middle School, 30 Broadway, Rockland, Maine, in the cafeteria. Written comments and materials regarding the proposed rule should be

directed to the Endangered Species Program Coordinator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, Massachusetts 01930, or to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. The 1999 Status Review may be obtained by contacting either of the above individuals or downloaded from the following site: http://news.fws.gov/salmon/asalmon.html. Please note that electronic mail or internet site comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Mary Colligan, NMFS, at the address above (978–281–9116) or Paul Nickerson, FWS, at the address above (413–253–8615).

SUPPLEMENTARY INFORMATION:

The Gulf of Maine DPS includes all naturally reproducing wild populations of Atlantic salmon having historical, river-specific characteristics found in a range north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the US-Canada border. The DPS includes both early and late run Atlantic salmon. Threats to the species include low marine survival, disease, the use of non-North American strains of Atlantic salmon in the U.S. aquaculture industry, aquaculture escapees, water withdrawal and sedimentation.

On November 17, 1999, the Services published a proposed rule to list the Gulf of Maine DPS of Atlantic salmon as endangered under the Endangered Species Act of 1973, as amended (ESA). Section 4(b)(5)(E) of the ESA requires that a public hearing be held if requested within 45 days of the proposal's publication in the *Federal Register*. Requests for public hearings were received within the allotted time period from Olympia Snowe, United States Senator, Chair, Subcommittee on Oceans and Fisheries, and Susan Collins, United States Senator, Chair, Permanent Subcommittee on Investigations, to be held in Machias, Maine; and Trout Unlimited, to be held in Rockland, Maine. The public hearing scheduled for January 19, 2000, in Ellsworth, Maine, which was noticed in the proposed rule (64 FR 62627; November 17, 1999), has been canceled.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement to be presented to the Services at the start of a hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearings or mailed to the Services. Legal notices announcing the dates, time, and location of the hearings are being published in newspapers concurrently with this **Federal Register** notice.

Dated: January 3, 2000.

Ann Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

Dated: December 22, 1999.

Ronald E. Lambertson,

Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 00–404 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[I.D. 121699A]

Small Takes of Marine Mammals Incidental to Specified Activities; San Francisco-Oakland Bay Bridge, Pile Installation Demonstration Project, San Francisco Bay, CA

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Federal Highway Agency (FHA) on behalf of the California Department of Transportation (CALTRANS) for the harassment of marine mammals incidental to a pile installation demonstration project (PIDP) at the San Francisco-Oakland Bay Bridge (SF-OBB), San Francisco Bay (the Bay), CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize CALTRANS to incidentally take, by harassment, small numbers of marine mammals in the above mentioned area for a period of 1 year.

DATES: Comments and information must be received no later than February 7, 2000.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division,

Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, (301) 713–2055 ext 128, or Tina Fahy, (562) 980–4023.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' ...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines ''harassment'' as:

> ...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On November 22, 1999, NMFS received an application from the FHA on behalf of CALTRANS, requesting authorization of an Incidental Harassment Authorization (IHA) for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*) incidental to conducting the PIDP at the SF-OBB.

CALTRANS is currently in the planning stages of the SF-OBB East Span Seismic Safety Project (ESSSP). The ESSSP would include driving large piles into the Bay bottom. One of the hammers anticipated to be used for this task is larger than any pile-driving hammer previously used in the Bay. Due to the untested nature of these hammers and piles in the Bay, a pile installation demonstration is needed. The PIDP will provide CALTRANS with an opportunity to measure resulting sound pressure levels (SPL), both in air and under water, record impacts to marine mammals and experiment with measures to reduce potential harm to marine mammals prior to general use on SF-OBB piles.

The PIDP site is located between Yerba Buena Island (YBI) and Oakland, in the area to the north of and between existing SF-OBB east span piers E6 and E9 (see figures 1 and 2 of the application). The PIDP site is approximately 2.0 km (1.24 mi) from northeast of the YBI harbor seal haul-out site, which is located immediately to the west of the lighthouse on the southernmost tip of the island.

The anticipated pier foundations for the ESSSP will consist of large diameter (up to 110–m (361–ft) long), steel pipe piles that will be driven into the Bay floor. Current plans anticipate using 2.5–m (8.2–ft) diameter piles for a majority of the foundations and smaller 1.5–m (4.9–ft) diameter pipe piles for others.

Accurately predicting the characteristics of pile driving prior to field-testing is not possible because piles of this size and length have not previously been installed in Bay substrates and there is limited experience with driving piles of this size. Therefore, given the unprecedented nature of this work in the Bay, this PIDP will provide CALTRANS with an opportunity to gather important data regarding in-air and underwater sound pressure levels generated by the pile driving activities. In addition, it will also provide an opportunity to gather data from experimental measures to attenuate elevated SPLs, thereby reducing the potential for harm to marine mammals. Information obtained from this demonstration potentially may prove valuable for forecasting anticipated impacts of pile installation activities associated with a larger SF-OBB east span construction, which will require the installation of approximately 350 piles of variable diameter.

Project Description

The PIDP includes driving three full-scale steel pipe piles (2.438 m (8.0 ft) in diameter, 110 m (361 ft) long) at two locations (two at a primary site and one at an alternate site) near the existing SF-OBB east span alignment. Each pile consists of four segments of variable length and wall thickness that will each be driven, subsequently welded to another segment, and driven again until the full desired length and depth of the pile is achieved. Due to the nature of this work, the majority of the project time will be spent on surface support activities, such as picking up the pile segments, placing the segment in the correct spot and welding the segments together. Actual pile driving will only occur for a small fraction of the project's duration. Please refer to the CALTRANS application for a complete description of the pile driving order of work.

Piles will be driven open-ended by hydraulic or steam hammers. These are large offshore hammers capable of driving large-diameter, thick-walled steel pipe piles. No other types of hammers (e.g. drop hammers, diesel hammers or vibratory hammers) will be used on this project. According to project specifications, two sizes of hammers are required. A ''smaller'' hammer having a maximum rated energy of not less than 500 kilojoules (kJ) but not more than 1,000 kJ will be used to drive initial segments of the piles. This hammer will be similar in size to the pile driving hammer that was used for activities associated with the retrofitting of the San Mateo-Hayward Bridge, also in the Bay. A larger hammer, having a maximum rated energy of not less than 1,700 kJ will be employed to drive subsequent segments of each pile. No upper limit is placed on the maximum rated energy of the larger hammer, however there is little motivation to use a larger hammer than necessary unless there are no other hammers available at that time. Furthermore, the piles must be able to support the weight of the anvil, limiting the size of the hammer that can be used.

The PIDP is expected to take place in late spring 2000. All necessary equipment for the PIDP will be brought to the project site on barges, tugboats and other marine vessels. Due to the high cost of the equipment being used for this project and the nature of pile installation, work will need to proceed 24 hours a day, 7 days a week for approximately 20 days barring unforeseen circumstances (i.e. broken equipment, adverse weather conditions). Actual impact hammering will only occur for a total of about 12 to 16 hours over the estimated 20 days. Continuous impact hammering would likely occur for a maximum amount of 2–3 hours at a time. As 3 piles are being driven, this maximum would only be reached on 3 days out of the 20 days of the PIDP. The hammer is expected to hit the piles at an average rate of 30–45 blows per minute.

Due to the amount of time needed between driving consecutive pile segments, it is extremely unlikely that more than two segments will be driven in a 24–hour period. It is important to note that once the driving of a pile segment begins it cannot be halted until that segment has reached its desired depth. This is not only because of the expense of keeping the equipment idle but also due to the nature of the predominantly clay soil types underlying the Bay. As piles are driven, the soil gradually loses resistance. If driving is stopped, the soil has a chance to regain its strength, and resistance to the pile increases. This can make it more difficult or even impossible to continue driving the pile, particularly if the pile tip is in a highly resistant layer at that point. Consequently, once hammering resumes, it could potentially take a longer time at increased energy levels. This could amplify impacts to marine mammals, as they would endure potentially higher SPLs for longer periods of time. Pile segment heights and wall thickness have been specially designed for this project to take the location of highly resistant sediment layers into account, so that when work is stopped at the desired depths between segments, the pile tip is never resting in highly resistant sediment layers. In addition, stopping in the middle of pile driving a segment may interfere with the goal of understanding the characteristics of pile driving within this new setting. If pile driving is permitted to be regularly interrupted, meaningful data regarding how the piles behave may be difficult to obtain.

Description of the Marine Mammals Affected by the Activity

General information on harbor seals, California sea lions, and other marine mammal species found in Central California waters can be found in Barlow *et al.* (1997, 1998). The marine mammals likely to be found in the SF-

OBB area are limited to the California sea lion and harbor seal.

California Sea Lions

While California sea lions are known to have historically used the Bay, they are rarely observed hauled out in the Bay (Bauer, 1999). However, since at least 1987, sea lions have been observed occupying the docks near Pier 39 in San Francisco, about 5.7 km (3.5 mi) from the project site. The number of sea lions hauled out at Pier 39 ranged from 63 to 737 in 1998 and from 5 to 906 in 1997 (Marine Mammal Center, Sausalito data). For both years, the lows occurred in June and the highs occurred in August. Most recently, 831 sea lions were observed on K dock at Pier 39 in October 1999. While they are present in large numbers, approximately 85 percent of the animals hauled out at this site are males, and no pupping has been observed at this site or any other site in the Bay (Lander pers. comm. to CALTRANS, 1999). At this time, no other sea lion haul-out sites have been identified in the Bay. About 90 percent of the U.S. stock breeds on the southern California Channel Islands, over 483 km (300 mi) from the PIDP site (Schoenherr, 1995; Howorth and Abbott, 1999). Pier 39 has now become a regular haul-out site for sea lions. The sea lions, most of whom are male, appear at the site after returning from the Channel Islands at the beginning of August (Bauer, 1999). Around late winter, sea lions begin to travel south to the breeding grounds, and numbers at the haul-out site decline. Lowest numbers of sea lions are usually observed from May through July. Numbers of sea lions at the haul-out site fluctuate quite a bit throughout the year and even from one week to the next. For example, in June of 1998, a maximum of 574 sea lions was observed on June 7th while a low count of 63 was observed on June 25th (Lander pers. comm. to CALTRANS, 1999).

While little information is available on the foraging patterns of California sea lions in the Bay, individual sea lions have been observed feeding in the shipping channel to the south of YBI on a fairly regular basis (Grigg pers. comm. to CALTRANS, 1999). Foraging by sea lions that utilize the Pier 39 haul-out site primarily occurs in the Bay, where they feed on Pacific herring, northern anchovy and sardines, among other prey (Hanni, 1995).

Pacific Harbor Seals

Pacific harbor seals are the only species of marine mammal that breed and bear young in the Bay (Howorth and Abbott, 1999). There are 12 haul-out sites and rookeries in the Bay and of those, only eight are used by more than a few animals at a time. Only three sites in the Bay are regularly used by more than 40 harbor seals at any one time; these are Mowry Slough, located in the South Bay, YBI, and Castro Rocks, located in the Central Bay (Spencer, 1997). The three closest haul-out sites to the project location are at YBI, Angel Island, and Castro Rocks. The most recent aerial harbor seal count, conducted this year by D. Hanan of the California Department of Fish and Game, found 477 individuals in the Bay (Green pers. comm. to CALTRANS, 1999). It is important to note that not all harbor seals were counted, as some may have been under water during the survey.

Harbor seals are present in the Bay year-round and use it for foraging, resting and reproduction. Peak numbers of hauled-out harbor seals vary by haul-out site depending on the season. Results of a study of 39 radio-tagged harbor seals in the Bay found that most active diving occurred at night and a majority of the diving time was spent in seven feeding areas in the Bay. The two feeding areas located closest to the project site are just to the south of YBI and north of Treasure Island. This study also found that the seals dove for a mean time of 0.50 minutes to 3.33 minutes. Mean surface intervals or the mean time the seals spent at the surface between dives ranged from 0.33 minutes to 1.04 minutes. Mean haul-out periods ranged from 80 minutes to 24 hours (Harvey and Torok, 1994).

Pupping season in the Bay begins in mid-March and continues until about mid-May. Pups nurse for only 4 weeks and mating begins after pups are weaned. In the Bay, mating occurs from April to July and molting season is from June until August (Schoenherr, 1995; Kopec and Harvey, 1995).

Haul-Out Sites in the Vicinity of the PIDP

YBI is located in the Central Bay, adjacent to man-made Treasure Island. The SF-OBB passes through a tunnel on YBI. An important harbor seal haul-out site is located on a rocky beach on the southwest side of YBI (Kopec and Harvey, 1995). Work for the PIDP will be performed approximately 2 km (1.24 mi) from this harbor seal haul-out site, facing the northwest side of the island.

Although seals haul out year-round on YBI, it is not considered a pupping site for harbor seals as no births have been observed at the site. Occasionally, pups have been seen at an average of 1 pup per year, though more recently, 7 pups were observed at one time in May, 1999 (San Francisco State University unpublished records, 1998–9). In a study of the haul-out site conducted between 1989 and 1992, males comprised 83.1 percent of the seals whose gender could be determined (Spencer, 1997). Peak numbers of harbor seals at this haul-out site have been observed from November to February. The maximum reported number of seals hauled out at one time is 344, counted in January 1992 (Kopec and Harvey, 1995). More recently, the number of seals counted at YBI ranged from 0 to 296 for the period May 1998 to present. The maximum count of 296 was recorded on January 1999. Mean monthly counts for the same period range from 14.5 in September 1998 to 107.3 in June 1999 (San Francisco State University, unpublished records 1998–9). The abundance of harbor seals at this site during the winter months likely coincides with the presence of spawning Pacific herring near the island. Re-sightings at the haul-out site indicate long-term usage of the site (Spencer, 1997).

Angel Island is a small haul-out site located approximately 7.4 km (4.6 mi) from the project site. A maximum count of 15 seals was observed in the 1980s and most recently, six harbor seals were seen in 1989. No pupping has been observed at the site.

The next closest haul-out site is approximately 14 km (8.7 mi) away at Castro Rocks, near the Richmond end of the Richmond- San Rafael Bridge. The Castro Rocks haul-out site is a recognized pupping site. A maximum of 176 harbor seals were observed at Castro Rocks in October 1999 (San Francisco State University unpublished records, 1998–9).

Potential Effects on Marine Mammals

It is possible that California sea lions and harbor seals swimming in the project vicinity may be subject to elevated SPLs that could produce a temporary shift in the animal's hearing threshold. Pile driving noise and human activity around the PIDP could also potentially result in behavioral changes in nearby pinnipeds. California sea lions and harbor seals may temporarily cease normal activities, such as feeding, or pop their heads up above water in response to the noise. They may also be curious and choose to investigate the project site. However, existing evidence shows that most marine mammals tend to avoid loud noises (Richardson, pers. comm. to CALTRANS, 1999). It is likely then that harbor seals and sea lions in the water in the project vicinity may be temporarily displaced if they choose to avoid the area in response to the high SPLs. Due to the short-term nature of

the pile driving (approximately 12 to 16 hours over 20 days) and its distance from the YBI haul-out site, the PIDP is not expected to result in long-term behavioral impacts to Bay seals or sea lions.

Based on in-air hammer noise measurements conducted elsewhere, the average received SPLs were 107 dB re 20 µPa measured at 10–20 meters (33–66 feet) from the hammer and between 70 dB and 44 dB re 20 µPa at 2,400 meters (7,874 feet or 1.5 miles) from the hammer. While a direct comparison is not possible due to different atmospheric and geographic conditions, it is anticipated that in-air noise levels at the YBI haul-out site, located approximately 2.0 km (1.24 miles) from the project site and physically shielded by the island, will attenuate to levels insufficient to cause injury to the seals and sea lions. It is also likely that harbor seals at this site will not be disturbed by the sound and leave the beach for the water, although they will most likely hear the pile driving noise.

Consequently, while it is likely that hauled-out marine mammals will hear the pile driving activities, noise levels are not expected to adversely impact them. Impact hammering could potentially harass those harbor seals that are in the water closer to the project site, whether their heads are above or below the surface. Potential impacts could include a temporary elevation in hearing threshold and/or changes in behavior patterns. However, potential harassment would only occur during those times when piles are being hammered, estimated at approximately 12 to 16 hours over 20 days.

It is difficult to estimate the number of California sea lions that could potentially be affected by the PIDP due to the lack of information on the number of sea lions in the Bay except for the Pier 39 haul-out site. However, assuming the sea lion population at Pier 39 starts to decline in the late winter as the sea lions migrate south to the rookeries, only a fraction of the animals would be left in the Bay at the time of the PIDP (late spring 2000). According to the Marine Mammal Center in Sausalito, the maximum number of sea lions observed at the Pier 39 haul-out site during the spring and summer seasons was 820 in April 1999. The mean numbers of sea lions observed at Pier 39 during spring and summer seasons were 340 in 1998 and 453 in 1997 (Lander, personal communication to CALTRANS, 1999). Because the Pier 39 haul-out site is located 5.7 km (3.5 mi) away from the project site, only a fraction of those sea lions left in the Bay at the time of the project could potentially be in the project vicinity at any one time. Although California sea lions are known to forage in groups, available evidence suggests that they are not regularly seen in groups in the Bay waters near the PIDP site. In surveys conducted from May 1998 to the present, sea lions have been observed foraging in the shipping channel to the south of YBI. However, these sea lions are typically alone and do not seem to be associated with any other sea lions (Grigg, personal communication 1999). Given this anecdotal evidence, the number of sea lions expected to be present at the PIDP site during pile driving activities is expected to be low.

Noise levels from the project are not expected to result in harassment of the sea lions hauled out at Pier 39 as SPLs would be expected to attenuate by the time they reach the haul-out site, 5.7 kilometers (3.5 miles) from the project site. As most of the sea lions observed at Pier 39 are males, and the project will occur during the time when females and adult males are in waters off southern California for the breeding and pupping season, it is anticipated that most of the California sea lions impacted would be subadult males.

Kopec and Harvey (1995) reported harbor seal counts for several haul-out sites in the Bay for the period 1989–1992.

Peak numbers of harbor seals haul out at YBI in the winter months. The maximum recorded number of harbor seals observed at YBI is 344, recorded in January 1992. The PIDP is likely to occur in late spring of 2000. According to Kopec and Harvey (1995), the maximum number of seals observed at the YBI haul-out site during the pupping season (March-July) was 127 in 1992. More recently, for the same season, the Richmond Bridge Harbor Seal Survey reported a maximum count of 213 harbor seals observed in July 1998 (San Francisco State University, unpub. records 1998–9). Kopec and Harvey reported mean harbor seal numbers of 35.7, 41.1, 63.5 and 65.6 during the pupping seasons (March 15–May 31) of 1989 to 1992, respectively (1995). The mean number of harbor seals observed during the pupping and molting seasons (March 15 to August 15) in 1998 and 1999 were 75.2 and 78.4, respectively (San Francisco State University, unpub. records 1998–9). Keeping in mind that these mean counts were taken for slightly different periods of time (March–July in 1989–1992 and March-August in 1998–1999) and the number of surveys taken varies by count, the average of the mean counts is 60.

Mitigation

Based upon a recommendation from NMFS, CALTRANS proposes to establish a 500–m (1640–ft) radius safety zone around the pile driving site. The safety zone is intended to include all areas where the underwater sound pressure levels are anticipated to equal or exceed 180 dB re 1 µPa. Once pile driving begins, SPLs will be recorded at the 500–m contour. The safety zone radius will then be enlarged or reduced, depending on the actual recorded SPLs.

Before pile driving of a pile segment begins, NMFS-approved observers on boats will survey the safety zone to ensure that no marine mammals are seen within the zone. If marine mammals are found within the safety zone, pile driving of the segment will be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor will wait 15 minutes and if no marine mammals are observed in that time it will be assumed that the animal has moved beyond the safety zone. Harbor seals in the Bay are known to dive for a mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994). However, due to the limitations of monitoring from a boat, there can be no assurance that the safety zone will be devoid of all marine mammals.

If marine mammals enter the safety zone after pile driving of a segment has commenced, hammering will continue unabated and marine mammal observers will monitor and record their numbers and behavior. For reasons mentioned previously, once the pile driving of a segment begins it cannot be stopped until that segment has reached its predetermined depth due to the nature of the sediments underlying the Bay.

NMFS proposes to restrict actual pile driving to times when the safety zone can be monitored for the entire 15–minute monitoring period immediately prior to the start-up of pile driving. Also, in order to obtain information on the behavioral effects to harbor seals and California sea lions, NMFS proposes to require that a minimum of 50 percent of the pile driving be scheduled during daylight hours. Daylight pile driving must include both hammer types.

A 500–m (1640–ft) no-entry buffer zone will be established around the haul-out site on YBI to minimize the impact of project-related vessel traffic during the PIDP on marine mammals. This buffer zone will be established in coordination with the U.S. Coast Guard (USCG). The exclusion zone will be delineated with USCG-compliant temporary buoys to insure compliance.

CALTRANS will establish strict standards on vessel speed for all project-related crafts traveling in the Bay.

The PIDP is expected to take place in late spring 2000. This timing would not coincide with the period of peak abundance at the YBI harbor seal haul-out site (November through February). Although harbor seal pupping and mating season will be ongoing in the Bay during the PIDP, YBI is not a known pupping site. Harbor seal molting season in the Bay begins in June. If the PIDP occurs during the harbor seal molting season, a greater proportion of harbor seals should be hauled out and, therefore, not subject to the potentially elevated in-water SPLs from pile driving.

Finally, CALTRANS proposes to use this demonstration period to test the effectiveness of potential mitigation techniques. One potential mitigation measure is an underwater sound barrier based on the noise-attenuating properties of air bubbles in water. At least two experimental techniques for creating underwater sound barriers will be tested by CALTRANS. Underwater SPLs will be recorded at various distances from pile driving activities in order to assess which measures, if any, prove practical and effective in reducing sound pressure levels.

Monitoring

Monitoring of the safety zone will be conducted during all active pile driving. Monitoring of the safety zone will be conducted by a minimum of three qualified observers. The observers will begin monitoring at least 30 minutes prior to startup of the pile driving. Observers will likely conduct the monitoring from small boats, as observations from a higher vantage point (such as the SF-OBB) may not be practical.

Observations will be made using binoculars during daylight hours. For operations at night, infrared or image intensifying equipment will be used. In addition to monitoring from boats, monitoring of the YBI haul-out will be conducted on land during all active pile driving. Data on all observations will be recorded and will include items such as species, numbers, time of observation, location, behavior, etc.

Both underwater and airborne SPL measurements will be made.

Underwater Sound Monitoring

Waterborne sound from the pile driving will be measured at approximately four locations. These locations will typically be in some combination of: (i) close to the pile driving activity, (ii) two mid-point locations, and (iii) one distant location. Each measuring system will consist of a hydrophone with charge type conditioning amplifier connected to a sound level readout device and an instrumentation-grade digital audio tape (DAT) recorder. ''Real-time'' amplitude DAT measurements of underwater sound levels will be provided. The hydrophone will be deployed from a skiff to an appropriate depth at each location. A portable geostationary positioning system (GPS) unit will document the location coordinates of the skiff. It is anticipated that the sound level and frequency spectrum of the recorded noise signals will also be analyzed in a laboratory subsequent to the test.

Airborne Sound Monitoring

Airborne sound from the pile driving will be measured at approximately four locations that are coincident with the underwater measurement locations (i.e., typically a combination of: (i) close to the pile driving activity, (ii) two mid-point locations, and (iii) one distant location). In addition, airborne sound will also be measured at Yerba Buena Island, as close as practicable to the haul-out site. Each measuring system will consist of a Type 1 Sound Level Meter (SLM) connected to an instrumentation-grade DAT recorder. ''Real-time'' amplitude measurements of airborne sound levels will be provided. The SLM will be equipped with a windscreen and tripod mounted on a skiff at approximately 1.2 meters above water level. As previously stated, a portable GPS unit will document the location coordinates of the skiff. It is anticipated that the sound level and frequency spectrum of the recorded noise signals will be analyzed in a laboratory subsequent to the test.

Reporting

CALTRANS proposes to notify NMFS prior to the initiation of the PIDP, and coordination with NMFS will occur on a weekly basis, or more often, as necessary. NMFS will be informed of the initial sound pressure levels measurements taken at the 500–m (1640–ft) contour and the final safety-zone radius established. Monitoring reports will be faxed to NMFS on a daily basis. The daily report will include species and numbers of marine mammals observed, time and location of observation, behavior. In addition the report will include an estimate of the number of California sea lions and Pacific harbor seals that may have been harassed as a result of the pile driving activities.

CALTRANS will provide NMFS with a final report detailing the monitoring protocol, a summary of the data recorded during monitoring, an estimate of the numbers of marine mammals that may have been harassed due to pile driving, and conclusions drawn from measurements with and without the attenuation measures.

Preliminary Conclusions

Based on the previous discussion, NMFS has preliminarily determined that the PIDP may unintentionally cause the harassment of California sea lions and Pacific harbor seals. Although CALTRANS has requested an authorization for Level B harassment, as a result of a behavioral modification to avoid either pile driving noise or human activity, NMFS notes that, on occasion, monitoring the safety zone may not be 100 percent effective. As a result, some harbor seals or California sea lions, while underwater in the vicinity of the PIDP, may incur levels above 180 dB re 1 μPa. At and above an SPL of this level, marine mammals may incur a temporary threshold shift (TTS) in hearing, lasting from a few minutes to a few hours. NMFS considers TTS to constitute Level A harassment (see § 216.3 for a definition of Level A and Level B harassment).

The PIDP is expected to have no more than an insignificant impact to marine mammals or their habitat. Harbor seals on YBI are commonly subjected to high levels of disturbance, primarily from watercraft, especially during the summer, when the numbers of small boats, jet skis, kayaks, etc. in the Bay increase. Abandonment of the haul-out site is not anticipated as sound levels from pile driving, both in water and in air, are expected to attenuate to sufficiently low levels by the time the SPLs reach the YBI haulout site. Although harbor seal pups have been observed at the YBI haul-out site, it is not a recognized pupping site and, therefore, no significant impacts on species recruitment are anticipated. Other haul-out sites for sea lions and harbor seals area are at a sufficient distance from the project site that they will not be affected.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization to CALTRANS for the possible harassment of small numbers of harbor seals and California sea lions incidental to a PIDP at the SF-OBB, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activities would result in the harassment (as defined in the MMPA) of only small numbers of harbor seals and California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: December 28, 1999.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 3, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Urban Connections.

OMB Control Number: 0596–NEW.

Summary of Collection: Urban residents are increasingly looking to the National Forests as a source of recreation and relaxation and to gain some relief from dense urban settings. As a result National Forest System lands are under increased pressure from urban residents to meet their need for relief from dense urban environments. The Forest Service (FS) is legally bound to conduct public involvement activities, as referenced in FSM 1626, FSM 1950.1, 36 CFR 219.6, (NEPA, NFMA), and has a long history of doing so. The purpose of the information collection is to help the FS better understand the demands urban residents make on the agency's programs and services, how well the agency communicates it programs and services to these residents, and how well the agency meets the needs and expectations of urban residents, how opportunities might be made available to involve urban residents in participating in volunteer activities on National Forest System lands. Communicating with people who live in close proximity to the National Forests has been of great value to the agency. Because of the increased demands on the natural resources, the FS is collecting information to identify the concerns that urban residents have regarding the agency's ability to meet these additional demands. The FS will collect information using telephone interviews, telephone surveys and focus groups.

Need and Use of the Information: FS will collect information to create opportunities for public involvement with urban residents; provide written information to them; provide them future opportunities to comment on national policy and initiatives; design communications that will meet urban residents needs; make urban residents aware of volunteer opportunities; provide the opportunity to correct any misinformation; let people know about land management planning activities and opportunities to be involved; share information about State and Private Forestry activities; and ensure FS communications reach diverse audiences. The results of this information collection will be used by FS employees to provide information to urban people in the cities of Boston, MA; Minneapolis/St. Paul, MN; and Detroit, MI. Without the results of the study, the FS would not know which urban residents are interested in public involvement or whom to share information with.

Description of Respondents: Individuals or households.

Number of Respondents: 4,148.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,549.

Foreign Agricultural Service

Title: Buyer Alert.

OMB Control Number: 0551–0024.

Summary of Collection: Under 7 U.S.C. part 1761, the Foreign Agricultural Service (FAS) and the AgExport Connections Office facilitates trade contracts between U.S. exporters and foreign buyers seeking U.S. food and agricultural products. The Buyer Alert service is designed to help U.S. firms introduce their products to new foreign markets, as well as expand their presence in existing markets. This service provides the U.S. firm an opportunity to have its products listed in a biweekly newsletter which is distributed to foreign buyers.

Need and Use of the Information: Buyer Alert is a biweekly overseas newsletter which advertises U.S. food and agricultural products to foreign buyers. Buyer Alert Announcements (advertisements) are processed by the USDA/FAS AgExport connections office and transmitted electronically to 80 FAS overseas offices, who distribute the information to more than 22,000 interested buyers world-wide. Each Announcement features a product description, and optional price indicator, and information about the exporter. U.S. firms may submit up to five Buyer Alert Announcements for distribution in each issue of the newsletter.

Description of Respondents: Business or other for-profit.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 306.

Foreign Agricultural Service

Title: FAS/Cooperator Foreign Market Development Program.

OMB Control Number: 0551–0026.

Summary of Collection: The basic authority for the Foreign Market Development Program is contained in Title VII of the Agricultural Trade Act of 1978, 7 U.S.C. 5721, *et seq.* Program regulations appear at 7 CFR 1550. Title VII directs the Secretary of Agriculture to ''establish and, in cooperation with eligible trade organizations, carry out a foreign market development cooperator program to maintain and develop foreign markets for United States agricultural commodities and products.'' All data collected is used by the Foreign Agricultural Service (FAS) marketing specialists and program managers for the allocation of funds, program management, planning and evaluation. The data collection has, in almost every case, been mandated by either the General Accounting Office or the Office of the Inspector General to eliminate perceived deficiencies in program management and to establish additional program controls. FAS will collect information using an application submitted by prospective Cooperators.

Need and Use of the Information: FAS will collect information to manage, plan, evaluate, and account for government resources. Specifically, data is used to assess the extent to which: applicant organizations represent U.S. commodity interests; benefits derived from market development efforts will translate back to the broadest possible range of beneficiaries; the market development efforts will lead to increases in consumption and imports of U.S. agricultural commodities; the applicant is able and willing to commit personnel and financial resources to assure adequate development, supervision and execution of project activities; and private organizations are able and willing to support the promotional program with aggressive marketing of the commodity in question. If information is not available which provides evidence that taxpayer funds are being disbursed in accordance with authorizing legislation, ethical standards, and standard Government rules and regulations, regulatory offices such as the General Accounting Office or the Office of the Inspector General would likely recommend terminating the program.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 30.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 43,748.

Agricultural Marketing Service

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping.

OMB Control Number: 0581–0110.

Summary of Collection: The Agricultural Marketing Act of 1946 directs the U.S. Department of Agriculture (USDA) to develop programs which will provide and enable a more orderly marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products where these dairy products are graded according to U.S. grade standards by a USDA grader. The dairy products so graded may be identified with the USDA grade mark. Dairy processors, buyers, retailers, institutional users, and consumers have requested that such a program be developed to assure the uniform quality of dairy products purchased. In order for any service program to perform satisfactorily, there must be written guides and rules, which in this case are regulations for the provider and user. The Agricultural Marketing Service will require records be maintained on dairy processing activity for visual review during inspections.

Need and Use of the Information: The Agricultural Marketing Service will collect information to administer the dairy inspection program and insure that dairy products are produced under sanitary conditions and buyers are purchasing a quality product. Without laboratory testing results requiring recordkeeping, inspectors would not be able to evaluate the quality of dairy products. The required records are routinely reviewed and evaluated during the inspection of the dairy plant facilities for USDA approval.

Description of Respondents: Business or other for-profit.

Number of Respondents: 508.

Frequency of Responses: Recordkeeping.

Total Burden Hours: 1,525.

Rural Housing Service

Title: Form RD 410–8, ''Application Reference Letter'' (A Request for Credit Reference).

OMB Control Number: 0575–0091.

Summary of Collection: The Rural Housing Service (RHS) is required by the Consolidated Farm and Rural Development Act, as amended, and the Housing Act of 1949 as amended to obtain information about an applicant's credit history that might not appear on a credit report in conjunction with its loanmaking operations. Form RD 410–8, ''Applicant Reference Letter'' is used by RHS to gather this information. It can be used to document an ability to handle credit effectively for applicants who have not used sources of credit that appear on a credit report. The form asks only for specific relevant information to determine the applicant's creditworthiness and to provide clarification on the promptness of applicant's payments on debts which enables RHS to make better creditworthiness decisions.

Need and Use of the Information: RHS will collect information to supplement or verify other debts when a credit report is limited or unavailable to determine the applicant's eligibility and creditworthiness for RHS loans and grants.

Description of Respondents: Business or other for-profit.

Number of Respondents: 28,523.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 28,238.

Forest Service

Title: Customer and Use Survey Techniques for Operations, Management, Evaluation and Research.

OMB Control Number: 0596–0110.

Summary of Collection: The National Forest Management Act (NFMA) of 1976 and the Forest and Rangeland Renewable Resources Act (RPA) of 1974 require a comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from the nation's public and private forests and rangelands. The Forest Service (FS) is required to report to Congress and others in conjunction with these legislated requirements as well as the use of appropriated funds. An important element in the reporting is the number of visits to National Forests and Grasslands, as well as to Wilderness Areas that the agency manages. The Customer and Use Survey Techniques for Operations, Management, Evaluation and Research (CUSTOMER) project combines several different survey approaches to gather data describing visitors to and users of public recreation lands, including their trip activities, satisfaction levels, evaluations, demographic profiles, trip characteristics, spending, and annual visitation patterns. FS will use fact-to-face interviewing for collecting information on-site as well as written survey instruments to be mailed back by respondents.

Need and Use of the Information: FS plans to collect information from a variety of National Forests and other recreation areas. Information gathered through the various CUSTOMER modules has been and will continue to be used by planners, researchers, managers, policy analysts, and legislators in resources management areas, regional offices, regional research

stations, agency headquarters, and legislative offices.

Description of Respondents: Individuals or households.

Number of Respondents: 57,000.

Frequency of Responses: Reporting: Quarterly; Annually.

Total Burden Hours: 9,917.

Food and Nutrition Service

Title: Child Nutrition Labeling Program.

OMB Control Number: 0584–0320.

Summary of Collection: The Child Nutrition Labeling Program is a voluntary technical assistance program administered by the Food and Nutrition Service (FNS). The program is designed to aid schools and institutions participating in the National School Lunch Program, the School Breakfast Program, the Child and Adult Care Food Program, and the Summer Food Service Program in determining the contribution a commercial product makes towards the meal pattern requirements. By requiring that companies who sell food to the government for use in nutrition program to identify the contribution of a product to the established meal pattern requirements. The Child Nutrition Labeling Program is implemented in conjunction with existing label approval programs administered by the Food Safety and Inspection Service (FSIS), the Agricultural Marketing Service (AMS), and the U.S. Department of Commerce. In addition to an application for approval of a child nutrition label, companies must include a separate statement on how the product satisfies meal pattern requirements. All information is submitted to FSIS on form FSIS 7234–1, Application for Approval of Labels, Marking or Device.

Need and Use of the Information: FNS uses the information collected by FSIS to aid school food authorities and other institutions participating in child nutrition programs in determining the contribution a commercial product makes towards the established meal pattern requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 795.

Frequency of Responses: Reporting: Other (as needed).

Total Burden Hours: 3,122.

Food and Nutrition Service

Title: SMI Implementation Study—Year 3 Data Collection.

OMB Control Number: 0584–0485.

Summary of Collection: The Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), as amended, provided the framework for implementing the School Meals Initiative (SMI) for Healthy Children. The SMI was launched for the purposes of modifying school meals in order to meet the Dietary Guidelines, which were established in 1980 as a joint effort between the U.S. Department of Agriculture (USDA) and the Department of Health and Human Services. In order to assess the progress of the SMI, the Food and Nutrition Service (FNS) developed plans for a multi-year longitudinal research project that collects information on SMI implementation at the state, district, and school levels. The study project plan calls for a three phase approach. FNS collected evaluation data in the Spring of 1996 and again in 1997. FNS is now seeking approval to proceed with the third phase of the project planned for the 1999–2000 school year.

Need and Use of the Information: FNS plans to collect information from 51 State Child Nutrition Directors, and a representative sample of School Food Authorities to: (1) Describe the status of the implementation of the SMI and (2) provide descriptive information on the operations and characteristics of the school-based Child Nutrition Programs. Two separate surveys have been developed—one for each sample group—that will be mailed to respondents in hardcopy format. Without the information to be collected in this study, FNS would not have continuous and reliable data about the status of the SMI, its effects on school food programs, problems encountered, and progress in achieving its objectives.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 2,039.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 2,039.

Food and Nutrition Service

Title: The Impacts of Food Stamp Program Time Limits on Able-Bodied Adults Without Dependents.

OMB Control Number: 0584–NEW.

Summary of Collection: Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104–193 (PRWORA), able-bodied adults without dependents (ABAWDs) are subject to a time limit on the receipt of food stamps unless they work or participate in an approved work or training program. The time limit on the receipt of food stamp benefits represents a significant change to the Food Stamp Program (FSP) rules and an operational challenge to administer, yet relatively little is know about how states are implementing this policy or how many people are affected by the new provisions. The Food and Nutrition Service (FNS) is proposing to conduct a study to (1) describe how the ABAWD provisions have been implemented, and (2) to provide national estimates of how many people are affected by the ABAWD provisions. FNS has contracted with an outside firm to conduct the study which will involve telephone and written surveys with state agency personnel, local office FSP personnel, and representatives from selected advocacy groups. For a smaller sample, some site visits will also be conducted.

Need and Use of the Information: FNS plans to collect information in order to develop a national picture of how the ABAWD provisions are implemented from state to state and to determine how many people are affected by the provisions. It will also provide information on the range of policy decisions that were available to the states and the factors that affected the choice of policies by individual states, counties, and local offices. The information will be shared by FNS with the states and the Congress to inform ongoing discussions on strategies for responding to this segment of the FSP population. The findings generated from the information collection will be presented in the form of a final reported and a public-use file containing the state and local responses to the survey questionnaires.

Description of Respondents: Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 897

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 2,193.

Food and Nutrition Service

Title: Summer Food Service Program.

OMB Control Number: 0584–0280.

Summary of Collection: The National School Lunch Act, as amended, authorizes the Summer Food Service Program for Children (SFSP). The SFSP is administered by the Food and Nutrition Service (FNS). The purpose of the SFSP is to provide nutrition meals to children from low-income areas during periods when schools are not in session. Information is gathered from state agencies and other organizations wishing to participate in the program to determine eligibility. If selected, additional reporting requirements apply to determine the amount of meals served and other program volume information. FNS used a variety of forms to collect information.

Need and Use of the Information: FNS uses the information collected to determine an organizations eligibility to participate and to monitor program

performance for compliance and reimbursement purposes.

Description of Respondents: Individuals or households.

Number of Respondents: 76,733.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Weekly.

Total Burden Hours: 316,005.

Rural Housing Service

Title: 7 CFR 1944–I, ''Self-Help Technical Assistance Grants''.

OMB Control Number: 0575–0043.

Summary of Collection: This regulation prescribes policies and responsibilities, including the collection and use of information, necessary to administer the Section 523 program. Rural Housing Service (RHS) will be collecting information from the non-profit organizations who want to develop a Self-Help program in their area to increase the availability of affordable housing. The information is collected at the local, district, and state levels. The information requested by RHS includes financial and organizational information about the non-profit organization.

Need and Use of the Information: RHS needs this information to determine if the organization is capable of successfully carrying out the requirements of the Self-Help program. The information is collected on an as requested or needed basis. RHS has reviewed the program's need for the collection of information versus the burden placed on the public.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 100.

Frequency of Responses: Recordkeeping; Reporting: Monthly, Annually.

Total Burden Hours: 3,095.

Rural Housing Service

Title: 7 CFR 1944–B, Housing Applications Packaging Grants.

OMB Control Number: 0575–0157.

Summary of Collection: Section 509 of the Housing Act of 1949, as amended, authorizes the Rural Housing Service (RHS) to make grants to private and public nonprofit organizations and State and local governments to package housing applications for Section 502, 504, 514/515 and 533 to colonials and designated counties. Eligible organizations aid very low and low-income individuals and families in obtaining benefits from RHS housing programs.

Need and Use of the Information: RHS field personnel use this information, required for approval of housing application packaging grants, to verify program eligibility requirements and to secure grant assistance. The information is also to insure that the program is administered in a manner consistent with legislative and administrative requirements.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 200.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 900.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–410 Filed 1–6–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Thursday, January 20, 2000, at the Wenatchee National Forest headquarters main conference room, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3:30 p.m. Key topics for this meeting will be: Information sharing on new developments on the on-going implementation of the Northwest Forest Plan, a re-cap of the roadless area meetings, and Advisory Committee goal setting for the year 2000. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open on the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: January 3, 2000.

Robert J. Sheehan,

Deputy Forest Supervisor, Wenatchee National Forest.

[FR Doc. 00–331 Filed 1–6–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Preapplications for Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of one single $500,000 grant from the passenger transportation portion of the Rural Business Enterprise Grant (RBEG) Program for Fiscal Year (FY) 2000 to be competitively awarded to a qualified national organization.

DATES: The deadline for receipt of a preapplication in the Rural Development State Office is March 1, 2000. Preapplications received at a Rural Development State Office after that date will not be considered for FY 2000 funding.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the preapplication package. A list of Rural Development State Offices follows:

Alabama
USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400

Alaska
USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 745–2176

Arizona
USDA Rural Development State Office, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700

Arkansas
USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200

California
USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800

Colorado
USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (303) 236–2801

Delaware-Maryland
USDA Rural Development State Office, 4607 South DuPont Highway, Camden, DE 19934–9998, (302) 697–4300

Florida/Virgin Islands
USDA Rural Development State Office, 4440 NW. 25th Place, Gainesville, FL 32614–7010, (352) 338–3400

Georgia
USDA Rural Development State Office, Stephens Federal Building, 355 E.

Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162

Hawaii
USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380

Idaho
USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600

Illinois
USDA Rural Development State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5235

Indiana
USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100

Iowa
USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663

Kansas
USDA Rural Development State Office, 1200 SW. Executive Drive, Topeka, KS 66604, (785) 271–2700

Kentucky
USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300

Louisiana
USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920

Maine
USDA Rural Development State Office, 444 Stillwater Avenue, Suite 2, Bangor, ME 04402–0405, (207) 990–9106

Massachusetts/Rhode Island/Connecticut
USDA Rural Development State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300

Michigan
USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5100

Minnesota
USDA Rural Development State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800

Mississippi
USDA Rural Development State Office Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316

Missouri
USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976

Montana
USDA Rural Development State Office, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59715, (406) 585–2580

Nebraska
USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551

Nevada
USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222

New Jersey
USDA Rural Development State Office, Tarnsfield Plaza, Suite 22, 790 Woodlane Road, Mt. Holly, NJ 08060, (609) 265–3600

New Mexico
USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950

New York
USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400

North Carolina
USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000

North Dakota
USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, Bismarck, ND 58502–1737, (701) 530–2043

Ohio
USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2500

Oklahoma
USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000

Oregon
USDA Rural Development State Office, 101 SW Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300

Pennsylvania
USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299

Puerto Rico
USDA Rural Development State Office, New San Juan Office Building, Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095

South Carolina
USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163

South Dakota
USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100

Tennessee
USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

Texas
USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700

Utah
USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4320

Vermont/New Hampshire
USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000

Virginia
USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550

Washington
USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740

West Virginia
USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4791

Wisconsin
USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600

Wyoming
USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, Casper, WY 82602, (307) 261–6300

SUPPLEMENTARY INFORMATION: The passenger transportation portion of the RBEG program is authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932 (C)(2)). The RBEG program is administered on behalf of RBS at the State level by the Rural Development State Offices. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program are made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. That subpart also contains the information required to be in the preapplication package. Up to 25 Administrator's points may be added to an application's priority score based on the extent to which the application targets assistance to Empowerment Zones/Enterprise Communities, Champion Communities, or other rural communities that have experienced persistent poverty, out-migration of population, or sudden severe structural changes in the local economy. A project that scores the greatest number of points based on the selection criteria and Administrator's points will be selected. Preapplications will be tentatively scored by the State Offices and

submitted to the National Office for review, final scoring, and selection.

To be considered ''national,'' a qualified organization is required to provide evidence that it operates in multi-state areas. There is not a requirement to use the grant funds in a multi-state area. Under this program, grants are made to a qualified private non-profit organization for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Public bodies are not eligible for passenger transportation RBEG grants.

Refer to section 310B(c)(2) (7 U.S.C. 1932) of the CONACT and 7 CFR part 1942, subpart G for the information collection requirements of the RBEG program.

Fiscal Year 2000 Preapplications Submission

Each preapplication received in a Rural Development State Office will be reviewed to determine if this preapplication is consistent with the eligible purposes outlined in 7 CFR part 1942, subpart G, and section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR part 1942, subpart G, section 1942.305(b)(3), must be addressed in the preapplication. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the preapplication. Copies of 7 CFR part 1942, subpart G, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice. All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the preapplication is submitted to the Rural Development State Office. Multiple project preapplications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project. For multiple-project preapplication, the average of the individual project scores will be the score for that preapplication.

All eligible preapplications, along with tentative scoring sheets and the Rural Development State Director's recommendation, will be referred to the National Office no later than April 14, 2000, for final scoring and selection for award.

The National Office will score preapplications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G, and Administrator's points, and will select a grantee subject to the grantee's satisfactory submission of a formal application and related materials in the manner and time frame established by RBS in accordance with 7 CFR part 1942, subpart G. It is anticipated that the grantee will be selected by June 1, 2000. All applicants will be notified by RBS of the Agency decision on the award.

The information collection requirements within this Notice are covered under OMB No. 0570–0022 and 7 CFR part 1942, subpart G.

Dated: December 20, 1999.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 00–408 Filed 1–6–00; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 7, 2000.

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 additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the 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 services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. 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. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Services, Offutt Air Force Base, Nebraska, NPA: Goodwill Industries, Inc., Omaha, Nebraska

Furnishings Management Services, Offutt Air Force Base, Nebraska, NPA: Goodwill Industries, Inc., Omaha, Nebraska

Grounds Maintenance, Offutt Air Force Base, Nebraska, NPA: BH Services, Inc., Box Elder, South Dakota

Pest Control, Offutt Air Force Base, Nebraska, NPA: Goodwill Industries, Inc., Omaha, Nebraska

Deletion

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 result in authorizing small entities to furnish the commodity to the Government.

3. 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 commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the

Procurement List: Filter, Air Conditioning, 4130–00–951–1208.

Beverly L. Milkman,

Executive Director.

[FR Doc. 00–369 Filed 1–6–00; 8:45 am]

BILLING CODE 6353–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Governors Vote To Close Meeting

By telephone vote on December 27, 1999, a majority of the Governors contacted and voting, the Governors voted to close to public observation a meeting held in Washington, D.C., via teleconference. The Governors determined that prior public notice was not possible.

ITEM CONSIDERED:

Succession Planning for the Office of the Governors.

GENERAL COUNSEL CERTIFICATION:

The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION:

Requests for information about the meeting should be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 00–481 Filed 1–5–00; 12:51 pm]

BILLING CODE 7710–12–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–834]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia or Keir Whitson at (202) 482–0498 and (202) 482–1777, respectively; Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that certain cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel products) from Taiwan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on June 21, 1999.[1] *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela,* 64 FR 34194 (June 25, 1999) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On June 22, 1999, the Department issued Section A antidumping questionnaires to all known exporters of subject merchandise in Taiwan, including all of those named in the original petition.[2]

On July 9, 1999, the Department selected China Steel Corporation (CSC) as a mandatory respondent in this investigation and issued Sections B, C, and D of the antidumping questionnaire to CSC. *See Respondent Selection Memo,* July 9, 1999. In addition, on July 19, 1999, we received a request from Taiwan Tokkin Co., Ltd. (Taiwan Tokkin) that it be included as a voluntary respondent in this investigation. Subsequently, on August 6, 1999, we accepted Taiwan Tokkin as a voluntary respondent. However, we did not issue the questionnaire to Taiwan Tokkin because on July 22, 1999, the company informed us that it had already obtained copies of each section.

Responses to various sections of the Department's questionnaire were received from Taiwan Tokkin and CSC between July and September 1999. We issued supplemental questionnaires where appropriate.

On July 16, 1999, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the products under investigation are materially injuring the United States industry. *See Certain Cold-Rolled Steel Products From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela: Determinations,* 64 FR 41458 (July 30, 1999).

In their comments on Taiwan Tokkin's questionnaire responses, petitioners raised the issue of whether the country of origin of Taiwan Tokkin's exports to the United States was actually Japan. Subsequently, Taiwan Tokkin submitted comments on this issue on September 27, 1999. Additional comments were submitted by petitioners and Taiwan Tokkin on October 15, 1999, and, October 21, 1999, respectively. *See Taiwan Tokkin—Country of Origin,* below.

On November 5, 1999, the Department postponed the preliminary determination in this case for 30 days in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2). *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Indonesia, the People's Republic of China, Taiwan and Turkey,* 64 FR 61825 (November 15, 1999).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such

[1] The petitioners in this investigation are Bethlehem Steel Corporation, Gulf States Steel, the Independent Steelworkers Union, Ispat Inland Steel, LTV Steel Company Inc., National Steel Corporation (not a petitioner in the Japan case), Steel Dynamics, U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and United Steelworkers of America.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation.

postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 25, 1999, CSC requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. CSC also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The period of the investigation (POI) is April 1, 1998, through March 31, 1999.

This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 1999).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or 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.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (HTSUS), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented; Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
  a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or
  b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:
  Thickness: 0.001 to 0.010 inches
  Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
  Thickness: ≤ 1.0 mm
  Width: ≤ 152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤ 0.03	≤ 0.006

MECHANICAL PROPERTIES

Tensile Strength	≥ 162 Kgf/mm^2
Hardness	≥ 475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤ 0.04%
Oxide Inclusion	≤ 0.05%

Compressive Stress: 10 to 40 Kgf/mm^2

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:
  Thickness: ≤0.100 mm +/−7%
  Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inches +/−.0015 inches
  Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm

Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5(0.1)	0(0)	7(0.2)

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16(0.4)	8(0.2)	24(0.6)

- Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm × 940 mm × coil, and with a bright finish;
- Certain cold-rolled steel sheet, which meets the following characteristics:
  Thickness (nominal): ≤0.019 inches
  Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.01	00.012

- Certain band saw steel, which meets the following characteristics:
  Thickness: ≤1.31 mm
  Width: ≤80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: fully spheroidized having >80% of carbides, which are ≤0.003 mm and uniformly dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 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, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the written description of the merchandise under investigation is dispositive.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners, aimed at clarifying the scope of the investigation. *See Memorandum to Joseph A. Spetrini (Scope Memorandum),* November 1, 1999, for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. *See Scope Memorandum.*

Facts Available

In its response to Section B of the Department's antidumping questionnaire, CSC reported a code designated ''X'' for certain home market sales observations in response to requested categories for yield strength, standard thicknesses, and standard widths. The Department issued a supplemental questionnaire requesting, in part, that CSC re-code these observations in conformity with the categories provided in the original questionnaire. CSC replied that it did not have the necessary information in its records to comply with the Department's questionnaire categories and that it had used the ''X'' code to designate those areas where it did not have the necessary information. In order to avoid introducing any distortions from product misclassification in the fair value comparison of CSC's home market sales to its U.S. sales, we have determined that we cannot use the product characteristics with a code designated as ''X'' for certain home market sales and, therefore, the use of facts otherwise available is necessary in this situation, pursuant to section 776(a) of the Act.

Section 776(a) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available

in reaching the applicable determination under this title.'' The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

As noted above, we determined that we cannot rely on home market sales for which certain product characteristics were designated as ''X.'' Therefore, in accordance with section 776(a) of the Act, we have determined that use of facts available is appropriate. Since it is not possible to determine the extent to which these sales might have served as comparison merchandise for U.S. sales, we have assigned to any U.S. sales that did not have identical matches the weighted-average margin calculated for all identical matches.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined.

After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine a large number of producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate the producer/exporter with the greatest export volume, as identified above. Because CSC accounted for more than 50 percent of all known exports of the subject merchandise from Taiwan during the POI, we selected CSC as the sole respondent. Additionally, on August 6, 1999, we granted a request from Taiwan Tokkin that it be included as a voluntary respondent in this investigation.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Taiwan during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on 14 criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: hardening and tempering, paint, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics as listed above.

Fair Value Comparisons

To determine whether sales of cold-rolled steel products from Taiwan were made in the United States at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Export Price

In accordance with section 772 of the Act, we calculated an EP for each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Consistent with this definition, we have found that CSC and Taiwan Tokkin made only EP sales during the POI.

For CSC and Taiwan Tokkin, we calculated EP based on packed prices charged to the first unaffiliated customer in the United States. We based EP on ex-factory and FOB prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign brokerage, loading and inland freight from the factory to the foreign port. Finally, for Taiwan Tokkin, we increased the starting price by the amount of duty drawback.

Taiwan Tokkin based its duty drawback calculation on a ratio of kilograms of raw material required to produce one kilogram of finished cold-rolled strip. We note that the ratio permitted under the drawback scheme appears to be at odds with Taiwan Tokkin's own production information. Accordingly, we will examine this issue closely at verification to determine whether we should continue to include the reported amount for duty drawback in our calculation of EP for the final determination.

Taiwan Tokkin—Country of Origin

Taiwan Tokkin's reported U.S. sales were for merchandise that was first imported into Taiwan from Japan as cold-rolled coil, processed by Taiwan Tokkin, and then exported to the United States as cold-rolled strip. As previously mentioned, petitioners raised the issue of whether the country of origin of Taiwan Tokkin's exports to the United States is actually Japan. In their comments on this issue, petitioners argued that Taiwan Tokkin's production process does not substantially transform the merchandise and, therefore, it retains Japanese country of origin. In support of this contention, they put forth the following arguments: (1) Taiwan Tokkin's imported and exported material are both cold-rolled products and stay within the same class or kind of merchandise; (2) under U.S. Customs regulations 19 CFR 120.20 dealing with the country of origin, a change in HTSUS heading from 7209 to 7211, as

occurs in this case, does not change the country of origin; and (3) Taiwan Tokkin's production process does not make any dramatic changes to the product, and the substantial transformation of the merchandise occurs in Japan where it was processed from slabs into hot bands and then cold-rolled into coils.

Taiwan Tokkin contends that the imported merchandise is substantially transformed in Taiwan and, therefore, acquires Taiwanese country of origin. Taiwan Tokkin argues that (1) Taiwan Tokkin's production process of slitting and repeated cold-rolling and annealing significantly changes the physical characteristics of the imported material and imparts a spring like-quality to the product, with higher tensile strength and flexibility; (2) while the raw material has no other use than for conversion into cold-rolled strip, the finished product is used in the production of end-products such as tape measures, springs and parts of electronic machinery; and (3) the value added to the merchandise through its production process is significant.

We have preliminarily accepted Taiwan Tokkin's claim that its merchandise sold to the United States is of Taiwanese origin. However, we intend to continue our analysis of this issue based on our findings at verification and comments submitted by the interested parties. We invite interested parties in this proceeding to submit comments or information concerning this issue, including arguments for the appropriate treatment of Taiwan Tokkin's sales if the Department determines that the country of origin of the merchandise in question is Japan.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

CSC and Taiwan Tokkin had viable home markets of cold-rolled steel products, and they reported home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in *Calculation of Normal Value Based on Home-Market Prices and Calculation of Normal Value Based on Constructed Value,* below.

B. Cost of Production Analysis

Based on allegations contained in the petition and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of cold-rolled steel products made in Taiwan were made at prices below the COP. *See Initiation Notice,* 64 FR 34194 (June 25, 1999). As a result, the Department conducted an investigation to determine whether CSC and Taiwan Tokkin made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of CSC's and Taiwan Tokkin's respective costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A), selling expenses, commissions, packing expenses and interest expenses. We relied on the COP data submitted by CSC and Taiwan Tokkin in their respective supplemental cost questionnaire responses, except as noted below, where the submitted costs were not appropriately quantified or valued.

CSC

We adjusted CSC's reported scarp recovery values to account for the overstatement of scrap credits resulting from the inclusion of downgraded products. Secondly, we adjusted CSC's G&A and financial expense rations. For the G&A expense ratio, we included certain revenues and expenses that had been excluded from the reported amount. In addition, we adjusted the cost of goods sold figure to be on the same basis as the reported cost of manufacturing. For the financial expense ratio, we adjusted the cost of goods sold figure to be on the same basis as the reported cost of manufacturing.

Taiwan Tokkin. Taiwan Tokkin adjusted its reported conversion costs by excluding costs associated with packing, freight, royalties, and including costs associated with direct labor. Tokkin calculated this adjustment as a percentage of conversion costs, but applied the adjustment to the total cost of manufacturing. We revised Taiwan Tokkin's cost adjustment percentage to one based on total cost of manufacturing, so that the adjustment percentage matches the basis to which it is applied.

Taiwan Tokkin did not submit revised conversion costs for one control number (CONNUM) for merchandise produced prior to the POI but sold during the POI. Therefore, we assigned to that CONNUM the reported direct material costs and the conversion costs of a CONNUM with the most similar product characteristics.

We adjusted Taiwan Tokkin's G&A and financial expense ratios by excluding certain costs from the cost of goods sold used in the denominator to ensure that the denominator is on the same basis as the cost of manufacturing to which the ratios are being applied. We adjusted Taiwan Tokkin's financial expense ratio to include certain financial expenses that had been omitted from the submitted calculation.

2. Test of Home-Market Sales Prices

We compared the weighted-average COP for Taiwan Tokkin and CSC, adjusted where appropriate (see above), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities [3] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs,

[3] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of cold-rolled steel products for which there were no comparable home-market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value,* below.

C. Calculation of Normal Value Based on Home-Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test.

For CSC and Taiwan Tokkin, we calculated NV based on delivered or FOB prices and made deductions from the starting price, where appropriate, for inland freight. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses and warranty expenses. For CSC, we also adjusted for discounts and rebates. In accordance with sections 773(a)(6)(A) and (B) of the Act, for both CSC and Taiwan Tokkin, we deducted home market packing costs and added U.S. packing costs.

In addition, the Department notes that CSC, during the fourth quarter of the POI, instituted a ''special incentive program'' for certain customers in the home market. These sales were included for purposes of calculating NV for the preliminary determination. At verification, the Department will conduct a detailed examination of this program in order to determine whether or not the Department should continue to include these sales in its calculation of NV for the final determination.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of cold-rolled steel products for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of each respondent's cost of materials, fabrication, interest expense, selling, general and administrative (SG&A) expenses and profit. We made adjustments to each respondent's reported cost as indicated above in the COP section. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

In addition, for each respondent we used U.S. packing costs as described in the *Export Price* section of this notice, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. These involved the deduction of direct selling expenses incurred on home market sales from, and the addition of U.S. direct selling expenses to, CV.

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 transaction. The normal-value 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 SG&A expenses and profit. The U.S. LOT for EP sales is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments.

With respect to each respondent's EP sales, in this investigation we found a single LOT in the United States, and a single, identical LOT in the home market. It was thus unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices. *See Memorandum to the File: Preliminary Determination Calculation Memorandum for Taiwan Tokkin Co., Ltd.,* November 8, 1999, and *Memorandum to the File: Preliminary Determination Calculation Memorandum for China Steel Corporation,* November 8, 1999.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs to suspend liquidation of all entries of cold-rolled steel products from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing U.S. Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below.

Manufacturer/exporter	Margin (percent)
CSC	14.80
Taiwan Tokkin	4.72
All Others	14.80[4]

[4] In accordance with section 735(c)(5) of the Act and section 351.204(d)(3) of the Department's regulations, we excluded the weighted-average dumping margin for Taiwan Tokkin, a voluntary respondent in this investigation, from the calculation of the all-others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of these preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: December 28, 1999.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–297 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–807]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Arland DiGirolamo or Gabriel Adler at (202) 482–1278 or (202) 482–1442, respectively; Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Preliminary Determinations

We preliminarily determine that cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel products) from Indonesia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on June 21, 1999.[1] *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela,* 64 FR 34194 (June 25, 1999) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

The Department issued an antidumping questionnaire to PT Krakatau, the only known producer of cold rolled steel products in Indonesia, on June 22, 1999 (Section A) and July 9, 1999 (Sections B through D).[2] We issued supplemental questionnaires where appropriate. PT Krakatau submitted timely responses to the Department's questionnaires.

On July 16, 1999, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the products under investigation are materially injuring the United States industry. *See Certain Cold-Rolled Steel Products From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela: Determinations,* 64 FR 41458 (July 30, 1999).

On November 5, 1999, the Department postponed the preliminary determination in this case for 30 days in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2). *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Indonesia, the People's Republic of China, Taiwan and Turkey,* 64 FR 61825 (November 15, 1999).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of

[1] The petitioners in this investigation are Bethlehem Steel Corporation, Gulf States Steel, the Independent Steelworkers Union, Ispat Inland Steel, LTV Steel Company Inc., National Steel Corporation (not a petitioner in the Japan case), Steel Dynamics, U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and United Steelworkers of America.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation.

exports of the subject merchandise or if, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months. On October 22, 1999, PT Krakatau filed a request for the postponement of the final determination in the event of an affirmative preliminary determination. On October 28, PT Krakatau filed a request for the extension of provisional measures from a four-month period to not more than six months in the event that the Department postpones the final determination. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The period of the investigation (POI) is April 1, 1998 through March 31, 1999. This period corresponds to the respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.,* June 1999).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or 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.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (HTSUS), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

  Thickness: 0.001 to 0.010 inches
  Width: 15 to 32 inches

CHEMICAL COMPOSITION:

Element	C
Weight %	< 0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

  Thickness: ≤1.0 mm
  Width: ≤ 152.4 mm

CHEMICAL COMPOSITION:

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤ 0.03	≤ 0.006

MECHANICAL PROPERTIES

Tensile Strength	≥ 162 Kgf/mm ^{2}
Hardness	≥ 475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	< 0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm^2.

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤0.209	Rz ≤0.5
0.209 < t ≤0.310	Rz ≤0.6
0.310 < t ≤0.440	Rz ≤0.7
0.440 < t ≤0.560	Rz ≤0.8
0.560 < t	Rz ≤1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:
  Thickness: ≤0.100 mm +/− 7%
  Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inches +/− .0015 inches
  Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches).
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge.
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable).
Camber (in any 10 feet)	1/16 inch.
Coil Size I.D	20 inches.

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz)	3.8 Watts/Pound max.
NAAS	
Permeability (1.5T/60 Hz)	1700 gauss/oersted typical.
NAAS	1500 minimum.

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:

Thickness: 0.025 to 0.245 mm

Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

• Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	.16 (0.4)	8 (0.2)	24 (0.6)

- Certain ''blued steel'' coil (also known as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm × 940 mm × coil, and with a bright finish;
- Certain cold-rolled steel sheet, which meets the following characteristics:

  Thickness (nominal): ≤ 0.019 inches
  Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

- Certain band saw steel, which meets the following characteristics:

  Thickness: ≤ 1.31 mm
  Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:

Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 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, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (U.S. Customs) purposes, the written description of the merchandise under investigation is dispositive.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners, aimed at clarifying the scope of the investigation. *See Memorandum to Joseph A. Spetrini (Scope Memorandum)*, November 1, 1999, for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. *See Scope Memorandum.*

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. We determined that PT Krakatau was the only known exporter of subject merchandise and therefore chose it as the only respondent from Indonesia. This company accounted for 100 percent of all known exports of the subject merchandise during the POI.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Indonesia during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on 14 criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: hardening and tempering, paint, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Fair Value Comparisons

To determine whether sales of cold-rolled steel products from Indonesia were made in the United States at less than fair value, we compared the export

price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average normal values. Indonesia experienced high inflation during the POI, as measured by the Wholesale Price Index, published in the June 1999 issue of International Financial Statistics. Accordingly, to avoid distortions caused by the effects of high inflation on prices, consistent with our practice in cases involving high inflation, we calculated EPs and NVs on a monthly-average basis, rather than a POI average basis.[3] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Pasta from Turkey*, 61 FR 1351, 1354 (January 19, 1996).

Export Price

In accordance with section 772 of the Act, we calculated an EP for each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Consistent with this definition, we have found that PT Krakatau made only EP sales during the POI.

We based EP on ex-factory and FOB prices to unaffiliated customers in the United States. In accordance with section 772(c)(2) of the Act, we made deductions from the starting price, where appropriate, for movement expenses including foreign brokerage and inland freight from the factory to the foreign port.

[3] Investigations involving exports from countries with highly inflationary economies require special methodologies for comparing prices and calculating CV and COP. The Department generally considers that an inflation rate in excess of 25 percent warrants application of a calculation methodology that takes into account the effect of high inflation on prices and costs. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from South Korea, 64 FR 137, 139 (January 4, 1999). Based on the Wholesale Price Index* (WPI) obtained from the International Monetary Fund (IMF), we determined that Indonesia experienced inflation of approximately 40 percent over the course of the POI. PT Krakatau has argued that the Department should not employ a high inflation analysis because the high inflation that occurred during the POI was isolated to the first six months of the period. We will consider this issue further for the final determination, and invite parties to comment.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

PT Krakatau has a viable home market of cold-rolled steel products, and it reported home market sales data for purposes of the calculation of NV.

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Home Market Prices* and *Calculation of Normal Value Based on Constructed Value, below.*

B. Cost of Production Analysis

Based on allegations made by petitioner in this case in a submission dated September 29, 1999, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of cold-rolled steel products made in Indonesia were made at prices below the COP. As a result, the Department has conducted an investigation to determine whether PT Krakatau made sales in its home market at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP. In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses, selling expenses, commissions, packing expenses, and interest expenses. As noted above, we determined that the Indonesian economy experienced significant inflation during the POI. Therefore, in order to avoid the distorting effect of inflation on our comparison of costs and prices, we computed indexed monthly costs based on the weighted average of all monthly costs as indexed over the POI. *See, e.g., Certain Steel Concrete Reinforcing Bar from Turkey*, 64 FR 49510, 49153 (September 10, 1999).

We relied on the COP data submitted by PT Krakatau in its cost questionnaire response, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued: (a) we adjusted the reported depreciation expense to account for the effects of inflation, (b) we computed the respondent's G&A and financial expense ratios on a constant currency basis using monthly IMF WPI indices, and (c) we recalculated the reported G&A and financial expense ratios to reflect certain expenses and offsets that had not been completely accounted for by the respondent.

2. Test of Home Market Sales Prices. We compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities [4] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts and rebates.

3. Results of the COP Test. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to (indexed) POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of cold-rolled steel products, more than 20 percent of the home market sales by PT Krakatau were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a

[4] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of cold-rolled steel products for which there were no comparable home market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value,* below.

C. Calculation of Normal Value Based on Home Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test.

We calculated NV based on delivered or FOB prices and made deductions from the starting price, where appropriate, for foreign brokerage and handling fees, foreign inland freight from the plant to the customer, and insurance. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These expenses included imputed credit expenses and bank charges. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of cold-rolled steel products for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on constructed value.

Section 773(e)(1) of the Act provides that constructed value shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the *Calculation of COP* section of this notice, above. We based SG&A and profit on the actual 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 comparison market, in accordance with section 773(e)(2)(A) of the Act.

In addition, we used U.S. packing costs as described in the *Export Price* section of this notice, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. These involved the deduction of direct selling expenses incurred on home market sales from, and the addition of U.S. direct selling expenses to, constructed value.

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 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 SG&A expenses and profit. The U.S. LOT for EP Sales is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, 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. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from PT Krakatau about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondent for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments.

In the home market, PT Krakatau sells to end-users and local trading companies. The respondent provides extensive selling functions to all home market customers, irrespective of the channel of distribution. These include technical assistance and customer support. Therefore, we find that all sales in the home market were made at a single LOT. In the U.S. market, PT Krakatau sells to trading companies only. In contrast to home market sales, the respondent provides no technical assistance, customer support, or any other selling function for U.S. sales. Therefore, we find that all sales in the U.S. market were made at a single LOT, which is different from the home market LOT. Since the record contains no information that would allow us to determine the extent, if any, to which this difference in LOTs affects price comparability, we have not made an LOT adjustment for this preliminary determination.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales. The Department's preferred source for exchange rates is the Federal Reserve Bank. However, since the Federal Reserve Bank does not publish exchange rates for the Indonesian rupiah, we have relied on exchange rates obtained from the Dow Jones Service, as published in the Wall Street Journal.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel products from Indonesia, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margin is provided below:

Manufacturer/exporter	Margin (percent)
PT Krakatau	49.28
All Others	49.28

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by this determination are

materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: December 28, 1999.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–298 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–859–801]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Slovakia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Abdelali Elouaradia, at (202) 482–1784 or (202) 482–0498, respectively; Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that certain cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel products) from Slovakia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on June 21, 1999.[1] *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela,* 64 FR 34194 (June 25, 1999) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred:

On June 22 and July 29, 1999, the Department issued section A non-market economy (NME) and market economy [2] antidumping questionnaires, respectively, to VSZ, a.s. (VSZ), the only known exporter of subject merchandise in Slovakia. As of the date of initiation of this investigation, Slovakia was still considered an NME country. On June 25, 1999, the Department received a letter from VSZ, requesting, on behalf of the Government of Slovakia, that the Department revoke the NME status of Slovakia under section 771(18)(A) of the Act. On July 2, 1999, the Department initiated a formal inquiry into Slovakia's NME status. While the Department conducted this inquiry, VSZ voluntarily submitted responses to both the Department's market economy questionnaire and the Department's NME questionnaire.

On July 16, 1999, the United States International Trade Commission (ITC) preliminarily determined that there was a reasonable indication that imports of the products under investigation were materially injuring the United States industry. *See Certain Cold-Rolled Steel Products From Argentina, Brazil, China, Indonesia, Japan, Russia, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela: Determinations,* 64 FR 41458 (July 30, 1999).

On October 13, 1999, the Department revoked Slovakia's NME status. *See* Memorandum to Robert S. LaRussa (October 13, 1999). Thereafter, this investigation continued under the Department's market economy procedures. *See Revocation of Slovakia's Non Market Economy Status,* below.

On October 19, 1999, the Department postponed the preliminary determination in this case for 30 days in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2). *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Slovakia,* 64 FR 57842 (October 27, 1999). On December 6, 1999, the Department further extended the deadline for the preliminary determination to December 28, 1999. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel*

[1] The petitioners in this investigation are Bethlehem Steel Corporation, Gulf States Steel, the Independent Steelworkers Union, Ispat Inland Steel, LTV Steel Company Inc., National Steel Corporation (not a petitioner in the Japan case), Steel Dynamics, U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and United Steelworkers of America.

[2] Both versions of the questionnaire were issued because VSZ had requested that the NME status of Slovakia be revoked.

Products from Slovakia, 64 FR 69491 (December 13, 1999).

On November 9, 1999, the petitioners requested that the Department initiate a below-cost sales investigation. After examining the petitioner's request, on November 10, 1999, the Department initiated a below-cost sales investigation. *See* Memorandum from Gary Taverman to Holly Kuga (November 10, 1999).

We issued supplemental questionnaires where appropriate. Responses to those questionnaires were timely filed, and we have incorporated the information provided in those responses into this preliminary determination.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On October 28, 1999, VSZ requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. VSZ also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Period of Investigation

The period of the investigation (POI) is April 1, 1998, through March 31, 1999.

This period corresponds to the respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, June 1999).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or 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.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (HTSUS), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and
  (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or
  (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

  Thickness: 0.001 to 0.010 inches
  Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

• Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:
Thickness: ≤1.0 mm
Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S
Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm2
Hardness	≥475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area percentage
Sulfide Inclusion	≤0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm^{T22}.

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

• Certain ultra thin gauge steel strip, which meets the following characteristics:
Thickness: ≤0.100 mm ±7%
Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

• Certain silicon steel, which meets the following characteristics:
Thickness: 0.024 inches ±.0015 inches
Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max.
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

- Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm x 940 mm x coil, and with a bright finish;
- Certain cold-rolled steel sheet, which meets the following characteristics:
  Thickness (nominal): ≤0.019 inches
  Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	0	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

- Certain band saw steel, which meets the following characteristics:
  Thickness: ≤1.31 mm
  Width: ≤80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:
Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 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, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and United States Customs Service (U.S. Customs) purposes, the written description of the merchandise under investigation is dispositive.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners, aimed at clarifying the scope of the investigation. *See* Memorandum to Joseph A. Spetrini (Scope Memorandum), dated November 1, 1999, for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. *See* Scope Memorandum.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the *Scope of Investigation* section, above, and sold in Slovakia during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on 14 criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: hardening and tempering, paint, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish. These characteristics have been weighted by the Department, where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics as listed above.

Revocation of Slovakia's Non-Market Economy Status

In determining whether to revoke NME-country status under section 771(18)(A) of the Act, the Department must take into account the following factors under section 771(18)(B): (1) The extent to which the currency of the foreign country is convertible into the currency of other countries; (2) the extent to which wage rates in the foreign country are determined by free

bargaining between labor and management; (3) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country; (4) the extent of government ownership or control of the means of production; (5) the extent of government control over the allocation of resources and over the price and output decisions of enterprises; and (6) such other factors as the administrating authority considers appropriate.

Since its emergence as an independent, democratic state, Slovakia has made significant progress in its transformation into a market economy country. The Slovak currency is now fully convertible. Wages in Slovakia are largely determined by free bargaining between labor and management. Trade has been liberalized and tariffs reduced, and the Slovak government is actively promoting foreign investment and business ventures. Industry, agriculture and services have all been privatized, and the power to make decisions related to the allocation of resources, and over pricing and output decisions, now rests with the private sector. Based on the preponderance of evidence related to economic reforms in Slovakia, analyzed as required under section 771(18)(B) of the Act, the Department revoked Slovakia's NME country status, effective January 1, 1998. *See* Memorandum to Robert S. LaRussa (October 13, 1999).

Fair Value Comparisons

To determine whether sales of cold-rolled steel products from Slovakia were made in the United States at LTFV, we compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Export Price

In accordance with section 772 of the Act, we calculated an EP for each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold or offered for sale, before the date of importation by the exporter or producer outside of the United States, to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Consistent with this definition, we have found that VSZ made only EP sales during the POI.

We calculated EP based on cost and freight (C&R) packed prices charged to the first unaffiliated customer in the United States. In accordance with section 772(c)(2) of the Act, we made deductions from the starting price, where appropriate, for movement expenses, including foreign inland freight and inland insurance for shipment from the mill to the port of export, foreign warehousing expenses, and ocean freight. We added interest revenue to the starting price for sales that had been paid late and for which the respondent collected actual interest revenue. See Preliminary Calculation Memorandum (December 28, 1999).

We note that, according to VSZ's reported data, certain of VSZ's U.S. sales were unpaid as of the date of this preliminary determination. Petitioners asserted that all of VSZ's unpaid sales should be treated as bad debt and, therefore, that the Department should treat such unpaid sales amounts as a direct selling expense. VSZ claims that it is still negotiating the payment of all reported sales, and because, as specified in its financial statement, the sales have not been written off, it would be inappropriate to treat the amount of the sales as direct selling expenses.

We have preliminarily accepted VSZ's claim that it has not written off the amounts due on any of the U.S. sales. We have, however, recalculated the imputed credit expenses for U.S. sales for which payment had not yet been received by setting the date of payment equal to the date of signature of this preliminary determination. We intend to examine this issue closely at verification.

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate), and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

VSZ had a viable home market for cold-rolled steel products, and reported home market sales data for purposes of the calculation of NV.

In deriving NV, we made certain adjustments as detailed in the *Calculation of Normal Value Based on Home-Market Prices* and *Calculation of Normal Value Based on Constructed Value* sections of this notice, below.

B. Cost of Production Analysis

As noted above, on November 8, 1999, petitioners filed a below-cost sales allegation against VSZ. After analyzing the allegation, in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that VSZ's sales of cold-rolled steel products in Slovakia were made at prices below the COP. *See* Memorandum from Gary Taverman to Holly Kuga (November 10, 1999). As a result, the Department conducted an investigation to determine whether VSZ made home market sales during the POI at prices below their respective COPs, within the meaning of section 773(b) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of VSZ's costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (G&A), selling expenses, commissions, packing expenses and interest expenses. We relied on the COP data submitted by VSZ in its cost questionnaire response.

2. Test of Home-Market Sales Prices

We compared the weighted-average COP for VSZ to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* a period of one year) in substantial quantities [3] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within

[3] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of NV.

an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of cold-rolled steel products for which there were no comparable home-market sales in the ordinary course of trade, we compared EPs to CV in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value,* below.

C. Calculation of Normal Value Based on Home-Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test.

We calculated NV based on ex-factory prices and made deductions from the starting price, where appropriate, for inland freight. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses, warranty expenses, and other direct selling expenses. We recalculated the imputed credit expenses for U.S. sales for which payment had not yet been received by setting the date of payment equal to the date of signature of this preliminary determination. *See* Preliminary Calculation Memorandum (December 28, 1999). We also made adjustments to the starting price for discounts and rebates.

In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of cold-rolled steel products for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the respondent's cost of materials, fabrication, selling, general and administrative (SG&A) expenses and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. In addition, we relied on U.S. packing costs as described in the *Export Price* section of this notice, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. These involved the deduction of direct selling expenses incurred on home market sales from, and the addition of U.S. direct selling expenses to, CV.

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 transaction. The normal-value 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 SG&A expenses and profit. The U.S. LOT for EP sales is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from VSZ about the marketing stages involved in the reported United States and home market sales, including a description of the selling activities performed by VSZ for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments.

VSZ claimed to have two LOTs in the NV market and one LOT in the U.S. market. We examined VSZ's distribution system, including selling functions, classes of customers, and selling expenses. We found that the selling functions—which included warranty, freight, processing of sales documents, and technical advice—were sufficiently similar in the United States and home markets to establish a single, same level of trade in both markets. It was thus unnecessary, for this preliminary determination, to make any level-of-trade adjustment for comparison of EP and normal value.

Currency Conversions

We made currency conversions into United States dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the United States sales, as certified by the Dow Jones Business Information Services.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of cold-rolled steel products from Slovakia, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below.

Manufacturer/exporter	Margin (percent)
VSZ	32.83
All others	32.83

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the United States industry. The deadline for that ITC determination would be the later of 120 days after the date of these preliminary

determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: December 28, 1999.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–299 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–854]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Karla Whalen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1102 or (202) 482–1391, respectively.

The Applicable Statue

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Preliminary Determination

We determine preliminarily that certain cold-rolled flat-rolled carbon quality steel products (''cold-rolled steel'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation (64 FR 34194, June 25, 1999) (''*Notice of Initiation*''), the following events have occurred:

On June 22, 1999, we sent a Section A questionnaire to the Chinese Ministry of Foreign Trade and Economic Cooperation (''MOFTEC''), the Embassy of the People's Republic of China in Washington, D.C. (''Embassy'') with instructions to forward the questionnaire to all producers/exporters of the subject merchandise explaining that these companies must respond by the due date. We also sent a copy of the questionnaire to Baoshan Iron and Steel Corporation, which was specifically named in the petition. We received no response from MOFTEC nor the Embassy, but we received a response from Shanghai Baosteel Group Corporation (''Baosteel'').

On July 23, 1999, the United States International Trade Commission (''ITC'') issued an affirmative preliminary injury determination in the case (*See* ITC Investigations Nos. 701–TA–393–396 and 731TA–829–840). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of cold-rolled steel. On July 9, 1999, we issued an antidumping questionnaire, Sections C–E to MOFTEC and to the Embassy with instructions to forward the questionnaire to all producers/exporters of the subject merchandise and that these companies must respond by the due date. We also sent a courtesy copy of the same questionnaire to Baosteel.

The questionnaire is divided into four sections. Section A requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the sales of the merchandise in all of its markets. Section C requests home market sales listings. Section D requests information on the factors of production of the subject merchandise. Section E requests information on further manufacturing.

On July 1, 6, and 20, 1999, Baosteel submitted its section A response. Baosteel, a producer of subject merchandise, also submitted Section A on behalf of two wholly-owned subsidiaries, Baosteel Group International Trade, Inc. (''Baosteel ITC'') and Baosteel America, Inc. (''BaoMei''). On August 30, 1999, Baosteel submitted its response to sections C, D and E of the questionnaire.

On August 24, 1999, we issued a Section A supplemental questionnaire to Baosteel. On September 10, 1999, we issued Sections C, D, and E supplemental questionnaire to Baosteel. Baosteel submitted its Section A supplemental questionnaire response on September 14, 1999. Baosteel submitted its Sections C, D, and E, supplemental questionnaire response on October 4, 1999.

On September 3, 1999, we requested publicly-available information for valuing the factors of production and for surrogate country selection. Petitioners had already provided comments on surrogate values to be used in this investigation in their petition of June 2, 1999. Respondents provided their

comments on this matter on September 15, 1999.

Petitioners submitted comments regarding Baosteel's questionnaire response on August 25, September 8, 10, and 17, and October 8 and 13, 1999. On October 15, 1999, Baosteel submitted additional information regarding its factors of production. On October 19, 1999, we issued a second supplemental questionnaire requesting clarification of certain items and other additional information. Baosteel submitted its response to this questionnaire on November 9 and 16, 1999.

The Department issued additional supplemental questionnaire on November 1, 5, and 22, 1999. Baosteel responded to these questionnaire on November 16, 30, and December 7, 1999, respectively.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners, aimed at clarifying the scope of the investigation. *See* Memorandum to Joseph A. Spetrini, November 1, 1999 (''*Scope Memorandum*'') for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. *See Scope Memorandum.*

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or 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.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low allow (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are rescognized as steels with micro-alloying levels of elements such as chromium, cooper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and

  (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or

  (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

  Thickness: 0.001 to 0.010 inches
  Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

  Thickness: ≤1.0 mm
  Width: ≤152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S

CHEMICAL COMPOSITION—Continued

Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm^2
Hardness	≥475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area Percentage
Sulfide Inclusion	≤0.04%
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm^2

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t≤0.209	Rz≤0.5
0.209<t≤0.310	Rz≤0.6
0.310<t≤0.440	Rz≤0.7
0.440<t≤0.560	Rz≤0.8
0.560<t	Rz≤1.0

- Certain ultra thin guage steel strip, which meets the following characteristics:
  Thickness: ≤ 0.100 mm ±7%
  Width: 100 to 600 mm

CHEMICAL COMPOSITION

Weight %	≤ 0.07	0.2–0.5	≤ 0.05	≤ 0.05	≤ 0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm$_2$

PHYSICAL PROPERTIES

Surface Finish	≤ 0.3 micron
Camber (in 2.0 m)	< 3.0 mm
Flatness (in 2.0 m)	≤ 0.5 mm
Edge Burr	< 0.01 mm greater than thickness
Coil Set (in 1.0 m)	< 75.0 mm

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inches +/-.0015 inches
  Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %				0.65		
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20I–UNIT max
Coating	C3A–08A max (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the followingcharacteristics:

Thickness: 0.025 to 0.245 mm

Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micro (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain full hard tin mill black plate, continuously cast which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	A1	As	Cu	B	N
Min.Weight %	0.02	0.02				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.00039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.00197 inches) in length.

Surface Treatment as follows:

The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

- Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm x 940 mm x coil, with a bright finish;
- Certain cold-rolled steel sheet, which meets the following characteristics:
  Thickness (nominal): ≤ 0.019 inches
  Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %	.....	0.010	0.012

- Certain band saw steel, which meets the following characteristics:
  Thickness: ≤ 1.31 mm
  Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:

Carbide: fully spheroidized having >80% of carbides, which are ≤0.003 mm and uniformed dispersed

Surface finish: bright finish free from pits, scratches, rust, cracks, or seams

Smooth edges

Edge camber (in each 300 mm of length): ≤7 mm arc height

Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheading: 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, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, and 7226.99.0000.

Although the HTSUS subheading are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (''POT'') is October 1, 1998, through March 31, 1999.

Non-Market-Economy Country Status

The Department has treated the PRC as a nonmarket economy (''NME'') country in all past antidumping investigations (see, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255 (December 31, 1998) (*''Mushrooms''*)). A designation as an NME remains in effect until it is revoked by the Department (*See* section 771(18)(C) of the Act). The respondents have not challenged such treatment. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME country.

Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department in most circumstances to base normal value (''NV'') on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines are countries comparable to the PRC in terms of economic development. *See* Memorandum from Jeff May to Edward Yang, dated June 24, 1999. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has usually been India if it is a significant producer of comparable merchandise. In this case, we have found that India as well as Indonesia are significant producers of comparable merchandise.

We used India as the primary surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producer's factors of production, when available and appropriate. *See* Surrogate Country Selection Memorandum to The File from James Doyle, Program Manager, dated December 28, 1999, (*''Surrogate Country Memorandum''*). We have obtained and relied upon publicly-available information wherever possible. For certain factors, we were unable to locate an appropriate surrogate value from any of the

comparable countries identified above. Therefore, we selected a U.S. value as the most appropriate surrogate. *See* Factor Valuation Memorandum to The File from Gideon Katz and Karla Whalen, dated December 28, 1999, (*''Valuation Memorandum''*).

Separate Rates

Baosteel has requested a separate company-specific rate. In its questionnaire response, Baosteel states that it is an independent legal entity. Baosteel reports that it is an independent trading company ''owned by all the people'' and is solely responsible for its profits and losses. Baosteel further claims that it does not have any corporate relationship with any level of the PRC Government, except for its mandatory registration with the government, which is required of all business entities. As stated in *Final Determination of Sales at Less-Than-Fair-Value: Silicon Carbide from the People's Republic of China* 59 FR 22585 (May 2, 1994) (*''Silicon Carbide''*) and *Final Determination of Sales at Less-Than-Fair-Value: Furfuryl Alcohol* 60 FR 22545 (May 8, 1995) (*''Furfuryl Alcohol''*), ownership of a company by ''all the people'' does not require the application of a single rate. Accordingly, Baosteel is eligible for consideration for a separate rate.

The Department's separate rate test is not concerned, in general, with macroeconomic/border-type controls (*e.g.,* export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value,* 60 FR 14725, 14726 (March 20, 1995) (*''Honey''*).

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China:* 56 FR 20588 (May 6, 1991) (*''Sparklers''*) and amplified in *Silicon Carbide*. Under this test, the Department assigns separate rates in NME cases only if an exporter can affirmatively demonstrate the absence of both (1) *de jure* and (2) *de facto* governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol.*

1. Absence of De Jure Control

Baosteel has placed on the administrative record two documents to demonstrate absence of *de jure* control. The first document, titled ''Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People,'' was adopted on April 13, 1988. (''The Industrial Enterprises Law''). The Industrial Enterprises Law provides that enterprises owned by ''the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. This law has been analyzed by the Department in past cases and has been found to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' such as Baosteel. *See Notice of Final Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472, 55474 (October 24, 1995); *Honey,* 60 FR at 14726; and *Furfuryl Alcohol,* 60 FR at 22544.

The second document submitted by Baosteel consists of excerpts from ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises'' (*''Regulations''*), issued on December 31, 1992, by the Ministry of Foreign Economic Relations and Trade of the People's Republic of China. These Regulations gave state-owned enterprises the right to establish ''production, management, and operational policies,'' and the right to set prices, sell products, purchase production inputs, make investment decisions, and dispose of profits and assets. These rights apply specifically to an enterprise's import and export activities (Article XII). The Department determined in the past that the existence of these Regulations supports finding that a PRC company is not subject to *de jure* governmental control. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China,* 60 FR 56045 (November 6, 1995) and *Chrome-Plated Lug Nuts from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 31719 (June 10, 1998).

In sum, in prior cases, the Department has analyzed the Chinese laws and Regulations placed on the record in this case, and found that they establish an absence of *de jure* control. We have no new information in this proceeding which would cause us to reconsider such a determination.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See, e.g., Silicon Carbide* and *Furfuryl Alcohol.*

Baosteel asserted the following: (1) It establishes its own export prices independently of the government and without the approval of a government authority; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions including the selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to obtain loans. We have found no indication from Baosteel's business licenses that the issuing authority imposes any type of restriction on its business. The business license simply establishes a legal name for the enterprise, provides the address of the enterprise, identifies the legal representative of the enterprise, reports the amount of registered capital of the enterprise, identifies the type of the enterprise, and establishes the authorized scope of business for the enterprise. In addition, Baosteel stated that the subject merchandise is not on any government list dealing with export provisions or licensing.

Consequently, we preliminarily determine that Baosteel has met the criteria for the application of separate rates. We will examine this matter further at verification. For non-responsive exporters, we preliminarily determine, as facts available, that they have not met the criteria for application of separate rates.

Use of Facts Available

Baosteel

In calculating the factors of production, the Department normally considers the factors from all production facilities of the respondent company that are involved in the production of the subject merchandise. Therefore, the Department's questionnaire requires that the respondent company provide information regarding the weighted-average factors of production across all of the company's plants that produce the subject merchandise, not just the factors of production from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.

In this case, as discussed in the Case History section, above, the Department issued several questionnaires to Baosteel. In response to the Department's inquiry into Baosteel's affiliates and factors of production, Baosteel indicated that ''Baosteel's wholly-owned subsidiaries, Baosteel Group International Trade Inc. (''Baosteel ITC'') and Baosteel America Inc. (''BaoMei''), are involved in the exportation of the subject merchandise.'' Baosteel stated that of all the subsidiaries listed in an exhibit to its section A response, ''no other subsidiaries involved [sic] in the manufacture, sales or research of the subject merchandise, except for Baosteel ITC and BaoMei. These two companies are involved in sales of the product * * *'' Baosteel further asserted in its section A supplemental response that ''[t]here is no other manufacturing plant, sales office, research and development facility, and administrative office involved in the manufacture and sale of the subject merchandise other than Baosteel ITC, Bao Mei and Baosteel headquarter's [sic] steel mill. Baosteel headquarter's [sic] steel mill manufactures the subject merchandise, Baosteel ITC handles all internal processing, arranges for shipments, and negotiates Letters of Credit; and Bao Mei acts as the sales office in the U.S.A.'' In response to the Department's supplemental questions requesting a list of all plants, offices, facilities, branches and affiliates involved in the manufacture and sale of subject merchandise, Baosteel stated that ''* * * Baosteel ITC and Bao Mei are wholly owned subsidiaries of Baosteel and sold the subject merchandise under investigation.'' Baosteel further asserted that ''[o]nly Baosteel's headquarter[s] plant produced the subject merchandise during the POI. No other plant was involved in the production of the subject merchandise. Baosteel, as requested, reported the factors of production and output of the plant which produced the subject merchandise.''

We find that Baosteel's responses that only its headquarters plant produces subject merchandise do not correspond with the public and proprietary information available on the record. *See* Memorandum to the File from Juanita Chen regarding public articles, dated October 26, 1999 (*''Public Sources Memorandum''*). According to public information, on November 17, 1998, Baoshan Iron & Steel (Group) Corporation was reorganized into Shanghai Baosteel Group Corporation, absorbing Shanghai Metallurgical Holding (Group) Corporation (''SMHC'') and Meishan Iron & Steel (Group) Corporation. SMHC comprises ten steel mills and a total of 30 plants, including Shanghai Nos 1, 3, 5 and 10 steel works. The International Iron and Steel Institute lists SMHC's crude steel output for 1998 at 6.6 million tons. It is also clear that Shanghai Pudong Iron & Steel (Group) Co. Ltd. (''Pudong''), formerly known as Shanghai No. 3 Iron & Steel Works, is a producer of carbon steel cold-rolled sheets. *See Iron and Steel Works of the World,* Volume 13, page 82. In addition to this information, Baosteel's own website states that:

> . . . with the approval of the State Council and by changing its registered company name, the former Baoshan Iron & Steel (Group) Corporation was reorganized into Shanghai Baosteel Group Corporation, absorbing Shanghai Metallurgical Holding (Group) Corporation (''SMHC'') and Meishan Iron & Steel (Group) (''Meishan'') Corporation on November 17, 1998. With RMB 45.8 billion yuan in registered funds and RMB 70.466 billion yuan in net assets, the newly established corporation is the largest iron and steel conglomerate in China at present. *See http://www.bstl.sh.cn/page__e/a001.htm* (visited December 20, 1999).

The Department also notes that, subsequent to the Department's further inquiries, Baosteel edited the information it provided in its response concerning its list of affiliates. Specifically, in its November 9, 1999, supplemental response, Baosteel excluded certain companies previously submitted as subsidiaries in its September 14, 1999, Section A supplemental response, including Baosteel Shanghai Pu Steel Mill, Baosteel Group Shanghai Numbers, One, Two, Three, and Five Steel Mills, and Baosteel Group Shanghai Mei Shan Company, Ltd.

Additionally, there is some evidence indicating that Wuhan Iron and Steel Works (''Wuhan''), a producer of carbon steel cold-rolled uncoated sheet/coil, may have also merged with Baosteel in 1998. *See Public Sources Memorandum.* We note, however, that Baosteel's responses fail to provide any factors of production information from either the Pudong or the Wuhan facilities, despite the Department's specific requests in its supplemental questionnaires.

Section 776(a)(2)(A) of the Act provides that, if an interested party withholds information that has been requested by the administering authority, the Department shall, subject to section 782(d), apply facts otherwise available. In this case, as described above, the publicly-available information indicates that, in addition to the Baosteel headquarters plant, there exist other Baosteel facilities that produce cold-rolled, flat-rolled carbon quality steel. Accordingly, in light of the evidence that both Pudong and Wuhan produced subject merchandise during the POI, and that Baosteel merged with Pudong and may have merged with Wuhan, the Department is concerned that Baosteel did not provide any information concerning these facilities. As explained above, to properly conduct this investigation, it is essential that the Department has at its disposal information regarding the weighted-average factors of production across all of a company's plants that produce subject merchandise, not just the factors of production from a single plant. Using factors of production for only one company plant may distort the actual factors of production for the entire company.

In response to the Department's questions on this issue, Baosteel's December 7, 1999 supplemental questionnaire response on page two asserted that ''The Department should note that the merger plan was announced on November 17, 1998, but, the registration did not occur until August 1999.'' Baosteel's focus on registration of the merger leads to its conclusion on page three that ''It is Baosteel's position that Pudong did not legally merge with Baosteel until August 10, 1999, that is, well after the POI.'' In addition to taking issue with the timing of the merger, Baosteel also challenged its relevance by contending that the companies with which it merged do not produce the merchandise under investigation, and therefore the provision of factors is unnecessary. Specifically, Baosteel's December 7, 1999, supplemental questionnaire response on page three notes that ''Pudong has previously certified that it did not produce the subject merchandise during the POI, and does not produce this subject merchandise.''

In addition, Baosteel provided a certification in Exhibit S5–3, stamped by Shanghai Pusteel (Group) Company Ltd. which it translated as follows: ''This is to certify that we do not produce the cold-rolled carbon type steel products.''

Regarding the timing of the merger, the Department first notes that Baosteel's responses have evolved, from first listing the merged entities among Baosteel's subsidiaries, to the most recent focus on registration of the merged entity as the critical event. In addition, these evolved statements remain at variance with several public documents, in particular public statements originating from Baosteel itself. The Department finds, based on the evidence as a whole, that it is appropriate to treat the companies as having merged during the POI. Baosteel has failed to adequately support its argument that registration is the critical merger event because it did not adequately explain the merger process. Specifically, Question 4 of the Department's November 22, 1999, supplemental questionnaire requested Baosteel to ''provide a complete explanation of the actual merger process'' and to ''clearly identify all legal documentation and proceedings which must occur for the merger to be officially legal according to Baosteel.'' Also, the Department requested Baosteel to ''detail the timing of each event.'' Instead, Baosteel focused almost exclusively on registration, providing no useful information regarding the process as a whole, despite repeated attempts by the Department to get this information on the record (*see* October 19 and November 5, 1999, supplemental questionnaires). As a result, Baosteel has prevented the Department from fully understanding the merger process as a whole so that we could assess the function and effect of registration. Absent such information, the Department finds no basis to disregard the company's public statements which indicate that the mergers were completed during the POI.

Baosteel's insistence that none of the merged entities produced subject merchandise is similarly unpersuasive. In its November 30, 1999 supplemental questionnaire, the Department explicitly stated that Baosteel should report factors of production for Pudong ''if Pudong manufactures and merchandise which falls within the scope of the investigation.'' Thus, production of the subject merchandise was the sole criterion for reporting factors of production. However, Baosteel's response indicates that it added an additional criterion for determining whether to report factors of production, *i.e.*, whether an affiliated producer exported subject merchandise to the United Stated during the POI. Therefore, Baosteel's responses have not answered the specific question whether any of the merged facilities manufacture the products described in the Scope of the Investigation section above.

Further, while Pudong's certification appears to have been written in response to a request from Baosteel regarding specific parameters, those parameters were not provided to the Department. Because the Department does not know the set of products to which Pudong is certifying, the certification's analytical usefulness is limited, especially since it directly contradicts recent sources of information such as *Iron and Steel Works of the World,* Volume 13 (1999), page 82, which clearly lists Shanghai Pudong as a 1999 producer of carbon steel cold-rolled sheets.

Thus, given that Baosteel appears to have withheld this information despite the Department's requests, pursuant to section 776(a)(2)(A), we preliminarily determine that the application of facts otherwise available is warranted.

Section 776(b) of the Act provides that, if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may, in selecting the facts otherwise available, use an inference that is adverse to the interests of that party. In this case, we find that although Baosteel provided the Department with information regarding its headquarters plant, Baosteel has not cooperated to the best of its ability because it failed to fully support the information it submitted and provided conflicting information on the record regarding this issue.

Accordingly, we are applying adverse partial facts available to account for the portion of the overall Baosteel Group's margin which might be attributed to SMHC. Given that the public information is not conclusive with regard to Wuhan, we have not included this plant in our partial facts available calculation. We used the relation between the steelmaking capacity of the Baosteel headquarters plant and the capacity of SMHC to weight-average the calculated and partial facts available margin to arrive at an overall margin. We weight-averaged the margin calculated for Baosteel's headquarters plant with the highest petition margin, 23.72% (to account for SMHC), to arrive at the preliminary margin. *See Public Sources Memorandum.* We note, however, that we issued an additional supplemental questionnaire on this topic and therefore, intend to examine this issue in more detail for the final determination.

PRC-Wide Rate

Information on the record of this investigation indicates that there may be producers/exporters of the subject merchandise in the PRC, in addition to the company participating in this investigation, as noted in the petition and confirmed by the Department's own analysis of the import statistics in comparison to Baosteel's reported U.S. sales. Also, U.S. import statistics indicate that the total quantity of U.S. imports of cold-rolled steel from the PRC is greater than the total quantity of cold-rolled steel exported to the U.S. as reported by Baosteel. *See* Corroboration Memorandum to Edward Yang, Office Director from Robert Bolling and Karla Whalen, dated December 28, 1999 (*''Corroboration Memorandum''*). Given this discrepancy, it appears that not all PRC exporters of cold-rolled steel responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate—the PRC-wide rate—to all exporters in the PRC, other than Baosteel, as specifically identified below under the ''Suspension of Liquidation'' section of this notice, based on our presumption that the export activities of the companies that failed to respond to the Department's questionnaire are controlled by the PRC government (*see, e.g., Final Determination of Sales at Less-Than-Fair-Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (*''Bicycles''*).

As explained below, this PRC-wide antidumping rate is based on adverse facts available. Section 776(a)(2) of the Act provides that if an interested party or any other person—

> (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

In this case, we found that there are PRC producers/exporters who failed to respond to our questionnaire, thereby withholding information necessary for reaching the applicable determination within the meaning of section 776(a)(2)(A) of the Act. Moreover, by

refusing to respond to the Department's questionnaire, these producers/exporters significantly impeded this investigation within the meaning of section 776(a)(2)(C) of the Act. Thus, in making our preliminary determination, we are required to use facts otherwise available.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interest of that party as the facts otherwise available. The exporters that decided not to respond in any form to the Department's questionnaire failed to act to the best of their ability in this investigation. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. As adverse facts available, we are assigning the highest margin in the petition, 23.72 percent, which is higher than the calculated margin. Further, absent a response, we must presume government control of these and all other PRC companies for which we cannot make a separate rate determination.

Section 776(c) of the Act provides that, when the Department relies upon ''secondary information'' in using facts otherwise available, such as the petition rates, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (''SAA''), states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at 870.

The petitioner's methodology for calculating export price (''EP'') and NV is discussed in the *Notice of Initiation.* The information contained in the petition demonstrates that petitioners calculated EP based on average unit values (''AUVs''), which rely, in turn, on U.S. import statistics. Petitioners used POI data for HTSUS numbers 7209.16.00.90 and 7209.17.00.90. The AUVs were calculated by dividing the free-along-side values by net tons. Petitioners made no deductions from these calculated AUVs. The information in the petition with respect to NV is based on factors of production for one petitioner through the hot-rolled production stage, and on another petitioner's factors of production for the additional processing stages necessary to produce cold-rolled steel. Petitioners valued the factors of production, where possible, based on reasonably available, public surrogate country data. Petitioners used India as their surrogate country for valuation of the factors of production.

To corroborate the margins we are using as adverse facts available, we re-examined evidence supporting the petition calculation. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the U.S. price and NV calculations on which the petition margin was based and compared the sources used in the petition to publicly-available information, where available. We compared petitioner factor usage data to the actual factor usage data of Baosteel for the most significant factor inputs, and we find this information to be sufficiently corroborated as defined in the statute. Furthermore, because the other information in the petition is from public sources contemporaneous with the POI, we find, for the purpose of the preliminary determination, that the margins in the petition are sufficiently corroborated. *See Corroboration Memorandum.*

Fair Value Comparisons

To determine whether sales of cold-rolled carbon steel from the PRC to the United States were made at LTFV, we compared the EP to the NV, as specified in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

In accordance with section 772(a) of the Act, we used EP because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NVs. *See Valuation Memorandum.* We calculated EP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for loading labor.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on the value of the factors of production reported by Baosteel. We used factors of production, reported by Baosteel, for materials, energy, labor, by-products, and packing. We made adjustments to the usage rates for these factors as noted below. In accordance with our standard practice, where an input is sourced from a market economy and paid for in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. *See Lasko Metal Products* v. *United States,* 437 F. 3d 1442 (Fed. Cir. 1994) (''*Lasko*''). Baosteel reported that some of its inputs were sourced from market economies and paid for in market economy currency. However, we determined not to use the prices reported by Baosteel for coking coal because the purchase was insignificant in comparison to the domestic purchases. Therefore, we disregarded Baosteel's coking coal information and instead used publicly-available information from India. *See Valuation Memorandum.*

Baosteel identified a number of by-products which it claimed are recycled in the production process and/or sold. However, the response was unclear as to how much of these various inputs are entered into the production process or sold. Therefore, the Department has only offset the cost of production by the amount of a by-product where Baosteel's response indicated that it was sold and not re-entered into the production process. We intend to examine this issue more closely at verification. *See Valuation Memorandum.*

Finally, we made an adjustment to the reported energy usage factor. Because we could not clearly determine what portion of the self-produced energy factor went into direct steelmaking, we have estimated this usage rate based on an Indian steel producer's self-produced energy costs.

Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. We used import prices to value factors. We removed from the imports data import prices from countries which the Department has previously determined to be NMEs. For those values not contemporaneous with the POL, we adjusted for inflation using wholesale price indices (''WPI''), published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see *Valuation Memorandum.*

For most raw material and energy surrogate values, we used values as reported in the *Monthly Statistics of Foreign Trade of India,* Vol. II—Imports, Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce, Government of India, Calcutta. The price information from *Monthly Statistics of Foreign Trade of India* represents cumulative values for the period of April 1997 through March

1998. For each input value obtained from the above referenced publication, we used the average value per kilogram for that input from market economics. Import statistics from NMEs were excluded in the calculation of the average value. Given that the data from this publication is not contemporaneous with the POI, we adjusted material values for inflation by using the WPI rate for India. We then converted each of the raw material inputs to U.S. dollars using an exchange rate conversion factor.

For certain other factors, we used values as reported in the *United Nations Commodity Trade Statistics* for India in 1997. We converted these values as appropriate. *See Valuation Memorandum.*

The Department determined that the only surrogate value for slag from India was unreliable. According to *New Steel,* February 1997, pages 24 and 44, slag has a relatively low value compared to the price of steel. Because the Indian value for slag was unusually high compared to the price of the subject merchandise, the Department has preliminarily used values for slag from the *U.S. Geological Survey, Minerals, Commodities Summaries* from 1998.

Baosteel reported that three types of iron ore were purchased from market economy suppliers, namely, iron ore fines, iron ore lumps, and iron ore pellets. The evidence provided by Baosteel indicated that its market economy purchases of iron ore were significant. *See* Section B of the October 4, 1999 submission, Exhibit SD–5. The Department has determined to use the FOB Baosteel prices as reported, in accordance with *Lasko.* However, for that portion of the three iron-ore type shipments which were unloaded at an intermediary port, we have added an unloading and a loading expense, as well as Indian surrogate river transport freight expense, given that the data indicates that the prices reported did not account for these additional expenses. We based the freight expense on the simple average of three surrogate values provided by Baosteel. We then added the freight and shipment expenses to a weighted-average FOB Baosteel price to account for materials delivered at an intermediary port. Finally, we weight-averaged the total value of the iron ore delivered directly to Baosteel with the total value of the iron ore unloaded at an intermediately port to derive a final market-based iron ore price per category of iron ore reported. For the ''other'' iron ore input category reported by Baosteel, we used a surrogate value as reported in the *United Nations Commodity Trade Statistics* for India in 1997 because this was not purchased via market economy sources. We have also added a proportional unloading and loading charge and transportation cost as appropriate using the above methodology. *See Valuation Memorandum.*

For labor, we used the Chinese regression-based wage rate at Import Administration's homepage, Import Library, Expected Wages of Selected NMW Countries, revised in May 1999. Because of the variability of wage rates in countries with similar per capita gross domestic prices, section 351.408(c)(3) of the Department's regulations requires us to use a regression-based wage-rate. The source of this wage-rate data on Import Administration's homepage is found in the 1998 Year Book of Labour Statistics, International Labour Office (Geneva: 1998), Chapter 5B: Wages in Manufacturing.

For overhead, profit and SG&A expenses, we used averaged information reported in publicly available financial reports to two Indian steel producers.

Verification

As provided in section 782(i) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Shanghai Baosteel Group Corporation (including Baosteel Group International Trade, Inc.)	8.84
China-wide Rate*	23.72

*The China-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On November 8, 1999, Baosteel requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of an affirmative preliminary determination in the **Federal Register**. Baosteel also included a request to extend the provisional measures to not more than six months. Accordingly, since we have made an affirmative preliminary determination, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: December 28, 1999.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–300 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–808]

Notice of Preliminary Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Charles Ranado, Stephanie Arthur or Robert James at (202) 482–3518, (202) 482–6312 or (202) 482–5222, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1, 1999).

Preliminary Determinations

We preliminarily determine that cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel products) from Turkey are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On June 21, 1999, the Department initiated antidumping duty investigations of imports of cold-rolled steel products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela. See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Argentina, Brazil, the People's Republic of China, Indonesia, Japan, the Russian Federation, Slovakia, South Africa, Taiwan, Thailand, Turkey, and Venezuela, 164 FR 34194 (June 25, 1999) (Initiation Notice). Since the initiation of the investigations, the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. From July through October 1999, the Department received responses from a number of parties including importers, respondents, consumers, and petitioners [1], aimed at clarifying the scope of the investigation. See Memorandum to Joseph A. Spetrini, November 1, 1999 (Scope Memorandum) for a list of all persons submitting comments and a discussion of all scope comments. There are several scope exclusion requests for products which are currently covered by the scope of this investigation that are still under consideration by the Department. These items are considered to be within the scope for this preliminary determination; however, these requests will be reconsidered for the final determination. See Scope Memorandum.

On June 22, 1999, the Department requested information from the U.S. Embassy in Turkey to identify producers/exporters of the subject merchandise. On June 21, 1999, the Department also requested comments from petitioners, two potential respondents, Eregli Demir ve Çelik Fabrikalari T.A.Ş''. (Erdemir) and Borçelik Çelik Sanayii ve Ticaret A.S. (Borcelik), and the Embassy of Turkey in Washington regarding the criteria to be used for model matching purposes. On July 26, 1999, Borcelik submitted comments on our proposed model-matching criteria. Petitioners filed additional model match comments on June 28, 1999.

On July 16, 1999, the United States International Trade Commission (the Commission) notified the Department of its affirmative preliminary injury determination in this case.

The Department issued antidumping questionnaires to Erdemir and Borcelik on June 22, 1999 (Section A) and July 9, 1999 (Sections B through D). The questionnaire is divided into five parts; we requested that Erdemir and Borcelik respond to Section A (general information, corporate structure, sales practices, and merchandise produced), Section B (home market or third-country sales), Section C (U.S. sales), and Section D (cost of production/constructed value for high inflation economies). In addition, we required respondents to respond to additional questions based on our determination that the Turkish economy underwent high inflation during the POI.[2]

[1] Petitioners in this case are Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Inc., LTV Steel Company Inc., National Steel Company, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, United Steelworkers of America, and Independent Steelworkers Union (collectively, petitioners).

[2] Based on our analysis of Turkey's consumer price and wholesale price indices, we determined that the Turkish economy was experiencing high inflation during the POI (see 1999 issues of the International Monetary Fund's International Financial Statistics). ''High inflation'' is a term used to refer to a high rate of increase in price levels. Investigations and reviews involving exports from countries with highly inflationary economies require special methodologies for comparing prices and calculating CV and COP. Generally, a 25 percent inflation rate has been used as a guide for assessing the impact of inflation on AD

Continued

Respondents submitted their initial responses to Section A of the Department's questionnaire on July 13, 1999. We received Borcelik's sections B through D response on August 31, 1999. Erdemir submitted it's response to sections B through D on September 3, 1999. Petitioners filed comments on respondents' questionnaire responses on July 27, 1999, and September 13, 1999. We issued the following supplemental questionnaires to respondents: (i) Section A on August 24, 1999, and (ii) sections B through D on September 16, 1999. Erdemir and Borcelik responded to our section A supplemental questionnaire on September 10, 1999. Erdemir responded to sections B through D of our supplemental questionnaire on October 7, 1999; Borcelik responded on October 14, 1999. Petitioners filed additional comments on respondents' supplemental responses between September 21 and October 22, 1999. On October 19, 1999, we issued a second supplemental to Erdemir providing it with an additional opportunity to submit appropriate information on product-specific costs. Erdemir responded to this request on November 3, 1999. Further, we issued a second supplemental to Borcelik on October 26, 1999, to which it responded on November 5, 1999.

Period of Investigation

The period of investigation (POI) is April 1, 1998 through March 31, 1999.

Scope of Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or 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.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedules of the United States (''HTSUS''), are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- SAE grades (formerly also called AISI grades) above 2300;
- Ball bearing steels, as defined in the HTSUS;
- Tool steels, as defined in the HTSUS;
- Silico-manganese steel, as defined in the HTSUS;
- Silicon-electrical steels, as defined in the HTSUS, that are grain-oriented;
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507);
- Silicon-electrical steels, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (.001 inches), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (.001 inches);
- Certain shadow mask steel, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inches
Width: 15 to 32 inches

CHEMICAL COMPOSITION

Element	C
Weight %	<0.002%

- Certain flapper valve steel, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤ 152.4 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S

investigations and reviews (see Policy Bulletin No. 94.5, entitled ''Differences in Merchandise Calculations in Hyperinflationary Economies,'' dated March 25, 1994).

CHEMICAL COMPOSITION—Continued

Weight %	0.90–1.05	0.15–0.35	0.30–0.50	≤ 0.03	≤ 0.006

MECHANICAL PROPERTIES

Tensile Strength	≥162 Kgf/mm^2
Hardness	≥ 475 Vickers hardness number

PHYSICAL PROPERTIES

Flatness	< 0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.

NON-METALLIC INCLUSION

	Area Percentage
Sulfide Inclusion	≤ 0.04%
Oxide Inclusion	≤ 0.05%

Compressive Stress: 10 to 40 Kgf/mm^2

SURFACE ROUGHNESS

Thickness (mm)	Roughness (μm)
t ≤ 0.209	Rz ≤ 0.5
0.209 < t ≤ 0.310	Rz ≤ 0.6
0.310 < t ≤ 0.440	Rz ≤ 0.7
0.440 < t ≤ 0.560	Rz ≤ 0.8
0.560 < t	Rz ≤ 1.0

- Certain ultra thin gauge steel strip, which meets the following characteristics:
  Thickness: ≤ 0.100 mm +/− 7%
  Width: 100 to 600 mm

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Al	Fe
Weight %	≤0.07	0.2–0.5	≤ 0.05	≤ 0.05	≤ 0.07	Balance

MECHANICAL PROPERTIES

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	< 3%
Tensile Strength	600 to 850 N/mm^2

PHYSICAL PROPERTIES

Surface Finish	≤ 0.3 micron
Camber (in 2.0 m)	< 3.0 mm
Flatness (in 2.0 m)	≤ 0.5 mm
Edge Burr	< 0.01 mm greater than thickness
Coil Set (in 1.0 m)	< 75.0 mm

- Certain silicon steel, which meets the following characteristics:
  Thickness: 0.024 inches +/− .0015 inches
  Width: 33 to 45.5 inches

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

MECHANICAL PROPERTIES

Hardness	B 60–75 (AIM 65)

PHYSICAL PROPERTIES

Finish	Smooth (30–60 microinches).
Gamma Crown (in 5 inches)	0.0005 inches, start measuring ¼ inch from slit edge
Flatness	20 I–UNIT max.
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet) 1/16 inch.	
Coil Size I.D	20 inches

MAGNETIC PROPERTIES

Core Loss (1.5T/60 Hz)	3.8 Watts/Pound max.
NAAS	
Permeability (1.5T/60 Hz)	1700 gauss/oersted typical
NAAS	1500 minimum

Certain aperture mask steel, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm

CHEMICAL COMPOSITION

Element	C	N	Al
Weight %	< 0.01	0.004 to 0.007	< 0.007

• Certain tin mill black plate, annealed and temper-rolled, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20					0.03			0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• Certain full hard tin mill black plate, continuously cast, which meets the following characteristics:

CHEMICAL COMPOSITION

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005).

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides > 1 micron (0.000039 inches) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inches) in length.
Surface Treatment as follows:
The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.

SURFACE FINISH

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Stone Finish	16 (0.4)	8 (0.2)	24 (0.6)

- Certain ''blued steel'' coil (also know as ''steamed blue steel'' or ''blue oxide'') with a thickness and size of 0.38 mm x 940 mm x coil, and with a bright finish;
- Certain cold-rolled steel sheet, which meets the following characteristics:
  Thickness (nominal): ≤ 0.019 inches
  Width: 35 to 60 inches

CHEMICAL COMPOSITION

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

- Certain band saw steel, which meets the following characteristics:
  Thickness: ≤ 1.31 mm
  Width: ≤ 80 mm

CHEMICAL COMPOSITION

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤ 0.03	≤ 0.007	0.3 to 0.5	≤ 0.25

Other properties:
Carbide: fully spheroidized having > 80% of carbides, which are ≤ 0.003 mm and uniformly dispersed
Surface finish: bright finish free from pits, scratches, rust, cracks, or seams
Smooth edges
Edge camber (in each 300 mm of length): ≤ 7 mm arc height
Cross bow (per inch of width): 0.015 mm max.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 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, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (''U.S. Customs'') purposes, the written description of the merchandise under investigation is dispositive.

Facts Available

Section 776(a)(2) of the Tariff Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In this case Erdemir failed, in its original and supplemental responses, to provide unique product costs which account for the differences in physical characteristics as defined by the Department. Erdemir assigned the same costs to all products within a cold-rolled family group. That methodology does not provide product-specific cost of production (COP) information, nor does it provide the Department with information to calculate a difference in merchandise (DIFMER) adjustment to account for differences in physical characteristics when comparing sales of similar merchandise. Additionally, Erdemir created these cold-rolled families using its matching characteristics that, while based on the company's records, do not correspond to the characteristics identified by the Department. See ''Product Comparison'' section below. Without accurate data for these items, we cannot perform a reliable cost test; we cannot make appropriate selections of sales for price-to-price comparisons; nor can we determine accurate constructed values for use as normal value. We issued Erdemir several supplemental questionnaires requesting that it correct these errors, but it failed to do so. Accordingly, Erdemir's failure to provide the requested data renders its response unusable for this preliminary determination. Therefore, in light of Erdemir's failure to provide requested information necessary to calculate dumping margins in this case, in accordance with section 776(a) of the Tariff Act, we are forced to resort to total facts available for this preliminary determination.

Section 776(b) of the Tariff Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the

respondent is not required before the Department may make an adverse inference.'' Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997), (Final Rule).

In this case we have determined that Erdemir has not acted to the best of its ability in responding to the Department's request for product-specific cost information that takes into account physical differences in the products. In our supplemental questionnaires we repeatedly instructed Erdemir to rely not only on its existing financial and cost accounting records, but on any other information which would allow it to calculate a reasonable allocation of its costs. It is standard procedure for the Department to request product-specific cost data and we routinely receive such information from respondents, as we did from the other respondent, Borcelik, in this case. In the Department's experience companies have information which allows them to calculate a reasonable estimate of the costs to make a given product. Even if a company does not identify product-specific costs in its normal financial and cost accounting records, it should be able to make some reasonable allocation of its costs among distinct products through the use of other product and production information.

Under section 782(c) of the Tariff Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a ''full explanation and suggested alternative forms.'' In response to our requests for product-specific cost data Erdemir only repeated the statement that its accounting records did not permit it to report product-specific costs. Cooperation in an antidumping investigation requires more than a simple statement that a respondent cannot provide certain information from its previously prepared accounting records; the burden to establish that it has acted to the best of its ability rests upon the respondent. As noted above, to meet that burden a respondent must explain what steps it has taken to comply with the information request, and propose alternative methodologies for getting the necessary information. *See also Allied-Signal Aerospace* v. *United States,* 996 F.2d 1185, 1192 (Fed. Cir. 1993). Erdemir has failed to do either. Moreover, we find that Erdemir's claim that it is unable to provide this information is inconsistent with Erdemir's other statements and information on the record of this case. For example, Erdemir closely tracks actual production for yield purposes and for purposes of identifying particular coils for warehouse identification as is evidenced by the yield information maintained by the company and the identifying tags affixed to each finished product. Erdemir also has budgets, manufacturing standards, and engineering standards for specific products listed in the company's product brochure. Erdemir must develop production plans involving the identification of certain products as produced from certain raw materials on certain production lines using specific engineering standards. Further, to maintain ISO certification, Erdemir must maintain contemporaneous records of production and processes to insure the quality of the products it produces. While Erdemir's financial accounting records do not contain the information requested on separate product costs, the company could have developed a reasonable allocation methodology to allocate costs to products on a control number (CONNUM)-specific basis using the company's normal cost accounting records as a starting point to calculate CONNUM-specific costs. The Department repeatedly requested that Erdemir look beyond its financial and cost accounting records and select from a variety of available data using, for example, engineering standards, direct labor hours, machine hours, budgeting systems, production line reports, production time, or other production records for allocating costs to products on a CONNUM-specific basis.

Given Erdemir's repeated failure throughout the investigation to provide product-specific cost data that takes into account physical differences in the product or to provide any meaningful explanation of why such data could not be provided, we preliminarily determine that Erdemir did not cooperate to the best of its ability. Accordingly, we have used an adverse inference in selecting the facts available to determine Erdemir's margin.

In addition, Borcelik failed, in its original and supplemental response, to provide COP data for major inputs purchased from an affiliated party. Therefore, in accordance with section 776(a) of the Tariff Act, we have preliminarily determined to use facts available in computing the affiliate's COP for purposes of the major input rule. As facts available we used the cost of major inputs from the petition. See ''Cost of Production'' section below.

Section 776(c) of the Tariff Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870. In this proceeding we considered the petition as the most appropriate information on the record to form the basis for a dumping calculation for Erdemir and for the cost of a major input for Borcelik. In accordance with section 776(c) of the Tariff Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.,* import statistics, cost data and foreign market research reports). See Initiation Notice at 34202. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the export price, home market price, and CV data provided for the margin calculations in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (see Memorandum to the File, ''Facts Available Rate and Corroboration of Secondary Information,'' dated December 8, 1999). As adverse facts available, we have preliminarily assigned Erdemir the rate of 32.91 percent, the highest calculated margin in the petition. This rate is subject to further comments by interested parties and therefore may be changed for the final determination.

Product Comparisons

We relied on fourteen criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: hardening and tempering, paint, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish. A detailed description of the matching criteria, as well as our matching methodology is contained in the Borcelik's Preliminary Determination Memorandum, dated December 8, 1999 (Preliminary Determination Memorandum).

Fair Value Comparisons

To determine whether sales of cold-rolled steel products from Turkey were made in the United States at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the ''Export Price'' and

''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs for comparison to weighted-average NVs. Turkey experienced significant inflation during the POI, as measured by the Wholesale Price Index, published in the June 1999 issue of International Financial Statistics. Accordingly, to avoid distortions caused by the effects of significant inflation on prices, we calculated EPs and NVs on a monthly average basis, rather than on a POI average basis. We then compared weighted-average EPs to weighted-average NVs for the same month.

Transactions Investigated

For home market and U.S. sales Borcelik reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Borcelik stated that the invoice date best reflects the date on which the material terms of sale are established and that price or quantity or both can change between contract date and invoice date. However, petitioners have alleged that the sales documentation indicates that the contract date appears to be the date when the material terms of sale are set for all of Borcelik's sales of cold-rolled steel. Given the nature of marketing these types of made-to-order products, the Department requested that Borcelik provide additional information concerning the nature and frequency of price and quantity changes occurring between the contract date and date of invoice. We also requested that Borcelik report change order date for all home market and United States sales and to ensure that all sales with change order or invoice dates within the POI are reported.

Borcelik claims that invoice date is the appropriate date of sale for both U.S. and home market sales, stating that this is the first date in which terms of sale are set. However, petitioners believe that all terms of sale are determined at the time of the sales contract and therefore claim that this date is the more appropriate date to use. Because there is evidence on the record suggesting that the terms of sale may change between the contract date and the issuance of the invoice, the Department is preliminarily using the invoice date as the date of sale for both home market and U.S. sales. We intend to fully examine this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. If we determine that change order is the appropriate date of sale, we may resort to facts available for the final determination to the extent that this information has not been reported.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP the US LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Tariff Act (the CEP offset provision). (See, *e.g.,* Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997)).

In implementing these principles in this investigation, we obtained information from Borcelik about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Borcelik for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments.

Borcelik reported numerous customer categories and one channel of distribution (i.e., sales to affiliated and unaffiliated end-users) for its home market sales. Borcelik only reported EP sales in the U.S. market. For EP sales Borcelik reported one customer category (i.e., trading companies) and one channel of distribution (i.e., sales through Boruan Dagitim to trading companies). Borcelik did not claim that its sales to home market customers are at a different LOT than its sales to U.S. customers and, therefore, did not claim a LOT adjustment.

In determining whether separate LOTs actually existed in the home market, we examined whether Borcelik's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories and selling functions. As noted above, Borcelik's sales to its unaffiliated and affiliated customers were made through the same channel of distribution, albeit to different categories of customer, with no differences in selling functions. Based on these factors we find that Borcelik's home market sales comprise a single LOT.

In comparing the LOT of Borcelik's EP sales with that of its home market sales, we noted that its EP sales generally involved the same selling functions associated with the home market LOT described above. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as that in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Tariff Act is warranted.

For a detailed level-of-trade analysis with respect to Borcelik, see Preliminary Determination Analysis Memorandum, dated December 8, 1999.

Export Price

We calculated EP in accordance with section 772(a) of the Tariff Act because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted, based on the facts of record. We based EP on the packed FOB (or for certain Borcelik sales, C&F) price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling charges, and international freight. We also increased the starting price by the amount of duty drawback because the company satisfied our two-pronged test.[3]

[3] Section 772(c)(1)(B) of the Tariff Act provides for an upward adjustment to U.S. price for duty drawback on import duties which have been rebated (or which have not been collected) by reason of the exportation of the subject merchandise to the United States. The Department applies a two-

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Affiliated-Party Transactions and Arm's-Length Test

Borcelik's sales to affiliated customers in the home market not made at arm's-length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993) and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Emulsion Styrene-Butadiene Rubber from Brazil, 63 FR 59509, 59512 (November 4, 1998).[4] Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Normal Value

Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Borcelik's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Borcelik's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Cost of Production Analysis

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Tariff Act, we found reasonable grounds to believe or suspect that sales of cold-rolled steel products produced in Turkey were made at prices below the COP. As a result, the Department has initiated investigations to determine whether Borcelik made home market sales during the POI at prices below its respective COP, within the meaning of section 773(b) of the Tariff Act. We conducted the COP analysis described below (see Initiation Notice).

A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of Borcelik's cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative, interest expenses, and packing costs. As noted above, we determined that the Turkish economy experienced significant inflation during the POI. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we computed indexed monthly costs based on the weighted average of all monthly costs as indexed for inflation over the POI (see, *e.g.,* Certain Steel Concrete Reinforcing Bar from Turkey, 64 FR 49150, 49153 (September 10, 1999)).

We used the information from Borcelik's Section D questionnaire responses to calculate COP. We used Borcelik's monthly COP amounts, adjusted as discussed below, and the Wholesale Price Index from the IMF's International Financial Statistics to compute monthly weighted-average COPs for the POI. We made the following adjustments to Borcelik's reported costs:

1. Pursuant to section 773(f)(3) of the Tariff Act and section 351.407 of the Department's regulations, we reviewed affiliated-party transactions and where appropriate used the higher of transfer price, COP or market price for all major inputs from affiliated parties. Because the affiliate's COP was not provided by Borcelik, we used as facts available the costs provided for manufacturing hot rolled coil as contained in the original petition dated June 2, 1999.
2. Pursuant to section 773(f)(2) of the Tariff Act, we reviewed affiliated transactions and, where appropriate, used the transfer or market price for minor inputs of raw materials purchased from affiliated parties.
3. We adjusted the general and administrative (G&A) expense rate to exclude shipping rebates related to exports of finished goods and to include bonuses for management personnel.
4. We recalculated Borcelik's cost of production to include foreign exchange losses on imported coils.

See Preliminary Determination Cost Calculation Memorandum for Borcelik, dated December 28, 1999.

B. Test of Home-Market Sales Prices

We compared the adjusted weighted-average COP for Borcelik to the home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. In accordance with section 773(b)(2)(C)(i) of the Tariff Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges and other direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined

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pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment. See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 55965, 55968 (October 30, 1996). In accordance with this test, the Department grants a duty drawback adjustment if it finds that: (1) import duties and rebates are directly linked to and are dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured products.

[4] As stated in 19 CFR 351.403(d), ''the Secretary normally will not calculate normal value based on a sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value.'' We examined Borcelik's affiliated party sales and determined that they represented less than five percent of its total sales of subject merchandise. Therefore, we did not request that Borcelik report sales by its affiliates (i.e., downstream sales). See Borcelik Analysis Memorandum, December 8, 1999.

that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) or the Tariff Act. In such cases, because we compared prices to (indexed) POI-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act. Therefore, we disregarded the below-cost sales.

We found that for certain models of cold-rolled steel products, more than 20 percent of the home-market sales by Borcelik were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Tariff Act. For those U.S. sales of cold-rolled steel products for which there were no comparable home-market sales in the ordinary course of trade, we compared EP to CV in accordance with section 773(a)(4) of the Tariff Act. See Price-to-CV Comparisons, below.

D. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of Borcelik's cost of materials, fabrication, SG&A, interest, and U.S. packing costs. We made adjustments similar to those described above for COP. In accordance with sections 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses we used the weighted-average home market selling expenses.

Price-to-Price Comparisons

We calculated NV based on the FOB or delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, inland freight, inland insurance. We made adjustments for differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Tariff Act for differences in circumstances of sale for imputed credit expenses, and warranties. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Tariff Act.

Currency Conversions

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and only used daily exchange rates. See Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 42496, 42503–03 (August 7, 1997) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey, 61 FR 30309 (June 14, 1996).

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Verification

In accordance with section 782(i) of the Tariff Act, we intend to verify all information relied upon in making our final determinations.

Suspensions of Liquidation

In accordance with section 733(d) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel products from Turkey that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Erdemir	32.91
Borcelik	8.81
All others	8.81

ITC Notification

In accordance with section 733(f) of the Tariff Act, we have notified the ITC of our determination. If our final antidumping determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determinations.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We intend to make our final determination no later than 75

days after the date of this preliminary determination.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Tariff Act.

Dated: December 28, 1999.

Holly Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–301 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–806, A–484,801]

Electrolytic Manganese Dioxide from Japan and Greece: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the antidumping duty administrative reviews of the antidumping duty orders on electrolytic manganese dioxide from Japan and Greece. The period of review is April 1, 1998, through March 31, 1999.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Tabash or Richard Rimlinger, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5047 or (202) 482–4477, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Extension of Time Limits for Preliminary Results

The Department has received a request to conduct administrative reviews of the antidumping duty orders on electrolytic manganese dioxide from Japan and Greece. On May 20, 1999, and June 30, 1999, the Department initiated these administrative reviews covering the period April 1, 1998, through March 31, 1999 (64 FR 28973 and 64 FR 35124 respectively).

Because it is not practicable to complete these reviews within the time limit mandated by section 751(a)(3)(A) of the Act (*see* Memoranda from Richard W. Moreland to Robert S. LaRussa, Extension of Time Limit for Administrative Reviews of Electrolytic Manganese Dioxide from Japan and Greece, December 21, 1999), the Department is extending the time limits for the preliminary results to February 14, 2000. The Department intends to issue the final results of reviews 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: December 28, 1999.

Louis I. Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–396 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; 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: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on Porcelain-on-Steel (''POS'') Cooking Ware from the People's Republic of China (''PRC'') in response to a request by the petitioner. The review covers one manufacturer/exporter of the subject merchandise, Clover Enamelware Enterprise, Ltd. of China (''Clover''), and its Hong Kong reseller, Lucky Enamelware Factory Ltd. (''Lucky''). The period of review (''POR'') is December 1, 1997 through November 30, 1998.

We have preliminarily determined that U.S. sales of subject merchandise by Clover and Lucky have not been made below normal value (hereinafter referred to as Clover/Lucky). Since Clover/Lucky submitted full responses to the antidumping questionnaire and it has been established that it is sufficiently independent, it is entitled to a separate rate. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess no antidumping duties on entries from Clover/Lucky during the POR.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington D.C. 20230; telephone: (202) 482–1775.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

Background

On December 2, 1986, the Department published in the **Federal Register** the antidumping duty order on POS cooking ware from the PRC (51 FR 43414). On December 8, 1998, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order (63 FR 67646). On December 30, 1998, in accordance with 19 CFR 351.213(b), the petitioner, Columbian Home Products, LLC, requested that the Department conduct an administrative review of Clover, a manufacturer/exporter, and its Hong Kong reseller Lucky. On January 25, 1999, we published the notice of initiation of this review covering the period December 1, 1997 through November 30, 1998 (64 FR 3682).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On August 25, 1999, the

Department published a notice of extension of the time limit for the preliminary results in this case to December 31, 1999 (64 FR 46349). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item 7323.94.00. HTS items numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Affiliated Parties

Clover is two-thirds owned by Lucky and, therefore, Lucky holds controlling interest in Clover. Due to Lucky's ownership interest in Clover, and the fact that the same individual is the general manager at both companies, we consider Clover and Lucky to be affiliated parties pursuant to section 771(33) of the Act. As such, and consistent with prior reviews of this order, we are assigning Clover/Lucky a single dumping margin. *See Porcelain-on-Steel Cooking Ware from the People's Republic of China: Final Results of Antidumping Administrative Review* (*''POS Final 1997''*); 62 FR 32758 (June 17, 1997). No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (''NME'') countries a single rate, unless an exporter can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (*''Sparklers''*), 56 FR 20588 (May 6, 1991), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (*''Silicon Carbide''*), 59 FR 22585 (May 2, 1994). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes:

(1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Evidence relevant to a *de facto* absence of government control with respect to exports is based on four factors, whether the respondent: (1) Sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22585, 22587; *see also, Sparklers*, 56 FR at 20588, 20589.

Clover/Lucky responded to the Department's request for information regarding separate rates by providing the requested documentation. We have determined that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to Clover/Lucky's exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. For further information, *see* Memorandum, ''Separate Rates in the 1997/1998 Administrative Review of Porcelain-on-Steel Cooking Ware from the People's Republic of China,'' dated the same date of this notice, which is on file in our Central Records Unit, room B–099 in the main Commerce building. As a result of our analysis, Clover/Lucky is entitled to a separate rate.

Export Price

The Department used export price (''EP'') for sales made by Clover/Lucky, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States, or Hong Kong (in cases where Clover/Lucky knew the ultimate destination was the United States), prior to importation into the United States and constructed export price is not otherwise indicated.

We calculated EP based on Lucky's price charged to unaffiliated purchasers in the United States. We deducted amounts, where appropriate, for discounts, brokerage and handling, foreign inland freight, ocean freight, export credit insurance, and marine insurance, which were provided by market economy carriers and paid for in market economy currencies. Moreover, we deducted the reported import and export declarations fees. *See POS Final 1997*.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (''NV'') using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. As a result, we calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is economically comparable to the PRC. On the basis of per capita gross domestic product (''GDP''), the growth rate in per capita GDP, and the national distribution of labor, we find that the Republic of Indonesia (''Indonesia'') is a comparable economy to the PRC. (*See* Memorandum to David Mueller, Director, Office of AD/CVD Enforcement VI from Jeff May, Director, Office of Policy, dated May 21, 1999, ''Porcelain-on-Steel Cooking Ware from the People's Republic of China, Non-Market Economy Status and Surrogate Country Selection'' on file in the Central Records Unit.)

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to POS cooking ware. For purposes of this administrative review, we find that Indonesia is a significant producer of POS cooking ware. *See* Memorandum to the File from Russell Morris, dated June 7, 1999, ''Porcelain-on Steel Cooking Ware from the People's Republic of China—Surrogate Country Selection,'' on file in the Central Records Unit. As a result, we have used publicly available information relating to Indonesia, unless

otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: hours of labor employed; quantities of raw materials required; amounts of energy and other utilities consumed; and representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: an average non-export value; representative of a range of prices within the POR or most contemporaneous with the POR; product-specific; and tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, *see* ''Margin Calculation and Factor Values Used for the Preliminary Results of the 1997–1998 Administrative Review of POS Cooking Ware from the PRC'' (Public Version) which is dated the same date of this notice, on file in the Central Records Unit. In accordance with this methodology, we valued the factors of production as follows:

• To value the surrogate values of materials used in the production of POS cooking ware, including bentonite, caustic soda, potassium chloride, titanium and antimony oxides, sodium nitrite, soda ash, sulphuric acid, degreasing agents, borax, barium molybdate, magnesium sulphate, potassium carbonate, urea, quartz powder, clay, color oxides, enamel frits, pebble stone, and diesel, we relied on cost-insurance-freight (''CIF'') import prices, quoted in U.S. dollars, contained in the August 1998 issue of the *Foreign Trade Statistical Bulletin—Imports*, (Indonesian Import Statistics). We made adjustments to account for freight costs between the suppliers and Clover's manufacturing facilities. In accordance with our practice, we added to CIF import values from Indonesia a surrogate freight cost using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61977 (November 20, 1997).

• We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). *See* Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised May 1999 (www.ita.doc.gov/import__admin/records/wages). The source of these wage rate data on the Import Administration's Web site is found in the 1998 Year Book of Labour Statistics, International Labour Office (Geneva: 1998), Chapter 5: Wages in Manufacturing.

• For electricity, we used an index of electricity prices used in previous antidumping duty investigations involving products from the PRC. This index is current as of April 1997. *See* www.ita.doc.gov/import__admin/records/factorv/prc/#Source Index. Because the value was not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices (''WPI'') which excluded petroleum, obtained from the *International Financial Statistics* published by the International Monetary Fund (''IMF''). We adjusted the value to reflect inflation up to the POR using the WPI published by the IMF. Further, we converted the electrical price quoted in Indonesian Rupiah (''Rupiah'') to U.S. dollars using the average exchange rate for the POR of Rupiah to U.S. dollars.

• For foreign inland freight, we used the freight rates reported in a September 1991 cable from the U.S. Embassy in Jakarta, Indonesia and the actual kilometers reported in the questionnaire response. The cable was received for the less than fair value (''LTFV'') investigation of *Pipe Fittings. See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China* (*''Pipe Fittings''*), 57 FR 21058 (May 18, 1992). We adjusted these freight rates to reflect yearly inflation through the POR using the WPI obtained by the IMF. We used the average exchange rate for the POR to convert surrogate values from Rupiah to U.S. dollars.

• To value water, we relied upon public information from the October 1997 Second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank. To achieve comparability of the water prices to the factors reported for the POS cooking ware processing periods applicable for Clover/Lucky, we adjusted this factor value for inflation using the WPI for Indonesia, as published by the IMF, and converting the quoted price from Rupiah to U.S. dollars by applying the average Rupiah to U.S. dollar exchange rate for the POR.

• We derived ratios for factory overhead, selling, general and administrative (''SG&A'') expenses, and profit using an index of such expenses from previous antidumping duty investigations involving products from the PRC. The ratios were derived from a similar industry, melamine institutional dinnerware, and from the same surrogate country, Indonesia. This index is current as of April 1997. *See* www.ita.doc.gov/import__admin/records/factorv/prc/#Source Index. From this information, we were able to calculate factory overhead as a percentage of direct material, labor, and energy expenses; SG&A as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A.

• To value cardboard boxes and tissue paper, we relied upon Indonesian import data from the August 1998 issue of the Foreign Trade Statistical Bulletin—Imports, (Indonesian Import Statistics). We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the period December 1, 1997 through November 30, 1998:

Manufacturer/Exporter	Margin (percent)
Clover Enamelware Enterprise/ Lucky Enamelware Factory ..	0.00

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five (5) days after the date of publication of this notice.

Interested parties may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. The Department will issue the final results of this administrative review, including its analysis of issues raised in any case or rebuttal brief or at a hearing, not later than 120 days after the date of publication of this notice, unless the time limits is extended.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement

instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For Clover/Lucky, which has a separate rate, the cash deposit rate will be zero; (2) for any previously reviewed PRC firm and non-PRC exporter with a separate rate, the cash deposit rate will be the company-and product-specific rate established for the most recent period; (3) the cash deposit rate for all other PRC exporters will continue to be 66.65 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 3, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–397 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[International Trade Administration]

[A–821–811]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Laurel LaCivita, or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408, (202) 482–4243, and (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

Preliminary Determination

We preliminarily determine that solid fertilizer grade ammonium nitrate (''ammonium nitrate'') from the Russian Federation is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

This investigation was initiated on August 12, 1999. *See Initiation of Antidumping Duty Investigation: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 64 FR 45236 (August 19, 1999). Since the initiation of this investigation the following events have occurred:

On August 17, 1999, the Department requested comments from petitioner and respondents regarding the criteria to be used for model-matching purposes. Petitioner and respondents submitted comments on the proposed model-matching criteria on August 31, 1999, and September 7 and 15, 1999.

On August 17, 1999, the Department issued Section A of its antidumping questionnaire to the Embassy of the Russian Federation, as well as courtesy copies (with the exception of JSC Kirovo-Chepetsk, for which we did not have an address) to the following possible producers/exporters of subject merchandise named in the petition: JSC Angarsk Petrochemical Co., JSC Berezniki Azot, JCS Cherepovets PO Azot, JSC Dorogobuzh, JSC Kemerovo Azot, JSC Kirovo-Chepetsk, JSC Meleuz Prod. Assoc. Minudobreniya, JSC Nevinnomyssky Azot (''Nevinka''), JSC Acron, JSC Novomendeleyevsk Chemical Plant, JSC Novomoskovsk AK Azot, JSC Minudobreniya, and JSC Kuybyshevazot.

On August 31, 1999, the following companies with period of investigation (''POI'') shipments to the U.S. submitted information regarding the quantity and value of these shipments of subject merchandise to the United States during the POI: JSC Acron and Nevinka.

We received a complete Section A response from Nevinka. Companies JSC Cherepovets PO Azot, JSC Kemerovo Azot, JSC Minudobreniya, JSC Kubyshevazot, JSC Berezniki Azot, JSC Novomendeleyevsk Chemical Plant and JSC Kirovo-Chepetsk reported that they made no sales to the United States during the POI. On October 27, 1999, we sent a letter to JSC Kirovo-Chepetsk seeking clarification and information on a particular shipment. The due date given for this information was November 24, 1999. We also informed JSC Kirovo-Chepetsk that if it had knowledge that this shipment was destined for the United States, it was required to respond fully to the Department's antidumping questionnaire by the due date of December 2, 1999. JSC Kirovo-Cheptesk failed to provide the requested information regarding the shipment at issue within the provided deadlines. Finally, companies JSC Angarsk Petrochemical Co., JSC Dorogobuzh, JSC Meleuz Production Association Minudobreniya, JSC Novomoskovsk AK Azot and JSC Acron did not respond to the Department's questionnaire.

On September 3, 1999, the United States International Trade Commission (''ITC'') preliminarily determined that ''there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of solid fertilizer grade ammonium nitrate.'' (64 FR 50103, September 15, 1999).

On September 20, 1999, Nevinka submitted its complete section A response. On November 15, 1999, Nevinka submitted its response to sections C and D of the questionnaire.

On October 14, 1999, the Department issued a Section A supplemental questionnaire to Nevinka. On November 11, 1999, Nevinka submitted its response to the Department's supplemental section A questionnaire. On November 21, 1999, the Department issued a supplemental section C and D, and second supplemental A questionnaire. On December 14, 1999, Nevinka submitted its supplemental sections C, D, and a second supplemental section A questionnaire response.

On October 22, 1999, we requested publicly-available information for valuing the factors of production and comments on surrogate country selection. On November 5 and 12, 1999, petitioner and Nevinka submitted comments and rebuttals on the surrogate country selection, respectively. On November 30 and December 7, 1999, petitioner and Nevinka submitted comments and rebuttals on surrogate values, respectively.

Petitioner submitted comments regarding Nevinka's questionnaire response on September 29 and November 22, 1999.

On December 17 and 20, 1999, petitioner submitted comments on Nevinka's claim of affiliation and on the supplemental questionnaire sections C and D response. On December 21, 1999, Nevinka provide rebuttal comments to petitioner's December 17 and 20, 1999 submissions. Because of the late dates of these submissions, the Department has not had time to analyze fully this information provided by petitioner and Nevinka. Therefore, the Department has not considered these submissions for its preliminary determination.

Critical Circumstances

On November 1, 1999, the Department issued its preliminary determination that critical circumstances exist with respect to Nevinka. On November 8, 1999, the Department requested information regarding shipments of ammonium nitrate from Nevinka. On November 23, 1999, Nevinka provided the requested information. For a complete discussion of our preliminary analysis of critical circumstances, *see Memorandum to Deputy Assistant Secretary Joseph Spetrini,* dated November 1, 1999, on file in Room B–099 of the Department headquarters and the *Preliminary Determination of Critical Circumstances: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation,* 63 FR 60422 (November 5, 1999). The Department will make its final determination of critical circumstances, on a company-specific basis as appropriate, concurrent with the final determination of sales at LTFV in this investigation.

Scope of Investigation

For purposes of this investigation, the products covered are solid, fertilizer grade ammonium nitrate products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate).

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 1999 through June 30, 1999.

Facts Available

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e), the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Nevinka has reported factor usage information for a large number of catalysts used in the production of ammonium nitrate (*see* Exhibit 18 of Nevinka's December 14, 1999 submission). However, there is currently no surrogate value information on the record regarding these catalysts, nor has the Department been able to locate such values independently. However, Nevinka has reported an actual price for ammonia synthesis catalyst purchased from a market economy country and in market economy currency in its supplemental section D questionnaire response. Therefore, as facts otherwise available, we used the actual price for ammonia synthesis catalyst as a surrogate value for all other catalysts for which Nevinka reported usage factors in its supplemental section D questionnaire response.

The Russia-Wide Rate

Respondents that are not entitled to a separate rate are considered to constitute a single enterprise under common control by the government of the Russian Federation. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996). Companies that failed to respond to our questionnaires or reported no shipments were assigned the Russia-wide rate. Companies JSC Cherepovets PO Azot, JSC Kemerovo Azot, JSC Minudobreniya, JSC Kubyshevazot, JSC Berezniki Azot and JSC Novomendeleyevsk Chemical Plant reported, and the Department confirmed through an examination of U.S. Customs data, that they had no shipments during the POI. Since these companies did not report any shipments, we have no basis for determining a margin. Therefore, these companies were assigned the Russia-wide rate, the composition of which is described below.

U.S. import statistics indicate that the total quantity and value of U.S. imports of solid fertilizer grade ammonium nitrate from the Russian Federation are greater than the total quantity and value of solid fertilizer grade ammonium nitrate reported by all Russian companies that submitted responses. Given this discrepancy, we have concluded that not all producers/exporters of Russian solid fertilizer grade ammonium nitrate with shipments during the POI responded to our questionnaire. Moreover, on September 15, 1999, JSC Acron, which had notified the Department of its shipment quantities and values, submitted a letter to the Department, stating that it would not participate in the antidumping investigation on solid fertilizer grade ammonium nitrate. Accordingly, we are applying a single antidumping duty deposit rate—the Russia-wide rate—to all producers/exporters in the Russian Federation, other than those specifically identified below under ''Suspension of Liquidation.''

The Russia-wide antidumping rate is based on the facts available. Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use

information that is adverse to the interests of that party as the facts otherwise available.

As discussed above, all Russian producers/exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. In such situations, the Department generally selects as total adverse facts available the higher of the highest margin from the petition or the highest rate calculated for a respondent in the proceeding. In the present case, there is only one calculated margin (which is the highest margin on the record). Because the highest margin on the record is the calculated margin, the Department is assigning this rate as the adverse facts available Russia-wide rate. Accordingly, for the preliminary determination, the Russia-wide rate is 264.59 percent. For the final determination, the Department will consider all margins on the record at that time for the purpose of determining the most appropriate margin.

Nonmarket Economy Country Status

The Department has treated the Russian Federation as a nonmarket economy (''NME'') country in all past antidumping duty investigations and administrative reviews (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 64 FR 38626 (July 19, 1999); *Titanium Sponge from the Russian Federation: Final Results of Antidumping Administrative Review,* 64 FR 1599 (January 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 62 FR 61787 (November 19, 1997); *Notice of Final Determination of Sale at Less Than Fair Value: Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (March 30, 1995). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The Department is continuing to treat the Russian Federation as an NME for this preliminary determination, because no party has sought revocation of NME status in this investigation.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c) of the Act requires that the Department base normal value (''NV'') on the NME producer's factors of production, valued in a surrogate market economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing the factors of production, utilizes, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are comparable in terms of economic development to the NME country and are significant producers of comparable merchandise. The sources of individual factor values are discussed in the NV section below.

The Department has determined that Poland, Tunisia, Colombia, Turkey, South Africa, and Venezuela are countries comparable to the Russian Federation in terms of overall economic development. *See Memorandum to Rick Johnson, Program Manager, from Jeff May, Director, Office of Policy; Re: Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Nonmarket Economy Status and Surrogate Country Selection.* Petitioner submitted information on the record indicating that Poland, Turkey and South Africa are significant producers of identical merchandise. *See* Submission from Akin, Gump, Strauss, Hauer & Feld, L.L.P., November 5, 1999. Nevinka submitted information in support of its argument that Venezuela is a significant producer of comparable merchandise. *See* Submission from White & Case, November 5, 1999. As noted in the *Surrogate Country Memorandum,* in the event that more than one country satisfies both statutory requirements, the Department has a preference to narrow the field to a single country on the basis of data availability and quality. *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 64 FR 38626 (July 19, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the Peoples Republic of China,* 59 FR 55625 (November 8, 1994).

Congress provided the Department with broad discretion in selecting surrogate countries in NME cases. *See* section 773(c)(1)(B) of the Act (valuation of factors of production shall be based on the best available information from a market economy country(s) considered to be appropriate); *see also, Lasko Metals* v. *United States,* 43 F3d. 1442, 1443 n.3 (Fed. Cir. 1994). The Department has determined that Poland qualifies as an appropriate surrogate because it satisfies the statutory criteria listed. Furthermore, we were able to obtain publicly available, contemporaneous information on the majority of factor inputs required.

While we have used surrogate prices for certain factors from countries other than the selected surrogate country in previous cases, it is the Department's preference and practice to rely on factor value information from one surrogate country to the extent possible. *See Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 21058 (May 18, 1992). Accordingly, we have calculated NV using publicly available information from Poland to value Nevinka's factors of production, with the exception of one input, monoethanolamine, which we valued using Venezuelan data, since there was no Polish data available for this preliminary determination. For a further discussion of the Department's selection of Poland as the primary surrogate, *see Memorandum to Edward C. Yang; Re: Surrogate Country Selection (''Surrogate Country Memorandum''*), dated December 30, 1999.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for a final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in an NME country. *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). The Department may, however, consider requests for a separate rate from individual exporters. Nevinka has requested a separate, company-specific rate. To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in NME cases only if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities. For a complete analysis of separate rates, *see Memorandum to Edward C. Yang, Re: Separate Rates for Exporters that Submitted Questionnaire Responses*

(*''Separate Rates Memorandum''*), dated December 30, 1999.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Nevinka has placed on the administrative record a number of documents to demonstrate absence of *de jure* control. These documents include laws, regulations, and provisions enacted by the central government of the Russian Federation, describing the elimination of export duties and licensing requirements on the export of mineral fertilizers including ammonium nitrate. Nevinka also placed on the record legislative enactments privatizing state-owned enterprises. This information provides a sufficient basis for a preliminary finding that there is an absence of *de jure* government control. *See Separate Rates Memorandum,* dated December 30, 1999.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

There is no evidence on the record to suggest that there is any government involvement in the determination of sales prices. Nevinka has reported that the prices with its U.S. customers cannot be revised or changed by any of the state authorities. Nevinka stated that there are no restrictions on the usage of export revenues and that distribution of profits resulting from export revenue is within the jurisdiction of the meeting of shareholders and the Board of Directors.

Nevinka stated that its company is managed through the joint responsibilities of shareholders, a supervisory board and a general director. Nevinka explained that the general director and members of the supervisory board are elected by a majority vote at an annual general meeting of shareholders and the general director and members of the supervisory board serve at five-year and one-year terms, respectively. Nevinka also noted that it is not required to notify any governmental authorities of the selection or appointment of its managers. Nevinka stated that it has authority to negotiate and sign contracts and other agreements. Nevinka claimed that no external organization reviews or approves any aspect of Nevinka's U.S. sales transactions. This information provides a sufficient basis for a preliminary finding that there is an absence of *de facto* government control. *See Separate Rates Memo,* dated December 30, 1999. Therefore, the Department preliminarily determines that Nevinka is eligible to receive a separate rate.

Affiliation

Nevinka originally reported its U.S. sales as CEP sales. Nevinka claimed that it is affiliated with its U.S. trading company, Transammonia, through Transammonia's stock ownership of Nevinka and a close supplier relationship between Nevinka and Transammonia. The Department issued supplemental questionnaires seeking further information on Nevinka's claim of affiliation with Transammonia. *See* supplemental section A questionnaire (October 14, 1999) , second section A supplemental questionnaire (November 21, 1999) and supplemental sections C & D questionnaire (November 12, 1999). Nevinka responded to our supplemental section A questionnaire on November 11, 1999 and second section A supplemental questionnaire and supplemental sections C & D questionnaire on December 14, 1999.

Section 771(33) of the Act defines affiliated persons as including:

(A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and Employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The legislative history makes clear that the statute does not require majority ownership for a finding of control. Rather, the statutory definition of control encompasses both legal and operational control. A minority ownership interest, examined within the context of the totality of the evidence, is a factor that the Department considers in determining whether one party is legally or operationally in a position to control another. *See Certain Cut-To-Length Carbon Steel Plate From Brazil,* 62 FR 18486, 18490 (April 15, 1997); *see also* 19 CFR 351.102(b).

The Department has stated that merely identifying ''the presence of one or more of the other indicia of control (as per Section 771(33) of the Act) does not end [the Department's] task.'' *See* Antidumping Duties; Countervailing Duties: *Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7310 (February 27, 1996). The Department is compelled to examine all indicia, in light of business and economic reality, to determine whether they constitute evidence of control. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. However, the Department will not find affiliation on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. *See* section 351.102(b) of the Department's regulations.

In the present case, as discussed below, we do not find the existence of an affiliation, as defined by the statute, between Nevinka and Transammonia. First, we note that Transammonia's ownership of Nevinka is below the five percent requirement under section 771(33)(E). The Department has also found no evidence of (and respondent has not argued for) a basis for affiliation with respect to the statutory definitions under section 771(33), subsections (A) through (D), or (F).

Furthermore, with respect to section 771(33)(G), we did not find that Nevinka's relationship with Transammonia constitutes a ''close supplier relationship'' which would indicate control by either party over the

other. The Statement of Administrative Action (SAA) defines a close supplier relationship as one where ''the supplier or buyer becomes reliant upon another.'' SAA accompanying the URAA, H.R. Doc. No. 103–316, vol. 1 at 838 (1994); *see also, Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea* (*Korean Steel*), 62 FR 18404, 18417 (April 15, 1997). To establish a close supplier relationship, the party must demonstrate that the ''relationship is so significant that it could not be replaced.'' *See Korean Steel,* at 62 FR 18417.

In *Korean Steel,* the Department provided additional guidance regarding close supplier relationships. Specifically, the Department established a threshold requirement that, in order to find a close supplier relationship, actual reliance between the companies must be found:

> Only if we make such a finding [of reliance] can we address the issue of whether one of the parties is in a position to exercise restraint or direction over the other. When the Preamble to our *Proposed Regulations* * * * states that ''business and economic reality suggest that these relationships must be significant and not easily replaced,'' it suggests that we must find significant indicia of control. *Korean Steel,* 62 FR at 18417.

With respect to whether reliance exists in this case, the Department has examined relevant information submitted by Nevinka on the record of this investigation. First, we note that the current record indicates that there are alternative sources of ammonium nitrate supply and distribution. For example, the Petition, at exhibits 6 and 8, indicates that there are 12 additional producers of ammonium nitrate in Russia alone, and five known U.S. importers of Russian-origin ammonium nitrate. Moreover, additional record information, which is proprietary in nature, leads us to the conclusion that there is a lack of actual reliance on Nevinka by Transammonia, and vice versa. In this respect, we also believe that information on the record does not support a finding that Transammonia holds a dominant position in the U.S. market place which might, *de facto,* create actual reliance on Transammonia by Nevinka. *See Memorandum to the File, Re: Analysis Memorandum for the Preliminary Determination for JSC Azot Nevinnomyssky (Nevinka)* (''*Analysis Memo*'') (Proprietary Version) at pg. 5.

Second, in examining reliance, we have considered comparative sales statistics of both companies, *e.g.,* the proportion of sales made by the producer through the trading company vis-vis the trading company's total sales, as well as the proportion of sales made by the producer through the trading company to the total sales made by the producer, in accordance with *Notice of Final Determination of Sales at Less Than Fair value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan,* 61 FR 38139, 38157 (July 23, 1996) (*LNPP from Japan*). In this regard, the Department has also determined that a close supplier relationship may occur when a majority of sales are made to one customer. *See Notice of Final Determination of Sales at Less Than Fair Value: Open-End Spun Rayon Singles Yarn From Austria,* 62 FR 43701 (August 15, 1997), citing *LNPP from Japan.*

In this case, we find that the various proportions of sales (of subject merchandise and of all products), both with respect to Nevinka's sales to Transammonia and Transammonia's sales of Nevinka's product, are insufficient to support a determination of reliance. *See Analysis Memo* (Proprietary Version) at pg. 5.

Third, we did not find the length and terms of the contract between Nevinka and Transammonia provides sufficient evidence of reliance. Because this information is proprietary, *see Analysis Memo* (Proprietary Version) at pg. 5.

In sum, we do not find that actual reliance exists with respect to the business relationship between Nevinka and Transammonia. We also do not find that other evidence combined with this supply relationship suffices to find any type of control that would lead to a finding of affiliation. *See Analysis Memo.* Nevinka has not argued for a finding of control under any other aspect of section 771(33)(G) of the Act other than through a close supplier relationship. Therefore, we preliminarily determine that Nevinka and Transammonia are not affiliated as defined by the statute, and have consequently examined Nevinka's sales to the first unaffiliated party (Transammonia) in the United States, which are export price transactions.

Fair Value Comparisons

To determine whether sales of solid fertilizer grade ammonium nitrate products from the Russian Federation sold to the United States by Nevinka were made at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Export Price

Although Nevinka has claimed that its sales through Transammonia should be considered CEP sales, as discussed above, the Department has preliminarily determined that the relationship between Nevinka and Transammonia does not meet the statutory definition of affiliation. Therefore, because the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and because there is no indication that treatment of CEP is warranted, we have examined Nevinka's sales to Transammonia as EP sales in accordance with section 772(a) of the Act. We will examine the EP/CEP designation further at verification. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the only one NV based on factors of production.

We calculated EP based on FOB prices to an unaffiliated trading company. We made deductions from the starting price for inland freight (plant warehouse to port). These services were assigned a surrogate value based on public information from Poland. *See Memorandum to Edward C. Yang; Re: Factor Valuation for Nevinka* (''*Factor Valuation Memo*''), dated December 30, 1999. We used Nevinka's reported date of sale, which was the date of shipment. The Department normally uses invoice date as the date of sale ''absent satisfactory evidence that the material terms of sale were finally established on a different date.'' *See Canned Pineapple Fruit from Thailand: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 43661, 43668 (October 16, 1997), citing *Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27348 (May 19, 1997). Although we have accepted the shipment based date of sale for this preliminary determination, we will continue to review whether the date of shipment is the appropriate date of sale for the final determination.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We calculated NV based on factors of production reported by Nevinka. For a further

discussion, *see Analysis Memo.* We valued all the input factors using publicly available published information as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice.

Factor Valuations

When possible, we valued material inputs on the basis of tax-exclusive domestic prices in the surrogate country. When we were not able to rely on domestic prices, we used import prices to value factors. As appropriate, we adjusted import prices to make them delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using producer or wholesale price indices, as appropriate, published in the International Monetary Fund's International Financial Statistics. For input(s) sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the factors-based NV in accordance with our standard practice. *See Lasko Metal Products* v. *United States,* 437 F. 3d 1442 (Fed. Cir. 1994).

To value caustic magnezite, sodium hydrate, diethanolamine, vanadium pentoxide, tri-sodium phosphate, hydrazine hydrate, sulphuric acid and aluminum sulphate, we used public information on Polish prices published by the United Nations Trade Commodity Statistics for 1998 (''UNTCS''). To value technical alumina, we used public information published by UNTCS for 1997. To value monoethanolamine, we used a Venezuelan price using public information published by the UNTCS for 1997 because no Polish data on this input was available.

For catalysts, as noted above in the ''Facts Available'' section, we used the market economy price for one catalyst provided by Nevinka, since there are no record values for any catalysts other than ammonia synthesis. However, for the final determination, we will attempt to find more appropriate values for these catalysts.

For natural gas, natural gas equivalents and electricity, we used second quarter 1999 values from *Energy Prices and Taxes: Second Quarter 1999,* International Energy Agency, OECD.

We used Polish transport information to value transport for raw materials. For domestic inland freight (truck), we used a price quote from a Polish trucking company. For domestic inland freight (rail), we used freight rates as quoted from the Polish National Railroad.

For labor, we used the Russian regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 1999. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations provides for the use of a regression-based wage rate. The source of this wage rate data on the Import Administration's homepage is found in the *1998 Year Book of Labour Statistics,* International Labour Office (''ILO'') (Geneva: 1998), Chapter 5: Wages in Manufacturing.

To value overhead, general expenses and profit, we used public information reported in the 1998 financial statements of Zaklady Azotwe Kedzierzyn S.A., a Polish ammonium nitrate producer.

Verification

As provided in section 782(i) of the Act, we will verify all company information relied upon in making our final determination.

Suspension of Liquidation

In accordance with sections 733(d) and (e) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin [percent]
JSC Azot Nevinnomyssky	264.59
Russia-Wide	264.59

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of solid fertilizer grade ammonium nitrate from the Russian Federation are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: December 30, 1999.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–395 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010400A]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held January 19, 2000, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: This meeting will be held at the Western Pacific Fishery Management Council office.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: This will be the third meeting of the RFDTF which will discuss the following topics: marine recreational licensing in Hawaii, marine recreational licenses in other U.S. states, recreational fishery data project proposal, responses of recreational fishermen to impending international management of tuna and tuna-like species and other business as required.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, these 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 document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to the meeting date.

Dated: January 4, 2000.

Richard W. Surdi,

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

[FR Doc. 00–403 Filed 1–6–00; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 20 January 2000 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW, Washington, DC 20001–2728. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, December 28, 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 00–310 Filed 1–6–00; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0130]

Submission for OMB Review; Comment Request Entitled Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate. A request for public comments was published at 64 FR 59743, November 3, 1999. No comments were received.

DATES: Comments may be submitted on or before February 7, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA, (202) 501–1757.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the North American Free Trade Agreement (NAFTA) Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation to supply an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products and NAFTA end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic and NAFTA country end products so as to give these products a preference during the evaluation of offers. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .167 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,140*; responses per respondent, 5; total annual responses, *5,700*; preparation hours per response, *.167*; and total response burden hours, *952*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0130, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all correspondence.

Dated: January 4, 2000.

Ralph J. Destefano,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 00–341 Filed 1–6–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/433,367 entitled ''Hyperspectral Visualization Extensible Workbench'' Navy Case No. 79,087.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, S.W., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, S.W., Washington, DC 20375–5320, telephone (202) 767–7230.

(Authority: U.S.C. 207, 37 CFR Part 404).

Dated: December 22, 1999.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–316 Filed 1–6–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Commercial Science and Technology will meet to review and access European intermediate to long-term commercial Science and Technology investment strategy in areas related to Department of the Navy dependence upon commercial off-the-shelf products, in an effort to identify mutually beneficial opportunities for Department of the Navy Science and Technology collaboration with commercial industrial sectors. The meeting will consist of executive sessions devoted to preparing a briefing of their findings and recommendations. All sessions of the meeting will be open to the public.

DATES: The meeting will be held Monday, January 24, 2000, through Thursday, January 27, 2000, from 8:30 a.m. to 5:00 p.m.; and Friday, January 28, 2000, from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Suite 907, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–6769.

Dated: December 22, 1999.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–317 Filed 1–6–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Reassignment of Responsibility for the Museum Exchange Program

AGENCY: Department of the Navy.

ACTION: Notice.

SUMMARY: The Naval Inventory Control Point (NAVICP) hereby gives notice that under authority of 10 U.S.C. 2572(b), the Secretary of the Navy has reassigned responsibility for the program to exchange condemned or obsolete combat materiel for Department of the Navy Command Museums to the Commander, Naval Inventory Control Point. The NAVICP may exchange certain condemned or obsolete combat materiel for similar property, or for search, salvage, restoration, preservation, or transportation services and supplies that will benefit the historical collection of the National Museum of Naval Aviation, the Marine Corps Air-Ground Museum, and other Navy Command Museums. This reassignment of responsibility was delineated in SECNAVINST 5755.2A.

FOR FURTHER INFORMATION CONTACT: Stephen Van Note, Contracting Officer, Code 0224.02, Naval Inventory Control Point, 700 Robbins Avenue, Philadelphia, PA 19111–5098, telephone (215) 697–5998.

SUPPLEMENTARY INFORMATION: Notices informing the public of the materiel or services sought by the Navy as well as the materiel available for exchange by the Navy will be published in the Commerce Business Daily. In addition to the Commerce Business Daily, the NAVICP may publish information simultaneously in selected trade journals.

(Authority: 10 U.S.C. 2572(b); SECNAVINST 5755.2A).

Dated: December 27, 1999.

C. G. Carlson,

Major, U.S. Marine Corps, Alternate Federal Register Liaison Officer.

[FR Doc. 00–315 Filed 1–6–00; 8:45 am]

BILLING CODE 5812–FF–P

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation 2000 (DE–PS36–00GO10482) for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy Efficiency and Renewable Energy

AGENCY: Department of Energy.

ACTION: Supplemental Announcement 03 to the Broad Based Solicitation 2000 for Financial Assistance Applications DE–PS36–00GO10482.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Biobased Products and Bioenergy Technologies. Financial assistance award(s) issued under this Supplemental Announcement will be cooperative agreements.

DATES: The solicitation will be issued in early January, 2000.

ADDRESSES: Copies of the Solicitation once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html.

SUPPLEMENTARY INFORMATION: Under this Supplemental Announcement, DOE is seeking research and development proposals that can advance current market opportunities for biobased products and bioenergy systems, and facilitate the development of existing and new markets. A fundamental requirement of this solicitation will be to perform research, development, and demonstration that results in integrated co-products addressing at least two of the three major areas of chemicals, fuel, and/or power, where power can be electricity and/or heat.

A primary objective is to develop and demonstrate low-cost, value-added process streams such as gases, liquids and solids from the initial conversion process as precursors to producing power, steam, fuels, chemicals, and consumer products. A second primary objective is to develop the biomass feedstock handling, process chemistry, biochemistry, separation and recovery technologies, and power generation knowledge to upgrade these streams to final products. A dual approach is envisioned whereby biomass feedstocks can be utilized in their existing form or upgraded to value-added streams which can then be processed to recover end products.

This Supplemental Announcement will solicit projects in either of two different phases. Each phase is characterized by a goal of achieving and proving different levels of technology maturity. Phase A is intended to result in a minimum of a laboratory-scale demonstration of the proposed technology. Phase B will advance the technology through proof of prototype-scale hardware and complete a detailed design for a pilot-scale facility. Each applicant will be required to elect one of the two phases for consideration of an award for any given conversion process. Awards under this Supplemental Announcement will be Cooperative Agreements that will have a term of 12 months or potentially longer.

The total amount of DOE funds available under this Supplemental Announcement is $4.3 million. Between two and four individual awards are anticipated in each of the two phases. The exact number of awards is subject to the results of the Merit Review process including the application of Program Policy Factors.

Issuance of the solicitation is planned for early January, 2000, with responses due on March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Ruth E. Adams, Contracting Officer, at 303–275–4722, e-mail ruth__adams@nre.gov.

Issued in Golden, Colorado, on December 22, 1999.

Matthew A. Barron,

Acting Procurement Director.

[FR Doc. 00–413 Filed 1–6–00; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

[DE–PS26–00FT40776]

National Energy Technology Laboratory; Notice of Financial Assistance Solicitation Availability

AGENCY: Department of Energy.

ACTION: Solicitation Available Notice.

SUMMARY: The U.S. Department of Energy is announcing its issuance of program solicitation number DE–PS26–00FT40776, entitled ''Energy and Environmental Solutions.'' The areas of interest defined in the solicitation are: (1) Biomass and/or biosolids, and (2) Environmental Management Program. The Environmental Management Program area of interest is further separated into sub-areas as follows: (2A) Inner Layer Confinement Reduction Program, (2B) Technology Deployment Assistance, (2C) Technology Acceptance, (2D) Technology Evaluation, (2E) International Technology Studies, and (2F) Long-Term Stewardship.

DATES: The solicitation was issued on December 21, 1999, with the first application due date on February 2, 2000. Subsequent application due dates are May 3, 2000, and August 30, 2000. All requests for explanation or interpretation of any part of the solicitation shall be submitted in writing to the Contract Specialist at the mailing address or E-mail address provided below. For each application submission cycle, your written questions must be received by the Contract Specialist no later than 25 calendar days prior to the due date for submission of applications to allow sufficient time for a reply to reach all prospective applicants before the submission of their application. The Government reserves the right not to respond to questions submitted after this period, nor to respond to questions submitted by telephone or in person at any time. If the Government elects to answer the questions, the questions will be answered via an amendment to the solicitation, with copies of both questions and answers included in the amendment, without reference to the originating sources.

ADDRESSES: The solicitation is available for viewing and downloading from NETL's Internet site at http://www.NETL.doe.gov/business. Solicitations will not be distributed on diskette or in paper form. DOE anticipates multiple financial assistance awards, grants or cooperative agreements, resulting from this solicitation. All amendments will be posted on the NETL Internet Homepage; therefore, applicants are encouraged to periodically check the NETL Homepage to ascertain the status of any amendments as hard copies will not be distributed.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I–07, U.S. Department of Energy, National Energy Technology Laboratory (NETL), P.O. Box 880, Morgantown, West Virginia 26507–0880; Telephone: (304) 285–4241; Telefax: (304) 285–4683; E-mail: driggi@NETL.doe.gov.

SUPPLEMENTARY INFORMATION: The objective of this program solicitation is to provide financial support to develop cost effective, environmentally sound technologies and analytical capabilities needed to solve environmental problems from the cold war and alternative uses of biomass. Developing the technologies will assist in reducing the radioactive and hazardous waste risk at DOE sites and provide pollution prevention opportunities for biomass. The Program Areas of Interest are:

1. Biomass and/or Biosolids

NETL is seeking to obtain general technical information, research and development in the following area relating to Biomass and/or Biosolids. Biomass is defined as ''plant materials and animal waste used as a source of fuel.'' Areas of interest include, but are not limited to: co-firing of bio-material with coal and other fossil fuel; stand alone combustion; gasification; digestion and advanced research on components, controls and systems utilizing bio-material for power production; and, co-products and other gaseous, liquid or solid fuels derived from Biomass. Research, development and demonstration activities can be directed at solving energy and/or environmental problems. Opportunities can be in general economy or those of specialty markets and industries.

2. Environmental Management Program

The Office of Environmental Management (EM) is the Department of Energy (DOE) organization responsible for the cleanup of the DOE sites contaminated during operations during the cold war. The National Energy Technology Laboratory (NETL) provides technical and management support to the DOE EM and specifically implements activities in support of the EM Office of Science and Technology (OST). The mission of the OST is to manage and direct a national, solution-oriented program that provides scientific foundation, new approaches, and new technologies to bring about significant reductions in risk, cost, and schedule in completing the EM cleanup mission. NETL's role is to implement programs to foster private sector companies to develop, demonstrate, and deploy cost-effective technologies that will be used to solve problems at multiple DOE sites. The private sector includes large and small businesses, private research institutes, and colleges and universities. To implement the overall science and technology program, EM has established ''Focus Areas'' to coordinate and focus technology development activities on the major problem areas that exist at the DOE sites. Specific areas of interest are defined by each of the Focus Areas and can be identified through the information sources provided in the solicitation. Significant areas of emphasis in the near term are defined in the solicitation.

Issued in Morgantown, WV, on December 22, 1999.

Randolph L. Kesling,

Director, Acquisition and Assistance Division, National Energy Technology Laboratory.

[FR Doc. 00–412 Filed 1–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, January 26, 2000, 6:00 p.m.–9:00 p.m.

ADDRESSES: Nambe Pueblo, Tribal Council Meeting Room, Route 502, Arriba County.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov*; or Internet http:www.nmcab.org.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Opening Remarks, 6:00 p.m.–6:30 p.m.
2. Public Comment, 6:30 p.m.–7:00 p.m.
3. Committee Reports:
   Environmental Restoration
   Monitoring and Surveillance
   Waste Management
   Community Outreach
   Budget
4. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on January 3, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–415 Filed 1–6–00; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 20, 2000: 5:30 p.m.–8:30 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR OTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Call to order/Discussion
6:00 p.m.—Approve Meeting Minutes
6:05 p.m.—Public Comments/Questions
6:30 p.m.—Presentations
7:15 p.m.—Sub Committee Reports
8:15 p.m.—Administrative Issues
8:30 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present

their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on January 3, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–416 Filed 1–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, January 25, 2000, 8:00 a.m.–6:00 p.m.; Wednesday, January 26, 2000, 8:00 a.m.–5:00 p.m.

ADDRESSES: The Owyhee Plaza, 1109 Main Street, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, INEEL SSAB Facilitator Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, (208–522–1662) or visit the Board's Internet homepage at *http://www.ida.net/users/cab*; or contact Mr. Charles Rice, INEEL SSAB Chair, c/o Jason Associates Corporation.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda

Presentations and discussions on the following:

- The Idaho National Engineering and Environmental Laboratory (INEEL) High-Level Waste and Facilities Disposition Draft Environmental Impact Statement
- Future facility and land use plans for INEEL
- Assessment of the ecological health of the INEEL
- Long-term stewardship planning
- Selection of new members for the INEEL Site-Specific Advisory Board

Discussion and finalization of the following recommendations:

- Draft Environmental Impact Statement for a Geologic Repository for Spent Nuclear Fuel and High-Level Waste, Nye County, Nevada
- The INEEL Institutional Plan
- The Draft Hazardous Waste Management Act/Toxic Substances Control Act permit for the Advanced Mixed Waste Treatment Project

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda or visit the Internet site.)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL CAB Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling the Board's facilitator at (208) 522–1662.

Issued at Washington, DC on December 22, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–417 Filed 1–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2077–00]

USGen New England, Inc.; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

January 3, 2000.

On July 14, 1998, the Federal Energy Regulatory Commission (Commission) issued a notice for the Fifteen Mile Falls Project (FERC No. 2077) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places. The Fifteen Mile Falls Project is located on the Connecticut River, in Grafton County, New Hampshire, and Caledonia County, Vermont. USGen New England, Inc. is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The following addition is made to the restricted service list notice issued on July 14, 1998, for Project No. 2077:

Mr. John Moody, R.F.D., Sharon, VT 05065.

The address for Ms. Giovanna Peebles, who is included on the restricted service list for Project No. 2077, has changed. Delete ''Division of Historic Preservation, 135 State Street, Drawer 33, Montpelier, VT 05633–1201'' and replace with ''Division for Historic Preservation, National Life

[1] 18 CFR 385–2010.

Office Building, Drawer 20, Montpelier, VT 05620–0501''.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–319 Filed 1–6–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 20, 1999 through December 23, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–L65337–ID Rating LO, Salmon River Canyon Project, Implementation, Nez Perce, Payette, Bitterroot and Salmon-Challis National Forests, Idaho County, ID.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–BIA–A65165–00 Rating EC2, Programmatic EIS—Navajo Ten Year Forest Management Plan Alternatives, Implementation and Funding, AZ and NM.

Summary: EPA expressed environmental concerns regarding water quality and protected beneficial uses. EPA asked that potential impacts associated with new road construction and use of pesticides and herbicides be addressed in the final EIS.

ERP No. D–COE–C35013–00 Rating EC2, Programmatic EIS—Port of New York and New Jersey Dredged Material Management Plan, Implementation Channel Depths and Deepen, NY and NJ.

Summary: EPA raised concerns with specific management options discussed in the PEIS, and requested that additional information be included in the final PEIS, Dredged Material Management Plan, and technical appendices.

ERP No. D–FHW–G40154–TX Rating EC2, Loop 1 Extension Project, From Farm-to-Market (FM–734 (Palmer Lander) to TX–45 Highway, Funding, Travis and Williamson Counties, TX.

Summary: EPA identified several environmental concerns and need for additional information which include the inclusion of an Edwards Aquifer water pollution abatement plan and additional documented coordination with the State Historic Preservation Officer. EPA requested that mitigation measure be incorporated into the final EIS and Record of Decision.

ERP No. D–FHW–G40155–TX Rating LO, TX–45 Highway Project, Extending from Anderson Mill Road (FM Road 2769) to Farm-to-Market Road 685 east of IH–35), Funding, Williamson and Travis Counties, TX.

Summary: EPA has no objection to the preferred alternative.

Final EISs

ERP No. F–AFS–L65311–ID North Fork St. Joe River Project, Implementation, Idaho Panhandles National Forest, St. Joe Ranger District, Shoshone County, ID.

Summary: The Final EIS adequately disclosed the environmental concerns with the project and responded to EPA's comments.

ERP No. F–BIA–J65298–MT Flathead Indian Reservation Forest Management Plan, Implementation, Rocky Mountain, Pablo, MT.

Summary: EPA expressed concern that little information was provided on the proposed monitoring programs to assure that ecological goals and objectives are attained.

ERP No. F–FHW–L40193–ID Sandpoint North and South (NH–IR–F–CM–5116(68) Projects, Construction, US 95 (Milepost 466.8 to Milepost 4786), Funding and COE Section 404 Permit, City of Sandpoint, Bonner County, ID.

Summary: EPA had no objection to the proposed action but request that the ROD include a discussion of the methodology used to determine that information in the final EIS is current and viable and that FHWA ensure that project implementation does not worsen water quality.

ERP No. F–FTA–L40205–00 South/North Corridor Project, Improvements to the Existing Urban Transportation, Funding, Multnomah, Clackamas and Washington Counties, OR and Clark County, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–USN–E11045–NC Introduction of the V–22 ''Osprey'' a new Type of Tiltrotor Aircraft, Replacement or Renovation of the facilities used to house Aircraft, Full Basing at MCAS Cherry Point and/or Partial Basing at both MCAS New River and Cherry Point, COE Section 404 Permit, NC.

Summary: EPA continues to have no significant objections to the Marine Corps' proposal to replace it CH–46 helicopters to the new Tiltrotor, V–22 Osprey.

Dated: January 4, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–401 Filed 1–6–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–7]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed December 27, 1999 through December 30, 1999 pursuant to 40 CFR 1506.9.

EIS No. 990496, DRAFT EIS, FAA, MN Flying Cloud Airport Expansion, Extension of the Runways 9R/27L and 9L/27R, Long-Term Comprehensive Development, City of Eden Prairie, Hennepin County, MN, Due: February 21, 2000, Contact: Glen Orcutt (612) 713–4354.

EIS No. 990497, DRAFT SUPPLEMENT, FHW, VA, DC, MD, Woodrow Wilson Bridge Improvements, Updated Information concerning the Changes and Discusses in differences between Alternative 4A of the September 1997 FEIS and Current Design Alternative 4A, I–95/I–495 (Capital Beltway), Telegraph Road to MD–210, Funding, COE Section 10 and 404 Permits and CGD Bridge Permit Issuance, City of Alexandria, Fairfax County, VA; Prince George's County, MD and DC, Due: February 25, 2000, Contact: John Gerner (703) 519–9800.

EIS No. 990498, DRAFT EIS, SFW, CA, High Desert Power Project, Construction and Operation, A Combined-Cycle Natural Gas-Fueled Electrical Generation Power Plant, Approval of Incidental Taking Authorization under Sections 7 and 10 of the Federal ESA, San Bernardino County, CA , Due: February 21, 2000, Contact: Ben Harrison (503) 231–2068.

EIS No. 990499, Final EIS, FHW, AR, MO, US–71. Transportation

Improvements, from south of Bella Vista to Pineville, Benton County, AR and McDonald County, MO, Due: February 07, 2000, Contact: Elizabeth A. Romero (501) 324–5625.

EIS No. 990500, Draft Supplement, UAF, FL, Homestead Air Force Base (AFB) Disposal and Reuse, Updated and Additional Information on Disposal of Portions of the Former Homestead (AFB), Implementation, Dade County, FL, Due: February 21, 2000, Contact: Frank Duncan (703) 696–5243.

Amended Notices

EIS No. 990463, Draft EIS, BOP, SC, South Carolina—Federal Correctional Institution, Construct and Operate, Possible Sites: Andrew, Bennettsville, Oliver and Salters, SC, Due: February 01, 2000, Contact: David J. Dorworth (202) 514–6470. FR notice published on 12/17/1999: CEQ Comment Date extended from 1/03/2000 to 02/01/2000.

Dated: January 4, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–402 Filed 1–6–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6520–7]

National Advisory Council for Environmental Policy and Technology, (NACEPT) Standing Committee on Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory NACEPT standing committee on compliance assistance meeting; open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Standing Committee on compliance assistance will meet on the date and time described below. The meeting is open to the public. Seating at the meeting will be a first-come basis and limited time will be provided for public comment. For further information concerning this meeting, please contact the individual listed with the announcement below. NACEPT Standing Committee on Compliance Assistance; January 31 and February 1, 2000. Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the NACEPT Standing Committee on Compliance Assistance on Thursday, Monday, January 31, 2000 from 9 a.m. to 5 p.m., and February 1, 2000 from 8:30–5. The meeting will be held at the Academy for Educational Development (AED) Conference Center, 1825 Connecticut Ave., NW, Washington, DC 20009. The agenda for both days of the meeting will be focused primarily on the development of the compliance assistance clearinghouse, national forum and the annual agency plan. A formal agenda will be available at the meeting.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92–463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies.

EPA recently issued a new report, ''Aiming for Excellence.'' This report commits EPA to take a number of actions to enhance our reinvention programs, including several to improve our compliance assistance efforts. The report was developed based on extensive external outreach to a broad range of stakeholders through a variety of forums. It is available on EPA's Reinvention home page (www.epa.gov/reinvent/).

In connection with this effort, the Office of Enforcement and Compliance Assurance (OECA) has recently completed work on an action plan, ''Innovative Approaches to Enforcement and Compliance Assurance.'' This action plan includes the compliance assistance activities identified in the Task Force report as well as additional OECA commitments. The action items described in the OECA report (available at www.epa.gov/oeca/innovative/approaches.html) will change fundamental aspects of the Agency's compliance assistance planning and programs.

To ensure that the compliance assistance activities in the action plan are implemented in a way that continues to reflect stakeholder needs, the National Advisory Council on Environmental Policy and Technology (NACEPT) is creating a new Standing Committee on Compliance Assistance. This will provide a continuing Federal Advisory Committee forum from which the Agency can continue to receive valuable stakeholder advice and recommendations on compliance assistance activities.

For further information concerning the NACEPT Standing Committee on Compliance Assistance, including the upcoming meeting, contact Gina Bushong Designated Federal Officer (DFO), on (202) 564–2242, or E-mail: bushong.gina@epa.gov.

INSPECTION OF SUBCOMMITTEE DOCUMENTS: Documents relating to the above topics will be publicly available at the meeting.

Dated: December 16, 1999.

Gina Bushong,

Designated Federal Officer.

[FR Doc. 00–361 Filed 1–6–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Comments Requested

December 28, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0463.

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990—CC Docket No. 90–571 and Telecommunications Relay.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit; state, local or tribal government; individuals or households.

Number of Respondents: 103 respondents.

Estimated Time Per Response: 112.6 hours per response (avg.).

Frequency of Response: On occasion, every five years.

Total Annual Burden: 21,557 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: 47 CFR Part 64, Subpart F implements certain provisions of the ADA of 1990. 47 CFR Section 64.605 establishes the procedures for certifying state programs. Section 64.604 establishes procedures for filing complaints. Information will be used to determine whether a state's program is certifiable according to federal requirements and to determine the merits of complaints filed. The Commission issued a NPRM in CC Docket No. 98–76 regarding telecommunications relay services and speech-to-speech (STS) relay services for persons with hearing and speech disabilities. Rules proposed in the NPRM would require that common carriers providing voice transmission service must ensure that nationwide STS relay services are available to users with speech disabilities throughout their service area. Rules proposed in the NPRM also would amend the Commission's current mandatory minimum standards for TRS service to improve the effectiveness of those rules and their application to TRS service. Those affected are states seeking certification of their programs and any member of the public who wants to file a complaint against specific carriers.

OMB Approval Number: None.

Title: Auditor's Annual Independence and Objectivity Certification.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Business or other for profit.

Number of Respondents: 7 respondents.

Estimated Time Per Response: 10 hours per response (avg.).

Frequency of Response: On occasion; annually.

Total Annual Burden: 70 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: The Responsible Accounting Officer Letter (RAO) requires that carriers' independent auditors disclose in writing all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgment may reasonably be thought to bear on independence; confirm in writing in its professional judgment it is independent of the carrier; and discuss the auditor's independence. The information will be used to determine whether the independent auditor's are performing their audits independently and unbiased of the carrier they audit.

OMB Approval Number: 3060–0774.

Title: Federal-State Joint Board on Universal Service—CC Docket No. 96–45, 47 CFR Part 54.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit; state, local or tribal government.

Number of Respondents: 5,565,451 respondents.

Estimated Time Per Response: .32 hours per response (avg.).

Frequency of Response: On occasion; quarterly; annually; recordkeeping.

Total Annual Burden: 1,787,278 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: In the Ninth Report and Order and Eighteenth Order on Reconsideration in CC Docket No. 96–45, released November 2, 1999, the Commission modified 47 CFR Part 54 by adopting several amendments to the current data reporting requirements to ensure that cost and lop count data submitted by non-rural carriers under 47 CFR Part 36 conforms with loop count data submitted under Part 54 for forwarding looking support. The amended sections containing information collections are as follows. a. 47 CFR Section 54.307—In order to receive support, a competitive eligible telecommunications carrier must report to the Administrator on July 31 of each year the number of working loops it serves in a service area as of December 31 of the preceding year, subject to update specified in 47 CFR 54.307(c). For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, the carrier must report the number of working loops it serves in the service area. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area and the number of working loops it serves in each wire center in the service area. A competitive eligible telecommunications carrier serving loops in the service area of a non-rural carrier telephone company, the carrier must update the information submitted to the Administrator pursuant to 47 CFR 54.307(c)(1)–(3). Because the interim hold-harmless provision provides support based on the existing 47 CFR Part 36 support mechanism, which relieves on book costs, non-rural incumbent LECs will be required to file cost data, in addition to loop-count data, in order to receive interim hold-harmless support. 47 CFR Section 54.309—Any state may file a petition for waiver to ask the Commission distribute support calculated to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the state desires support to be distributed, and an explanation of how waiver will further the preservation and advancement of universal service within the state. c. 47 CFR Section 54.311—A state may file a petition for waiver asking the Commission to distribute interim hold-harmless support to a geographic area different than the wire center. Such petition must contain a description of the particular geographic level to which the State desires interim hold-harmless support to be distributed, and an explanation of how waiver will further the preservation and advancement of universal service within the state. The information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the collection of information will be used to verify that the carriers have accounted for its receipt of federal support in its rates or otherwise used the support for the ''provision, maintenance, and upgrading of facilities and services for which the support is intended'' in accordance with 47 USC Section 254(e). In the Sixth Order on Reconsideration in CC Docket No. 97–21 and the Fifteenth Order on

Reconsideration in CC Docket No. 96–45 (released 11/1/99), the Commission revised its rules governing the eligibility of services that the universal service support mechanism will support. The Commission also revised its rules to allow the Administrator to calculate the support based upon all distance-based charges. The Commission modified its rules to require health care providers and consortia of health care providers to maintain documentation of the amount of support for which each member of a consortium is eligible. The Commission modified its rules to allow new members to be added to a consortium even after the rural health care provider submits its application for support.

OMB Approval Number: 3060–0233.

Title: Separations—Part 36.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 1500 respondents.

Estimated Time Per Response: 104.75 hours per response (avg.).

Frequency of Response: On occasion; quarterly; annually; third party disclosures.

Total Annual Burden: 157,125 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: Telephone companies are required to identify investment, expenses and revenues attributable to intrastate and interstate operations pursuant to a court decision. These procedures are found in 47 CFR Part 36. In the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Congress codified the Commission's historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to telecommunications service. In 47 U.S.C. 254, Congress instructed the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service. 47 CFR 36.601–36.741 contain the following procedures and collections for the Universal Service Fund Program. a. 47 CFR sections 36.611 and 36.612—In order to allow determination of the study areas that are entitled to an expense adjustment, and the wire centers that are entitled to support pursuant to 47 CFR Part 54, each incumbent local exchange carrier must provide the National Exchange Carrier Association (NECA) with the information required by 47 CFR section 36.611 for each of its study areas, with the exception of the information listed in subsection (h), which must be provided for each study area and, if applicable, for each wire center as that term is defined in 47 CFR Part 54. This information is to be filed with NECA by July 31st of each year, and must be updated pursuant to 47 CFR 36.612. The information filed on July 31st of each year will be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs to be filed the following October. b. 47 CFR 36.701–36.741—State or local carriers must submit copies of their lifeline plans to demonstrate that their plans meet certain minimum federal guidelines to qualify for federal assistance. 47 CFR 36.721 requires state or local telephone companies who want to participate in the ''Link-Up America'' Program to file data with the Commission demonstrating eligibility pursuant to the criteria contained in 47 CFR 36.721(a)(1)–(4). c. 47 CFR section 36.731 requires local telephone companies participating in the lifeline programs to file information with NECA for each of their study areas, on a yearly basis, on June 30th. Information to be filed with NECA includes: estimate of the number of eligible households which will receive assistance under both parts of the ''Link-Up America'' programs; estimate of the average discount on service commencement to be provided to each subscriber; and estimate of the average deferred interest cost for each subscriber. Carriers must submit the foregoing information to the Commission, as well as to NECA for those study areas in which the additional interstate expense allocation is to be in effect for less than a full calendar year. See also 47 CFR section 36.741. d. In a NPRM issued in CC Docket No. 80–286, released 10/7/97, the Commission sought comment on a proposed rule allowing incumbent LECs to separate joint and common costs on an individual basis should be contingent upon an ILECs showing that competition exists in the local markets for which they seek relaxed separations rules. The requirements contained herein are necessary to implement the congressional mandate for universal service. The reporting requirements are necessary to verify that non-rural local exchange carriers are eligible to receive universal service support. Information filed with NECA pursuant to 47 CFR 36.611 is used in the jurisdictional allocations underlying the cost support data for the access charge tariffs every April. Without this information, NECA would not be able to prepare and file the necessary tariffs. Information submitted to the Commission pursuant to 47 CFR 36.721 is required to maintain the integrity of the Federal Lifeline Assistance programs. Certification is necessary to ensure that the targeted group is the beneficiary of the program.

OMB Control Number: None.

Title: Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 140.

Estimate Time Per Response: 12.6 hrs. (avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 1,766 hours.

Total Annual Costs: None.

Needs and Uses: The Report and Order and Memorandum Opinion and Order, in WT Docket No. 98–169, adopted September 7, 1999 and released September 10, 1999, 64 FR 59656 (November 3, 1999), as codified at 47 CFR 1.2105(a)(2)(xi) and 95.816(b), offers various financial restructuring options to the 218–219 MHz licensees regarding their existing installment payment obligations and permits eligible licensees to choose (i) reamortization and resumption of installment payments on their licenses; (ii) an amnesty option wherein eligible licensees surrender any licenses they choose to the Commission for subsequent auction and, in return, have all of the outstanding debt on those licenses forgiven; or (iii) a prepayment option whereupon licensees may retain or return as many licenses as they desire; however, licensees electing the prepayment option must prepay the outstanding principal of any license they wish to retain. The information requested provides the FCC with the data to implement the restructuring option(s) chosen by current and former 218–219 MHz licensees. The staff will use this information to maintain data on current licensees, new installment payment terms, refunds to licensees, and spectrum returned to the FCC for auction. The information collection is necessary in order to enable the licensees to meet their financial obligations to the Commission that will help ensure rapid provision of 218–219 MHz service to the public.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–337 Filed 1–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority; Comments Requested

December 28, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0720.

Title: Report of Bell Operating Companies of Modified Comparably Efficient Interconnection Plans.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 7 respondents.

Estimated Time Per Response: 6 hours per response (avg.).

Frequency of Response: Annually.

Total Annual Burden: 42 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: Bell Operating Companies are required to supplement the CEI plans they already file with the Commission with descriptions of how they are complying with the CEI equal access parameters. Without provision of these reports, the Commission would be unable to ascertain whether the BOCs were providing competing payphone providers with unbundled nondiscriminatory access to its network features and functionalities. The report allows the Commission to determine how the BOC will provide competing payphone providers with equal access to all the basic underlying network services that are provided to its own payphones.

OMB Approval Number: 3060–0722.

Title: Initial Report of Bell Operating Companies of Comparably Efficient Interconnection Plans.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 7 respondents.

Estimated Time Per Response: 50 hours per response (avg.).

Frequency of Response: One-time.

Total Annual Burden: 350 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: Bell Operating Companies are required to provide initial CEI plans describing how they intend to comply with the CEI equal access parameters. Thereafter, they may include this information in the CEI plans they already file with the Commission. The report allows the Commission to determine how the BOCs will provide competing payphone providers with equal access to all the basic underlying network services that are provided to its own payphones.

OMB Approval Number: 3060–0099.

Title: Annual Report—Form M.

Form Number: FCC Form M.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 3 respondents.

Estimated Time Per Response: 1,120 hours per response (avg.).

Frequency of Response: Annually.

Total Annual Burden: 3,360 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: Filing of the FCC Form M is required by Sections 1.785 and 43.21 of the FCC Rules and Section 219 of the Communications Act of 1934, as amended. Filing of the Form M is required by subject telephone carriers having annual operating revenues in excess of the indexed revenue threshold. The data are used by staff members in the regulation of the telephone industry and by the public in analyzing the industry.

OMB Approval Number: 3060–0894.

Title: Certification Letter Accounting for Receipt of Federal Support (CC Docket Nos. 96–45 and 96–262).

Form Number: N/A.

Type of Review: Extension.

Respondents: State, Local or Tribal Government.

Number of Respondents: 51 respondents.

Estimated Time Per Response: 3 hours per response (avg.).

Frequency of Response: On occasion; annually.

Total Annual Burden: 153 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: The Commission requires states to certify that carriers within the state had accounted for its receipt of federal support in its rates or otherwise used the support pursuant to 47 U.S.C. Section 254(e). This information will be used to show that federal high-cost support is being provided to the carrier to assist in keeping rates affordable in those subscribers' area. Further, the collection of information will be used to verify that the carriers have accounted for its receipt of federal support in its rates or otherwise used the support for the provision, maintenance, and upgrading of facilities and services for which the support in intended in accordance with 47 U.S.C. Section 254(e).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–338 Filed 1–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

December 27, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing

effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0347.

Title: Section 97.311, Spread Spectrum (SS) Emission Types.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 10.

Estimate Time Per Response: 6 seconds.

Frequency of Response: Recordkeeping.

Total Annual Burden: 1 minute.

Total Annual Costs: None.

Needs and Uses: The recordkeeping requirement contained in Section 97.311 is necessary to document all spread spectrum transmissions by amateur radio operators. This information must be provided to the District Director when deemed necessary and consist of a computer file which is generated when spread spectrum transmissions are made. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–336 Filed 1–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval.

December 22, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before February 7, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0362.

Title: Inspection of Radio Installation on Large Cargo and Small Passenger Ships.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Federal, State, local, or Tribal government(s).

Number of Respondents: 4,600.

Estimate Time Per Response: 4.5 hours.

Frequency of Response: On occasion reporting requirements every five years; Third party disclosure.

Total Annual Burden: 20,608 hours.

Total Annual Costs: None.

Needs and Uses: The FCC adopted rules that privatized inspections of ships subject to the inspection requirements of the Telecommunications Act of 1996, as amended, and the International Convention for the Safety of Life at Sea, 1974 (Safety Convention). The Communications Act requires the Commission to inspect the radio installation of large cargo ships and certain passenger ships at least once a year to ensure that the radio installations are in compliance with the requirements of the Communications Act. Small passenger ships must be inspected at least once every five years. The Safety Convention also requires an annual inspection. FCC rules require this inspection to be conducted by an FCC-licensed technician, but allow private sector FCC-licensed technicians to certify that the ship has passed an inspection and to issue the ship a safety certificate. FCC rules also mandate that the inspecting technician provide a summary of the results of the inspection and that the technician, the ship's owner, operator, or captain each certify in the ship's safety log that the vessel has passed the safety inspection.

OMB Control Number: 3060–0398.

Title: Equipment Authorization Measurement Standards, 47 CFR 2.948, 15.117(g)(2).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 320.

Estimate Time Per Response: 28.44 hours (avg.).

Frequency of Response: Recordkeeping; Three year reporting requirements.

Total Annual Burden: 9,100 hours.

Total Annual Costs: $1,000.

Needs and Uses: The FCC uses this information to ensure that data accompanying all requests for equipment authorization are valid, and that proper testing procedures are used. Testing ensures that potential interference to radio communications is controlled, and if necessary, the data may be used for investigating complaints or harmful interference, or for verifying the manufacturer's compliance with FCC rules. The Report and Order in ET Docket No. 95–144 eliminated the necessity for manufacturers to file UHF noise figure data documenting the performance of TV receivers tested and marketed in the U.S.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–339 Filed 1–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 21, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Philip Brown McAfee, Decherd, Tennessee; to retain voting shares of Citizens Community Bancshares, Inc., Winchester, Tennessee, and thereby retain voting shares of Citizens Community Bank, Winchester, Tennessee.

Board of Governors of the Federal Reserve System, January 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–328 Filed 1–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Premier Capital Corp., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bank, Denver, Colorado.

Board of Governors of the Federal Reserve System, January 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–326 Filed 1–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 21, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Berkshire Bancorp, Inc., New York, New York; to acquire 24.9 percent of the voting shares of Madison Merchant Services Inc., New York, New York, and thereby engage in credit card authorization and credit card processing pursuant to Board order; see Barnett Banks of Florida, Inc., 71 Fed. Res. Bull. 648 (1985); Citicorp, 76 Fed. Res. Bull. 549 (1990).

2. Deutsche Bank AG, Frankfurt am Main, Germany, and Deutsche Financial Services Inc., St. Louis, Missouri; to acquire Keyboard Acceptance Corporation, and Signature Leasing Company, both of Mason, Ohio, and thereby engage in: (i) extending credit and servicing loans, pursuant to

§ 225.28(b)(1) of Regulation Y; (ii) activities related to extending credit pursuant to § 225.28(b)(2)(iv) of Regulation Y; and (iii) leasing of personal or real property pursuant to § 225.28(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, January 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–327 Filed 1–6–00; 8:45 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE 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, January 12, 2000.

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.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–480 Filed 1–5–00; 12:56 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 991 0281]

RHI AG; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 31, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Morris Bloom, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–2574 or 326–2707.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 30, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Agreement'') from RHI AG (''RHI'' or ''respondent'') to resolve competitive concerns relating to the refractories industry arising out of RHI's proposed acquisition of Global Industrial Technologies, Inc. (''Global''). Under the Agreement, RHI would divest two refractories manufacturing plants located in North America and certain assets relating to refractory products currently produced at a third North American manufacturing plant. The proposed Order requires that the assets be divested to another refractories producer, Resco Products, Inc. (''Resco''), a company that produces refractories but does not compete in the affected markets at the present time, or to another buyer approved by the Commission.

The proposed Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Agreement and comments received and decide whether to withdraw its acceptance of the Agreement or make final the Agreement's proposed Order.

Refractories are brick- and cement-like products made from certain natural minerals and materials that are used to line and protect furnaces in many industries—including the steel, aluminum, cement and glass industries—that involve the heating or containment of solids, liquids, or gases at high temperatures. Refractories are consumable products, and wear down as a result of being subjected to intense temperatures as well as chemical and mechanical pressures.

The proposed complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and Section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45, as amended, in the following markets: (1) The North American market for magnesia-carbon bricks for basic oxygen furnaces (''BOFs''); (2) the North American market for magnesia-carbon bricks for electric arc furnaces (''EAFs''); (3) the North American market for magnesia-carbon bricks for steel ladles used with BOFs; (4) the North American market for magnesia-chrome bricks for steel degassers; (5) the North American market for high-alumina bricks for steel

ladles used with BOFs; and (6) the North American market for high-alumina bricks for torpedo cars used in steel making.

The proposed complaint alleges that each of the relevant markets is highly concentrated. Specifically, the proposed complaint alleges that RHI and Global control approximately 95 percent of the $30 million North American market for magnesia-carbon refractory bricks for BOFs. The proposed acquisition thus represents a virtual merger to monopoly in magnesia-carbon bricks for BOFs. The proposed complaint also alleges that RHI and Global control approximately 65 percent of the $58 million North American market for magnesia-carbon refractory bricks for EAFs; approximately 40 percent of the $100 million North American market for magnesia-carbon bricks for steel ladles used with BOFs; approximately 46 percent of the $5 million North American market for magnesia-chrome bricks for steel degassers; approximately 70 percent of the $50 million North American market for high-alumina bricks for steel ladles used with BOFs; and approximately 52 percent of the $23.5 million North American market for high-alumina bricks for torpedo cars.

The proposed complaint further alleges that the effect of the acquisition may be to substantially lessen competition and to tend to create a monopoly by, among other things, eliminating actual, direct and substantial competition between RHI and Global in each of the relevant markets identified above. The proposed complaint further alleges that the effect of the acquisition may be to substantially lessen competition and to tend to create a monopoly by increasing the level of concentration in each of these relevant markets and by increasing the likelihood that the firm created by the merger of RHI and Global will unilaterally exercise market power in each of these relevant markets, that purchasers of these products will be forced to pay higher prices, that technical and sales service will decline, and that innovation in the development of these products will decline.

The proposed complaint further alleges that entry into the relevant markets requires significant sunk costs and would not be timely, likely and sufficient to deter or offset reductions in competition resulting from the proposed acquisition. Development of the specialized refractories described above, including determination of the proper chemical composition and manufacturing techniques, is time consuming and requires an extremely high level of expertise. In addition, customers in the steel industry increasingly require that their suppliers of refractories be able to supply the full line of refractories for particular applications, such as BOFs, EAFs and steel ladles. Thus, a new entrant would have to be able to assume the costs and expertise necessary to develop and supply both magnesia-carbon and high-alumina bricks.

Furthermore, because the refractory bricks at issue are used to control processes and substances at extremely high temperatures, the failure of the products can be catastrophic, sometimes causing the loss of human life. Consequently, customers are extremely resistant to change, and any new entrant would have to undergo months of laboratory testing, followed by extended periods (sometimes taking several years) of field testing, prior to acceptance of product for use in BOF and EAF steel making applications.

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the relevant markets, as alleged in the complaint, by requiring the divestiture to Resco of: (a) Global's Hammond, Indiana refractories plant, which produces magnesia-carbon bricks for BOFs, EAFs and steel ladles, and related equipment, machinery and intellectual property (including formulas, mixes, presses and molds) and customer lists and contracts; (b) Global's Marelan, Quebec plant, which produces magnesia-chrome bricks for steel degassers, and related equipment, machinery and intellectual property (including formulas, mixes, presses and molds) and customer lists and contracts; and (c) all rights, title and interest in and to specific assets relating to the production of high-alumina bricks for BOF steel ladles and torpedo cars, which are currently produced by RHI at its Farber, Missouri plant, including intellectual property, customer lists and contracts, formulas, mixes and molds. The proposed Order requires the divestiture to take place no later than forty-five (45) days after the date the Commission accepts the Agreement for public comment.

The proposed Order also provides for a magnesite supply contract between Resco and respondent. Currently, Global is one of only two U.S. producers of high purity magnesite, a necessary ingredient of magnesia-carbon and magnesia-chrome bricks, and currently supplies other refractory producers with the material for the production of refractories. In order to ensure that Resco has a continuing supply of high purity magnesite with which it can make the relevant products, and to prevent the possibility that customers might require re-qualification in the event that the acquirer is forced to obtain an alternate source of supply of this raw material, the proposed Order provides that respondent enter into a one year high purity magnesite supply contract, renewable for two additional one year terms at Resco's option, with most favored nation pricing. The arrangement is intended to be of sufficient duration to give Resco time to assimilate the relevant products into its own line of refractory products, to perfect the production processes, and to test other sources of high purity magnesite without jeopardizing customer contracts in the meantime.

Thus, the proposed Order is designed to promote the viability and competitiveness of the divested businesses by placing the businesses in the hands of a company with extensive expertise in the refractories industry, expertise in related refractories applications, and additional economies resulting from shared research and development, overhead and production. The proposed Order is structured to help assure the success of Resco in operating the divested businesses by providing Resco with the assets required for it to successfully compete in the relevant markets: magnesia-carbon, magnesia-chrome and high-alumina formulas that are well-known, well-respected and already proven in the marketplace; supply contracts with customers; technical assistance and training; production assets; and raw materials supply contracts to ensure the continued and consistent ability to produce the products.

If the Commission determines that Resco is not an acceptable buyer, or that the agreement between Resco and respondent is not an acceptable form of divestiture, the proposed Order provides that respondent shall rescind the Resco agreement and any divestiture to Resco, and divest the identified assets, including RHI's Farber, Missouri plant and fixtures, at the purchaser's option, to an acquirer that receives the prior approval of the Commission. In such an event, the proposed Order also contains provisions designed to ensure that such an acquirer has the benefit, at its option, of all of the raw materials, contracts and technical assistance relating to the businesses to be divested.

The proposed Order also provides that if respondent fails to divest the assets to be divested as required by the proposed Order, the Commission may appoint a Divestiture Trustee to divest the business along with any assets related to the business that are necessary to effect the purposes of the proposed Order.

The proposed Order also provides for the appointment of an Interim Trustee to ensure that respondent expeditiously performs its responsibilities under the proposed Order. The Interim Trustee will oversee the divestiture to ensure the adequacy of the transfer, to ensure that disputes between the parties will be identified and resolved quickly, clearly, and impartially, and to identify possible violations of the proposed Order.

The Agreement requires respondent to provide the Commission, within thirty (30) days of the date of the agreement was signed, with an initial report setting forth in detail the manner in which respondent will comply with the provisions relating to the divestiture of assets.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–365 Filed 1–6–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00029]

Cooperative Agreement for the Operation and Enhancement of a National Public Health Information/Communication Network; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the operation and enhancement of a national public health information/communication network. This network/program addresses the ''Healthy People 2000'' priority area of Educational and Community-Based Programs.

The purpose of this program is to coordinate coverage of public health emergencies with State and local health departments; enhance disease prevention and promotion efforts; provide opportunities to relate the stories of health prevention; identify methods to provide health communication education and training to State health departments; and to elicit the coordination and cooperation of other national, public, private, and voluntary agencies in promoting public health information.

The purpose is also to foster national public health priorities which include strengthening science for public health action and increasing collaboration with health care partners for prevention and promoting healthy living at all stages of life. The network should continue to support the exchange and sharing of information methods and techniques for the improvement of coordination of public information initiatives between State health departments and provide a forum of continuing education opportunities in public health information. The network serves as a facilitator of communications through which Directors of State, territory and federal public affairs may share information and methods for the benefit of improved public health programs.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State (*i.e.* public information Directors of State health departments) and their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 2000 to fund one cooperative agreement. It is expected that the award will begin on or about May 1, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1., below, and CDC will be responsible for conducting activities under 2., below:

1. Recipient Activities:

a. Plan, conduct, and evaluate an annual national conference and, as required, regional conferences. The purpose of these conferences is to provide a forum for continuing educational opportunities in public health communications. Future conferences will serve as opportunities to update CDC staff on State level communication campaigns and provide a platform for CDC to update States on CDC information/communication campaigns.

b. Publish periodic newsletters to keep State Health Departments informed of the programs, initiatives, and activities of interest to the States related to communication intervention programs that enrich and improve public health. Maintain, update, and publish an annual membership directory, design of network/association brochure, and journal articles.

c. Assess electronic communication networking among State health departments and provide recommendations to States on equipment and financial needs to strengthen communication efforts. Electronically disseminate urgent public health announcements to general membership via the web-site data base. Develop electronic communication access for all public health officials (ex: high speed, secure Internet connectivity for access by local public health officials; satellite/distance learning links for public health officials so they can be notified during public health crises). Expand the capacity to reach out through an established network to interact through the State network representatives to reach local health departments in relation to high priority communication issues.

d. Evaluate the media training available for public health professionals and provide recommendations for workshops to all State health departments. Provide assistance to those State health departments wishing to implement media training.

e. Network with key national public health groups that focus on Minority health and schools to evaluate existing public information material relating to public health programs such as, but not limited to, immunization, tobacco control, tuberculosis, violence and bioterrorism, emerging infectious diseases, occupational health, injury prevention, youth/children, women's health, health care gaps, food safety, pandemics.

f. Develop materials, seminars and training for crisis management, that are culturally competent and linguistically appropriate, in order to communicate

with one voice to public health officials at all levels. Develop a communication plan/agreement integrated at the local, State and federal levels and improve information systems dedicated to communication/community affairs activities about how to respond to the media and public if a crisis occurs that is multi-state or catastrophic in nature. Disseminate current information about the existing national response plan to Public Health priorities. Draft basic reference materials designed for target populations in the form of fact sheets available through multiple venues for the general public and media, for health care professionals in the event of Public Health priorities, such as actual bioterrorist events.

g. Develop formalized communication methods through a liaison in each State who can network with each county. Develop fact sheets and press releases at State level on important national public health topics which could be customized for use by other State health departments.

h. Focus educational efforts among sentinel health care professionals and others by promoting satellite courses i.e. public health response to bioterrorism. In preparation and planning for a disease pandemic, work with CDC to develop a State/local pandemic plan.

i. As needs are identified, regional awareness campaigns will be designed through State health departments.

j. Additionally, disseminate campaign updates and materials from CDC and elsewhere to State public information Directors. Provide liaisons to each CDC public information/communication campaign.

2. CDC Activities:

a. Provide technical assistance and consultation in the area of program development, implementation, and health communication campaigns.

b. Provide technical assistance in the development of an annual conference for State, regional and national exchange of public health information.

c. Provide technical assistance in defining the scope of training needs and proposed training materials to address those needs.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Prior to the 25 page narrative, please provide a three page summary documenting evidence of a three year history in the operation of a national public health information/communication network, which includes at least one organizational representative from each state.

F. Application Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937–0189). Forms are in the application kit. On or before March 14, 2000, submit to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' Section of this announcement.

Deadline: Application shall be considered as meeting the deadline if it is:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

The application will be evaluated against the following criteria:

1. Background, Need, and Capacity (25 percent): The extent to which the applicant presents data and information documenting the capacity to accomplish the program, positive progress in related past or current activities or programs, and, as appropriate, need for the program. The extent to which the applicant demonstrates a 3-year history in conducting a national public health information communication program, which includes at least one organizational representative from each state.

2. Goals and Objectives (15 percent): The extent to which the applicant includes goals which are relevant to the purpose of the proposal and feasible to accomplish during the project period, and the extent to which these are specific and measurable. The extent to which the applicant has included objectives which are feasible to accomplish during the budget period and project period, and which address all activities necessary to accomplish the purpose of the proposal.

3. Methods and Staffing (25 percent): The extent to which the applicant provides: (1) A detailed description of proposed activities which are likely to achieve each objective and overall program goals, and which includes designation of responsibility for each action undertaken; (2) a reasonable and complete schedule for implementing all activities; and (3) a description of the roles of each unit, organization, or agency, and evidence of coordination, supervision, and degree of commitment of staff, organizations, and agencies involved in activities.

4. Evaluation (25 percent): The extent to which the proposed evaluation system is detailed, addresses goals and objectives of the program, and will document program process, effectiveness, and impact. The extent to which the applicant demonstrates potential data sources for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included.

5. Collaboration (10 percent): The extent to which relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities are clear, complete and provide for complementary or supplementary interactions. The extent to which coalition membership and roles are clear and appropriate. The extent to which the applicant provides evidence of at least one organizational representative from each State.

6. Budget and Justification (not scored): The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semiannual Progress reports;

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where To Obtain Additional

Information'' Section of this announcement. For descriptions of the following Other Requirements, see Attachment I in the application package.

AR–5 HIV Program Review Panel Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 1704 (42 U.S.C. 300u–3) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

J. Where to Obtain Additional Information

This announcement and other announcements may be downloaded from www.cdc.gov.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00029, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone (770) 488–2717, Email address jcw6@cdc.gov.

For program technical assistance, contact: Linda Leake, Administrative Officer, Office of Communication, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E., MS D25, Atlanta, GA 30333, Telephone: (404) 639–7994, E Mail: ldl1@cdc.gov.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–332 Filed 1–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Federal Parent Locator Service.

OMB No.: 0970–0142.

Description: The Federal Parent Locator Service is a computerized national location network which provides address and social security number information to State and local child support enforcement agencies upon request for purposes of locating parents to establish parentage or establish or enforce a child support order and to assist authorized persons in resolving parental kidnapping and child custody and visitation issues. As such, the FPLS serves as a conduit between child support enforcement offices and Federal and State agencies by conducting weekly, biweekly, or monthly matches of the collected information with various agencies and distributing the information back to the requesting State or local child support office.

Respondents: State, Local or tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Federal Parent Locator Service	200	24	1	4,800

Estimated Total Annual Burden Hours: 4,800.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503. Attn: ACF Desk Officer.

Dated: January 3, 2000.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 00–311 Filed 1–6–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–R–0264 A–H / Supplement]

[Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)]

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In

compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R. Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because of a statutory deadline imposed by section 1853(a)(3) of the Balanced Budget Act of 1997. Without this information, HCFA would not be able to properly implement the requirements set forth in the statute. In order to fully test the operations of competitive bidding at the second site, and to thus test the President's plans for this part of value based purchasing, it is necessary to operate the demonstration for at least two years. The authorizing legislation for the demonstration, section 1847 of the Balanced Budget Act, states that ''all projects under this section shall terminate not later than December 31, 2002.'' In order to operate the demonstration for two years, we need to implement the demonstration at the second site starting January 1, 2001. Because of the need for nine months for processing and bidding operations, we must have emergency approval of the forms in order to proceed with the demonstration on time and as needed. Using the regular clearance process would not allow the demonstration a full two year?s of operation as needed for a full test of the bidding concept.

HCFA is requesting OMB review and approval of this collection by February 15, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below by January 31,2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection;

Title of Information Collection: Medicare DMEPOS Competitive Bidding Demonstration: Site 2;

Form No.: HCFA–R–0264 A–H /Supplement;

Use: Section 4319 of the Balanced Budget Act (BBA) mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The first of these demonstration projects implements competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). The new set of products to be offered for competitive bidding are: oxygen equipment and supplies, hospital beds, standardized orthotic products, manual wheelchairs, and nebulizer drugs. Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002. The schedule for the demonstration anticipates about a six month period required between mailing the bidding forms to potential bidders and the start of payments for DMEPOS under the demonstration. There are eight forms that are required for this demonstration. Form A will be used by the bidding supplier to provide information about the characteristics of the company. Form B will be used by the bidding supplier to provide specific information about the prices it bids for specific product categories, and to provide information about the attributes of the supplier in relation to the specific product category. Form C will be used by HCFA or its agents to obtain information on site regarding the bidding supplier. Form D will be used by HCFA or its agents to obtain financial references on the bidding supplier from banks and other financial sources. Form E will be used by HCFA or its agents to obtain information about the bidding suppliers from referral sources such as home health agencies and hospital discharge planners. Form F will be used to obtain information about the suppliers' financial status and to assure that they have sufficient fiscal resources to operate in a competitive environment where the prices being paid for some products are less than what have been customarily paid. It is required only from suppliers whose bids are in the competitive range. Form G will be used for nursing facilities to identify their suppliers of products and services who have not been awarded Demonstration Supplier status for services to beneficiaries in their home. This is to permit payment to those suppliers for products services furnished to nursing facilities. Form H is a new form added since the demonstration of the first site. It will be used to monitor the performance of Demonstration Suppliers to assure their adherence to the quality standards established for the project.

The competitive bidding demonstration for DMEPOS has the following objectives:

- Test the policies and implementation methods of competitive bidding to determine whether or not is should be expanded as a Medicare Program.
- Reduce the price that Medicare pays for medical equipment and supplies.
- Limit beneficiary out-of-pocket expenditures for copayments.
- Improve beneficiary access to high quality medical equipment and supplies.
- Prevent business transactions with suppliers who engage in fraudulent practices.

Frequency: On occasion;

Affected Public: Business or other for-profit, and not-for-profit institutions;

Number of Respondents: 1,375;

Total Annual Responses: 1,375;

Total Annual Hours: 11,242.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designee referenced below, by January 31, 2000:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attn: Dawn Willinghan, Room: N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

or

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: December 22, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–313 Filed 1–6–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA);

Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in January 2000.

The SAMHSA National Advisory Council meeting will be open and will include follow up to the September 22 SAMHSA National Advisory Council Meeting, presentations and updates on SAMHSA's HIV Agenda, Healthy People 2010 Objectives, the Surgeon General's Report on Mental Health, Parity, a discussion on the implications of the Olmstead Decision, and discussions on what's ahead in the new millennium for mental health, substance abuse treatment, and substance abuse prevention. In addition, there will be status reports by the Council's workgroups on communication and co-occurring addictive and mental disorders.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Thursday, January 20, 2000, 9:00 a.m. to 4:45 p.m. (Open); Friday, January 21, 2000, 9:00 a.m. to 12:15 p.m. (Open).

Place: Hilton Washington and Towers 1919 Connecticut Avenue, NW., Washington, DC 20009.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17–89, Rockville, MD 20857; Telephone: (301) 443–4266; FAX: (301) 443–1587 and e-mail: TVaughn@samhsa.gov.

Dated: January 3, 2000.

Sandra Stephens,

Acting Committee Management Officer, SAMHSA.

[FR Doc. 00–305 Filed 1–6–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–01]

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: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; 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, 1988 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: December 30, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–191 Filed 1–6–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability

SUMMARY: The Fish and Wildlife Service has published a Comprehensive Conservation Plan, Environmental Assessment, and a Finding of No Significant Impact for Pond Creek National Wildlife Refuge. The plan describes how the Fish and Wildlife Service intends to manage the refuge for next 15 years.

ADDRESSES: A copy of the above documents may be obtained by writing to the Fish and Wildlife Service, Attention: David Erickson, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345; or Refuge Manager, Felsentahal National Wildlife Refuge Complex, 5531 Highway 82W, Crossett, Arkansas 71635.

FOR FURTHER INFORMATION CONTACT: David Horning, Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone: 404/679–7116.

SUPPLEMENTARY INFORMATION: By implementing this comprehensive conservation plan, the refugee seeks to maintain and restore diverse habitats designed to achieve refuge purpose and wildlife population objectives; maintain viable, diverse populations of native flora and fauna consistent with sound biological principles; protect the area's wetlands and restore values through land protection strategies; and develop and implement a quality wildlife-dependent recreation program that leads to enjoyable recreation experiences and a greater understanding and appreciation of fish and wildlife resources.

Dated: December 14, 1999.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 00–314 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Tulare Irrigation District Main Intake Canal Lining Project, Tulare County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The Tulare Irrigation District has applied to the Fish and Wildlife Service (Service) for an incidental take permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service proposes to issue a 5-year Permit to Tulare Irrigation District that

would authorize take of the threatened valley elderberry longhorn beetle (Desmocerus californicus dimorphus) (beetle) and the endangered San Joaquin kit fox (Vulpes macrotis mutica) (fox) incidental to otherwise lawful activities. Such take would occur during the concrete lining of 9.7 miles of an existing canal in Tulare County, California. Lining of the canal will result in the loss of up to 54 elderberry plants with 227 stems which provide habitat for the beetle. This project may also result in destruction of potential fox dens, and could result in harassment of foxes during construction.

This notice advises the public that the Service has opened the comment period on the permit application and the draft environmental assessment. The permit application includes Tulare Irrigation District's Habitat Conservation Plan (Plan) for the beetle and fox. The Plan describes the proposed project and the measures that Tulare Irrigation District would undertake to minimize and mitigate take of beetles and foxes. The environmental assessment addresses effects on the environment that may result from the Service's issuance of the Permit. Issuance of a Permit to Tulare Irrigation District for the canal lining project has already been subject to a 30-day public comment period (64 FR 42408). The original application requested incidental take for the beetle only. The Service now proposes to issue the Permit for take of the beetle and the fox.

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act and section 10(a) of Act. The Service will also evaluate whether the issuance of the requested permit complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The resulting section 7 biological opinion, in combination with the National Environmental Protection Act and section 10(a) evaluations, will be used in the final analysis to determine whether or not to issue the requested permit. The final National Environmental Protection Act and Endangered Species Act determinations will not be completed until after the end of a 30-day comment period and will fully consider all comments received. If it is determined that the requirements are met, the requested permit will be issued for the incidental take of the beetle and fox subject to the provisions of Tulare Irrigation District's Plan.

DATES: Written comments should be received on or before February 7, 2000.

ADDRESSES: Send written comments to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825-1846. Comments may be sent by facsimile to 916–414–6713.

FOR FURTHER INFORMATION CONTACT: Ms. Jesse Wild, Fish and Wildlife Biologist, at the above address or call (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Document Availability

Please contact the above office if you would like copies of the application, Plan, and environmental assessment. Documents also will be available for review by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; *i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

Tulare Irrigation District operates the Main Intake Canal (canal) primarily to transport an average of 60,000 acre-feet of water from the St. Johns and Kaweah Rivers to agricultural areas within Tulare Irrigation District boundaries. The canal begins at a turnout on the Friant-Kern Canal approximately 4 miles east of the community of Ivanhoe in Tulare County and proceeds in a general southwesterly direction to the Tulare Irrigation District boundary at Road 132 approximately 3 miles west of the community of Farmersville. The existing canal is unlined with a varying capacity up to 900 cubic feet per second. Since 1978, the canal has conveyed water an average of 177 days per year. According to Tulare Irrigation District, approximately 10 percent of water conveyed through the canal is lost to seepage. Therefore, Tulare Irrigation District has proposed to line the canal to conserve water, increase water deliveries, and decrease per-unit costs associated with water deliveries.

Although the maintained banks of the canal are generally unvegetated, several mature oaks, cottonwoods, and elderberry bushes are present within and adjacent to Tulare Irrigation District right-of-ways. Land use adjacent to the canal is primarily agricultural (vineyards, orchards, and nurseries) interspersed with stretches of sparse residential and industrial developments. The irrigation district comprises approximately 70,000 acres of land, which has been entirely developed for agricultural, residential, and/or commercial purposes.

In 1998, biologists surveyed the project area for special-status wildlife and plant species that could be affected by the project. Blue elderberry plants, potential habitat for the beetle, were observed at various locations along the canal. Some of these plants had stems with exit holes indicating use by beetles. Potential fox den sites were also found along the canal.

Lining of the canal will result in the loss of up to 54 elderberry plants (beetle habitat) with 227 stems greater than one inch in diameter (the minimum stem size believed to be necessary for supporting beetles). Tulare Irrigation District has agreed to implement the following measures to minimize and mitigate take of the beetle: (1) Protect elderberry bushes in place, where possible, by using protective fencing and conducting educational meetings with contractors to highlight the importance of protecting elderberry bushes; and (2) make a one-time payment into the Beetle Mitigation Fund that has been established through a joint agreement between the Service and the Center for Natural Lands Management. Payments made to the Beetle Mitigation Fund will be dispersed by the Center for Natural Lands Management at the direction of the Service to preserve and manage large tracts of habitat suitable for supporting beetles.

Foxes potentially inhabiting the project area could be harassed through temporary disturbance during construction. The Service expects take of up to five potential fox dens. To minimize these impacts, Tulare Irrigation District agreed to implement the following measures to minimize take of foxes: (1) Conduct preconstruction surveys consistent with Service protocol; (2) collapse unoccupied potential dens to prevent occupation during construction; (3) limit construction to daylight hours, to minimize harassment of nocturnally active wildlife, including foxes; (4) cap pipes over four inches in diameter, or check any such pipes for wildlife before they are moved; (5) check for presence of wildlife before operating any equipment with the potential to conceal

wildlife; and (6) place speed limits of 20 miles per hour or less on canal roads.

The Proposed Action addressed in the environmental assessment consists of the issuance of a Permit to allow the potential incidental take of beetles and foxes incidental to the Main Intake Canal Lining Project. The environmental assessment focuses on the potential impacts on beetles and foxes that may result from issuance of a Permit and implementation of the Plan. Impacts on other resources (ground water and surface water, land use, aesthetic resources, air quality, noise, cultural resources, public services, traffic, and circulation) are discussed in detail in the Environmental Impact Report for the Main Intake Canal Lining Project and are summarized in the Service's environmental assessment.

An alternative to the taking of listed species under the Proposed Action is considered in the Plan and environmental assessment. Under the No Action Alternative, no permit would be issued. However, the No Action Alternative is unacceptable as it will continue to result in the loss of up to 6,000 acre-feet of water per year. Five other alternatives are presented in the Plan and the environmental assessment, but are considered unacceptable for various reasons, including disagreement among, or opposition from, local landowners.

All interested agencies, organizations, and individuals are urged to provide comments on the permit application and environmental assessment. All comments received by the closing date will be considered in finalizing National Environmental Protection Act compliance and permit issuance or denial. The Service will publish a record on its final action in the **Federal Register**.

Dated: January 3, 2000.

Thomas Dwyer,

Acting Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 00–333 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Oil Spill Restoration Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service, on behalf of the Department of the Interior, the National Oceanic and Atmospheric Administration (Administration), the State of Washington, and the Makah Tribe, announces the release for public review of a Revised Draft Restoration Plan and Environmental Assessment for the *Tenyo Maru* Oil Spill (Plan/Assessment). The Plan/Assessment covers the Natural Resource Trustees' (Trustees) proposal to restore natural resources injured as a result of the 1991 *Tenyo Maru* fishing vessel oil spill.

DATES: Written comments must be submitted on or before February 7, 2000.

ADDRESSES: Requests for copies of the Plan/Assessment may be made to: Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503, Attn: Cindy M. Chaffee. The Plan/Assessment is also available for download at *http://www.r1.fws.gov.* and *http://www.darcnw.noaa.gov/tenyo.htm.* Written comments regarding the Plan/Assessment should be sent to the same mailing address as requests for copies of the Plan/Assessment.

FOR FURTHER INFORMATION CONTACT: Cindy M. Chaffee, Fish and Wildlife Service, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503. Interested parties may also call (360) 753–4324.

SUPPLEMENTARY INFORMATION: On July 22, 1991, a Japanese fishing vessel (*Tenyo Maru*) and a Chinese freighter (*Tuo Hai*) collided about 20 miles northwest of Neah Bay, Washington, spilling at least 100,000 gallons of oil. Beaches were fouled with oil from Vancouver Island, British Columbia to northern Oregon. While impacts were scattered along the entire Washington State shoreline and the northern beaches of Oregon, the heaviest oiling occurred along the Makah Indian Reservation and the Olympic National Park shoreline. Seabirds, and to a lesser extent, kelp habitats, were demonstrated to have been injured by the spill. The trustees documented that common murres (*Uria aalge*) and federally threatened marbled murrelets (*Brachyramphus marmoratus*) were killed, as well as rhinoceros auklets (*Cerorhinca moncerata*), tufted puffins (*Fratercula cirrhata*), Cassin's auklets (*Ptychoramphus aleuticus*) and pigeon guillemots (*Cepphus columba*). Oil was observed in many of the giant kelp (*Macrocystis*) and bull kelp (*Nereocystis*) dominated kelp beds from Cape Alava north to Tatoosh Island and from Tatoosh Island east to Waadah Island.

Claims for natural resource damages were settled by consent decree under the Oil Pollution Act of 1990 (Act), 33 U.S.C. 2701 *et seq.*. Under the consent decree, the defendants agreed to pay approximately $5.2 million to the natural resource trustees to compensate the public for the injury, destruction, and loss of natural resources resulting from the spill.

On February 10, 1999, the Trustees published a Notice of Availability for a draft Plan/Assessment. The Trustees received numerous comments on this draft Plan/Assessment. In response to those comments, the Trustees have made several changes to the Plan/Assessment. These changes include: (1) The addition of funding for an emergency towing vessel stationed at the entrance to the Strait of Juan de Fuca; (2) an option to consider a project involving restoration of tufted puffins; and (3) elimination of the Seabird By-Catch Reduction in Coastal Net Fisheries Project. In order to help focus public review, the revised Plan/Assessment includes the highlighting of additional language and strike-out lines where language has been removed from the draft Plan/Assessment published last February.

The Plan/Assessment is presented to the public by the Trustees responsible for restoration implementation under the consent decree and is consistent with the Natural Resource Damage Assessment Regulations found at 15 CFR, Part 990. The Plan/Assessment describes the affected environment and illustrates potential restoration alternatives to restore, rehabilitate, replace, or acquire the equivalent of natural resources injured in the *Tenyo Maru* oil spill and their environmental consequences.

The preferred restoration alternative selected by the Trustees is an integrative restoration approach that restores populations of injured resources, provides quality habitat, and allows natural recovery. Proposed restoration efforts will include the combination of protection and enhancement activities that have the greatest potential to restore the injured natural resources, with particular emphasis on seabirds. The Plan/Assessment proposes to restore injured resources by: (1) Restoring common murre or potentially, tufted puffin colonies within the Copalis National Wildlife Refuge; (2) contributing to an oiled wildlife rehabilitation center; (3) educating the public on the negative impacts caused by human disturbance of nesting seabird colonies; (4) protecting injured natural resources from further impacts of oil spills; (5) protecting marbled murrelet habitat; and (6) reducing siltation in rivers to aid salmon recovery.

Interested members of the public are invited to review and comment on the Plan/Assessment. Copies of the plan are available for review at the Fish and Wildlife Service's Western Washington Office in Lacey, Washington (510 Desmond Drive SE, Suite 102); the Olympic Coast National Marine Sanctuary in Port Angeles, Washington (Federal Building, 138 West 1st Street, Suite 7) and; the Makah Tribe at Neah Bay, Washington (Old Air Force Building #15). Additionally the Plan/Assessment will be available for review at the Fish and Wildlife Service's web site *http://www.r1.fws.gov,* at Administration's web site *http://www.darcnw.noaa.gov/tenyo.htm,* and at public libraries in Clallam, Jefferson, Grays Harbor, and Pacific Counties.

Written comments will be considered and addressed in the final Restoration Plan and Environmental Assessment at the conclusion of the restoration planning process.

Dated: January 3, 2000.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–334 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Maptech, Inc. This CRADA is for the purpose of research. The Research Plan of this CRADA addresses key technology areas that are of mutual interest to both USGS and Maptech. Specific research subjects include (1) hybrid map data sets, (2) web-based map catalog queries, and (3) web-based map updating. Maptech and USGS will jointly carry out the Research Plan to develop these key technologies.

The research activities will be executed in approximately 18 months and will end with the development of products for the 2002 winter Olympics in Salt Lake City, Utah. These products will be created utilizing the results of the research activities in this CRADA. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Chief, Systems and Technology, Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–5084, facsimile (703) 648–4706; Internet ''blowell@usgs.gov''.

FOR FURTHER INFORMATION CONTACT: Brent H. Lowell, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: December 15, 1999.

Kathryn R. Clement,

Associate Division Chief for Operations.

[FR Doc. 00–321 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Paperwork Reduction Act Request to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for the Class III Gaming Procedures, OMB No. 1076–0149, has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 25).

DATES: Submit your comments and suggestions on or before February 7, 2000.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Room 10102, 725 17th Street NW, Washington, DC 20503. Send a copy of your comments to, George Skibine, Bureau of Indian Affairs, Office of Indian Gaming Management, 1849 C Street NW, Mail Stop 2070–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection may be obtained by contacting George Skibine, 202–219–4066.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the need for Class III Gaming Procedures. A request for comments on this information collection was published in the **Federal Register** on August 4, 1999 (64 FR 42409–42410). No comments were received.

II. Request for Comments

Comments are invited on (a) whether the information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including through the use of automated collection techniques or other forms of information technology. Please note that comments, names and addresses are available for public review during regular business hours. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment sent to us. We will honor your request to the extent allowable by law.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, comments submitted in response to this notice should be submitted to OMB within 30 days in order to assure their maximum consideration.

III. Data

Title of the Information Collection: Class III Gaming Procedures.

OMB Approval Number: 1076–0149.

Summary of Collection of Information: The collection of information will ensure that the provisions of IGRA, the relevant provisions of State laws, Federal law and the trust obligations of the United States are met.

Affected Entities: Federally recognized tribes who submit Class III procedures for review and approval by the Secretary of the Interior.

Frequency of Response: Once, unless revised.

Estimated Number of Annual Responses: 12.

Estimated Time per Application: 320 hours.

Estimated Total Annual Burden Hours: 3,840 hours.

BIA Information Collection Clearance Officer: Ruth Bajema 202–208–2574

Dated: December 22, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–323 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Slots Only Compact between the Moapa Band of Paiute Indians and the State of Nevada, which was executed on October 18, 1999.

DATES: This action is effective January 7, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: December 9, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–324 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–079–00–1010–PA]

Seasonal Area Closures to All Unauthorized Public Uses of Lands Located Along Hauser Lake, Downstream from Canyon Ferry and 10 Miles Northeast of Helena, Montana

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: Notice is hereby given that every year from October 15th through December 31st all public lands lying in the 2.5-mile stretch from Canyon Ferry Dam downstream to Brown's Gulch Road and between the east shore of Hauser Lake and Johnny's Gulch Road are closed to public uses in portions of:

Principle Meridian, Montana

T. 10 N., R. 1 W., Secs. 5 and 6, and T. 11 N., R. 1 W, Sec. 32.

During the annual kokanee salmon spawning runs up Hauser Lake to Canyon Ferry Dam, bald eagles migrate into this area. These lands provide critical eagle habit for communal roosting, perching and foraging in the river. The purpose of this closure is to protect bald eagles and the habitat where they congregate.

Persons exempt from this closure order include employees and contractors of the Montana Department of Fish, Wildlife and Parks; Bureau of Land Management; and Bureau of Reclamation engaged in official business. Also, with permission from the Bureau of Land Management, Montana Power Company employees may enter the closure to do emergency repair of power lines and monitor for injured eagles.

Authority for this closure is cited under 43 CFR, Subpart 8364.1.

PENALTIES: Penalties are as prescribed under the Federal Land Policy and Management Act, 43 USC 1733(a). Violation is punishable by fines and/or imprisonment under 43 CFR 8360.0–7.

EFFECTIVE DATE: To comply with the Administrative Procedures Act, this Supplemental Rule will go into effect February 7, 2000, if no substantive negative comments are received, and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Chuck Neal of the Butte Field Office, Park Manager, 7661 Canyon Ferry Road, Helena, Montana 59602, telephone 406–475–3319.

Dated: December 22, 1999.

Merle Good,

Field Manager.

[FR Doc. 00–306 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(NV–030–00–1020–24)

Sierra Front/Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada) will be held as indicated below. Topics for discussion will include issues related to mine closures; the role and function of Federal and state Walker River Basin Assessment Teams; scoping of the Proposed Action for the Walker Lake EIS; review and comment on the lands acquisition criteria for funds generated by the Southern Nevada Public Lands Management Act; review of standards and guidelines for wild horse and burro management previously developed by the Mojave/Southern Great Basin Resource Advisory Council; review of the guiding principles for integrated watershed planning for the Carson River; a review of Black Rock Subcommittee value statements; review of the BLM preferred alternative for the Black Rock Management Plan, and other topics the council may raise.

All meetings, including field trips, are open to the public. Members of the public wishing to join field trips will need to provide their own transportation. The public may present written comments to the council. The public comment period for the council meeting will be at 4:30 p.m. on Thursday, January 27th. The agenda will be available on the internet by January 7, 2000, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, or who desire a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than January 24, 2000.

DATE AND TIME: The council will meet on Thursday, January 27, 2000, from 8 a.m. to 5 p.m. and Friday, January 28, 2000, from 8 a.m. to 4 p.m., in the main conference room of the Bureau of Land Management's Winnemucca Field Office, 5100 East Winnemucca Blvd, Winnemucca, NV 89445. Public comment will be received at the discretion of the Council Chairperson, as meeting moderator, with a general public comment period on Thursday, January 27, 2000, at 4:30 p.m. The council will take a field tour between 10 a.m. and 1:30 p.m. on January 27th; the public is invited to join the field trip, but will need to provide their own transportation.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6107.

Dated: December 14, 1999.

Terry Reed,

Manager, Winnemucca Field Office.

[FR Doc. 00–307 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1430–EU]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct sale of public lands in Boulder County, CO.

SUMMARY: The following described lands have been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

COC–62980:

6th Principal Meridian, Colorado

T. 1 N., R. 73 W., section 12: A portion of Lot 44

Containing 4.3 acres, more or less.

COC–63202:

6th Principal Meridian, Colorado:

T. 1 N., R. 72 W., section 6: Lot 166

Containing 2.32 acres, more or less.

COC–63203:

6th Principal Meridian, Colorado

T. 1 N., R. 73 W., section 1: That portion of the Johanna Lode, MS 12731, that is in conflict with the unpatented Warrior Lode mining claim

Containing 0.6 acres, more or less.

COC–63204:

6th Principal Meridian, Colorado

T. 1 N., R. 72 W., section 6: Lot 133

Containing 0.78 acres, more or less.

The land described is segregated by a previous segregation, COC–63471, dated December 21, 1999. The land is segregated from location, entry or patenting under the general mining laws and from appropriation under the public land laws, except as to land exchange, Recreation and Public Purposes lease and patent, or direct sale under Section 203 of the Federal Land Policy and Management Act of October 21, 1976 to resolve inadvertent trespass.

The land will be offered as follows: COC–62980 to Gary Munson; COC–63202 to Peter and Deborah Evangelista; COC–63203 to Thomas and Virginia Cardinale; and COC–63204 to Lenore Seiler. These lands will be offered to resolve historic unauthorized residential use. The patents, when issued, will contain a reservation of all minerals to the United States and will be subject to any existing rights of record. Detailed information concerning these reservations as well as specific conditions of the sale will be available upon request.

Any parcels not purchased when initially offered, will be offered competitively to the public through sealed bids on the next scheduled sale day, the 1st and 3rd Wednesdays of each month.

DATES: Interested parties may submit comments to Donnie Sparks, the Field Office Manager, at the address listed below until February 29th, 2000. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Bureau of Land Management, Royal Gorge Field Office, 3170 East Main St., Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Jan Fackrell, Realty Specialist (719) 269–8525.

Levi Deike,

Associate Field Office Manager.

[FR Doc. 00–378 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1430–ES; NVN 2347]

Notice of Realty Action; Termination of Recreation and Public Purposes Act Classification; Mineral County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purposes (R&PP) Classification N 2347 in its entirety. The land will be opened to the public land laws, including the mining laws.

EFFECTIVE DATE: The land will be open to entry effective 10 a.m. on February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, 775–885–6000.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, R&PP Classification N 2347 is hereby terminated in its entirety on the following described public land:

Mount Diablo Meridian, Nevada

T. 7 N., R. 35 E.,

Sec. 33, NE¼NE¼SW¼.

Containing 10.00 acres.

The classification made pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869 *et. seq.*), segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. The land was previously leased to Mineral County for a sanitary landfill. The lease has expired and the classification no longer serves any purpose.

At 10 a.m. on February 7, 2000, the land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 7, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on February 7, 2000, the land will also be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: December 23, 1999.

Carla James,

Acting Assistant Manager, Non-Renewable Resources.

[FR Doc. 00–308 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1430–ES; NVN 43262]

Notice of Realty Action; Termination of Recreation and Public Purposes Act Classification; Mineral County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purposes (R&PP) Classification N 43262 in its entirety. The land will be opened to the public land laws, including the mining laws.

EFFECTIVE DATE: The land will be open to entry effective 10 a.m. on February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, 775–885–6000.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, R&PP Classification N 43262 is hereby terminated in its entirety on the following described public land:

Mount Diablo Meridian, Nevada

T. 8 N., R. 34 E.,
Sec. 34, NW¼NW¼SW¼.
Containing 10.00 acres.

The classification made pursuant to the Act of June 14, 1926, as amended (43 U.S.C. 869 *et. seq.*), segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. The land was previously leased to Mineral County for a sanitary landfill. The lease has expired and the classification no longer serves any purpose.

At 10 a.m. on February 7, 2000, the land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on February 7, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on February 7, 2000, the land will also be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: December 23, 1999.

Carla James,

Acting Assistant Manager, Non-Renewable Resources.

[FR Doc. 00–309 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention to Request Clearance of Information Collection Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, WASO.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on a proposed information collection. Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; and (3) ways to enhance the quality, utility, and clarity of the information to be collected.

The National Park Service Volunteers-In-Parks Program (Pub. L. 91–357) collects information from volunteers for the purposes of recordkeeping and reimbursement.

DATES: Public comments on the proposed ICR will be accepted on or before March 1, 2000.

ADDRESSES: Send comments to Joy M. Pietschmann, National Park Service, Servicewide Volunteer Coordinator, 1849 C Street NW, Suite 7312, Washington, DC 20240.

All responses to this notice will be summarized and included in the requests for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Copies of draft agreement forms/reimbursement forms can be obtained from Joy M. Pietschmann, National Park Service, Servicewide Volunteer Coordinator, 1849 C Street NW, Suite 7312, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joy M. Pietschmann, 202–565–1050.

SUPPLEMENTARY INFORMATION:

Agreement for Individual Voluntary Services

Bureau Form Number: 10–85.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of Need: Official agreement between agency and volunteer/recordkeeping.

Agreement for Sponsored Voluntary Services

Bureau Form Number: 10–86.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of Need: Official agreement between agency and volunteer group/recordkeeping.

Claim for Reimbursement for Volunteer Expenses

Bureau Form Number: 10–67.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of Need: Recordkeeping/Reimbursement.

Automated data collection: At the present time, there is no automated way to collect this information.

Description of respondents: Volunteers entering into an agreement with the National Park Service and those requiring reimbursement for incidental expenses.

Estimated average number of respondents: Approximately 116,000 respondents.

Estimated average burden hours per response: ¼ burden hour per response.

Estimated annual reporting burden: 80 burden hours.

Leonard E. Stowe,

Information Collection Clearance Officer, National Park Service, WAPC.

[FR Doc. 00–368 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement and Comprehensive Management Plan for the Merced Wild and Scenic River, Yosemite National Park, Madera and Mariposa Counties, California; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub L.91–190, as amended), and the Council of Environmental Quality regulations (40 CFR Part 1500), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement identifying and evaluating five alternatives for a Merced Wild and Scenic River Comprehensive Management Plan for segments of the river within Yosemite National Park, California. Potential impacts, and appropriate mitigations, are assessed for each alternative. When approved, the plan will guide management actions during the next 15–20 years which will be necessary to preserve the free-flowing condition of the Merced Wild and Scenic River and to protect and enhance the ''Outstandingly Remarkable Values'' (ORVs) for which the river was designated, pursuant to the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271).

Proposal

The proposed Merced River Plan (Alternative 2—Preferred) would manage the Merced River corridor by modifying the ORVs and boundaries from the present situation to reflect current information. No change is proposed in the present classifications of the river segments. This alternative also proposes implementing criteria to guide future decision-making and management actions. These measures include establishing management zones to appropriately constrain use and development, and creation of a river protection overlay along the river and its banks with the intent that natural processes will prevail.

Alternatives

In addition to the proposal, four other alternatives are identified and analyzed. Alternative 1 (''no action'') is a continuation of the existing situation, based on the ORVs, boundaries, and classifications as published in the 1996 Draft Yosemite Valley Housing Plan/ Supplemental EIS. If approved, Alternative 1 will not impose decision-making criteria, and would establish neither management zoning nor a river protection overlay.

Alternative 3 differs from the actions proposed (Alternative 2) with regard to boundaries, in that limits would be generally one-quarter mile from the river—except that in El Portal, all of Yosemite Valley, and Wawona, the 100-year floodplain and adjacent meadows and wetlands would define the extent of the boundary. In addition, management zones are differently allocated, the effect of which would be to promote more resource protection within the river corridor than would Alternative 2.

Alternative 4 is the same as Alternatives 2 and 3, except that: (i) The boundary would extend a continuous one-quarter mile from the river throughout the park; (ii) a change in classification from ''Scenic'' to ''Recreational'' is proposed in the east end of Yosemite Valley and in Wawona; and (iii) the allocation of management zoning promotes the most resource protection overall. Alternative 5 is the same as Alternative 4, except that no river protection overlay is proposed, and the allocation of management zoning promotes the greatest diversity of visitor experience opportunities.

Planning Background

The draft Merced River Plan/EIS was prepared pursuant to the Wild and Scenic Rivers Act and National Environmental Policy Act. A Scoping Notice was published in the **Federal Register** on June 11, 1999; and the Notice of Intent was published on August 23, 1999. An intensive scoping phase was undertaken during June and July, 1999, which included a series of six public meetings. The invitation letter requesting input into the development of the draft Merced River Plan/EIS was sent to the park's general mailing list. In addition, the scoping effort was publicized via regional and local media and on the park's Webpage. As a result of this outreach, over 330 responses were received and used in the development of issues upon which preparation of the draft Merced River Plan/EIS was based. A summary of the scoping process is available on the park's Webpage (address noted below).

Public Meetings

In order to facilitate public review and comment on the draft Merced River Plan/EIS, the Superintendent has scheduled public meetings in the following California cities: January 31, Mammoth Lakes; February 1, Bakersfield; February 2, San Diego; February 3, Los Angeles; February 5, Palo Alto; February 6, Berkeley; February 8, Sacramento; February 9, Merced; February 10, Mariposa; February 11, El Portal; February 14, Yosemite Valley; February 15, Fish Camp. Meetings on February 5 and 6 begin at 11:30 am; all other sessions begin between 4 and 5:30 pm and end at 9 or 9:30 pm.

Participants are encouraged to review the document prior to attending a meeting. Detailed information on location and times for each of the public meetings will be published in local and regional newspapers several weeks in advance, broadcast via radio and television stations, and listed on the park's Webpage. Yosemite National Park management and planning officials will attend all sessions to present the draft Merced River Plan/EIS, to receive oral and written comments, and to answer questions.

Comments

The draft Merced River Plan/EIS will be direct mailed to the park's general mailing list. Copies will be available at park headquarters in Yosemite Valley, the Warehouse Building in El Portal, and at local and regional libraries (*i.e.,* San Francisco and Los Angeles). Also, the complete document will be posted on the Yosemite National Park Webpage (http://www.nps.gov/yose/planning).

Written comments must be postmarked (or transmitted by e-mail) not later than 60 days after the Environmental Protection Agency publishes the notice of filing of the draft Merced River Plan/EIS in the **Federal Register** (anticipated to occur on January 7, 2000). All comments should be addressed to the Superintendent, Attn: Merced River Plan, P.O. Box 577, Yosemite National Park, California 95389 (or e-mailed to: Yose__Planning@nps.gov). All comments received will be available for public review in the park's research library.

Decision Process

Depending upon the degree of public interest and response from other agencies and organizations, at this time it is anticipated that the Final Merced River Plan/EIS will be completed during June, 2000; availability of the document will be duly noticed in the **Federal Register**. Subsequently, notice of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty (30) days after the final document is distributed. This is expected to occur by mid-July, 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation

is the Superintendent, Yosemite National Park.

Dated: December 22, 1999.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 00–367 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/ Environmental Impact Statement, Fort Vancouver National Historic Site, Washington

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Fort Vancouver National Historic Site.

A General Management Plan sets forth the basic management philosophy for a unit of the National Park System and provides the strategies for addressing issues and achieving identified management objectives for that unit. In the GMP/EIS and its accompanying public review process, the National Park Service will formulate and evaluate the environmental impacts of a range of alternatives to address distinct management strategies for the park, including resource protection and visitor use. The plan will guide the management of natural and cultural resources and visitor use of those resources for the next 15 years. Development concept plans for selected facilities may be included with the GMP.

Scoping is the term given to the process by which the scope of issues to be addressed in the GMP/EIS is identified. Representatives of Federal, State and local agencies, American Indian tribes, private organizations and individuals from the general public who may be interested in or affected by the proposed GMP/EIS are invited to participate in the scoping process by responding to this Notice with written comments. All comments received will become part of the public record and copies of comments, including any names, addresses and telephone numbers provided by respondents, may be released for public inspection.

Among the major issues likely to be addressed in the Fort Vancouver National Historic Site GMP/EIS are: (1) Interpretation and resource management, including the NPS role in relation to Vancouver National Historic Reserve; (2) partnership opportunities with the McLoughlin House National Historic Site; (3) cultural resources research and protection; (4) accessibility and availability of park collections; (5) park maintenance and sustainability; and (6) park administration. A full range of alternatives, including ''no action'', will be considered in the GMP/EIS to address these and other issues that may emerge during the planning process.

The draft GMP/EIS is expected to be available for public review by the fall of 2000, with the final version of the GMP/EIS and the Record of Decision to be completed by summer 2001.

Because the responsibility for approving the GMP/EIS has been delegated to the National Park Service, the EIS is a ''delegated'' EIS. The responsible official is John J. Reynolds, Regional Director, Pacific West Region, National Park Service.

DATES: Public scoping meetings will be held on Wednesday, January 12, 2000, 6:30–9 p.m. at the Vancouver Water Resources Education Center, 4600 SE Columbia Way, Vancouver, WA, and Thursday, January 13, 2000, 2–4:30 p.m., at the McLoughlin House National Historic Site, 719 Center Street, Oregon City, OR. Written comments on the scope of the issue and alternatives to be analyzed in the GMP/EIS should be received no later than March 1, 2000.

ADDRESSES: Written comments concerning the GMP/EIS should be sent to Superintendent, Fort Vancouver National Historic Site, 612 E. Reserve Street, Vancouver, WA 98661.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Vancouver National Historic Site, at the above address, or phone (360) 696–7655, ext. 13.

Dated: December 16, 1999.

Rory D. Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 00–400 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Boston Harbor Islands Advisory Council will meet on Thursday, February 10, 2000. The meeting will convene at 4:00 pm at the New England Aquarium, in the Conference Center, Long Wharf, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Approval of minutes from December 9, 1999.

2. Review status and progress of Spectacle Island: sustainability issues.

3. Report from nomination committee: status of interest groups nomination.

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA 02110, telephone (617) 223–8667.

Dated: December 28, 1999.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 00–366 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Mojave National Preserve Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mojave National Preserve Advisory Commission will be held January 24 and 25, 2000, assemble at 1:00 p.m. at the Primm Valley Hotel Conference Room, Primm, Nevada.

The agenda: Revisions to the General Management Plan and Value Analysis for Kelso.

The Advisory Commission was established by Public Law 103–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are: Micheal Attaway, Irene Ausmus, Rob

Blair, Peter Burk, Dennis Casebier, Donna Davis, Kathy Davis, Gerald Freeman, Willis Herron, Elden Hughes, Claudia Luke, Clay Overson, Norbert Riedy, Mal Wessel.

This meeting is open to the public.

May Martin,

Superintendent, Mojave National Preserve.

[FR Doc. 00–398 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Tallgrass Prairie National Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for a meeting of the Tallgrass Prairie National Preserve Advisory Committee. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

DATES, TIMES, AND ADDRESSES: Wednesday, February 16, 2000; 9 a.m. until business and public comment are complete; Chase County Community Building, Swope Park, Walnut and County Road, Cottonwood Falls, Kansas. This business meeting is open to the public. Space and facilities to accommodate members of the public are limited and people will be accommodated on a first-come, first-served basis. An agenda will be available from the Superintendent 1 week prior to the meeting. Attendees are encouraged to participate in these meetings. If you would like to address the committee, please contact the Superintendent by February 11, at the address or telephone number listed below requesting that your name be added to the agenda. Depending on the number of requests, the Superintendent has the right to limit the amount of time each participant is allowed to address this committee.

FOR FURTHER INFORMATION CONTACT: Steve Miller, Superintendent, Tallgrass Prairie National Preserve, P.O. Box 585, Cottonwood Falls, Kansas 66845; or telephone him at 316–273–6034.

SUPPLEMENTARY INFORMATION: The Tallgrass Prairie National Preserve was established by Public Law 104–333, dated November 12, 1996.

Dated: December 10, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 00–399 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 24, 1999. Pursuant to 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 24, 2000.

Paul R. Lusignan,

Acting Keeper of the National Register.

COLORADO

Bent County

Thompson House, 605 Cottonwood Ave., Las Animas, 99001702

El Paso County

McGregor Hall (Colorado College MPS), 930 N. Cascade Ave., Colorado Springs, 99001705

Ticknor Hall (Colorado College MPS), 926 Cascade Ave., Colorado Springs, 99001704

FLORIDA

Lake County

Methodist Episcopal Church, South, at Umatilla, 100 W. Guerrant St., Umatilla, 99001707

GUAM

Guam County

Ha. 62–76 Japanese Midget Attack Submarine, Chapel Rd. near barracks 14, Comnavmarianas, 99001706

ILLINOIS

Cook County

St. Matthey Evangelical Lutheran School, 2101–2107 W. 21st St., Chicago, 99001710

Grundy County

Morris Wide Water Canal Boat Site, East Washington St., Morris, 99001708

Madison County

Hotel Stratford, 229 Market St., Alton, 99001709

Vermilion County

Dale Building, 101–1–3 N. Vermillion St., Danville, 99001711

LOUISIANA

East Baton Rouge Parish

Beauregard Town Historic District (Boundary Increase), Roughly bounded by Mayflower, I–10, S. 10th St., and Royal and St. Charles Sts., Beauregard Town, 99001712

MICHIGAN

Leelanau County

Lake Leelanau Narrows Bridge (Highway Bridges of Michigan MPS) M–204 over Lake Leelanau Narrows, Leland Township, 99001732

Lenawee County

Van Wagoner, Murray D., Memorial Bridge (Highway Bridges of Michigan MPS) MI 156 over Silver Cr., Morenci, 99001731

Oakland County

Derby Street—Grand Trunk Western Railroad Bridge (Highway Bridges of Michigan MPS) Derby St. over GTW Railroad, Birmingham, 99001730

Gillespie Street—Clinton River Bridge (Highway Bridges of Michigan MPS) Gillespie St. over Clinton R., Pontiac, 99001729

St. Clair County

Masters Road—Belle River Bridge (Highway Bridges of Michigan MPS) Masters Rd. over Belle R., Riley Township, 99001728

OREGON

Benton County

Avery—Helm Historic District, Roughly bounded by SW 2nd, 6th, and Jefferson Sts. and OR 20/34 By-Pass, Corvallis, 99001716

Hood River County

Butler Bank, 301 Oak Ave., Hood River, 99001713

Multnomah County

Emerson Apartments, 5310 n. Williams Ave., Portland, 99001714

Gresham Carnegie Library, 410 N. Main St., Gresham, 99001715

VIRGINIA

Arlington County

Fort C. F. Smith Historic District, 2411 24th St., Arlington, 99001719

Campbell County

Walnut Hill, Rte. 2, Lawyers Rd., Lynchburg vicinity, 99001724

Henrico County

Emmanuel Church at Brook Hill, 1214 Wilmer Ave., Henrico, 99001720

Loudoun County

Vestal's Gap Road and Lanesville Historic District, 21544 Cascades Pkwy., Sterling, 99001722

Page County

Luray Norfolk and Western Passenger Station, Jct. Campbell St. and Norfolk Southern Railway, Luray, 99001718

Rockbridge County

Mountain View Farm, 199 Fredericksburg Rd., Lexington, 99001723

Richmond Independent City

Monroe Ward, Roughly Main and Cary St., and 3rd to Jefferson Sts., Richmond, 99001717

Westbourne, 330 Oak Ln., Richmond, 99001721

WISCONSIN

Eau Claire County

Chamberlin, Clarence, House (Eau Claire MRA) 322 W. Grand Ave., Eau Claire, 99001725

Chamberlin, Clarence, House (Eau Claire MRA) 322 W. Grand Ave., Eau Claire, 99001726

WYOMING

Park County

Stock, Paul, House, 1300 Sunset Dr, Cody, 99001727

[FR Doc. 00–335 Filed 1–6–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–407]

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted a request for emergency processing for review and clearance of questionnaires to the Office of Management and Budget (OMB). The Commission has requested OMB approval of this submission by COB January 21, 2000.

EFFECTIVE DATE: December 21, 1999.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–407, Foundry Coke: A Review of the Industries in the United States and China, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Committee on Ways and Means of the U.S. House of Representatives (the Committee). The Commission expects to deliver the results of its investigation to the Committee by August 25, 2000.

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* 3.

(2) *Title of form:* Foundry Coke: A Review of the Industries in the United States and China—Questionnaires for U.S. Producers, Foreign Producers, and Purchasers/Importers/Brokers.

(3) *Type of request:* new.

(4) *Frequency of use:* U.S. Producer, Foreign Producer, and Purchaser/Importer/Broker questionnaire, single data gathering, scheduled for 2000.

(5) *Description of respondents:* U.S. firms which produce, purchase, import, or broker foundry coke and Chinese producers of foundry coke.

(6) *Estimated number of respondents:*
8 (U.S. producer questionnaire)
15 (Foreign producer questionnaire)
75 (Purchaser/Importer/Broker questionnaire)

(7) *Estimated total number of hours to complete the forms:* 1,960 hours.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Edmund Cappuccilli (202) 205–3368. Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503.

ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: January 4, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–372 Filed 1–6–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos 701–TA–286 (Review) and 731–TA–365 (Review)]

Industrial Phosphoric Acid From Israel and Belgium

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review investigations.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Dong Jun Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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).

SUPPLEMENTARY INFORMATION: On July 1, 1999, the Commission established a schedule for the conduct of the subject full five-year reviews (**Federal Register** 64 FR 38474, July 16, 1999). On December 17, 1999, the Commission received a request from a party to the full five-year reviews to extend the period of time for making its determinations in these proceedings by the full 90 days authorized by 19 U.S.C. 1675(c)(5). The Commission, therefore, is revising its schedule to make the appropriate adjustments in the scheduling of these reviews.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than March 22, 2000; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 27, 2000; the deadline for filing prehearing briefs is March 21, 2000; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 30, 2000; the deadline for filing posthearing briefs is April 6, 2000; the Commission will make its final release of information on April 28, 2000; and final party comments are due on May 2, 2000.

For further information concerning these investigations see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–370 Filed 1–6–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–864–867 (Preliminary)]

Certain Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia, and the Philippines

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–864–867 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Germany, Italy, Malaysia, and the Philippines of stainless steel butt-weld pipe fittings, provided for in subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by February 14, 2000. The Commission's views are due at the Department of Commerce within five business days thereafter, or by February 22, 2000.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 29, 1999.

FOR FURTHER INFORMATION CONTACT: D.J. Na (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on December 29, 1999, by Alloy Piping Products, Inc., Shreveport, LA; Flowline Div. of Markovitz Enterprises, Inc., New Castle, PA; Gerlin, Inc., Carol Stream, IL; and Taylor Forge Stainless, Inc., North Branch, NJ.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 19, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact D.J. Na (202–708–4727) not later than January 14, 2000, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 24, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: December 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–371 Filed 1–6–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immgration and Naturalization Service

[INS No. 2032–99]

Notice of Intent To Prepare a Draft Environmental Impact Statement for the Construction of an International Border Fence and Roads in San Diego, California

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The Immigration and Naturalization Service will prepare a Draft Environmental Impact Statement for the construction of a secondary fence and patrol roads along the United States/Mexico border in the vicinity of San Diego, California. Related infrastructure includes north/south gate access, maintenance corridors, lighting, and remote video surveillance components. these actions are intended to gain and maintain control of the border to further prevent the influx of illegal entry and drugs into the United States.

Prior National Environmental Policy Act (NEPA) documents, developed to address those project portions which have been previously constructed, will be incorporated into the DESI by reference. Direct project impacts of the remaining portions of the project, as well as cumulative impacts of the comprehensive project, will also be addressed. Pursuant to the Council on environmental Quality's regulations, a scoping process will be conducted. As part of this process, a public workshop/open house will be held to identify issues of concern for analysis during the NEPA process.

Alternatives

Alternatives to be covered by the DESI will include various alignments and configurations within the narrow geographic scope dictated by the international border. Other alternatives (to include the required ''No Action'' alternative) identified will also be fully examined.

Scoping Process

During the preparation of the EIS, there will be numerous opportunities for public involvement, including scoping and review.

DEIS Preparation

Public notice will be given in the **Federal Register** concerning the availability of the DESI for public review and comments.

FOR FURTHER INFORMATION CONTACT: Manny Rodriguez, Chief, Policy and Planning, Immigration and Naturalization Service, Facilities and Engineering Branch, 425 I Street, NW, Washington, DC 20536, Room 2060, Attn: Kevin Feeney, telephone: 202–353–9412, or Dr. Rebecca Griffith, INS Architecture Engineering Resource Center, U.S. Army Corps of Engineers, Fort Worth District, 819 Taylor Street, Room 3A28, Fort Worth, Texas, 76102–0300, telephone: (817) 978–3389.

Dated: December 29, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–479 Filed 1–5–00; 11:55 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1256]

RIN 1121–ZB90

Notice of the Fiscal Year 2000 Missing and Exploited Children's Program Proposed Program Plan

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Proposed program plan for public comment.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing its Missing and Exploited Children's Program Proposed Program Plan for Fiscal Year (FY) 2000 and soliciting public comment on the overall plan and priorities. After analyzing the public comments on this Proposed Program Plan, OJJDP will issue its final FY 2000 Missing and Exploited Children's Program Plan.

DATES: Comments must be submitted by March 7, 2000.

ADDRESSES: Public comments should be mailed to Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Missing and Exploited Children's Program, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Missing and Exploited Children's Program is administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Pursuant to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, Section 406 (a)(2), 42 U.S.C. 5776, the Administrator of OJJDP is publishing for public comment a Proposed Program Plan for activities authorized by Title IV of the JJDP Act, the Missing Children's Assistance Act, 42 U.S.C. 5771 *et seq.*, that OJJDP proposes to continue in FY 2000. Taking into consideration comments received on this Proposed Program Plan, the Administrator will develop and publish a Final Program Plan that describes the program activities OJJDP intends to fund during FY 2000 using Title IV funds.

OJJDP does not propose any new Missing and Exploited Children's programs for FY 2000. No proposals, concept papers, or other types of applications should be submitted.

Background

For the purposes of Title IV, the term ''missing children'' refers to children who have been abducted by either a family or nonfamily member and includes children who have been abducted within the United States and those who have been abducted from the United States to a foreign country. The term ''child exploitation'' refers to any criminal activity that focuses on children as sexual objects and includes sexual abuse, child pornography, and prostitution.

The issues involving missing and exploited children are complex and diverse. Since 1984, OJJDP has supported a variety of research projects designed to provide the knowledge needed to make informed policy decisions and meet the information needs of the field. These projects include the first National Incidence Study of Missing, Abducted, Runaway, or Thrownaway Children (NISMART); Abduction Homicide Investigation Solvability Factors; Obstacles to the Recovery and Return of Parentally Abducted Children; and the Missing Children and Criminal Justice Response to Parental Abduction Cases. This research indicated that abduction and exploitation can have a devastating impact on children and families. Lessons learned from research also provide the basis for this proposed program plan.

A decade ago, NISMART (1988) provided valuable data on family and nonfamily abductions and on child exploitation. The following are some of the major findings at that time: an estimated 354,100 family abductions annually; between 3,200 and 4,600 short-term nonfamily abductions reported yearly to law enforcement; an estimated 114,600 attempted nonfamily

abductions; 446,700 runaways; and approximately 127,100 thrownaway children.

The NISMART findings are in the process of being updated (see the program description under ''Continuation Programs'' below). Preliminary results from NISMART 2, the second national study to measure the incidence of missing, abducted, runaway, or thrownaway children, are expected to be available in mid-2000. NISMART 2 will:

- Update information on the characteristics of the children involved in missing child episodes and the nature of these episodes.
- Update estimates of the number of these episodes reported to police, the number of children known to be missing, and the number of missing children who are recovered.
- Include an aggregate estimate of missing children in all categories.
- Estimate the incidence of sexual assault and exploitation of children and youth by both family and nonfamily perpetrators.
- Analyze any significant changes in the numbers of missing, abducted, runaway, or thrownaway children since 1988, the focal year for the initial NISMART data collection.
- Improve criteria for the identification and classification of missing child episodes.
- Permit the identification and counting of children involved in certain categories of episodes (e.g., lost children) whose importance was first recognized during the data analysis for the initial NISMART study.

The information from NISMART 2 will enable parents and the public to better understand the dimensions of the problem and identify those factors that place children at greatest risk of becoming missing. Practitioners and policy makers need this new information to design programs and policies that will ensure the safety of our Nation's children.

The initial NISMART study did not report on the number of children who are abducted within the United States and who are taken to or illegally retained in foreign countries, nor will NISMART 2. While accurate data on the number of children illegally abducted is unknown, in 1998 the U.S. Department of State maintained a caseload of approximately 1,000 outgoing (from the United States to another country) international abduction cases. An estimated 19 children are abducted from the United States or are illegally retained in foreign countries each week. The average age of these children is 5½ years old. Most incidents involve a formal determination of custody prior to the abduction. Only 30 percent of these cases are resolved with the return of the child to the United States.[1] It is reasonable to project that these abductions will increase as the trend continues toward a global society characterized by fewer restrictions on international travel and increasing numbers of cross-cultural marriages, separations, and divorces.

In 1993, OJJDP awarded a research grant to the Washington State Attorney General's Office to identify the characteristics of successful child abduction homicide investigations. The study examined cases from urban, suburban, and rural areas and included both large and small law enforcement agencies. The study found that in most instances, the offender was known to the victim, the victim was abducted within one-quarter mile of his or her last known location, and the victim was selected on the basis of opportunity. Sex was the motivating factor behind offenders' behavior in the great majority (70 percent) of the cases. More than two-thirds of the time, the initial call to law enforcement was to report a runaway or missing child. The research indicated that for these cases, timely, thorough, and well-organized neighborhood canvassing is critical to identifying the offenders.

The advent of the information age has exposed children to a new threat. Industry experts estimate that more than 10 million children currently go online and, by the year 2002, 45 million children will use cyberspace to talk with friends, explore the universe, or complete homework assignments. In cyberspace, children are a mouse click away from exploring museums, libraries, and universities. Unfortunately, they are also a mouse click away from sexual exploitation and victimization.

While providing almost limitless opportunities to learn, the Internet has also become the new schoolyard for predators seeking children to victimize. Cloaked in the anonymity of cyberspace, sex offenders can seek victims with little risk of detection. They can roam from chatroom to chatroom trolling for children susceptible to manipulation and victimization. Chatroom stalking circumvents conventional safeguards and provides sex offenders virtually unlimited opportunity to have unsupervised contact with children. This development has important implications for parents, educators, and law enforcement.

Victimization of children can have devastating effects on the child and the family. There are clear linkages between early childhood victimization and later violent behavior, such as school violence, drug abuse, and adult criminality. Since 1986, OJJDP has sponsored three longitudinal studies to improve understanding of serious delinquency, violence, and drug use. Referred to as the Program of Research on the Causes and Correlates of Delinquency, these studies have confirmed the linkage between early childhood victimization and maltreatment and later criminal behavior. A history of childhood maltreatment is associated with at least a 25 percent increased risk of involvement in serious and violent delinquency, drug use, poor school performance, mental illness, and teenage pregnancy. A history of childhood maltreatment nearly doubles the risk that a teenager will experience multiple problems during adolescence.[2] Furthermore, in a 1996 study of 1575 court cases, Widom confirmed that neglect may be as damaging as physical abuse.[3] A 1997 study conducted by the Crime Victims Research and Treatment Center, Medical University of South Carolina, also demonstrated that childhood victimization is a risk factor in developing major mental health problems and alcohol abuse.[4]

Children who have been abducted and returned to their families often live in fear of being reabducted. When a child is returned to his or her family after an extended period of time, even limited psychological support is seldom provided to either the child or the family. Almost four-fifths of victims and families of missing children do not receive mental health or counseling services.

For families of missing and exploited children, the impact of these crimes can have equally devastating effects. Emotions range from fear and anger to a sense of helplessness. Parents are often on their own when searching for their children. Like the victims of abductions, many parents do not receive

[1] Chiancone, J., and Girdner, L.1998. *Issues in Resolving Cases of International Child Abductions.* Unpublished manuscript. Chicago, IL: American Bar Association.

[2] Kelley, B.T., Thornberry, T.P. and Smith, C.A. 1997. *In the Wake of Childhood Maltreatment.* Bulletin. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

[3] Widom, C.S. 1996. *The Cycle of Violence Revisited.* Research Preview. Washington, DC: Department of Justice, Office of Justice Programs, National Institute of Justice.

[4] Kilpatrick, D., and Saunders, B.1997. *Prevalence and Consequences of Child Victimization.* Research Preview. Washington, DC: U.S. Department of Justice, National Institute of Justice.

the necessary support or counseling services to help them cope with this personal tragedy. When a child returns, the process of reunification typically takes no more than 15 minutes with no psychological or social service support. In most cases, the only nonfamily person present is a police officer.

These findings provide the research basis for the programs and activities set forth in the proposed Fiscal Year 2000 program plan.

Background to the Fiscal Year 2000 Program Plan

In 1984, Congress enacted the Missing Children's Assistance Act, establishing the Missing and Exploited Children's Program (MECP) within OJJDP. Under the Act, MECP is responsible for coordinating Federal missing and exploited children activities, providing a national resource center and clearinghouse, and supporting research, training, technical assistance, and demonstration programs to enhance the overall response to missing children and their families.

In FY 1999, OJJDP's Missing and Exploited Children's Program made significant advances in the course of meeting its responsibilities to provide services to children, parents, educators, prosecutors, law enforcement, and other professionals and interested persons working on child safety issues. Some of the notable accomplishments are summarized below.

OJJDP supported work on a soon to be released Spanish version of the publication, *When Your Child Is Missing: A Family Survival Guide.* This is the first document published by OJJDP to be translated into a foreign language. Written by parents for parents, the Guide provides firsthand insights into what families should do and expect when their children are missing. Copies of the English and Spanish versions of the Guide are available through OJJDP's Juvenile Justice Clearinghouse (JJC) at 800–638–8736.

MECP continued to build on the parents helping parents theme through the Team Hope Program. Team Hope uses specially trained parents to serve as mentors and provide advice to families who are undergoing a missing child episode. In FY 1999, more than 20 parent volunteers began assisting other parents with advice and information about available resources to assist their search for their children.

MECP released two additional publications in the Portable Guide series: *Forming a Multidisciplinary Team To Investigate Child Abuse* and *Use of Computers in the Sexual Exploitation of Children.* Additional guides scheduled for release in FY 2000 include *Cultural Competence and Child Abuse Investigations, Risk Profiles for Abduction and Appropriate Interventions,* and *Uniform Child Custody and Jurisdiction and Enforcement Act (UCCJEA): Implications for District Attorneys and Investigators.*

MECP chairs the Federal Agency Task Force on Missing and Exploited Children as part of its coordination responsibilities. In FY 1999, an ad hoc subcommittee completed an assessment of the Federal response to international child abductions. That assessment resulted in a series of recommendations regarding agency roles, responsibilities, and jurisdiction, sent in a special report to the Attorney General and subsequently forwarded to Congress for review and consideration.

In FY 1999, MECP, in a collaborative process with representatives from the Federal Bureau of Investigation (FBI), United States Customs Service, Postal Inspection Service, National Center for Missing and Exploited Children and the OJJDP Internet Crimes Against Children Task Forces (ICAC Task Force), developed investigative and operational standards (Standards) for the ICAC Task Force Program. The Standards were designed to coordinate investigations, foster information sharing, ensure the probative quality of undercover operations, and facilitate interagency case referrals through standardization of investigative practices. As such, they express broad themes that pertain to target selection, supervision and management practices, media releases, undercover conduct, and evidence collection procedures.

In FY 1999, NCMEC played a critical role in making the electronic world of cyberspace a safer place for children. More than 700 law enforcement personnel, ranging from executives to frontline personnel, participated in NCMEC-sponsored Protecting Children Online courses. More than 8,500 leads were received by the CyberTipline from children, parents, and other individuals concerned about the safety of children on the Internet. Some of these leads resulted in the arrest of individuals using the Internet to identify children for sexual molestation while others led to the recovery of children enticed from home by sex offenders.

In FY 1999, through a cooperative agreement with Fox Valley Technical College (FVTC), OJJDP sponsored training or technical assistance for more than 4,500 law enforcement, prosecutors, social services, and health and family services professionals. Training and technical assistance integrates current research, state-of-the-art practice and knowledge, and new technologies into courses that are designed to increase skills and abilities, enhance service coordination and delivery, and improve the investigation and handling of missing and exploited children's cases. Specialized technical assistance was provided to State and local practitioners and juvenile justice agencies relating to Internet crimes against children, information sharing, response planning, child protection legislation, and multidisciplinary team development.

Finally, the Attorney General again participated in the annual Missing Children's Day Ceremony to commemorate America's missing children and to recognize extraordinary efforts by law enforcement officers working to reunite children and their families. The Attorney General presented the NCMEC Law Enforcement Officer of the Year Award to Postal Inspector Robert Adams, Fort Worth, TX, and Texas Ranger Matt Cawthon and Detective Thomas Noble of the Bellmead, TX, Police Department in recognition of their excellent work in recovering missing children. The Attorney General also presented for the first time, the Child Exploitation Unit Award for outstanding service, to the Dallas Police Department.

Fiscal Year 2000 Programs

In FY 2000, OJJDP proposes to continue its concentration on programs that are national in scope, promote awareness, and enhance the Nation's response to missing and exploited children and their families. While no funds are expected to be available for new program initiatives in FY 2000, input from the field on the continuation programs proposed and on program and service needs that should be considered and addressed will assist the Office in making final plans for FY 2000 and in determining future program priorities.

Continuation Programs

FY 2000 Title IV continuation programs are summarized below. Available funds, implementation sites, and other descriptive information are subject to change based on the plan review process, grantee performance, application quality, fund availability, and other factors. No competitive applications would be solicited for any of these programs in FY 2000.

National Resource Center and Clearinghouse

In FY 1999 Congress provided funding to continue and expand the programs, services, and activities of the

National Center for Missing and Exploited Children (NCMEC), a national resource center and clearinghouse dedicated to missing and exploited children and their families. As provided in Title IV, the functions of the Center include, but are not limited to, the following:

- Provide a toll-free hotline where citizens can report investigative leads and parents and other interested individuals can receive information concerning missing children.
- Provide technical assistance to parents, law enforcement, and other agencies working on missing and exploited children's issues.
- Promote information sharing and provide technical assistance by networking with regional nonprofit organizations, State missing children clearinghouses, and law enforcement agencies.
- Develop publications that contain practical, timely information.
- Provide information regarding programs offering free or low-cost transportation services that assist in reuniting children with their families.

In FY 1999, NCMEC's toll-free hotline received more than 115,000 calls ranging from citizens reporting information concerning missing children to requests from parents and law enforcement for information and publications. NCMEC also assisted in the recovery of hundreds of children, disseminated millions of missing children's photographs, distributed nearly 2.5 million publications, and sponsored a national training workshop for State missing children clearinghouses and relevant nonprofit organizations. NCMEC also continues to assist the State Department in carrying out its Hague Convention responsibilities by processing incoming applications for children abducted to the United States and is broadening its efforts to recover American children abducted to foreign countries.

In FY 1999, NCMEC continued to perform the national resource center and clearinghouse functions and broadened the ICAC training program with development of 1-day awareness seminars for communities seeking to improve their response to these offenses. NCMEC is also sponsoring research to determine the incidence of young people receiving unwanted sexual solicitations or who are unwillingly exposed to pornography via the Internet and the context in which the exposure or solicitation occurred and to evaluate current knowledge of children and parents in how to respond to these episodes. Efforts this year involved development and field testing of the survey instrument. Preliminary results are expected in FY 2000.

A 1-year cooperative agreement will be awarded to NCMEC in FY 2000 for continued performance of national resource center and clearinghouse functions and operation of the Jimmy Ryce Law Enforcement Center.

Internet Crimes Against Children Regional Task Force Development

In 1998, the Missing and Exploited Children's Program (MECP) awarded $2.4 million to ten State and local law enforcement agencies to develop and implement regional multijurisdictional, multiagency responses to prevent and combat Internet crimes against children (ICAC). ICAC Task Forces serve as regional sources of prevention, education, and investigative expertise to provide assistance to parents, teachers, law enforcement, and other professionals working on child victimization issues. In FY 1999, ICAC Task Forces worked with representatives from the MECP, FBI, United States Customs Service, Postal Inspection Service, and the National Center for Missing and Exploited Children (NCMEC) to develop investigative and operational standards for the ICAC Task Force Program. These standards are designed to coordinate investigations, foster information sharing, ensure the probative quality of undercover operations, and facilitate interagency case referrals through standardization of investigative practices.

On November 9, 1999, OJJDP, in cooperation with the National School Boards Association and NCMEC, sponsored a national teleconference titled *On-Line Safety for Children: A Primer for Parents and Teachers.* The teleconference was designed to raise awareness of Internet safety, encourage the development of safe on-line practices, and identify strategies for preventing Internet crimes against children. The teleconference was directed toward educators, school administrators, law enforcement, community leaders, parents, policy makers, and others who are interested in child safety on the Internet.

In FY 2000, MECP plans to sponsor a series of town meetings to promote awareness of the importance of community-wide interdiction and intervention as it relates to Internet crimes against children. Based on the availability of funds, MECP will also make supplemental awards to the ten jurisdictions currently participating in the ICAC program, and will support a minimum of eight new ICAC sites.

Missing and Exploited Children Training and Technical Assistance Program

In FY 1998, Fox Valley Technical College (FVTC) was awarded a 3-year cooperative agreement to provide training and technical assistance to law enforcement, prosecutors, and health and family services professionals. The purpose of this program is to ensure the provision of up-to-date, practical training and technical assistance for professionals working on missing and exploited children issues. Training focuses on investigative techniques, interview strategies, comprehensive response planning, media relations, lead and case management, and other topics related to missing and exploited children's cases.

Under the Missing and Exploited Children Training and Technical Assistance Program, FVTC offers five courses: Responding to Missing and Abducted Children, Child Sexual Exploitation Investigations, Child Abuse and Exploitation Investigative Techniques, Missing and Exploited Children, and Child Abuse and Exploitation Team Investigation Process. FVTC also provides technical assistance and support to the Federal Agency Task Force on Missing and Exploited Children and its related subcommittees; develops documents and publications related to missing and exploited children; convenes special focus groups or meetings to facilitate communication and problem solving among youth service workers and professionals at the Federal, State, and local level; and performs special projects as directed by OJJDP such as the design of protocols for handling and responding to cases involving missing and exploited children, establishment of a response planning system, and conducting a case review of child protection legislation. FVTC would continue to provide these training and technical assistance services in FY 2000.

Alzheimer's Disease and Related Disorders Association's Safe Return Program

OJJDP administers the Safe Return program designed to facilitate the identification and safe return of memory-impaired persons who are at risk of wandering from their homes. In FY 1999, the Safe Return Program increased its registration database to more than 53,000 individuals and assisted in the return of 980 wanderers.

In FY 2000, the program will continue the national registry and the 24-hour toll-free hotline. In addition, the Safe Return Program would continue work

on the model community program and expand training and technical efforts focusing on law enforcement and emergency personnel.

National Crime Information Center (NCIC)

OJJDP proposes to continue to transfer funds to the Department of Justice's Justice Management Division through a reimbursable agreement to continue NCMEC's online access to the FBI's National Crime Information Center (NCIC) Wanted and Missing Persons files. The ability to verify NCIC entries, communicate with law enforcement through the Interstate Law Enforcement Telecommunication System, and be notified of life-threatening cases through the NCIC flagging system is crucial to NCMEC's mission of providing advice and technical assistance to law enforcement.

NISMART 2

Under the Missing Children's Assistance Act, Title IV, OJJDP is required to conduct periodic studies of the scope of the problem of missing children in the United States. The first national study was conducted in 1988, with results published in 1990. In FY 1995, OJJDP funded NISMART 2, the second national study of missing, abducted, runaway, and thrownaway children in the United States. Temple University received funding in FY 1995 to conduct this study, which builds on the strengths and addresses some of the weaknesses of the initial NISMART study. Temple has contracted with the University of New Hampshire Survey Research Laboratory and Westat, Inc., to carry out specific components of the study and provide extensive background knowledge about the particulars of the original NISMART study. Specifically, the NISMART 2 study will (1) revise and enhance NISMART definitions, (2) survey approximately 23,000 households by telephone to estimate how many children are missing on an annual basis, (3) survey law enforcement agencies to determine the annual frequency of child abductions, (4) survey approximately 10,000 youth by telephone to understand what happens during missing children episodes, (5) interview directors of residential facilities and institutions to determine how many residents run away, and (6) analyze data on thrownaway children from a related survey of community professionals. The findings from these surveys will provide updated estimates on the number of missing children each year in the United States. Preliminary NISMART 2 findings will be available in mid-2000, and a final report will be completed in FY 2000. An OJJDP Bulletin documenting the scope of the research, definition revisions, and methodology changes will be published in FY 2000.

OJJDP support for NISMART 2 would continue in FY 2000.

Parent Resource Support Network (Team Hope)

In FY 1997, OJJDP entered into a competitively awarded 3-year cooperative agreement with Public Administration Services (PAS) to develop and maintain a parent support network. The goal of this project is to stimulate development of a network of screened and trained parent volunteers who will provide assistance and advice to other victim parents.

In FY 2000, PAS would train additional parent volunteers and engage in activities to market the program.

Jimmy Ryce Law Enforcement Training Center Program

In FY 1997, OJJDP, in partnership with the National Center for Missing and Exploited Children, the FBI, and OJJDP grantee Fox Valley Technical College (FVTC), developed and implemented the Jimmy Ryce Law Enforcement Training Center (JRLETC) program. JRLETC offers two law enforcement training tracks that are designed to improve the national investigative response to missing children cases.

JRLETC's Chief Executive Officer (CEO) seminars approach missing children's cases from a management perspective and offer information regarding coordination and communication issues, resource assessment, legal concerns, and policy development for police chiefs and sheriffs. The Responding to Missing and Exploited Children (REMAC) course offers modules focusing on investigative techniques for all aspects of missing children cases.

In FY 1999, 371 police chiefs and sheriffs and 323 investigators participated in at least one of the JRLETC programs.

Congress appropriated $1.25 million in FY 1999 to continue operation of the Jimmy Ryce Law Enforcement Training Center. OJJDP, NCMEC, the FBI, and FVTC will continue to provide training and technical assistance through the JRLETC and the onsite technical assistance program to respond to the numerous requests for assistance from JRLETC graduates.

Under the JRLETC appropriation, OJJDP awarded $500,000 to FVTC to support regional REMAC courses, with the remaining $750,000 awarded to NCMEC to continue the CEO seminars and onsite technical assistance program. NCMEC also will draft a model policy to assist law enforcement executives plan response protocols for their communities. The International Association of Police Chiefs is currently reviewing the final draft of the policy and MECP anticipates publication by the second quarter of FY 2000.

Association of Missing and Exploited Children's Organizations

MECP provides funds to the Association of Missing and Exploited Children's Organizations (AMECO) to improve, at the State and local level, the quality, availability, and coordination of services provided to missing and exploited children and their families, and to improve the capacity and capabilities of nonprofit organizations (NPO's) serving missing children and their families. While many AMECO member agencies serve parents and children who are the victims of domestic abduction, few are trained or equipped to provide specialized services to those involved in international abductions. Until recently, little attention has been given to the need to coordinate with local service providers and expand their services for children and their families.

In FY 2000, additional funds would be provided to AMECO to hire full time staff to support the expansion of services for international parental abduction cases, support semiannual meetings, and develop and disseminate written protocols, policies, procedures, and standards for NPO's for both domestic and international parental abduction cases.

National Center on Child Fatality Review

In FY 1997, OJJDP awarded a grant to the National Center on Child Fatality Review (NCCFR) in Los Angeles, California, to develop State and local uniform reporting definitions and generic child fatality review team protocols for consideration by communities working on enhancing their child death investigations. NCCFR developed a model for integrating data among the Criminal Justice, Vital Statistics, and Social Services Child Abuse Indices. NCCFR is funded by a National Advisory Board, which is composed of representatives from across the country and from relevant disciplines.

In FY 1999 the NCCFR will continue its efforts to standardize and coordinate information and resources relating to child death review activities. This includes the development of a Web site

that will be used to post national data on child abuse and neglect related fatalities, offer Internet-based training, provide information about each State's CFR activities, and offer information and resources to professionals and practitioners throughout the country. NCCFR will also produce and publish a national newsletter titled *Unified Response,* expand the NCCFR list-serve, and develop and distribute training materials using the Internet, CD–ROM, or videotape and other media.

In FY 2000, OJJDP would provide continuation support to NCCFR.

Investigative Case Management for Missing Children Homicides

In FY 1993, OJJDP awarded a competitive grant to the Washington State Attorney General's Office (WAGO) to analyze the solvability factors of missing children homicide investigations. During the course of that research, WAGO collected and analyzed the specific characteristics of more than 550 missing child homicide cases. These characteristics were recorded in WAGO's child homicide database.

In FY 1999, WAGO identified additional cases for inclusion in the database and began the interview data collection process. In FY 2000 OJJDP proposes to continue to provide funding support to WAGO to ensure the vitality and investigative relevance of its child homicide database. This funding would support data collection, database maintenance, and case consultation activities. The database can be used by Federal, State, and local law enforcement to perform link analyses by identifying cases with similar characteristics. Law enforcement database inquiries can be made by calling WAGO at 800–345–2793.

FBI Child Abduction and Serial Killer Unit (CASKU)

In FY 1997, OJJDP entered into a 3-year interagency agreement with the FBI's CASKU to expand research to broaden law enforcement's understanding of homicidal pedophiles' selection and luring of their victims, their planning activities, and their efforts to escape prosecution. This information is being used by the FBI and OJJDP in training and technical assistance programs. FY 1999 activities included refinement of the interview protocol, identification of incarcerated offenders meeting requirements of the research criteria, and field tests of the interview protocol.

In FY 2000, OJJDP would continue funding support to CASKU to begin data collection efforts and preliminary analyses.

National Child Victimization Conference Support

In FY 2000, MECP proposes to provide funding support to national conferences focusing on child abduction, exploitation, and victimization issues. This funding support would include the conferences sponsored by the National Children's Advocacy Center, Dallas Police Department and Children's Advocacy Center, and American Professional Society on the Abuse of Children.

Dated: January 4, 2000.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–354 Filed 1–6–00; 8:45 am]

BILLING CODE 4410–18–P

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 determination 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.

Volume I

Connecticut
CT990001 (Mar. 12, 1999)
CT990003 (Mar. 12, 1999)
CT990004 (Mar. 12, 1999)
CT990005 (Mar. 12, 1999)
Maine
ME990018 (Mar. 12, 1999)
ME990026 (Mar. 12, 1999)
ME990030 (Mar. 12, 1999)
New York
NY990002 (Mar. 12, 1999)
NY990003 (Mar. 12, 1999)
NY990004 (Mar. 12, 1999)
NY990005 (Mar. 12, 1999)
NY990007 (Mar. 12, 1999)
NY990008 (Mar. 12, 1999)
NY990010 (Mar. 12, 1999)
NY990011 (Mar. 12, 1999)
NY990013 (Mar. 12, 1999)
NY990014 (Mar. 12, 1999)
NY990015 (Mar. 12, 1999)
NY990016 (Mar. 12, 1999)
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NY990021 (Mar. 12, 1999)
NY990022 (Mar. 12, 1999)
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NY990031 (Mar. 12, 1999)
NY990032 (Mar. 12, 1999)
NY990037 (Mar. 12, 1999)
NY990039 (Mar. 12, 1999)
NY990040 (Mar. 12, 1999)
NY990041 (Mar. 12, 1999)
NY990042 (Mar. 12, 1999)
NY990045 (Mar. 12, 1999)
NY990048 (Mar. 12, 1999)
NY990049 (Mar. 12, 1999)
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MD990002 (Mar. 12, 1999)
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MD990028 (Mar. 12, 1999)
MD990029 (Mar. 12, 1999)
MD990037 (Mar. 12, 1999)
MD990042 (Mar. 12, 1999)
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MD990048 (Mar. 12, 1999)
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Virginia
VA990005 (Mar. 12, 1999)
VA990011 (Mar. 12, 1999)
VA990014 (Mar. 12, 1999)
VA990031 (Mar. 12, 1999)
VA990033 (Mar. 12, 1999)
VA990046 (Mar. 12, 1999)
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Kentucky
KY990001 (Mar. 12, 1999)
KY990002 (Mar. 12, 1999)
KY990003 (Mar. 12, 1999)
KY990004 (Mar. 12, 1999)
KY990006 (Mar. 12, 1999)
KY990007 (Mar. 12, 1999)
KY990025 (Mar. 12, 1999)
KY990027 (Mar. 12, 1999)
KY990029 (Mar. 12, 1999)
KY990035 (Mar. 12, 1999)
KY990039 (Mar. 12, 1999)
Illinois
IL990012 (Mar. 12, 1999)
Indiana
IN990001 (Mar. 12, 1999)
IN990002 (Mar. 12, 1999)
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IN990047 (Mar. 12, 1999)
Minnesota
MN990007 (Mar. 12, 1999)
MN990008 (Mar. 12, 1999)
MN990015 (Mar. 12, 1999)
MN990027 (Mar. 12, 1999)
MN990035 (Mar. 12, 1999)
MN990058 (Mar. 12, 1999)
MN990059 (Mar. 12, 1999)
MN990061 (Mar. 12, 1999)
Ohio
OH990001 (Mar. 12, 1999)
OH990002 (Mar. 12, 1999)
OH990003 (Mar. 12, 1999)
OH990023 (Mar. 12, 1999)
OH990028 (Mar. 12, 1999)
OH990029 (Mar. 12, 1999)
OH990034 (Mar. 12, 1999)
OH990035 (Mar. 12, 1999)

Volume V

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Colorado
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CO990003 (Mar. 12, 1999)
CO990004 (Mar. 12, 1999)
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CO990006 (Mar. 12, 1999)
CO990007 (Mar. 12, 1999)
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CO990014 (Mar. 12, 1999)
CO990016 (Mar. 12, 1999)
CO990022 (Mar. 12, 1999)
CO990025 (Mar. 12, 1999)
Oregon
OR990001 (Mar. 12, 1999)
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Washington
WA990001 (Mar. 12, 1999)
WA990002 (Mar. 12, 1999)
WA990003 (Mar. 12, 1999)
WA990005 (Mar. 12, 1999)
WA990007 (Mar. 12, 1999)
WA990008 (Mar. 12, 1999)
WA990011 (Mar. 12, 1999)
WA990013 (Mar. 12, 1999)
WA990023 (Mar. 12, 1999)
WA990026 (Mar. 12, 1999)
Wyoming
WY990004 (Mar. 12, 1999)
WA990008 (Mar. 12, 1999)
WA990009 (Mar. 12, 1999)
WA990023 (Mar. 12, 1999)

Volume VII

None

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 29th day of December 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–91 Filed 1–6–99; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

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 National Science Foundation (NSF) will publish periodic summaries of proposed projects.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by March 7, 2000 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Earned Doctorates.

OMB Approval Number: 3145–0019.

Expiration Date of Approval: May 31, 2000.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by five Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly educated individuals. Data is obtained from each person earning a research doctorate on their field of specialty, educational background, sources of support in graduate school, postgraduation plans for employment, and demographic characteristics. The information is used extensively by the Federal government, universities, and others. The National Science Foundation, as the lead agency, publishes statistics from the survey in many reports, but primarily in the annual publication series ''Science and Engineering Doctorates'' (available in print and electronically on the World Wide Web). The National Opinion Research Corporation, U. of Chicago, also disseminates a free report entitled ''Summary Report: Doctorate Recipients from U.S. Universities.''

A total response rate of 92% of the total 42,683 persons who earned a research doctorate was obtained in fiscal year 1998.

Estimate of Burden: The Foundation estimates that, on average, 20 minutes per respondent will be required to complete the survey, for a total of 14,228 hours for all respondents.

Respondents: Individuals.

Estimated Number of Responses: 42,683 (FY 1998 number).

Estimated Total Annual Burden on Respondents: 14,228 hours total (FY 1998 number).

Dated: January 3, 2000.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 00–325 Filed 1–6–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company (Brunswick Steam Electric Plant, Unit Nos. 1 and 2); Order Approving Application Regarding Proposed Corporate Restructuring of Carolina Power & Light Company by Establishment of a Holidng Company

I

Carolina Power and Light Company (CP&L) and North Carolina Eastern Municipal Power Agency are the holders of Facility Operating License Nos. DPR–71 and DPR–62 for Brunswick Steam Electric Plant, Units No. 1 and 2 (Brunswick 1 and 2), which were issued November 12, 1976, and November 27, 1974, respectively. CP&L owns a 81.67% interest in Brunswick 1 and 2.

II

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, CP&L filed an application dated September 15, 1999, which was supplemented by letters dated October 8, and November 10, 1999, requesting approval of the indirect transfer of Facility Operating License Nos. DPR–71 and DPR–62 for Brunswick 1 and 2 that would result from a proposed corporate restructuring of CP&L. Under the proposed restructuring, a new holding company, CP&L Holdings, Inc. (''Holdings''), will be formed and will become the parent company of CP&L. Current holders of CP&L common stock will receive, on a one-for-one basis, shares of common stock of Holdings such that Holdings will then own the common stock of CP&L. CP&L's ownership interests in, and its operation of, its nuclear facilities will not change. No direct transfer of the licenses will occur, as CP&L will continue to hold the licenses. No physical changes to the facilities or operational changes are being proposed in the application. According to the application, as a result of the new corporate structure, Holdings will be able to respond more effectively to increased competition in the energy industry. Notice of the application and an opportunity for hearing was published in the **Federal Register** on November 2, 1999 (64 FR 59220). No hearing requests were filed.

Under 10 CFR 50.80 and 72.50, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted by

CP&L in its application, as supplemented, and other information before the Commission, the NRC staff has determined that the proposed restructuring of CP&L will not affect the qualifications of CP&L as holder of the licenses referenced above, and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated December 29, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80 and 72.50, *It is hereby ordered* that the application regarding the subject indirect transfers is approved, subject to the following conditions:

(1) CP&L shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from CP&L to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of CP&L's consolidated net utility plant, as recorded on CP&L books of account, and

(2) should the restructuring of CP&L not be completed by December 30, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This order is effective upon issuance.

For further details with respect to this action, see the initial application dated September 15, 1999, and supplements dated October 8, and November 10, 1999, and the Safety Evaluation dated December 29, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Website (http://www.nrc.gov).

Dated at Rockville, Maryland, this 29th day of December 1999.

For the Nuclear Regulatory Commission.

Samuel A. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–253 Filed 1–6–00; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

Virginia Electric and Power Company

[Docket Nos. 50–338 and 50–339]

Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied part of a request by Virginia Electric and Power Company, (the licensee) for amendments to Facility Operating License Nos. NPF–4 and NPF–7, issued to the licensee for operation of the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia. Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on December 16, 1998 (63 FR 69349).

The licensee's application of November 18, 1998, as supplemented October 22, 1999, proposed several changes to the Technical Specifications (TS) relating to allowable groundwater elevation at the service water reservoir dike and monitoring of the groundwater level. The amendments authorize these changes except for one to remove the monitor device numbers from the TS. The proposal to eliminate device numbers from the TS was denied because the device numbers help to indicate the location of the piezometer within the zone of interest.

The NRC staff has concluded that this portion of the licensee's proposed change is unacceptable and is denied. The licensee was notified of the Commission's denial by letter dated December 29, 1999.

By February 7, 2000, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, and to Donald P. Irwin, Esquire, Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 18, 1998, as supplemented October 22, 1999, and (2) the Commission's letter to the licensee dated December 29, 1999.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Document Control Desk, or accessed electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 29th day of December 1999.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Regulatory Commission.

[FR Doc. 00–342 Filed 1–6–00; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES NUCLEAR REGULATORY COMMISSION

The Power Authority of the State of New York

[Docket No. 50–286]

Indian Point Nuclear Generating Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to the Technical Specifications for Facility Operating License No. DPR–64, issued to the Power Authority of the State of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would implement the Radiological Effluent Technical Specifications guidance of Generic Letter (GL) 89–01 and make changes that are necessary to implement the revised 10 CFR Part 20.

The proposed action is in accordance with the licensee's application for amendment dated February 19, 1998, as supplemented by letter dated July 28, 1999.

The Need for the Proposed Action

The proposed amendment is needed to allow the licensee to implement the programmatic controls of GL 89–01, to implement the revised 10 CFR Part 20, to make editorial changes to the Radioactive Effluent Release Report in accordance with 10 CFR 50.36a, and to allow an annual submittal for the Radioactive Effluent Release Report.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no adverse environmental impacts associated with the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure; therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Indian Point Nuclear Generating Unit No. 3.

Agencies and Persons Consulted

In accordance with its stated policy, on November 1, 1999, the staff consulted with the New York State official, Jack Spath, of the New York State Energy Research and Development Authority, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 19, 1998, as supplemented by letter dated July 28, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 29th day of December 1999.

For the Nuclear Regulatory Commission

George F. Wunder,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–343 Filed 1–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, and the U.S. Department of Energy, Office of Waste Management, Concerning the Management of Sealed Sources

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Memorandum of Understanding (MOU) between the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE). The purpose of the MOU is to address the problem of unwanted and uncontrolled radioactive materials, often referred to as ''orphan sources''. The MOU defines the agreed-upon roles and responsibilities of the NRC and DOE in situations involving orphan sources where the NRC is responsible for leading the Federal response, where immediate health and safety hazards have been addressed, and where assistance with the transfer of the radioactive material is determined to be necessary for continued protection of public health and safety and the environment.

EFFECTIVE DATE: June 18, 1999.

ADDRESSES: Copies of all NRC documents are available for public inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday (except Federal holidays). Telephone service is provided from 8:30 a.m. to 4:15 p.m. at 202–634–3273 or toll-free at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: Douglas A. Broaddus, NMSS, Mail Stop T8–F5, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–5847; Fax: (301) 415–5369; e-mail: dab@nrc.gov.

Dated at Rockville, Maryland, this 23rd day of December 1999.

For the Nuclear Regulatory Commission.

Donald A. Cool,

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

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards and the U.S. Department of Energy, Office of Waste Management, Concerning Management of Sealed Sources

I. Introduction

The Federal Radiological Emergency Response Plan (FRERP) provides guidance for the response of Federal agencies in peacetime radiological emergencies that have actual, potential, or perceived radiological consequences within the United States, its Territories, possessions, or territorial waters. Although the FRERP encompasses a broad range of radiological emergencies, it does not provide specific actions that each agency must take when a radiological emergency is identified. This Memorandum of Understanding (MOU) defines the roles and responsibilities between the U.S. Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) in situations where the NRC is responsible for the Federal response to a radiological emergency, but that does not require an immediate response (i.e., activation of the NRC Incident Response Plan as described in NRC Management Directive 8.2), and where the transfer of licensed source, special nuclear, or byproduct radioactive material—as defined under the Atomic Energy Act of

1954, as amended (the Act)—primarily in the form of sealed sources and devices as described in section IV. B., to the DOE is determined to be necessary to protect the public health and safety and the environment.

II. Background

This MOU formally defines the activities carried out since 1992 under agreements reached via exchange of correspondence between NRC and DOE. The need for this agreement arose due to the fact that licensed radioactive material which exceeds the Class C limits defined in § 61.55, Title 10 Code of Federal Regulations (CFR) is not acceptable for disposal at commercial disposal sites. The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99–240) made DOE responsible for the ultimate disposition of this material. Until such time as the DOE has in place a disposal or routine acceptance and storage capability for the various types of this material, this agreement is necessary to allow transfer of material which exceeds Class C limits from NRC and Agreement State licensees to the DOE in limited situations which pose an actual or potential threat to the public health and safety.

Under limited situations, described in more detail in Section IV. A. of this agreement, DOE will consider accepting material at the request of NRC which does not exceed Class C limits, but only under situations where there is an actual or potential threat to the public health and safety that cannot be mitigated by other reasonable means.

III. Purpose

This MOU applies to the recovery and disposition of byproduct, source, and special nuclear material in the possession of licensees and in the public domain by the DOE at the request of NRC. Although this MOU is intended to apply to these materials in the form of sealed sources, it is envisioned that under rare circumstances this MOU will apply to the recovery and disposition of radioactive materials in other forms, as described in section IV. B. In addition, this agreement applies only to material in the private sector, licensed by NRC or an Agreement State, which represents an actual or potential threat to the public health and safety.

The determination of an actual or potential threat to the public health and safety will be made by the NRC as described in this MOU, in consultation with and participation by DOE, and may be based on such factors as condition of the material, environmental conditions that may affect the containment of the material, or loss of adequate controls by the licensee because of financial, technical, or other reasons. This MOU represents the process by which NRC may request assistance of DOE to mitigate or eliminate an actual or potential threat to the public health and safety from sealed sources and devices, after all other reasonable alternatives have been unsuccessfully explored.

This MOU does not apply to situations where the DOE has in-place the required capabilities for routine acceptance, storage, and/or disposal of material which exceeds the limits of § 61.55, 10 CFR as specified in Pub. L. 99–240. Any agreements required under those situations will be entered into separately or as a specific modification of this MOU. In addition, this MOU does not apply to situations which require activation of the NRC Incident Response Plan, nor does it apply to safeguards or reactor incidents.

IV. Scope

A. Types of Radioactive Materials

This agreement is limited to only those radioactive materials which are defined under the Atomic Energy Act of 1954, as amended, as source, special nuclear, or byproduct materials. This agreement does not have the authority to require the NRC or DOE to respond to non-emergency situations, pursuant to this MOU, involving radioactive materials or to respond to emergency situations which do not involve materials regulated by the NRC.

This agreement is primarily intended to provide, under emergency situations as described in this MOU, for the proper recovery and disposition by the DOE of radioactive materials that are regulated by NRC that exceed Class C waste limits defined in § 61.55, 10 CFR. Radioactive materials which do not exceed Class C limits are also covered by this agreement in circumstances that represent an actual or potential threat to the public health and safety and for which there are no other reasonable alternatives to mitigate the threat. NRC and DOE will consider situations involving radioactive material which does not exceed Class C limits on a case-by-case basis as described in section IV. E., or other agreed upon procedures.

Routine acceptance of material that does not exceed Class C limits is not a part of this MOU and would fall under the authority of the States in accordance with the intent of Pub. L. 99–240. No activities contained in this MOU are intended to undermine the authorities and responsibilities of the States as defined in Pub. L. 99–240. Further, situations which would be considered an emergency solely due to the lack of access to a compact or regional disposal site are not part of this MOU. These situations are covered in the emergency access provisions of Pub. L. 99–240 and must be addressed in accordance with 10 CFR Part 62. The purpose of 10 CFR Part 62 is to mitigate any serious or immediate threat to the public health and safety due to denial of access to a low-level waste disposal facility.

B. Form of Radioactive Material

This agreement primarily addresses the radioactive materials defined in section IV. A. in the form of sealed sources or in devices containing sealed sources. In general, the material must also be a form that is readily transportable, does not require significant special handling or unique handling equipment or capabilities, and is confined to a single location. Material forms which are determined to be outside these conditions will be handled on a case-by-case basis in accordance with section IV. E., or other agreed upon procedures.

C. Quantity of Radioactive Material

It is envisioned that most cases covered under this MOU will involve only a small number of sealed sources or devices, usually less than ten, and only relatively small licensees. Quantities of radioactive material contained in individual sealed sources or devices should not exceed the maximum authorized on the sealed source or device vendor's license. Situations involving significantly greater numbers of sealed sources or devices or large scale licensees will be considered on a case-by-case basis by the NRC and DOE in accordance with section IV. E., or other agreed upon procedures. Radioactive materials shall not be combined or altered for the sole purpose of meeting the conditions of this MOU.

D. Nature of the Threat to the Public and Response Required

This agreement does not apply to emergency situations requiring an immediate response, to situations for which immediate health and safety concerns have not been mitigated or to situations for which the NRC would not be designated as the Lead Federal Agency (LFA) for the federal response to a radiological emergency. This MOU addresses situations which the NRC determines, in consultation with DOE, represent an actual or potential threat to the public health and safety. The level of response required under this MOU will be based on an assessment of the potential health and safety

consequences of the situation (e.g., amount of material involved, potential for radiation exposure or releases of radioactive material, and potential impact on the environment).

The authorities and responsibilities of certain Federal agencies (including NRC and DOE) for responding to radiological emergencies are specified in the FRERP. Activities under this MOU must be consistent with the FRERP for responses to radiological emergencies and must not interfere with or take precedence over FRERP activities. In addition, actions necessary to mitigate an emergency requiring an immediate response, or to mitigate an immediate health and safety threat (radiological or otherwise)—including temporary control over radioactive material—must be taken prior to any DOE recovery or disposition activities.

Assistance by DOE to recover and manage the material may only be requested by NRC after all other reasonable alternatives to alleviate the situation are addressed. In addition, NRC shall identify the response requested of DOE. DOE shall determine the appropriate response to ensure the present or potential threat is mitigated or eliminated in such situations where existing controls may not be adequate to ensure long-term assurance of the public health and safety.

E. Exceptions to the Primary Intent of This MOU

The purpose of section IV, Scope, is to define the bounds of this agreement in specific terms. Paragraphs A–C of this section indicate that exceptions to the conditions of this agreement may be necessary. The reason for these exceptions is that it is recognized that situations involving actual or potential health and safety threats requiring DOE assistance will not be limited to only small quantities of sealed sources which exceed the Class C limits as defined in 10 CFR Part 61.55.

In situations where the materials involved do not meet the specific conditions described in paragraphs A–C above, but DOE assistance is determined by NRC to be necessary, then the NRC shall document the reason why it is appropriate to respond to the particular situation under the terms of this MOU, document why DOE assistance is necessary for the particular situation, and provide this information to DOE. The DOE shall review this information and document the response it intends to take based upon the information provided, and provide this information to the NRC. So as to not delay a response to a request for assistance, this exchange of information may take place electronically, so long as hardcopy follow-up is provided.

F. Other Limitations

This agreement, and subsequent DOE recovery and disposition actions, are generally limited to packaging, transport, and/or receipt of radioactive materials, and the associated requirements to conduct those activities.

This agreement is not intended to require or imply that DOE will provide decontamination or clean-up activities, except as a direct result of a DOE recovery operation, nor will DOE be expected to perform recovery or disposition actions for materials other than those specifically identified in this document.

This MOU does not apply to requests for radiological assistance from DOE Radiological Assistance Program teams.

V. Authority and Regulatory Programs

A. NRC

NRC is responsible for licensing and regulating nuclear facilities and material and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; in accordance with the National Environmental Policy Act of 1969, as amended; and other applicable statutes. NRC responsibilities include protecting public health and safety, protecting the environment, and safeguarding nuclear materials in the interest of national security.

The Office of Nuclear Material Safety and Safeguards (NMSS) was established under Section 204 of the Energy Reorganization Act of 1974, as amended, and is charged with the responsibility of protecting the public health and safety through regulatory control of the safe use of byproduct, source, or special nuclear material, for medical, industrial, academic, and commercial uses. To accomplish this goal, NMSS uses licensing, inspection, enforcement, development and implementation of regulations, guidance and policy, safety reviews for products that use the material (including sealed sources and devices), and other means available according to 10 CFR.

B. Agreement States

Section 274 of the Atomic Energy Act of 1954, as amended, provides the NRC the authority to discontinue its regulatory authority over certain radioactive materials (including sealed sources and devises) within a State that has agreed to establish and maintain a regulatory program for the materials that is adequate to protect the public health and safety, and is compatible with NRC's program. States that have been found to meet these criteria and have entered into such agreements with NRC are called Agreement States. These Agreement States have independent authority to regulate the radioactive materials specified in the agreement within their boundaries, and are charged with protecting the public health and safety through the licensing, regulation, and enforcement of activities associated with the materials.

Under Pub. L. 99–240, each State is responsible for providing for the disposal of radioactive material which does not exceed a waste Classification of C that is generated within its boundaries. In addition, State and local governments have primary responsibility for determining and implementing appropriate measures to protect life, property, and the environment from radiological and other hazards.

C. DOE

DOE is responsible for conducting research and development, and other activities, to support the use of byproduct, source, and special nuclear materials for medical, biological, health, and other uses as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Department of Energy Organization Act, as amended; and other applicable statutes.

DOE is responsible for the disposal of radioactive material which exceeds a waste Classification of C as defined in § 61.55, 10 CFR as mandated by Pub. L. 99–240. DOE is required to assure the public health and safety as mandated by Section 102(13) of the Department of Energy Organization Act, as amended, and is responsible jointly with NRC for the development of contingency plans to recall or recapture radioactive materials under Section 204(b)(2)(B) of the Energy Reorganization Act of 1974, as amended. In addition, DOE is granted the authority to take, requisition, condemn, or otherwise acquire any special nuclear, source, or byproduct material as authorized by Sections 55, 66, and 81, respectively, of the Atomic Energy Act of 1954, as amended.

VI. Agency Responsibilities and Agreements

NRC and DOE staffs will closely coordinate actions in both the planning and execution phases to: (1) ensure a timely response where DOE assistance is necessary; (2) provide adequate protection of the health and safety of the public and occupational workers

involved in responding to requests for assistance; and (3) ensure cost effective operations. Each agency will develop, in consultation with the other, appropriate procedures as necessary to implement this agreement. Each agency will designate the organization and key personnel responsible for the day-to-day coordination and management of activities covered by this MOU.

A. NRC Responsibilities

1. Upon discovery of a potential radioactive material incident concerning NRC or Agreement State licensed material in an uncontrolled condition that does not require activation of the NRC Incident Response Plan, the NRC regional and headquarters offices will follow the procedures contained in NRC Manual Chapter (MC) 1301, ''Response to Radioactive Material Incidents that do not Require Activation of the NRC Incident Response Plan,'' or Policy and Guidance Directive (P&GD) 9–12, ''Reviewing Efforts to Dispose of Licensed Material and Requesting DOE Assistance,'' as applicable.

a. Manual Chapter 1301 is applicable to this MOU in situations where licensed material is in an uncontrolled condition in an unrestricted area and a responsible party cannot be readily identified. Incidents applicable to MC 1301 may include locations which are unlicensed, as well as licensed locations where the licensee is not authorized to possess the radioactive material. When requesting assistance of DOE is considered for these type incidents, MC 1301 will be consulted for the procedures and guidance to follow for determining whether DOE assistance is appropriate and necessary. Once DOE assistance is determined to be appropriate and necessary, MC 1303, ''Requesting Emergency Acceptance of Radioactive Material by DOE,'' will be consulted for the procedures for making the request.

b. P&GD 9–12 is applicable to this MOU in situations where an NRC or Agreement State licensee is unable to safely maintain control over its licensed material, or there is a high potential for the licensee to lose control of its licensed material. NRC and Agreement State license reviewers will use this document to determine if DOE assistance with the material is appropriate and necessary, and for making the request. This document contains, in part, guidance for determining the need for DOE assistance based on an evaluation of:

(1) whether viable options are available for recovery and disposition of the radioactive material, (2) the licensee's ability to adequately maintain control over the material and available options for achieving this, and (3) whether the material is causing or has a high potential to cause a significant health and safety risk to members of the public.

2. Upon determining that DOE assistance is likely, NRC staff shall consult with DOE staff to: (1) provide appropriate information available on the incident (e.g., information listed in Enclosure 1 to P&GD 9–12 or MC 1303); (2) determine if any additional information is needed; and (3) identify any special conditions or requirements concerning the incident.

3. Upon determining that DOE assistance is appropriate and necessary, NRC staff shall formally request DOE assistance in accordance with MC 1303 or P&GD 9–12, as applicable. These documents specify the procedure for making an official request for DOE assistance, information that is to be provided to DOE (e.g., sealed source identification and condition information, licensee name, point of contact, applicable historical information, etc.), the DOE addressee for the request, and follow-up actions after the request is made. Prior to issuance of the formal request, NRC will notify the applicable DOE staff (via phone or electronic media) that the request is being made.

4. Prior and subsequent to requesting DOE assistance, NRC will determine the extent of assistance that other parties involved are responsible for, or are able to, provide for the recovery of the material to minimize the cost to the government. Examples include providing for the packaging and/or transport of the material.

5. Agreement States seeking DOE assistance applicable to this MOU shall make all requests through NRC, following the guidance in MC 1301, MC 1303, or P&GD 9–12. NRC staff will evaluate the Agreement State's request and determine if all applicable information has been provided and if requesting DOE assistance is appropriate and necessary. NRC will not forward the request to DOE until the request contains complete information and provides sufficient justification for requesting DOE assistance, and will work with the Agreement State to obtain this information. NRC will make all requests for DOE assistance under this MOU on behalf of the Agreement States and shall serve as the single point-of-contact for evaluating the requests in accordance with this MOU.

6. NRC shall arrange for transfer of title of the recovered materials to DOE or to other parties who will take possession of the material, as designated by DOE.

7. Within its regulatory authority, NRC will ensure, and expedite where appropriate, license and/or certification reviews and amendments are performed as necessary to support safe and timely recovery of the materials and to minimize costs to the government incurred in recovery and shipment operations.

8. NRC shall coordinate the efforts of non-DOE involved parties in recovery operations, and participate, as appropriate and necessary, to ensure adequate protection of public/worker health and safety, and to ensure regulatory compliance, as applicable.

B. DOE Responsibilities

1. DOE staff will participate and consult with NRC in the determination process for requesting DOE assistance.

2. Upon receipt of a formal request for assistance, DOE will review the request against the requirements of this agreement, Departmental policies in effect at the time of the request, changes in legislative authority which may affect actions requested, and expected cost versus available funds to carry out the requested action. DOE will review each request to ensure all reasonable options for disposition have been exhausted prior to providing assistance. Upon completion of this review, DOE will notify NRC of the action it will take.

3. Upon acceptance of a request for assistance, DOE shall identify, package, transfer, receive, and/or store the radioactive material at a DOE or other appropriate facility; or contract with appropriately licensed firms for these services.

4. DOE will coordinate, through NRC, with the licensee and/or local authorities and other agencies, as appropriate, regarding the details of the recovery operations and provide information on progress and status.

5. DOE will take title of the radioactive material either at the material pickup location or at the designated receiving site, as determined on a case-by-case basis, or ensure title is transferred to appropriate parties contracted for services.

6. DOE may review procedures that NRC uses to determine: (1) that material is an imminent threat to the public health and safety; (2) that all available options for disposition of the material have been exhausted; and (3) that a request for DOE assistance with radioactive material is appropriate and in accordance with this MOU.

7. DOE will plan and budget, as appropriate, for its costs to provide for

reasonably expected requests under this agreement.

8. DOE shall utilize its field elements, contractors, laboratories, and facilities, and private industry, as required, in recovery and disposition operations, for the safe, timely, and efficient conduct of these operations. The use of these facilities is limited to those sites with appropriate capabilities and compliance with applicable regulations, as well as necessary funding. If such a site or necessary funds are not available, DOE will consult with NRC and/or other Federal and State agencies to determine if managing the material may be accomplished by other means.

C. Coordination Officers

Each agency shall designate an individual(s) who will serve as the respective coordination officer(s), or point(s) of contact (POC). The POCs will coordinate and facilitate actions required by their respective agencies. Additionally, they will establish and maintain a call list (names, phone, and fax numbers) of responsible persons for day-to-day contact on any matter related to this MOU, and shall provide this call list to each other, as requested and appropriate.

VII. Elements of Coordination

A. Information Exchange

Both agencies agree to exchange information with respect to relevant programs and lessons learned. The purpose of the exchanges is to provide expert technical assistance to both agencies and to assist either agency by reducing or eliminating duplication of effort. The sharing of information between DOE and NRC (and Agreement States as appropriate) will be exercised to the extent authorized by law (i.e. NRC and DOE directives, statutes, and regulations), and will be consistent with each agencies' missions.

Both agencies recognize the need to protect from public disclosure, data and information that are exchanged between them, which fall within the definition of trade secrets, and confidential commercial or financial information. Both agencies agree to exchange proprietary information in accordance with applicable regulations and their regulatory authority. If a request calls for a disclosure determination regarding proprietary information obtained from either agency, such as a Freedom of Information Act request or response to a Congressional inquiry—or either agency must comply with various regulatory or public information responsibilities—the agency responsible for the information will be promptly notified, by the other agency, of the need for disclosure of the information. The responsible agency will make any needed contact with the submitter of the protected information and will accept the responsibility for evaluating the submitter's comments, before rendering the disclosure determination.

B. Sharing Other Information

DOE and NRC will also offer each other the opportunity to comment on regulations, regulatory guides, or other communications that refer to activities, policies, or regulations of the other agency, that are relevant to this agreement. If practicable, the documents will be provided for comment prior to issuance.

Either agency may request additional information, when such is deemed necessary to complete its mission.

VIII. Meetings

A. Annual Inter-Agency Meeting

The following are the offices and officers responsible for this agreement:

1. For the U.S. Nuclear Regulatory Commission: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A23, Washington, D.C. 20555; Telephone: (301) 415–7800.

2. For the U.S. Department of Energy: Deputy Assistant Secretary for Waste Management, Environmental Management, U.S. Department of Energy, Mail Stop 5B–040/FORS, Washington, D.C. 20585; Telephone: (202) 586–0307.

The DOE and NRC responsible officers, or their designated representatives, shall meet at least annually to evaluate the activities related to this MOU and make recommendations to agency heads on its effectiveness. DOE and NRC will host the meeting on alternating years.

B. Coordination Officers

Coordination officers, POCs, or their designated representatives, shall meet, on a semiannual basis, to discuss technical issues related to this MOU, review the status of actions underway or planned, discuss any problems or issues, and recommend necessary changes. DOE and NRC shall host the meeting on alternate dates.

IX. Other Laws and Matters

Nothing in this MOU shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the MOU be construed as modifying, restricting, or directing the existing authority of either agency.

Nothing in this MOU shall be deemed to establish any right nor provide a basis for any action, either legal or equitable, by any person or class or persons challenging a government action or a failure to act.

This MOU shall not be used to obligate or commit funds or as the basis for the transfer of funds.

X. Effective Date, Modification, and Termination of MOU

This MOU may be further implemented by supplementary agreements in which authorized representatives of DOE and NRC may further amplify or otherwise modify the policy or provisions in the memorandum or any of its supplements, provided that any material modifications of the provisions or any of its supplements shall be subject to the approval of the authorized signatories of this memorandum or their designated representatives.

This MOU will take effect when it has been signed and dated by the authorized representatives of DOE and NRC. It may be modified by mutual written consent, or terminated by either agency upon 60 days advance written notice. The agencies agree to reevaluate this MOU at lease every five years, at which time either agency has the option of renewing, modifying, or terminating this MOU.

Approved and accepted for the U.S. Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

Dated: June 18, 1999.

Approved and accepted for the U.S. Department of Energy.

Mark W. Frei,

Acting Deputy Assistant Secretary for Waste Management, Environmental Management.

Dated: December 18, 1998.

[FR Doc. 00–344 Filed 1–6–00; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical

utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Spouse Annuity Under the Railroad Retirement Act; OMB 3220–0042 Section 2(c) of the Railroad Retirement Act (RRA), provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the RRA. The age requirements for a spouse annuity depend on the employee's age and date of retirement and the employee's years of railroad service. The requirements relating to the annuities are prescribed in 20 CFR 216, 218, 219, 232, 234, and 295.

The RRB uses Form AA–3, *Application for Spouse/Divorced Spouse Annuity*, to obtain the information needed to determine an applicant's entitlement to an annuity and the amount of the annuity. Completion is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes to revise Form AA–3 by adding an item that clarifies whether the Medicare processing section of the form needs to be completed. Significant non-burden impacting formatting, cosmetic and editorial changes are also proposed. The RRB estimates that 8,500 Form AA–3's are completed annually at an estimated completion time of 33 to 58 minutes per response. Total respondent burden is estimated at 4,717 hours.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–322 Filed 1–6–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24230; File No. 812–11438]

Golden American Life Insurance Company, et al.; Notice of Application

December 30, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order of approval pursuant to Section 26(b) of the Investment Company Act of 1940 (''Act'') and an order granting exemptive relief pursuant to Section 17(b) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the Act, approving the substitution of shares of the Mid-Cap Growth Series of The GCG Trust for shares of the All-Growth Series of The GCG Trust. Applicants also seek an order, pursuant to Section 17(b) of the Act, granting exemptions from Section 17(a) to permit Applicants to carry out the substitution by means of in-kind redemption and purchase transactions.

APPLICANTS: Golden American Life Insurance Company (''Golden American''), Golden American Life Insurance Company Separate Account A (''Golden American Separate Account A''), Golden American Life Insurance Company Separate Account B (''Golden American Separate Account B''), Equitable Life Insurance Company of Iowa (''Equitable''), Equitable Life Insurance Company of Iowa Separate Account A (''Equitable Separate Account A''), First Golden American Life Insurance Company of New York (''First Golden''), First Golden American Life Insurance Company of New York Separate Account NY–B (''First Golden Separate Account NY–B''), and The GCG Trust (''GCG Trust'').

FILING DATES: The application was filed on December 18, 1998, and amended and restated on July 13, 1999, and December 23, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 24, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request 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 of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Marilyn Talman, Esquire, Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Attorney, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC 20549–0102, or call (202) 942–8090.

Applicants' Representations

1. Golden American and Equitable are stock life insurance companies organized under the insurance laws of Delaware and Iowa, respectively. Each is authorized to write variable annuity and variable life insurance policies in at least 48 states and the District of Columbia. First Golden is a stock life insurance company organized under the insurance laws of the state of New York, and is authorized to write variable annuity contracts in New York and Delaware. Golden American, Equitable and First Golden (collectively, ''Applicant Insurance Companies'') are wholly owned subsidiaries of ING Groep N.V. (''ING''), a global financial services holding company.

2. Equitable Separate Account A, Golden Separate Account A, Golden Separate Account B and First Golden Separate Account NY–BH (collectively, ''Applicant Separate Accounts'') are separate accounts for which one of the Applicant Insurance Companies serves as the sponsor and depositor. Golden American serves as sponsor and depositor of Golden Separate Account and Golden Separate Account B; Equitable serves as sponsor and depositor of Equitable Separate Account A; First Golden serves as sponsor and depositor of First Golden Separate Account NY–B. Each Applicant Separate Account is a segregated asset account of its insurance company sponsor and each is registered under the Act as a unit investment trust. Each Applicant Separate Account is administered and accounted for as part of the general business of the Applicant Insurance Company of which it is a part. The income, gains or losses of Applicant

Separate Accounts are credited to or charged against the assets of each such separate account, without regard to income, gains or losses of such Applicant Insurance Company.

3. Each Applicant Separate Account serves as a finding vehicle for certain variable annuity and/or variable life contracts (collectively, ''Variable Contracts'') written by the respective Applicant Insurance Companies. Applicant Separate Accounts are divided into separate subaccounts, each dedicated to owning shares of one of the investment options available under the Variable Contracts. The Variable Contracts are structured such that holders of any of the Variable Contracts (''Contractholders'') may select one or more of the investment options available under the contract held by allocating premiums payable under such contract to that subaccount of the relevant Applicant Separate Account that corresponds to the investment option desired. Thereafter, Contractholders accumulate funds, on a tax-deferred basis, based on the investment experience of the selected subaccount(s). Contractholders may, during the life of the contract, make unlimited transfers of accumulation values among the subaccounts available under the contract held, subject to any applicable administrative and/or transfer fees.

4. The GCG Trust is registered under the Act as an open-end management series investment company. The GCG Trust offers shares of several separate investment series, including the All-Growth Series and the Mid-Cap Growth Series.

5. Under the terms of an investment advisory agreement (''Trust Management Agreement'') between the GCG Trust and Directed Services, Inc. (''DSI''), DSI manages the business and affairs of each of the several series of the GCG Trust, subject to the control of the Board of Trustees of the GCG Trust. Under the Trust Management Agreement, DSI is authorized to exercise full investment discretion and make all determinations with respect to the investment of the assets of the respective series, but may, at its own cost and expense, retain portfolio managers for the purpose of making investment decisions and research information available to the GCG Trust. DSI has retained Massachusetts Financial Services Company as portfolio manager of the Mid-Cap Growth Series and Pilgrim Baxter & Associates, Limited as portfolio manager of the All-Growth Series.

6. Pursuant to the Trust Management Agreement, DSI is responsible for providing the GCG Trust (or arranging and paying for the provision to the GCG Trust) a comprehensive package of administrative and other services necessary for the ordinary operation of certain selected series of the Trust, including the Mid-Cap Growth Series and the All-Growth Series. This fee (''Unified Fee'') is calculated for the participating GCG Trust series based on a percentage of assets basis and in accordance with schedules that provide, for most of the GCG Trust series, fee reductions at specified asset levels or ''break points.'' One feature of the Unified Fee is that certain of the GCG Trust series, which include the Mid-Cap Growth Series and the All-Growth Series, albeit in different groups, are grouped together for the purpose of determining whether a break point has been reached. The rate at which the Unified Fee payable to DSI is calculated will be reduced when the combined assets of all of the GCG Trust series in the designated fee group reach the scheduled break points. As a result, a GCG Trust series that is part of a designated fee group is likely to realize a reduction in the fee payable to DSI more quickly than might otherwise be the case.

7. The Variable Contracts expressly reserve to Applicant Insurance Companies the right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account of the appropriate Separate Account. The prospectuses for the Variable Contracts and Applicant Separate Accounts contain appropriate disclosure of this right.

8. Applicant Insurance Companies propose to substitute shares of the Mid-Cap Series for those of the All-Growth Series by means of cash and in-kind redemptions and purchases (''Substitution''). Following the Substitution, Applicant Separate Accounts will have two subaccounts holding shares of the Mid-Cap Growth Series and will combine these subaccounts.

9. Applicants state that the investment objectives and policies of the Mid-Cap Growth Series are sufficiently similar to those of the All-Growth Series to assure that the essential objectives and risk expectations of those Contractholders with interest in the All-Growth Series subaccounts (''Affected Contractholders'') will be met. Both the Mid-Cap Growth Series and the All-Growth Series share the primary objective of increase in value of the shares of the portfolio securities (capital growth). The Mid-Cap Growth Series also has the same investment strategy as the All-Growth Series, of allocating assets primarily among equity and bond classes of investments, with the majority invested in equity investments in companies with medium market capitalization. Both may be invested significantly in over-the-counter securities. In addition, the All-Growth Series is authorized to allocate 10% of its assets investing in securities of foreign issuers, the Mid-Cap Growth Series is authorized to invest 20% of its net assets in equity securities of foreign issuers. The chief distinction between the series is that the All-Growth Series is diversified and the Mid-Cap Growth Series is non-diversified, although it is not currently taking advantage of that distinction and has no present intention of doing so. Applicants state that several factors could cause the Mid-Cap Growth Series to change its investment style to non-diversified including a response to extreme market conditions or a change of the portfolio manager, although Applicants state that there is no desire to change the portfolio manager. Golden American has, therefore, concluded that the overall investment objectives of the All-Growth Series and the Mid-Cap Growth Series are sufficiently similar such that the Mid-Cap Growth Series is appropriate for substitution.

10. Applicants state that the lower expenses of the Mid-Cap Growth Series was considered. The expense ratio for the nine-month period ended September 30, 1999, for the All-Growth Series and Mid-Cap Growth Series were 0.96% and 0.91%, respectively, and 0.99% and 0.95%, respectively, for fiscal year 1998. Unified Fees as of September 30, 1999 based on net assets for that day for the All-Growth Series and Mid-Cap Growth Series were 0.96% and 0.90%, respectively.

11. Applicants also state that the Mid-Cap Growth Series has more consistent investment performance. Applicants state that the All-Growth Series has not generated the hope for total returns on a consistent basis.

12. Applicants state that the Substitution and the related subaccount combinations are part of an overall business plan of Applicant Insurance Companies to make their respective products, including the Variable Contracts, more competitive and more efficient to administer and oversee. Applicants represent that the Substitution is appropriate because it will allow the GCG Trust to eliminate a portfolio with erratic performance and higher expenses and place Contractholders in a position to

participate in a portfolio with better, more consistent performance and a lower Unified Fee.

13. Applicants state that DSI serves as overall manager of the All-Growth Series and the Mid-Cap Growth Series. The portfolio manager of the Mid-Cap Growth Series is Massachusetts Financial Services Company. After the Substitution, Affected Contractholders whose interest in the All-Growth Series is redeemed and invested in the Mid-Cap Growth Series will continue to benefit from the services of DSI as overall manager.

14. Applicants state that, as of the effective date of the Substitution (''Effective Date''), shares of the All-Growth subaccounts of the Applicant Separate Accounts will be redeemed for cash and certain securities will be transferred in-kind. Applicants, on behalf of the All-Growth subaccount of Applicant Separate Accounts will simultaneously place a redemption request with the All-Growth Series and a purchase order with the Mid-Cap Growth Series so that the purchase will be for the exact amount of the redemption proceeds. The proceeds of such redemptions, whether effected in cash or in-kind, will then be used to purchase the appropriate number of shares of the Mid-Cap Growth Series. As a result, moneys attributable to Contractholders currently invested in the All-Growth Series will be fully invested.

15. The Substitution will take place at relative net asset value (in accordance with Rule 22c–1 under the Act) with no change in the amount of any Affected Contractholder's accumulation value or death benefit or in the dollar value of his or her investment in the Applicant Separate Accounts. Affected Contractholders will not incur any fees or charges as a result of the proposed Substitution nor will their rights or Applicant Insurance Companies' obligations under the Variable Contracts be altered in any way. Applicant Insurance Companies or their affiliates will pay all expenses incurred in connection with the proposed Substitution, including legal, accounting, and other fees and expenses. In addition, the proposed Substitution will not impose any tax liability on Affected Contractholders. The proposed Substitution will not cause the Variable Contract fees and charges currently being paid by Affected Contractholders to be greater after the proposed Substitution than before the proposed Substitution. Also, after notification of the Substitution, and for thirty days after the Substitution, Affected Contractholders may reallocate, to any other investment options available under their Variable Contract, their All-Growth subaccount accumulation value without incurring any costs or excessive allocation charges.

16. Any transfer in-kind within the proposed Substitution will take place pursuant to rule 17a–7(d) under the Act and no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid by the All-Growth Series or the Mid-Cap Growth Series or Affected Contractholders in connection with the transactions. Applicants submit that the terms or the proposed transaction, including the consideration to be paid by the Mid-Cap Growth Series and received by the All-Growth Series, is fair and reasonable, and that the transactions do not involve overreaching. The transactions of the proposed Substitution will be consistent with the policies of each investment company involved and the general purposes of the Act, and comply with the requirements of section 17(b) of the Act.

17. Immediately following the Substitution, Applicants will cause the All-Growth subaccounts of Applicant Separate Accounts to combine with the Mid-Cap Growth subaccounts of Applicant Separate Accounts at full net asset value so that there is no loss of account value for the Contractholders. Affected Contractholders will not incur any fees or charges as a result of this combination of subaccounts nor will their rights or Applicants' obligations under the Variable Contracts alter in any way. Applicants will pay all expenses incurred in connection with the combinations, including legal and/or accounting fees. In addition, the combination will not result in any adverse tax liability on Affected Contractholders, or any change in the economic interest or contract value of Affected Contractholders.

18. Affected Contractholders were notified of the Application by means of a supplement to the GCG Trust prospectus on or about March 8, 1999. Following the issuance of the requested order, but prior to the Effective Date, each Affected Contractholder will receive a notice setting forth the Effective Date and advising Affected Contractholders of their right, if they so chose, at any time prior to the Effective Date, to reallocate or withdraw accumulated value in the All-Growth subaccount under their Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their Variable Contract. If Affected Contractholders reallocate accumulation value prior to the Effective Date or thirty days after the Effective Date, there will be no charge for the reallocation and it will not be counted toward the total number of reallocations made within the contract year. All current Contractholders have received a prospectus containing a description of the Mid-Cap Growth Series and another copy will be forwarded to any Contractholder who requests one. Within five days after the Effective Date, Affected Contractholders will receive a notice (''Substitution Notice'') stating that shares of the All-Growth Series have been redeemed and that the shares of the Mid-Cap Growth Series have been substituted. The Substitution Notice will include a written confirmation showing the before and after accumulation values (which will not have changed as a result of the substitution) and detailing the transactions effected on behalf of the Affected Contractholder with regard to the Substitution.

Applicants' Legal Analysis

1. Section 26(b) of the Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. Applicants request an order pursuant to section 26(b) of the Act approving the Substitution and related transactions. Applicants assert that the purposes, terms, and conditions of the proposed Substitution and related transactions are consistent with the protection of investors and the purposes fairly intended by the Act. Applicants further assert that the Substitution will not result in the type of costly forced redemption against which section 26(b) was intended to guard.

3. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits any of the persons described above, from purchasing any security or other property from such registered investment company.

4. Applicant Insurance Companies state that it could be said to be transferring unit values between subaccounts. The transfer of unit values could be said to involve purchase and sale transactions between divisions that

are affiliated persons. The division investing in the All-Growth Series could be said to be selling shares of the All-Growth Series to the division investing in the Mid-Cap Growth Series, in return for units of that division. Conversely, it could be said that the division investing in the Mid-Cap Growth Series was purchasing shares of the All-Growth Series. If Substitution is effected through an in-kind transfer of securities the All-Growth Series could be said to be selling portfolio securities from an affiliate and the Mid-Cap Growth Series could be said to be purchasing portfolio securities from an affiliate.

5. Applicants request an order pursuant to Section 17(b) of the Act exempting the in-kind transfer of portfolio securities and combination of subaccounts from the provision of Section 17(a) of that Act. Section 17(b) of the Act provides that the Commission may grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned; (ii) the proposed transaction is consistent with the investment policy of each registered investment company concerned; and (iii) the proposed transaction is consistent with the general purposes of the Act.

6. Applicants represent that the terms of the redemptions and purchases or the in-kind transfer, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Contractholders will not be diluted. The redemptions and purchases or the in-kind transfer will be done at values consistent with the policies of both the All-Growth Series and the Mid-Cap Growth Series. Applicant Insurance Companies and DSI will review all the asset transfers to assure that the assets meet the objectives of the Mid-Cap Growth Series and that they are valued under the appropriate valuation procedures of the All-Growth Series and the Mid-Cap Growth Series. The Applicants represent that the transactions are consistent with Rule 17a-7(d) under the Act, the transactions are consistent with the policies of each investment company involved and the general purposes of the Act, and the transactions comply with the requirements of Section 17(b) of the Act.

7. Applicants represent that the combination of the Mid-Cap Growth Series and the All-Growth Series subaccounts in the manner set forth in the Application is intended to reduce expenses and raise investment return and thereby benefit Contractholders with assets in those subaccounts. The purchase and sale transactions described in the Application will be effected based on the net asset value of the investment company shares held in the subaccounts and the value of the units of the subaccount involved. Therefore, there will be no change in value to any Contractholder.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and related transactions involving redemptions and the combination of certain separate account subaccounts should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–379 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24228; File No. 812–11748]

Golden American Life Insurance Company, *et al.*; Notice of Application

December 30, 1999.

AGENCY: Securities and Exchange Commission (''SEC or ''Commission'').

ACTION: Notice of application for an order of approval pursuant to Section 26(b) of the Investment Company Act of 1940 (''Act'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the Act, approving the substitution of shares of the Mid-Cap Growth Series of The GCG Trust for shares of the Growth Opportunities Series of The GCG Trust.

APPLICANTS: Golden American Life Insurance Company (''Golden American''), Golden American Life Insurance Company Separate Account A (''Golden American Separate Account A''), Golden American Life Insurance Company Separate Account B (''Golden American Separate Account B''), Equitable Life Insurance Company of Iowa (''Equitable''), Equitable Life Insurance Company of Iowa Separate Account A (''Equitable Separate Account A''), First Golden American Life Insurance Company of New York (''First Golden''), and First Golden American Life Insurance Company of New York Separate Account NY–B (''First Golden Separate Account NY–B'').

FILING DATES: The application was filed on August 13, 1999, and amended and restated on December 23, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 24, 2000, and should be accompanied by proof of service on Applicants, 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 of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Marilyn Talman, Esquire, Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Attorney, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC 20549–0102, or call (202) 942–8090.

Applicants' Representations

1. Golden American and Equitable are stock life insurance companies organized under the insurance laws of Delaware and Iowa, respectively. Each is authorized to write variable annuity and variable life insurance policies in at least 48 states and the District of Columbia. First Golden is a stock life insurance company organized under the insurance laws of the state of New York, and is authorized to write variable annuity contracts in New York and Delaware. Golden American, Equitable and First Golden (collectively, ''Applicant Insurance Companies'') are wholly owned subsidiaries of ING Groep N.V. (''ING''), a global financial services holding company.

2. Equitable Separate Account A, Golden Separate Account A, Golden Separate Account B and First Golden Separate Account NY–B (collectively,

''Applicant Separate Accounts'') are separate accounts for which one of the Applicant Insurance Companies serves as the sponsor and depositor. Golden American serves as sponsor and depositor of Golden Separate Account A and Golden Separate Account B; Equitable serves as sponsor and depositor of Equitable Separate Account A; First Golden serves as sponsor and depositor of First Golden Separate Account NY–B. Each Applicant Separate Account is a segregated asset account of its insurance company sponsor and each is registered under the Act as a unit investment trust. Each Applicant Separate Account is administered and accounted for as part of the general business of the Applicant Insurance Company of which it is a part. The income, gains or losses of Applicant Separate Accounts are credited to or charged against the assets of each such separate account, without regard to income, gains or losses of such Applicant Insurance Company.

3. Each Applicant Separate Account serves as a finding vehicle for certain variable annuity and/or variable life contracts (collectively, ''Variable Contracts'') written by the respective Applicant Insurance Companies. Applicant Separate Accounts are divided into separate subaccounts, each dedicated to owning shares of one of the investment options available under the Variable Contracts. The Variable Contracts are structured such that holders of any of the Variable Contracts (''Contractholders'') may select one or more of the investment options available under the contract held by allocating premiums payable under such contract to that subaccount of the relevant Applicant Separate Account that corresponds to the investment option desired. Thereafter, Contractholders accumulate funds, on a tax-deferred basis, based on the investment experience of the selected subaccount(s). Contractholders may, during the life of the contract, make unlimited transfers of accumulation values among the subaccounts available under the contract held, subject to any applicable administrative and/or transfer fees.

4. The GCG Trust is registered under the Act as an open-end, management, series investment company. The GCG Trust offers shares of several separate investment series, including the Growth Opportunities Series and the Mid-Cap Growth Series.

5. Under the terms of an investment advisory agreement (''Trust Management Agreement'') between the GCG Trust and Directed Services, Inc. (''DSI''), DSI manages the business and affairs of each of the several series of the GCG Trust, subject to the control of the Board of Trustees of the GCG Trust. Under the Trust Management Agreement, DSI is authorized to exercise full investment discretion and make all determinations with respect to the investment of the assets of the respective series, but may, at its own cost and expense, retain portfolio managers for the purpose of making investment decisions and research information available to the GCG Trust. DSI has retained Massachusetts Financial Services Company as portfolio manager of the Mid-Cap Growth Series and Montgomery & Associates, Limited as portfolio manager of the Growth Opportunities Series.

6. Pursuant to the Trust Management Agreement, DSI is responsible for providing the GCG Trust (or arranging and paying for the provision to the GCG Trust) a comprehensive package of administrative and other services necessary for the ordinary operation of certain selected series of the Trust, including the Mid-Cap Growth Series and the Growth Opportunities Series. This fee (''Unified Fee'') is calculated for the participating GCG Trust series based on a percentage of assets basis and in accordance with schedules that provide, for most of the GCG Trust series, fee reductions at specified asset levels or ''break points.'' One feature of the Unified Fee is that certain of the GCG Trust series, which include the Mid-Cap Growth Series and the Growth Opportunities Series, albeit in different groups, are grouped together for the purpose of determining whether a break point has been reached. The rate at which the Unified Fee payable to DSI is calculated will be reduced when the combined assets of all of the GCG Trust series in the designated fee group reach the scheduled break points. As a result, a GCG Trust series that is part of a designated fee group is likely to realize a reduction in the fee payable to DSI more quickly than might otherwise be the case.

7. The Variable Contracts expressly reserve to Applicant Insurance Companies the right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a sub-account of the appropriate Separate Account. The prospectuses for the Variable Contracts and Applicant Separate Accounts contain appropriate disclosure of this right.

8. Applicant Insurance Companies propose to substitute shares of the Mid-Cap Series for those of the Growth Opportunities Series (''Substitution''). Following the Substitution, Applicant Separate Accounts will have two subaccounts holding shares of the Mid-Cap Growth Series and will combine these subaccounts.

9. Applicants state that the investment objectives and policies of the Mid-Cap Growth Series are sufficiently similar to those of the Growth Opportunities Series to assure that the essential objectives and risk expectations of those Contractholders with interest in the Growth Opportunities Series subaccounts (''Affected Contractholders'') will be met. Both the Mid-Cap Growth Series and the Growth Opportunity Series share the primary objective of increase in value of the shares of the portfolio securities (capital growth). The Mid-Cap Growth Series also has the same investment strategy as the Growth Opportunities Series, of allocating assets primarily among equity and bond classes of investments, with the majority invested in equity investments in companies with medium market capitalization. The Mid-Cap Growth Series and the Growth Opportunities Series may invest up to 20% and 35%, respectively, in foreign issuers. Both may also invest in over-the-counter securities. The chief distinction between the series is that the Growth Opportunities Series is diversified and the Mid-Cap Growth Series is non-diversified, although it is not currently taking advantage of that distinction and has no present intention of doing so. Applicants state that several factors could cause the Mid-Cap Growth Series to change its investment style to non-diversified including a response to extreme market conditions or a change of the portfolio manager, although Applicants state that there is no desire to change the portfolio manager. Golden American has, therefore, concluded that the overall investment objectives of the Growth Opportunities Series and the Mid-Cap Growth Series are sufficiently similar such that the Mid-Cap Growth Series is appropriate for substitution.

10. Applicants state that the lower expenses of the Mid-Cap Growth Series was considered. The expense ratio for the nine-month period ended September 30, 1999, for the Growth Opportunities Series and Mid-Cap Growth Series were 1.06% and 0.91%, respectively, and 1.15% and 0.95%, respectively for fiscal year 1998. Unified Fees as of September 30, 1999 based on net assets for that day for the Growth Opportunities Series and Mid-Cap Growth Series were 1.03% and 0.90%, respectively.

11. Applicants also state that the better investment performance of the Mid-Cap Growth Series was considered.

12. Applicants state that the Substitution and the related subaccount combinations are part of an overall business plan of Applicant Insurance Companies to make their respective products, including the Variable Contracts, more competitive and more efficient to administer and oversee. Applicants represent that the Substitution is appropriate because it will allow the GCP Trust to eliminate a portfolio with poor performance and higher expenses and place Contractholders in a position to participate in a portfolio with better, more consistent performance and a lower Unified Fee.

13. Applicants state that DSI serves as overall manager of the Growth Opportunities Series and the Mid-Cap Growth Series. The portfolio manager of the Mid-Cap Growth Series is Massachusetts Financial Services Company. After the Substitution, Affected Contractholders whose interest in the Growth Opportunities Series is redeemed and invested in the Mid-Cap Growth Series will continue to benefit from the services of DSI as overall manager.

14. Applicants state that, as of the effective date of the Substitution (''Effective Date''), shares of the Growth Opportunities subaccounts of the Applicant Separate Accounts will be redeemed for cash. Applicants, on behalf of the Growth Opportunities subaccounts of Applicant Separate Accounts will simultaneously place a redemption request with the Growth Opportunities Series and a purchase order with the Mid-Cap Growth Series so that the purchase will be for the exact amount of the redemption proceeds. The proceeds of such redemptions will then be used to purchase the appropriate number of shares of the Mid-Cap Growth Series. As a result, moneys attributable to Contractholders currently invested in the Growth Opportunities Series will be fully invested.

15. The Substitution will take place at relative net asset value (in accordance with Rule 22c–1 under the Act) with no change in the amount of any Affected Contractholder's accumulation value of death benefit or in the dollar value of his or her investment in the Applicant Separate Accounts. Affected Contractholders will not incur any fees or charges as a result of the proposed Substitution nor will their rights or Applicant Insurance Companies' obligations under the Variable Contracts be altered in any way. Applicant Insurance Companies or their affiliates will pay all expenses incurred in connection with the proposed Substitution, including legal, accounting, and other fees and expenses. In addition, the proposed Substitution will not impose any tax liability on Affected Contractholders. The proposed Substitution will not cause the Variable contract fees and charges currently being paid by Affected Contractholders to be greater after the proposed Substitution than before the proposed Substitution. Also, after notification of the Substitution, and for thirty days after the Substitution, Affected Contractholders may reallocate, to any other investment options available under their Variable Contract, their Growth Opportunities subaccount accumulation value without incurring any costs or excessive allocation charges.

16. Immediately following the Substitution, Applicants will cause the Growth Opportunities subaccounts of Applicant Separate Accounts to combine with the Mid-Cap Growth subaccounts of Applicant Separate Accounts at full net asset value so that there is no loss of account value for the Contractholders. Affected Contractholders will not incur any fees or charges as a result of this combination of subaccounts nor will their rights or Applicants' obligations under the Variable Contracts alter in any way. Applicants will pay all expenses incurred in connection with the combinations, including legal and/or accounting fees. In addition, the combination will no result in any adverse tax liability on Affected Contractholders, or any change in the economic interest or contract value of Affected Contractholders.

17. Affected Contractholders were notified of the Application by means of a supplement to the GCG Trust prospectus on or about August 30, 1999. Following the issuance of the requested order, but prior to the Effective Date, each Affected Contractholder will receive a notice setting forth the Effective Date and advising Affected Contractholders of their right, if they so chose, at any time prior to the Effective Date, to reallocate or withdraw accumulated value in the Growth Opportunities subaccount under their Variable Contract or otherwise terminate their interest thereof in accordance with the terms and conditions of their Variable Contract. If Affected Contractholders reallocate accumulation value prior tot he Effective Date or thirty days after the Effective Date, there will be no charge for the reallocation and it will not be counted toward the total number of reallocations made within the contract year. All current Contractholders have received a prospectus containing a description of the Mid-Cap Growth Series and another copy will be forwarded to any contractholder who requests one. Within five days after the Effective Date, Affected Contractholders will receive a notice (''Substitution Notice'') stating that shares of the Growth Opportunities Series have been redeemed and that the shares of the Mid-Cap Growth Series have been substituted. The Substitution Notice will include a written confirmation showing the before and after accumulation values (which will not have changed as a result of the substitution) and detailing the transactions effected on behalf of the Affected Contractholder with regard to the Substitution.

Applicants' Legal Analysis

1. Section 26(b) of the Act prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(b) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the Act.

2. Applicants request an order pursuant to Section 26(b) of the Act approving the Substitution and related transactions. Applicants assert that the purposes, terms, and conditions, of the proposed Substitution and related transactions are consistent with the protection of investors and the purposes fairly intended by the Act. Applicants further assert that the Substitution will not result in the type of costly forced redemption against which Section 26(b) was intended to guard.

3. Applicants represent that the terms of the redemptions and purchases are reasonable and fair and do not involve overreaching on the part of any person concerned and that the interest of Contractholders will not be diluted. The redemptions and purchases will be done at values consistent with the policies of both the Growth Opportunities Series and the Mid-Cap Growth Series. Applicant Insurance Companies and DSI will review all the asset transfers to assure that the assets meet the objectives of the Mid-Cap Growth Series and that they are valued under the appropriate valuation procedures of the Growth Opportunities Series and the Mid-Cap Growth Series.

4. Applicants represent that the combination of the Mid-Cap Growth

Series and the Growth Opportunities Series subaccounts in the manner set forth in the Application is intended to reduce expenses and raise investment return and thereby benefit Contractholders with assets in those subaccounts. Thhe purchase and sale transactions described in the Application will be effected based on the net asset value of the investment company shares held in the subaccounts and the value of the units of the subaccount involved. Therefore, there will be no change in value to any Contractholder.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and related transactions involving redemptions and the combination of certain separate account subaccounts should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–382 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24229; File No. 812–11732]

December 30, 1999.

Provident Mutual Life Insurance Company; Notice of Application

AGENCY: Securities and exchange Commission (the ''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(b) and Section 17(b) of the Investment Company Act of 1940 (the ''1940 Act'').

SUMMARY OF APPLICATION: Provident Mutual Life Insurance Company (''PMLIC''), Providentmutual Life and Annuity Company of America (''PLACA''), Provident Mutual Variable Annuity Separate Account (''PMLIC Annuity Account''), Provident Mutual Variable Separate Account (''PMLIC Account''), Providentmutual Variable Annuity Separate Account (''PLACA Annuity Account''), and Providentmutual Variable Life Separate Account (''PLACA Life Account'') (together, the ''Applicants'') are requesting an order of approval for the proposed substitution of shares of the Equity 500 Index Portfolio (the ''New Portfolio'' of the Market Street Fund, Inc. (''Market Street''), a management investment company advised by an affiliate of PMLIC and PLACA, for shares of the Index 500 Portfolio (the ''Replaced Portfolio'') of the Variable Insurance Products Fund II (''VIP II''), which is currently used as a variable funding option under variable annuity and variable life contracts (together, the ''Contracts'') issued by PMLIC or PLACA. Applicants also seek an order pursuant to Section 17(b) of the 1940 Act to permit Applicants to effect the substitution by redeeming shares of the Replaced Portfolio in kind and using the proceeds to purchase shares of the New Portfolio.

APPLICANTS: PMLIC, PLACA, PMLIC Annuity Account, PMLIC Account, PLACA Annuity Account, and PLACA Life Account.

FILING DATE: The application was filed on August 2, 1999, and amended on December 20, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 24, 2000, and must be accompanied by proof of service on applicants 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 requests notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o James G. Potter, Esq., Provident Mutual Life Insurance Company, 1000 Chesterbrook Boulevard, Berwyn, Pennsylvania 19312–1181. Copies to Jeffrey A. Dalke, Esq. and Cori E. Daggett, Esq., Drinker Biddle & Reath LLP, One Logan Square, 18th and Cherry Streets, Philadelphia, PA 19103–6996.

FOR FURTHER INFORMATION CONTACT: Rebecca M. Marquigny, Senior Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. PMLIC, a mutual life insurance company chartered by the Commonwealth of Pennsylvania, is authorized to transact life insurance and annuity business in Pennsylvania and in 50 other jurisdictions. PMLIC is the depositor and sponsor of the PMLIC Annuity Account and the PMLIC Account.

2. PLACA is a stock life insurance company originally incorporated under the laws of the Commonwealth of Pennsylvania in 1958, and redomiciled as a Delaware insurance company in 1992. It is a wholly owned subsidiary of PMLIC. PLACA is licensed to do business in 48 states and the District of Columbia. PLACA is the depositor and sponsor of the PLACA Annuity Account and the PLACA Life Account.

3. PMLIC established the PMLIC Annuity Account on October 19, 1992 and the PMLIC Account on June 7, 1993 as segregated investment accounts under Pennsylvania law. PLACA established the PLACA Annuity Account on May 9, 1991 as a segregated investment account under Pennsylvania law, and established the PLACA Life Account on June 30, 1994 as a segregated investment account under Delaware law. Each Account is a ''separate account'' as defined by Rule 0–1(e) under the 1940 Act, and is registered with the Commission as a unit investment trust.

4. The PMLIC Account is divided into twenty subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding Portfolio of one of five series-type management companies. The assets of the PMLIC Account support variable life insurance Contracts, and interests in the PMLIC Account offered through such Contracts have been registered under the Securities Act of 1933 (the ''1933 Act'') on Form S–6.

5. The PMLIC Annuity Account is divided into thirty-one subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding Portfolio of one of seven series-type management companies. The assets of the PMLIC Annuity Account support variable annuity Contracts, and interests in the PMLIC Annuity Account offered through such Contracts have been registered under the 1933 Act on Form N–4.

6. The PLACA Annuity Account is divided into thirty-one subaccounts. Each subaccount invests exclusively in a Portfolio of one of seven series-type registered investment management companies. The assets of the PLACA

Annuity Account support variable annuity Contracts, and interests in the PLACA Annuity Account offered through such Contracts have been registered under the 1933 Act on Form N–4.

7. The PLACA Annuity Account is divided into twenty-five subaccounts. Each subaccount invests in a Portfolio of one of six series-type management companies. The assets of the PLACA Life Account support variable life Contracts, and interests in the PLACA Life Account offered through such Contracts have been registered under the 1933 Act on Form S–6.

8. The PMLIC Annuity Account, the PMLIC Account, the PLACA Annuity Account and the PLACA Life Account, either directly or through their subaccounts, invest in shares of various investment portfolios (the ''Portfolios''), including the Replaced Portfolio.

9. The Contracts are modified premium and flexible premium variable life insurance contracts and individual flexible premium deferred variable annuity contracts. PMLIC issues five of the variable life insurance Contracts and one of the variable annuity Contracts that would participate in the proposed substitution. PLACA issues three of the variable life insurance Contracts and two variable annuity Contracts that would participate in the proposed substitution. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. PMLIC or PLACA, under each of the Contracts, reserves the right to substitute shares of one Portfolio for shares of another, including a Portfolio of a different registered management investment company.

10. Generally, the variable life insurance Contracts provide for twelve free transfers within one policy year, with a charge of $25 thereafter for any additional transfer within that policy year. Some Contracts require a minimum transfer amount of $1,000. Another Contract provides for four free transfers in a minimum amount of $100.

11. Three variable annuity Contracts provide for twelve free transfers within one policy year, with a charge of $25 thereafter for any additional transfer within that policy year. The remaining variable annuity Contracts provide for a minimum transfer amount of $500 with no limit on the number of transfers, except a limit of one transfer per policy year from the Guaranteed Account.

12. VIP II was organized as a Massachusetts business trust on March 21, 1988. VIP II is registered under the 1940 Act as an open-end diversified management investment company. VIP II is a series investment company as defined by Rule 18f-2 under the 1940 Act and currently comprises five portfolios. VIP II issues a separate series of shares of beneficial interest in connection with each portfolio and has registered these shares under the 1933 Act on Form N–1A. One of these portfolios is the Replaced Portfolio. The investment adviser, subadviser and distributor of the Replaced Portfolio are not affiliated with PMLIC or PLACA. Shares of the Replaced Portfolio are held by the Accounts either directly or indirectly through certain of their subaccounts.

13. The Market Street Fund, Inc. (''Market Street'') was incorporated in Maryland on March 21, 1985. Market Street is registered under the 1940 Act as an open-end diversified management investment company. Market Street is a series investment company as defined by Rule 18f-2 under the Act and currently comprises eleven Portfolios. Market Street issues a separate series of shares in connection with each Portfolio and has registered these shares under the 1933 Act on Form N–1A. Providentmutual Investment Management Company (''PIMC''), an indirect subsidiary of PMLIC, serves as investment adviser to certain of the Market Street Portfolios.

14. Market Street and PIMC are organizing the New Portfolio. PIMC will serve as the investment adviser of the New Portfolio. PIMC will enter into a contract with State Street Global Advisers (''State Street''), a division of State Street Bank and Trust Company, under which State Street will manage the New Portfolio as subadviser.

15. PMLIC, on its behalf and on behalf of the PMLIC Annuity Account and the PMLIC Account, and PLACA, on its behalf and on behalf of the PLACA Annuity Account and the PLACA Life Account, propose to substitute shares of the New Portfolio for shares of the Replaced Portfolio. The Applicants believe that by making the proposed substitutions in each of the Accounts, they can better serve the interests of owners of their Contracts as described below.

16. The Replaced Portfolio and the New Portfolio have substantially the same investment objective. Both are passively managed portfolios that seek investment results that correspond to the total return of common stocks publicly traded in the United States, as represented by the Standard & Poor's Composite Index of 500 Stocks (the ''S&P 500''). Both invest substantially all of their assets in the common stocks that are included in the S&P 500, and both attempt to minimize the difference (''tracking error) between their investment performance and the investment performance of the S&P 500. As a result of their similar investment objectives and policies, the Replaced Portfolio and the New Portfolio present substantially the same investment risk, which is the risk of investing in the stocks of large U.S. issuers that are included in the S&P 500.

17. At least until May 1, 2001, PMLIC and PLACA intend to maintain the same total expense ratio for the New Portfolio as the Replaced Portfolio has experienced. Total expenses as a percentage of net assets are .28% for the Replaced Portfolio. This rate reflects a voluntary reimbursement by the investment adviser for total operating expenses in excess of .28% of average net assets. This arrangement may be terminated at any time. Contractual total management fees for the Replaced Portfolio are .24% of average net assets. Total annual operating expenses without reimbursements would have been .35% of average net assets for the fiscal year ended December 31, 1998. Contractual total management fees for the New Portfolio will be .24% of average net assets. Total annual operating expenses for the New Portfolio are expected to be .39% of average net assets; however, total expenses as a percentage of net assets for the New Portfolio will be .28% as the result of the reimbursement of expenses.

18. Currently, approximately $300 million of Contract owner funds are allocated to the Replaced Portfolio. PMLIC and PLACA intend to reallocate the entire amount currently invested in the Replaced Portfolio, less Contract owner reallocations to other currently existing investment options, to the New Portfolio. The Applicants believe that the amount of such Contract owner reallocations will be insubstantial, and that the New Portfolio will have more than enough assets to replicate the investment structure and performance of the S&P 500 Index.

19. The Applicants believe that it is in the interests of Contract owners that PMLIC and PLACA control, to the extent practicable, the underlying Portfolios in which the Accounts invest. The Applicants also believe that Contract owners are benefited to the extent the PMLIC and PLACA are able to improve their efficiency in administering the products they offer and increase their oversight over the investment options that are available to Contract owners.

20. Control, administrative efficiency and oversight are important to Contract

owners because they help ensure the quality of PMLIC's and PLACA's products and help reduce unnecessary costs. For example, because the Replaced Portfolio is available as a portfolio in other variable insurance products offered by unaffiliated companies, PMLIC and PLACA do not have nearly as much influence over matters relating to the Replaced Portfolio as they will have with respect to the New Portfolio. In particular, by being able to interact directly with Market Street's board of directors, PMLIC and PLACA will better be able to have meaningful input on matters relating to the New Portfolio, such as the use of particular investment techniques by the New Portfolio and the level of Portfolio expenses. Furthermore, the substitution of the New Portfolio will give PMLIC and PLACA greater ability to coordinate events requiring communications to Contract owners. Changes to the management or structure of Portfolios that are offered through the Contracts but are managed by firms that are unaffiliated with PMLIC or PLACA (such as the Replaced Portfolio) can result in costly, off-cycle communications and mailings to Contract owners that might otherwise be avoided. In addition, to the extent that the investment management of a Portfolio is unsatisfactory for any reason, correction of the matter is often less complicated and cheaper in situations where the investment manager of the Portfolio is affiliated with the sponsor of the Accounts than in situations where the investment manager is unaffiliated. In the latter case, regulatory approval of the substitution of another Portfolio may be the only available alternative.

21. The proposed substitution will thus enhance PMLIC's and PLACA's ability to control both their costs and the costs of their products (through administrative efficiencies and the greater ability to control the costs of the New Portfolio), and in this way will be able to ensure their continued competitiveness over time. Furthermore, the proposed substitution will increase PMLIC's and PLACA's ability to monitor the investment performance of the New Portfolio (including the accuracy of its tracking the performance of the S&P 500), to react quickly to any issues that may arise in connection with the New Portfolio's operations and to ensure that the management of the New Portfolio is fully consistent with both the terms and purposes of the Contracts offered to customers and with the other investment options that are available through the Contracts.

22. The proposed substitution reduces the possibility of conflicts that can arise in connection with the use of Portfolios that are used in ''shared'' funding arrangements by unaffiliated insurance companies.

23. By supplements to the various prospectuses for the Contracts and the Accounts, all owners of the Contracts will be notified of the Applicants' intention to take the necessary actions, including seeking the order requested by the application, to substitute shares of the Portfolio.

24. The supplements for the Accounts will advise Contract owners that from the date of the supplement until 30 days after the date of the proposed substitution, Contract owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected Accounts or subaccounts to another subaccount or separate account available under a Contract without that transfer counting as a ''free'' transfer permitted under a Contract. The supplements also inform Contract owners that PMLIC and PLACA will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitution.

25. The substitution will be effected by redeeming shares of the Replaced Portfolio on the date of the substitution at net asset value and using the proceeds to purchase shares of the New Portfolio at net asset value on the same date. No transfer or similar charges will be imposed by PMLIC or PLACA and, at all times, all contracts and policies will remain unchanged and fully invested.

26. While the substitution may be effected in cash, the Applicants are contemplating the possibility of a redemption of the shares of the Replaced Portfolio partly or entirely in kind. If a redemption in kind is effected, the cash and securities received as payment in kind would then be used to purchase shares of the New Portfolio. Redemption and contribution in kind would reduce the brokerage costs that would otherwise be charged in connection with the redemption. In kind redemption and contribution would be done in a manner consistent with the investment objectives and policies and diversification requirements of the New Portfolio, and PIMC and the New Portfolio's subadviser would review the in kind redemption to assure that the assets proposed for the substitution are suitable for the New Portfolio. The assets subject to the in kind redemption and contribution would be valued based on the normal valuation procedures of the Replaced Portfolio and the New Portfolio. Any inconsistencies in valuation procedures between the Replaced Portfolio and the New Portfolio would be reconciled so that the redeeming and purchasing values are the same. It is expected that any inconsistencies in valuation would be minimal because both the Replaced Portfolio and the New Portfolio invest primarily in common stocks listed on the S&P 500 Composite Price Index, securities with a readily ascertainable market value. Both the Replaced Portfolio and the New Portfolio value an equity security at its last sale price before valuation, or if no sale price is available, at its closing bid price. In effecting the substitution, the redemption requests and the purchase orders will be placed simultaneously so that the purchases will be effected for the exact amounts of the redemption proceeds. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remunerations would be paid in connection with any in kind transaction. In addition, no transfer fees will be borne by the Contract owners.

27. The proposed substitution will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any Contract. Contract owners will not incur any fees or charges as a result of the proposed substitution, nor will their rights or PMLIC's or PLACA's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting and other fees and expenses, including brokerage expenses, will be paid by PMLIC or PLACA. In addition, the proposed substitution will not impose any tax liability on Contract owners. The proposed substitution will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitution than before the proposed substitution.

28. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitution, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitution was carried out and that for a period of 30 days following the substitution they may make one transfer of all account value under a Contract invested in any one of the affected Accounts or

subaccounts to another subaccount or separate account available under their Contract without that transfer counting as one of any limited number of transfers permitted in a Contract year or as one of a limited number of transfers permitted in a Contract year free of charge. The notice will also state that PMLIC and PLACA will not exercise any rights reserved under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitution. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contract owners who are affected by the substitution may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by PMLIC (or one of its affiliates) or PLACA (or one of its affiliates) during the 60 days following the proposed substitutions. The notices will be accompanied by the current prospectus for the New Portfolio.

29. PMLIC and PLACA also are seeking approval of the proposed substitution form any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive commission approval before substituting the securities held by the trust. Section 26(b) was added to the Act by the Investment Company Amendments of 1970. Prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantage these charges created for investors who did not want to remain invested in the substituted fund, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. Congress responded to the Commission's concerns by enacting Section 26(b) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts.

2. The proposed substitution involves substitution of securities within the meaning of Section 26(b) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(b) approving the proposed substitution.

3. The Contracts expressly reserve for PMLIC or PLACA the right, subject to compliance with applicable law, to substitute shares of another investment company for shares of an investment company held by an Account or a subaccount of an Account. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. PMLIC and PLACA have each reserved this right of substitution to preserve the opportunity to replace such shares in situations where a substitution will further the mutual interests of Contract owners and themselves.

4. In the present case, Contract owners will be at least as well off after the proposed substitution as they are today. Shares of Replaced Portfolio will be replaced by a portfolio with substantially the same investment objectives and policies and substantially the same expenses. Furthermore, the proposed substitution retains for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitution is carried out, the Contract owners will be permitted to allocate purchase payments and transfer account values between and among the same number of separate accounts or subaccounts as they could before the proposed substitution. Most importantly the proposed substitution provides the benefit of allowing the Applicants greater control over the management and administration of the Contracts and their underlying investments and reducing the risk of harm that can result from less control.

5. In these respects, the proposed substitution is fully consistent with the policies underlying Section 26(b). Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer account values to other separate accounts or subaccounts without cost or other disadvantage. The proposed substitution will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

6. The proposed substitution also is unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by PMLIC or PLACA under their Contracts as well as numerous other rights and privileges set forth in the Contracts. Contract owners would reasonably have considered PMLIC's or PLACA's size, financial condition and reputation for service in selecting their Contracts. These factors will not change as a result of the proposed substitution.

7. The Applicants submit that the proposed substitution meets the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

8. Section 17(a) (1) and (2) of the 1940 Act generally prohibit any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company and from purchasing any security or other property from such registered investment company. PMLIC and PLACA anticipate that the proposed substitution will be accomplished in whole or in part by redeeming shares of the Replaced Portfolio in kind rather than in cash and then using the securities received to purchase shares of the New Portfolio.

9. PMLIC, as depositor of the PMLIC Annuity Account and the PMLIC Account, effectively controls those Accounts, and therefore is an affiliated person of each of the PMLIC Annuity Account and the PMLIC Account. PLACA, as depositor of the PLACA Annuity Account and the PLACA Life Account, effectively controls the PLACA Annuity Account and the PLACA Life Account, and is therefore an affiliated person of those Accounts.

10. The Accounts, PLACA and PIMC are under the common control of PMLIC and therefore may be deemed to be affiliated persons of one another. PIMC, as investment adviser to Market Street, is an affiliated person of Market Street.

11. If the Applicants effect the proposed redemption and contribution in kind, the Accounts would receive securities upon redemption of shares of the Replaced Portfolio. The Accounts would then purchase shares of the New Portfolio from Market Street with the securities acquired in the redemption. The redemption and contribution in kind therefore involve a purchase and sale of property among parties which may be deemed to be affiliated persons under Section 17(a) of the 1940 Act.

12. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exemption any transaction from the prohibitions of Section 17(a) if the

evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

13. The Applicants submit that the terms under which any redemption and contribution in kind would be effected are reasonable and fair and do not involve overreaching on the part of any person. The Applicants further submit that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of 1940 Act.

14. If a redemption and contribution in kind is effected, each of PMLIC and PLACA, on behalf of its respective Accounts, would contemporaneously place a redemption request with the Replaced Portfolio and a purchase order with the New Portfolio so that each purchase in the New Portfolio would correlate to the amount of the redemption proceeds received from the Replaced Portfolio. As a result, at all times, monies attributable to Contract owners then invested in the Replaced Portfolio would remain fully invested.

15. Furthermore, the interests of the Contract owners would not be diluted by the proposed transaction. The redemption and contribution in kind would be done at values consistent with the policies of both the Replaced Portfolio and the New Portfolio. In addition, PIMC and the proposed subadviser of the New Portfolio would review the asset transfers to ensure that the assets meet the objectives of the New Portfolio and that they are valued under the appropriate valuation procedures of the Replaced Portfolio and the New Portfolio. The in kind redemption and contribution would reduce the brokerage costs that would otherwise be charged in connection with the full redemption of shares and would conform to the provisions of rule 17a-7(d) under the 1940 Act.

16. The Applicants believe proposed redemption and contribution in kind are consistent with the general purposes of the 1940 Act and do not present any of the abuses that the 1940 Act was designed to address. The Applicants would carry out the proposed substitution and any redemption and purchase in kind in a manner appropriate in the public interest and consistent with the protection of investors. The Applicants submit that the proposed redemption and contribution in kind meets the standards the Commission and its staff have applied to applications for orders of exemption for similar redemptions in kind that have been granted in the past.

17. The Applicants request an order of the Commission pursuant to Section 26(b) of the 1940 Act approving the proposed substitution by PMLIC and PLACA and pursuant to Section 17(b) of the 1940 Act exempting any related transaction involving a redemption and contribution in kind from Section 17(a). The proposed substitution and related transaction will not be completed until after both (1) the Commission has issued an Order granting the relief requested in this application and (2) the post-effective amendment to the registration statement of Market Street registering the New Portfolio and its shares with the Commission is effective.

Conclusion

For the reasons summarized above, Applicants assert that the requested order meets the standards set forth in Section 26(b) of the 1940 Act and Section 17(b) of the 1940 Act and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–380 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24231; 812–11782

Standish, Ayer & Wood Investment Trust, et al., Notice of Application

January 3, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain limited partnership to transfer all their assets to corresponding new series of a registered open-end management investment company in exchange for shares of the new series.

APPLICANTS: Standish, Ayer & Wood Investment Trust (''Trust''), Standish Small Cap Value Fund, Limited Partnership (''Small Cap Partnership''), SIMCO International Small Cap Fund, Limited Partnership (''International Partnership'' and together with the Small Cap Partnership, the ''Partnerships''), Standish, Ayer & Wood Inc. (''Standish''), Standish International Management Company, L.P. (''SIMCO'' and together with Standish, the ''Advisers''), and Standish Investments, Inc. (''SII'').

FILING DATES: The application was filed on September 20, 1999 and amended on December 22, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 26, 2000, and should be accompanied by proof of service on applicants, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609; Applicants, c/o Beverly E. Banfield, Standish, Ayer & Wood Inc. One Financial Center, 26th Floor, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently offers 23 series and proposes to offer two additional series, the Standish Small Cap Value Fund (''Small Cap Fund'') and the Standish International Small Cap Fund (''International Fund'' and together with

the Small Cap Fund, the ''New Funds''). The investment objective and principal strategies of each New Fund will be essentially identical to those of its corresponding Partnership. The Small Cap Partnership and the International Partnership are Massachusetts limited partnerships organized on January 4, 1999 and January 2, 1996, respectively. The Partnerships are not registered under the Act in reliance on section 3(c)(1) of the Act.

2. Standish is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Small Cap Partnership and the Small Cap Fund. SIMCO, which is wholly-owned by Standish, is registered under the Advisers Act and serves as investment adviser to the International Partnership and to the International Fund. SII, a wholly-owned subsidiary of Standish, serves as general partner (''General Partner'') of the Partnerships.

3. Applicants propose that each of the New Funds will acquire all the assets, minus assets sufficient for winding up the Partnership, from its corresponding Partnership in exchange for New Fund shares (''Shares'') (the ''Exchanges''). Each Exchange will be effected pursuant to an Agreement and Plan of Exchange (the ''Plan''). Under the Plan, Shares delivered to each Partnership in an Exchange will have an aggregate net asset value (''NAV'') equivalent to the NAV of the assets transferred by that Partnership to the Trust on behalf of the corresponding New Fund. Each Partnership will subsequently distribute the New Fund Shares it receives to its partners on a pro-rata basis based on the value of the interests held on the effective date of the Exchange by each partner, currently anticipated to be January 28, 2000. Following the Exchange, each Partnership will be liquidated and dissolved. The expenses of the Exchanges will be borne by Standish.

4. At an October 12, 1999 meeting of the board of trustees of the Trust (the ''Board''), the Board, including a majority of the members who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), approved the Exchanges. In approving the Exchanges, the Board concluded that: (a) the Exchanges are desirable as a business matter from the point of view of the Trust; (b) the Exchanges are reasonable and fair, do not involve overreaching, and are consistent with the policies of the Funds; and (c) the interests of existing shareholders in the Funds will not be diluted as a result of the Exchanges. These findings, and the basis upon which such findings were made, have been recorded in the minute books of the Trust.

5. The board of directors of SII, as General Partner of the Partnerships, approved the Exchange by unanimous written consent. SII, as General Partner, will solicit through the delivery of a private placement memorandum written consents from each limited partner to amend the partnership agreements of the Partnerships to allow for the conversion of the Partnerships into a registered investment company. The limited partners who do not consent to the amendment to the partnership agreements, or who do not wish to participate in the conversion of the Partnerships, will have an opportunity to redeem their interests in the Partnerships before the conversion occurs.

6. The Exchanges will not be effective until: (a) The Commission has issued an order relating to the application; (b) a majority in interest of the limited partners of each Partnership approve an amendment to each Partnership Agreement to allow for the conversion of the Partnerships into a registered investment company; and (c) the Trust and the Partnerships have received an opinion of counsel that no gain or loss will be recognized by the New Funds upon the transfer of the Partnerships' assets.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an 'affiliated person'' as, among other things, any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person controlling, controlled by, or under common control with, the other person; any officer, director, partner, copartner or employee of the other person; and, if the other person is an investment company, its investment adviser.

2. Applicants state that each Partnership could be deemed to be an affiliated person of an affiliated person of each Fund. Applicants state that because SII (as General Partner of the Partnerships) and SIMCO (as investment adviser to the International Partnership) are under common control with Standish (the investment adviser to the Small Cap Partnership), Standish could be deemed to control the Partnerships. Each Partnership would be an affiliated person of Standish and an affiliated person of an affiliated person of each New Fund based on Standish and SIMCO begin the investment advisers to the New Funds. In addition, several limited partners who are directors or officers of Standish own greater than 5% of the Small Cap Partnership, which would make these limited partners affiliated persons of the Small Cap Partnership. These limited partners are also affiliated persons of the New Funds by reason of their positions with Standish. Accordingly, the Small Cap Partnership could also be deemed an affiliated person of an affiliated person of the Small Cap Fund. Thus, applicants state that the proposed Exchanges may be prohibited under section 17(a).

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers or directors, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of a security. Applicants state that the relief provided by rule 17a–7 may not be available for the Exchanges because the Exchanges will be effected on a basis other than cash. Applicants also state that because several limited partners who are officers or directors of Standish may be deemed affiliated persons of the Small Cap Partnership because they own 5% or more of the Partnership, the New Funds and the Partnerships may be affiliated in a manner other than allowed under rule 17a–7.

4. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

5. Applicants submit that the terms of the Exchanges are consistent with the requirements of section 17(b) of the Act. Applicants state that the Shares issued by each New Fund will have an aggregate NAV equal to the value of the assets acquired from its corresponding Partnership and that because Shares will be issued at their NAV, Fund shareholders will not be diluted. Applicants also state that the investment objective and policies of each New Fund are substantially similar to its corresponding Partnership.

Applicants further state that the Board, including the Independent Trustees, have approved the Exchanges, and that each Exchange will comply with rule 17a–7 (b) through (f).

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

1. The Exchanges will comply with the terms of Rule 17a–7 (b) through (f).

For the Commission, by the Division of Investment Management under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–383 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24232; 812–11828]

H&Q Healthcare Investors and H&Q Life Sciences Investors; Notice of Application

January 3, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicants, H&Q Healthcare Investors (''HQH'') and H&Q Life Sciences Investors (''HQL'') (each a ''Fund,'' and together the ''Funds''), request an order to permit each fund to make up to four distributors of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of net asset value.

FILING DATES: The application was filed on October 27, 1999, and was amended on December 21, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2000, and should be accompanied by proof of service on applicants, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, 50 Rowes Wharf, Fourth Floor, Boston, Massachusetts 02110–3328.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Funds are registered under the Act as closed-end, diversified management investment companies and organized as Massachusetts business trusts. The investment objective of HQH is long-term capital appreciation through investment in securities of companies in the healthcare industry. The investment objective of HQL is long-term capital appreciation through investment in securities of companies in the life sciences industry. Hambrecht & Quist Capital Management Incorporated, an investment adviser registered under the Investment Adviser Act of 1940, serves as each Fund's investment adviser.

2. On May 10, 1999, each Fund's board of trustees (''Board''), adopted a managed distribution policy (''distribution'') with respect to the Fund's common shares. Each Fund's shares are listed and traded on the New York Stock Exchange. Under the Distribution Policy, each Fund intends to make quarterly distributions to its shareholders equal to 2.0% of the Fund's net asset value (''NAV''). The Boards, including a majority of the members who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act, concluded that adoption of the Distribution Policy would be in the best interests of the Funds' shareholders. Applicants state that, while at times since inception each Fund's shares have traded at a premium, each Fund's shares generally have traded at a discount to NAV. In this regard, the Boards took into account empirical evidence that, in some cases, market price discounts to NAV have narrowed upon adoption of similar distribution policies by other closed-end investment companies.

3. Each Fund requests relief to permit it, so long as it maintains in effect the Distribution Policy, to make up to four long-term capital gains distributions in any one taxable year.

Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once very twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that rule 19b–1, by limiting the number and amount of net long-term capital gains distributions that each Fund may make with respect to any one year, may prevent the normal operation of the Distribution Policy whenever the Fund's realized net long-term capital gains in any year exceed the total of the long-term capital gains that under rule 19b–1 may include such capital gains. As a result, applicants state that each Fund might have to combine the third and fourth quarter dividends to comply with rule 19b–1, thereby disturbing the regularity of the dividend policy or fund the distributions with a return of capital. Applicants further state that the long-term capital gains in excess of the fixed distributions permitted by rule 19b–1 then would have to be added to one of the permitted capital gains distributions, thus exceeding the total minimum amount called for by the Distribution Policy, or be retained by each Fund, with each Fund paying taxes on the long-term capital gains that are retained. Applicants believe that the application of rule 19b–1 to its Distribution Policy may create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include long-term capital gains.

3. Applicants submit that one of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that

shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state that each Fund's Distribution Policy, including the fact that quarterly dividends may include returns of capital to the extent that net investment income and net long-term capital gains are insufficient to meet the distribution obligation, will be described in periodic communications to its shareholders. Applicants further state that in accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution (investment company taxable income, net long-term realized capital gains or return of capital) will accompany any distribution (or the confirmation of its reinvestment under each Fund's dividend reinvestment plan) that is not from the Fund 's net investment income. In addition, a statement showing the amount and character of the distributions during the year will be included with each Fund's IRS Form 1099–DIV and Form 1099–B reports, which will be sent to each shareholder of record who received distributions during the year (including shareholders who sold shares during the year).

4. Applicants submit that another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming dividend (''selling the dividend''), where the dividend results in an immediate corresponding reduction in NAV and is in effect a return of the investor's capital. Applicants state that this concern does not apply to closed-end investment companies such as the Funds which do not continuously distribute shares. Applicants also state that the condition to the requested relief would further assure that the concern about selling the dividend would not arise in connection with a rights offering by the applicants. Applicants state that any transferable rights offering by either Fund will comply with the guidelines of the Commission and its staff. In making the requisite findings in connection with such an offering, the Boards will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Applicants also state that any such offering will also comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Applicants state that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. Applicants assert that the anticipated benefits to the Fund's shareholders are such that each Fund will continue to make quarterly distributions regardless of what portion is composed of long-term capital gains.

6. Section 6(c) of the Act provides that the Commission may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, the applicants believe that the requested relief satisfies this standard.

Applicant's Condition

Each Fund agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its shares other than:

(i) A rights offering with respect to the Fund's shares to holders of the Fund's shares, in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising the rights will not be entitled to receive such dividend, and (c) the Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Fund;

unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–384 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42268; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc. and the Philadelphia Stock Exchange, Inc.

December 23, 1999.

I. Introduction

On November 29, 1999, the National Association of Securities Dealers, Inc. (''NASD''), on behalf of itself and the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposal to extend the operation of a joint transaction reporting plan (''Plan'')[1] for Nasdaq/National Market (''Nasdaq/NM'') (previously referred to as Nasdaq/NMS) securities traded on an exchange on an unlisted or listed basis.[2] The proposal would extend the effectiveness of the Plan, as amended by Revised Amendment No. 9, as defined in footnote 3, through June 30, 2000.[3] The

[1] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated November 29, 1999 (''November 1999 Extension Request''). The November 1999 Extension Request also requests that the Commission continue to provide exemptive relief, previously granted in connection with the Plan on a temporary basis, from Rules 11Ac1–2 and 11Aa3–1 under the Securities Exchange Act of 1934, as amended (''Act''). 15 U.S.C. 78a *et seq*. The signatories to the Plan are the Participants for purposes of this release, however, the BSE joined the Plan as a ''limited participant'' and reports quotation information and transaction reports only in Nasdaq/NM securities listed on the BSE. Originally, the American Stock Exchange, Inc. (''Amex'') was a Participant but withdrew its participation from the Plan in August 1994.

[2] Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges (''UTP'') under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter (''OTC/UTP''), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of the Section 12(f) requirement, *see* November 1995 Extension Order, *infra* note 7.

[3] On March 18, 1996, the Commission solicited comment on a revenue sharing agreement among the Participants. *See* March 1996 Extension Order, *infra* note 7. Thereafter the Participants submitted certain technical revisions to the revenue sharing

Commission also is extending certain exemptive relief as described below. The November 1999 Extension Request also requests that the Commission approve the Plan, as amended, on a permanent basis on or before June 30, 2000. During the extension of the Plan, the Commission will consider whether to approve the proposed Plan, as amended, on a permanent basis.

II. Background

The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[4] The Commission approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. The Commission originally approved the Plan on June 26, 1990.[5] Accordingly, the pilot period commenced on July 12, 1993 and was scheduled to expire on July 12, 1994.[6] The Plan has since been in operation on an extended pilot basis.[7]

III. Description of the Plan

The Plan provides for the collection from Plan Participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in ''eligible securities.'' [8] The Plan contains various provisions concerning its operation, including: Implementation of the Plan; Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information; Reporting Requirements (including hours of operation); Standards and Methods of Ensuring Promptness, Accuracy and Completeness of Transaction Reports; Terms and Conditions of Access; Description of Operation of Facility Contemplated by the Plan; Method and Frequency of Processor Evaluation; Written Understandings of Agreements Relating to Interpretation of, or Participation in, the Plan; Calculation of the Best Bid and Offer (''BBO''); Dispute Resolution; and Method of Determination and Imposition, and Amount of Fees and Charges.[9]

IV. Exemptive Relief

In conjunction with the Plan, on a temporary basis, the Commission granted an exemption to vendors from Rule 11Ac1–2 under the Act regarding the calculation of the BBO [10] and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. As discussed further below in the Summary of Comments, the Participants ask in the November 1999 Extension Request that the Commission grant an extension of the exemptive relief described above to vendors until the BBO calculation issue is fully resolved. Additionally, in the November 1999 Extension Request, the Participants also request that the Commission grant an extension of the exemptive relief described above to the BSE for as long as the BSE is a Limited Participant under the Plan.

V. Summary of Comments

In the December 1998 Extension Order, the Commission requested comment on the following issues: Whether the BBO calculation for securities traded pursuant to the Plan should be based on a price/time/size methodology or a price/size/time methodology; whether there is a need for a trade through rule; and the impact of the CHX's intended use of BRASS, as defined below.

With respect to the BBO calculation issue, the Nasdaq Board approved a recommendation to modify the methodology for calculating the BBO on Nasdaq to prioritize quotes based on a price/size/time algorithm instead of the current price/time/size algorithm, provided that Nasdaq market makers are subject to a minimum quote size requirement of 100 shares for at least 1,000 Nasdaq securities.[11] In furtherance of this goal, on October 29, 1997, the Commission approved an NASD proposal to extend and expand the ''Actual Size Rule'' [12] to a total of 150 securities from 100 securities.[13] More recently, the Commission approved an NASD proposal to permanently allow market makers to quote their actual size by reducing the minimum quotation size requirement for all Nasdaq securities to one normal unit of trading.[14]

In addition, the NASD submitted a proposed rule change to establish an

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agreement (''Revised Amendment No. 9''). *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated September 13, 1996. *See also* September 1996 Extension Order, *infra* note 7.

[4] *See* Section 12(f)(2) of the Act.

[5] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (''1990 Plan Approval Order'').

[6] *See* letter from David T. Rusoff, Foley & Lardner, to Betsy Prout, Division of Market Regulation (''Division''), SEC, dated May 9, 1994.

[7] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); Securities Exchange Act Release No. 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (''August 1995 Approval Order''); Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) (''November 1995 Extension Order''); Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); Securities Exchange Act Release No. 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996) (''March 1996 Extension Order''); Securities Exchange Act Release No. 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996) (''September 1996 Extension Order''); Securities Exchange Act Release No. 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); Securities Exchange Act Release No. 38457 (March 31, 1996), 62 FR 16880 (April 8, 1997); Securities Exchange Act Release No. 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); Securities Exchange Act Release No. 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998) (''July 1998 Extension Order''); Securities Exchange Act Release No. 40896 (December 31, 1998) 64 FR 1834 (January 12, 1999) (''December 1998 Extension Order''); and Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (''May 1999 Approval Order'').

[8] The Plan defines ''eligible security'' as any Nasdaq/NM security as to which unlisted trading privileges have been granted to a national securities exchange pursuant to Section 12(f) of the Act or that is listed on a national securities exchange. On May 12, 1999, the Commission expanded the number of eligible Nasdaq/NM securities that may be traded by the CHX pursuant to the Plan from 500 to 1000. *See* May 1999 Approval Order, *supra* note 7.

[9] The full text of the Plan, as well as a ''Concept Paper'' describing the requirements of the Plan, are contained in the original filing which is available for inspection and copying in the Commission's public reference room.

[10] Rule 11Ac1–2 under the Act requires that the best bid or best offer be computed on a price/size/time algorithm in certain circumstances. Specifically, Rule 11Ac1–2 under the Act provides that ''in the event two or more reporting market centers make available identical bids or offer for a reported security, the best bid or offer . . . shall be computed by ranking all such identical bids or offers . . . first by size . . . then by time.'' The exemption permits vendors to display the BBO for Nasdaq securities subject to the Plan on a price/time/size basis.

[11] The NASD Board approved a recommendation that the price/size/time algorithm be utilized when a meaningful portion of Nasdaq securities are subject to a minimum quote size requirement of 100 shares. In addition, the Nasdaq and NASD Boards agreed that if Nasdaq develops the technological capability to afford market makers simultaneous electronic access to all market maker quotes at the same price level, the methodology used to determine the quoted size of the Nasdaq market will be re-examined to accommodate reflection of the fully accessible size displayed on Nasdaq.

[12] *See* Securities Exchange Act Release No. 39285 (October 29, 1997), 62 FR 59932 (November 5, 1997).

[13] *See* Securities Exchange Act Release No. 38513 (April 15, 1997), 62 FR 19369 (April 21, 1997). Under the Actual Size Rule, market makers in certain Nasdaq securities are subject to a minimum quotation size requirement of 100 shares instead of the applicable small order execution system (''SOES'') tier size for that security.

[14] *See* Securities Exchange Act Release No. 40211 (July 15, 1998), 63 FR 39322 (July 22, 1998).

integrated order delivery and execution system for directed orders and non-directed orders.[15] The NASD also submitted a proposed rule change to modify the NASD's SOES and SelectNet systems and create a new system, Nasdaq National Market Execution System.[16] Either of the proposed new systems, if approved, would alter SOES and SelectNet and would have an impact on the Plan (*e.g.*, the manner in which Plan participants interact with orders and quotes displayed in Nasdaq). With respect to the need for a trade through rule, the NASD maintains that it would be more appropriate to address this issue once the issue of electronic access to Nasdaq market makers' quotes has been resolved.

In December 1997, the CHX advised the Commissions staff that it intended to replace its then existing MAX–OTC system with the BRASS system developed by Automated Securities Clearance, Limited (''ASC'').[17] In December 1998, the CHX stated its intention to implement the BRASS system by September 30, 1999.[18] While awaiting delivery of the necessary BRASS system modifications from ASC, the CHX continue to upgrade its MAX–OTC system. Earlier this year, after ASC failed to deliver the necessary modifications, the CHX decided to make the improved MAX–OTC system its means of accessing securities instead of the BRASS system.[19]

VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through June 30, 2000, is appropriate and in furtherance of Section 11A of the Act.[20] The Commission believes that the extension will provide the Participants with additional time to seek Commission approval of pending proposals concerning the BBO calculation [21] and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. With respect to a trade through rule, the Commission notes that it has recently proposed to expand the ITS linkage to all securities. This, in turn, would expand the coverage of the ITS trade through rule.[22] While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants on or before June 30, 2000 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by June 30, 2000.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1–2 under the Act until the earlier of June 30, 1999, or until such time as the calculation methodology of the BBO is based on a price/size/time algorithm pursuant to a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from rule 11Aa3–1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through June 30, 1999. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal 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. All submissions should refer to File No. S7–24–89 and should be submitted by January 28, 2000.

V. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and paragraph (c)(2) of rule 11Aa3–2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through June 30, 2000, and certain exemptive relief through June 30, 2000, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–393 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42302]

Order Canceling Registrations of Certain Transfer Agents

December 30, 1999.

On October 28, 1999, notice was published in the **Federal Register** that the Securities and Exchange Commission (''Commission'') intended to issue an order, pursuant to Section 17A(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),[1] canceling the registrations of the transfer agents whose names appear in the Appendix attached to this Order.[2] For the reasons discussed below, the Commission is canceling the registration of each of the transfer agents identified in the attached Appendix.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Gregory J. Dunmark, Special Counsel, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

Background and Discussion

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission

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[15] *See* Securities Exchange Act Release No. 39718 (March 4, 1998) 63 FR 12124 (March 12, 1998). (''IODES Proposal'') Directed orders are those that an order-entry firm chooses to send to a specific Nasdaq market maker, electronic communications network (''ECN'') or UTP exchange for delivery and execution. Non-directed orders are those that are not sent to particular Nasdaq market maker or ECN. In other words, when the broker-dealer entering the order does not specify the particular Nasdaq market maker, ECN or UTP exchange it wants to access, the order will be sent to the next available executing participant quoting at the national BBO.

[16] Securities Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844 (April 22, 1999).

[17] *See* December 1997 Extension Request and Letter from George T. Simon, Foley & Lardner to Howard L. Kramer, Senior Associate Director, Division, SEC, dated December 12, 1997.

[18] *See* December 1998 Extension Order, *supra* note 7.

[19] *See* Letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, to Mignon McLemore, Attorney, Division, SEC, dated December 20, 1999.

[20] In approving this extension, the Commission has considered the extension's impact on efficiency, competition, and capital formations. 15 U.S.C. 78(c)(f).

[21] *See e.g.*, Actual Size Rule Release, *supra* note 13 and IODES Proposal, *supra* note 14.

[22] Securities Exchange Act Release No. 42212 (December 9, 1999), 64 FR 70297 (December 16, 1999).

[23] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78q–1(c)(4)(B).

[2] Securities Exchange Act Release No. 34–42039 (October 20, 1999), 64 FR 58112 (October 28, 1999).

finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. On October 20, 1999, the Commission issued a Notice of Intention to Cancel Registrations of Certain Transfer Agents which identified eight transfer agents that the Commission believed either are no longer in existence or have ceased doing business as transfer agents. The Notice stated that at any time after November 29, 1999, which was 30 days after the Notice was published in the **Federal Register**, the Commission intended to issue an order canceling the registrations of any or all of the identified transfer agents.

Accordingly, the Commission is canceling the registration of each of the identified eight transfer agents.

Order

On the basis of the foregoing, the Commission finds that each of the transfer agents whose name appears in the attached Appendix either is no longer in existence or has ceased doing business as a transfer agent.

It is therefore ordered, pursuant to Section 17A(c)(4)(B) of the Exchange Act, that the registration of each of the transfer agents whose name appears in the attached Appendix be and hereby is canceled.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

Appendix

Registration No.	Name
84–5767	American Transfer & Registrar Inc.
84–5394	First Federal Savings & Loan Association of Montana.
84–5779	Franklin American Corp.
84–5686	Selena T. Jackson.
84–5562	Stephen Rudolph Jones, d/b/a New York Stock Transfer.
84–1864	Library Bureau, Inc.
84–1606	Mt. Olive Church of God in Christ—United Mission, Inc.
84–1960	Odenton Federal Savings & Loan Association.

[FR Doc. 00–385 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42308; File No. SR–Amex–99–23]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to the Amendment of Commentary .05 to Rule 155

January 3, 2000.

I. Introduction

On July 9, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change permitting members to break certain trades only with Floor Official approval. The Exchange submitted Amendment No. 1 to its proposal on August 2, 1999.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 21, 1999.[4] The Commission received no comments on the proposal. On October 25, 1999, the Amex file Amendment No. 2.[5] This order approves the proposal, as amended, and solicits comments from interested persons on Amendment No. 2.

II. Description of Proposal

Under the proposal, a member must first obtain written Floor Official approval before breaking a trade because the specialist acted as both agent and principal. The member seeking the rejection must request, in writing, Floor Official review of the transaction promptly after receiving notice of the trade.[6] As is currently the case, the basis for the request to break the trade would be that the specialist acted in a dual capacity on the trade. Under the proposed procedure, a Floor Official would review the facts and circumstances of the trade to determine whether the specialist acted consistently with his obligation to maintain a fair and orderly market.[7] This review would include discussions with the aggrieved member, the specialist and other members with knowledge of the transaction. It is incumbent on the Floor Official (who has received training on the rules of the Exchange) to investigate the transaction and make a ruling. Members aggrieved by a Floor Official's ruling may seek review of the ruling pursuant to Exchange Rule 22.[8]

The Exchange believes that the current rule, which permits a party to an Exchange contract to break the trade even though the specialist has not acted inappropriately with respect to the trade,[9] interjects an element of financial risk into the market. This risk is magnified in the context of options due

[3] 17 CFR 200.30–3(a)(22).

[1] 15 U.S.C. 87s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Attorney, Division of Market Regulation (''Division''), Commission, dated July 29, 1999 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 41866 (September 13, 1999) 64 FR 5115.

[5] In Amendment No. 2, the Exchange clarified what constitutes ''prompt'' notice that a member wants to break a trade, as well as the procedure for Floor Official review. The Exchange also represented that it has sufficient surveillance to determine whether a specialists is acting consistently with his obligation to maintain a fair and orderly market. *See* Letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Attorney, Division, Commission dated October 21, 1999 (''Amendment No. 2'').

[6] The amount of time that constitutes ''prompt'' notice will vary according to conditions in the market and the member or member organization seeking to break the trade act diligently. The Exchange has represented that the member or member organization seeking to break the trade will have sufficient time to review the notice of the trade and to prepare and deliver the written request for Floor Official review of the transaction. *Id.*

[7] In Amendment No. 2, the Exchange deleted the requirement that the member seeking to reject the trade show good cause for the Floor Official to form the belief that the execution was inconsistent with the specialist's responsibility to maintain a fair and orderly market. It is up to the Floor Official to review the facts and circumstances of the trade to determine whether the specialist acted consistently with his obligation to maintain a fair and orderly market. *Id.*

[8] *Id.*

[9] Telephone conversation between William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Attorney, Division, Commission, on January 3, 2000.

to the leverage of these securities. In the Exchange's view, the risk of financial instability created by giving persons an unfettered right to cancel trades merely because the executing specialist acted both as principal and agent outweighs whatever residual benefits the rule may have.

The Exchange, however, is not proposing to eliminate a member's ability to rescind a trade where the specialist may have acted inappropriately. The proposed rule change is intended to eliminate the unchecked right to break trades due to the capacity in which the specialist acted. The Exchange believes that the proposal appropriately limits the financial risk of specialists that provide liquidity to investors by acting as principal while maintaining the ability of members to break trades where the specialist acts inconsistently with his obligations. The Exchanges believes that brokers have developed sophisticated systems for reviewing execution quality in response to the Commission's statements on ''best execution'' of customer orders. Further, the Exchange notes that it has developed sophisticated surveillance systems backed by extensive staff resources for reviewing trading by its members. The Exchange believes that its current surveillance capabilities are sufficient to determine whether specialists are acting consistently with their obligations to maintain fair and orderly markets. In addition, the Exchange plans to automate its order ticket review procedures, which will further enhance its market surveillance.[10]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.[12] Section 6(b)(5) of the Act [13] requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Commission finds that requiring written Floor Official approval before breaking a trade due to the specialist acting as agent and principal (for good cause shown in relation to the specialist's responsibility to maintain a fair and orderly market) promotes just and equitable principles of trade, facilitates transactions in securities, and removes impediments to and perfects the mechanism of a free and open market and a national market system. By requiring Floor Official approval, the proposal should limit the instances in which a trade can be rejected which could enhance the stability of the marketplace, while providing members with an opportunity to break a trade when a specialist acted in a manner that was not consistent with his or her duty to maintain a fair and orderly market.

The Commission also finds that Amendment No. 2 is consistent with Section 6(b)(5) of the Act, because it promotes just and equitable principles of trade, facilities transactions in securities and removes impediments to and perfects the mechanism of a free and open market and, in general, protects investors and the public interest. The Commission notes that the theory underlying Amex Rule 155, Commentary .05, is that a member who places an order, which the specialist executes as principal, should have a special opportunity to evaluate the execution and decide whether to reject the transaction. As stated above, the purpose would continue to be served, because members will continue to receive notices when a specialist has acted as both principal and agent and members may continue to reject a specialist's principal transactions upon a finding of good cause when the specialist has failed to maintain a fair and orderly market. Thus, a member's ability to rescind a trade in that instance should ensure that the interest of investors are protected. In addition, the Exchange has represented that it has sufficient surveillance for monitoring the activity of its specialists, thus helping to ensure investor protection.

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. Specifically, Amendment No. 2 merely clarifies the process by which a member can reject a trade and conveys Amex's representation that it has adequate surveillance to monitor its specialists. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) and 19(b) of the Act [14] to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether the amendment is consistent with the Act. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–23 and should be submitted by January 28, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change, as amended, (SR–Amex–99–23) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–386 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

[10] *Id.*

[11] In approving this proposed rule change, the Commission has considered its impact on efficiently, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] 15 U.S.C. 78f(b)(5) and 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42307; File No. SR–Amex–99–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Amendments to the Amex Constitution by the American Stock Exchange LLC Eliminating the Requirement That the Chairman Also Be the CEO

January 3, 2000.

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 16, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 9, 1999, the Amex filed Amendment No. 1 to the proposed rule change.[3] On November 23, 1999, the Amex filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Article II, Section 4(a) of the Amex Constitution to eliminate the requirement that the Chairman of the Board also act as the Chief Executive Officer of the Exchange. Conforming changes to other provisions of the Constitution and rules are also being made.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Amex clarified certain aspects of the proposal and amended the proposed rule language to provide for the election of the Chairman by a majority of the members of the Board of Governors. *See* letter from J. Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy, Amex, to Joseph Corcoran, Attorney, Division of Market Regulation (''Division''), Commission, dated November 8, 1999 (''Amendment No. 1'').

[4] In Amendment No. 2, the Amex amended the proposed rule language to provide for the election of the Chief Executive Officer (''CEO'') by a majority of the members of the Board of Governors. *See* letter from J. Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy, Amex, to Joseph Corcoran, Attorney, Division, Commission, dated November 22, 1999 (''Amendment No. 2'').

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article II, Section 4(a) of the Amex Constitution currently requires that the Chairman of the Board also act as the CEO of the Exchange. The Chairman thus performs the standard functions of a Board Chairman, as well as being responsible to the Board for the management and administration of the affairs of the Exchange as CEO.

The Exchange is proposing to amend Article II, Section 4(a) of the Constitution to eliminate the requirement that the Chairman also act as the CEO of the Exchange. The NASD's two other subsidiaries (the Nasdaq Stock Market and NASD Regulation), both have non-executive Chairmen. Eliminating this requirement from the Amex Constitution would give the Amex the flexibility to have a non-executive Chairman if desired. Having a non-executive Chairman attend to the functions of a Chairman would allow the CEO to focus on the operations of the Exchange. The Exchange would, of course, always have the ability to continue the dual role of Chairman and Chief Executive Officer if that was thought to be more advantageous.[5]

As a result of the amendment to Article II, Section 4(a) of the Constitution decoupling the Chairman and CEO roles, it is necessary to make a number of conforming changes to other provisions of the Constitution and rules. Because the Chairman and CEO roles may now be held by separate persons, the Amex has attempted to clarify the separate functions of the Chairman and the CEO. Article II, Section 3 (Chairman) and Article II, Section 4(a) (Chief Executive Officer), discussing the selection and authority of the Chairman and CEO respectively, have been appropriately rearranged. In each instance in other provisions of the Constitution and rules where the Chairman functions in his role as CEO, the term Chairman has been changed to CEO. In certain cases, the function may properly be performed by either the Chairman or the CEO, if delegated by the Chairman. Other than de-coupling the Chairman and CEO roles and making the above mentioned conforming changes, the Amex represents that there are no substantive changes being made.

[5] The Commission notes that as a result of dividing the Chairman/CEO position into two separate positions, the proposed language now permits the Chairman to be affiliated with a member of the Exchange.

The following examples of conforming changes being made are set forth for purposes of illustration.

a. Article II, Section 4(a) of the Constitution (Officers of the Exchange)

- Describes the authority of the Chairman to appoint officers, determine the salaries of Exchange employees, and make periodic reports to the Board.
- As this is normally a function of a CEO, the term Chairman is being changed to CEO.

b. Article II, Sections 4(c) and (d) of the Constitution (Officers of the Exchange)

- States that the Treasurer and Corporate Secretary report to the Chairman.
- As these two corporate positions normally report to the CEO of a company, the term Chairman is being changed to CEO.

c. Article V, Sections 1(b)(2) and (3) of the Constitution (Discipline of Members)

- Section 1(b)(2) authorizes the Chairman, subject to Board approval, to designate Exchange Officials and other persons to serve on the Hearing Board, a pool of persons who can be asked to serve as members of disciplinary panels in Exchange disciplinary proceedings.
- Section 1(b)(3) authorizes the Chairman, subject to Board approval, to designate one or more hearing officers, who have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters, to act as Chairmen of Amex disciplinary panels.
- As these functions are more appropriately exercised by the CEO as the senior officer of the Exchange, the term Chairman is being changed to CEO.

d. Article V, Sections 3(a) and (b) of the Constitution (Discipline of Members)

- Section 3(a) states that a member or member firm failing to meet its commitments or in financial or operating difficulty putting investors and others at risk shall inform the Chairman of the Exchange and upon such notice be automatically suspended from the Exchange.
- Section 3(b) states that whenever it shall appear to the Chairman of the Exchange that a member or member firm is failing to meet its commitments or in financial or operating difficulty putting investors and others at risk, the Chairman shall announce to the Exchange the suspension of such member or member firm.
- Again, as these functions are more appropriately exercised by the CEO as

the senior officer of the Exchange, the term Chairman is being changed to CEO.

2. Statutory Basis

The Exchange believes that the rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(3)[6] in particular in that it is intended to assure fair representation in the selection of its directors and administration of its affairs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the rule change.

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 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 20549–0609. 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 Amex. All submissions should refer to File No. SR–Amex–99–25 and should be submitted by January 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–387 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(3).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42306; File No. SR–NASD–99–37]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the use of Hard To Borrow Lists

January 3, 2000.

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 4, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 1, 1999, the NASD filed Amendment No. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rule 3370 to permit the use of a ''Hard to Borrow'' list to comply with affirmative determination requirements for short sales. The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

* * * * *

Rule 3370. Prompt Receipt and Delivery of Securities

(a) No change

(b) No change

(1) No change

(2) No change

(3) No change

(4) ''Affirmative Determination''

(A) No change

(B) No change

(C) The manner by which a member or person associated with a member annotates compliance with the ''affirmative determination'' requirement contained in subsection (b)(2) above (e.g., marking the order ticket, recording inquiries in a log, etc.) is not specified by the Rule and, therefore, shall be decided by each member. Members may rely on ''blanket'' or standing assurances *(i.e., ''Easy to Borrow'' lists)* that securities will be available for borrowing on settlement date to satisfy their affirmative determination requirements under this rule. [,] *For any short sales executed in Nasdaq National Market (NNM) or national securities exchange-listed (listed) securities, members also may rely on ''Hard to Borrow'' lists indicating NNM or listed securities that are difficult to borrow or unavailable for borrowing on settlement date to satisfy their affirmative determination requirements under this Rule, provided that: (i) any securities restricted pursuant to UPC 11830 must be included in such a list; and (ii) the creator of the list attests in writing on the document or otherwise that any NNM or listed securities not included on the list are easy to borrow or are available for borrowing. Members are permitted to use Easy to Borrow or Hard to Borrow lists* provided: (i) the information used to generate the *list* [''blanket'' or standing assurance] is less than 24 hours old; and (ii) the member delivers the security on settlement date. Should a member relying on *an Easy to Borrow or Hard to Borrow list* [blanket or standing assurance] fail to deliver the security on settlement date, the Association shall deem such conduct inconsistent with the terms of this Rule, absent mitigating circumstances adequately documented by the member.

(5) No change

* * * * *

[7] 17 CFR 200.30–3(as)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, the Commission, dated October 26, 1999. The substance of Amendment No. 1 is incorporated into this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NASD Rule 3370, which was designed to prevent abusive short selling and ensure that short sellers satisfied their settlement obligations, requiring members to make an affirmative determination prior to executing certain short sales and to maintain a written record of that affirmative determination. This Rule essentially requires that a member must make an affirmative determination that it will receive delivery of the subject security, or can borrow or otherwise provide delivery of the security, by settlement date. Although the Rule provides that a member firm must record the identity of both the individual and the firm contacted who offered assurances that the subject security would be delivered by settlement date or be available for borrowing by settlement date, the manner in which compliance with this Rule is to be evidenced is not specified by the Rule.

The Rule does, however, in specified circumstances, permit member firms to rely on ''blanket'' or standing assurances that certain, specified securities will be available for borrowing on settlement date to satisfy their affirmative determination obligations.[4] Such ''blanket'' assurances are commonly referred to as ''Easy to Borrow'' lists. The use of ''Hard to Borrow'' lists (*i.e.,* lists reflecting stocks that are difficult to borrow or unavailable for borrowing) is not specifically allowed by the Rule. It is the understanding of NASD Regulation staff that the New York Stock Exchange (NYSE) currently permits its members to rely on such lists.

The proposed amendment will permit member firms to rely on a ''Hard to Borrow'' list for any short sales executed in The Nasdaq Stock Market (Nasdaq) National Market (NM) or national securities exchange-listed securities, provided that any securities restricted pursuant to Uniform Practice Code (UPC) 11830 must be included on such a list[5] and that the creator of the list attests in writing that any Nasdaq NM or national securities exchange-listed securities not included on the list are easy to borrow or are available for borrowing. Operationally, a member firm would refer to the ''Hard to Borrow'' list before executing a short sale in a given security. If the subject security is not on the list, the member firm would have conducted the requisite affirmative determination and can execute the short sale without taking any further steps to satisfy the affirmative determination rule. Conversely, if the security is on the list, then a member firm would not be able to execute the short sale without taking additional steps to ensure the security's availability. Member firms that rely on ''Hard to Borrow'' lists would be required, under the Rule, to maintain and keep such lists to satisfy the requirements of the Rule that such affirmative determinations be annotated. Lastly, the same requirements that apply to ''Easy to Borrow'' lists also will apply to ''Hard to Borrow'' lists.[6]

The use of ''Hard to Borrow'' lists will be permitted only for Nasdaq NM and national securities exchange-listed securities, and not for Nasdaq SmallCap and over-the-counter (OTC) equity securities, for two reasons. First, other short-sale rules apply to Nasdaq NM and national securities exchange-listed securities (NASD Rule 3350 and SEC Rule 10a–1, respectively) to which Nasdaq SmallCap and OTC equity securities are not subject. Second, Nasdaq NM and national securities exchange-listed securities are liquid and highly capitalized, and are less likely to be subject to short sale abuses than Nasdaq SmallCap and OTC equity securities, which generally are more thinly traded and illiquid and potentially more vulnerable to short sale abuses. Therefore, the use of ''Hard to Borrow'' lists will still not be permitted for Nasdaq SmallCap and OTC Equity securities, and member firms will continue to be required to take active steps to determine stock availability for these more illiquid securities, thus providing additional investor protection.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[7] of the Act, which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act because it will reduce the administrative burdens that are placed on member firms when they comply with the affirmative determination rule and will expedite the process of executing short sale transactions, thus providing faster and possibly better executions for public investors. The proposed rule change also will allow member firms to use the same affirmative determination procedures that NASD Regulation understands are used on the NYSE for both Nasdaq NM and national securities exchange-listed securities, thereby promoting uniformity and consistency in the application and interpretation of parallel NASD and NYSE rules and avoiding member firm confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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**

[4] *See* Release No. 34–36859 (February 20, 1996), 61 FR 7127 (February 26, 1996) (File No. SR–NASD–95–62), approving reliance on ''blanket'' assurances.

[5] A security becomes restricted pursuant to UPC 11830 when the total number of shares that market participants have failed to deliver in that security exceeds 0.5% of the total shares outstanding. In practice, securities with large fail-to-deliver positions are difficult to borrow.

[6] A member firm is permitted to use an ''Easy to Borrow'' list if the information used to generate the ''blanket'' or standing assurance is less than 24 hours old and the member firm delivers the security on settlement date. If the member firm does not deliver the security on settlement date, disciplinary action could be initiated. As stated above, these same restrictions would apply to the use of a ''Hard to Borrow'' list.

[7] 15 U.S.C. 78*o*–3(b)(6).

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 NASD Regulation 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. 20549–0609. 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 the filing will also be available for inspection and copying at the principal offices of the NASD. All submissions should refer to File No. SR–NASD–99–37 and should be submitted by January 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42300; File No. SR–NASD–99–40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Revising Its Fees for Listing Additional Shares

December 30, 1999.

I. Introduction and Background

On August 20, 1999, 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 (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change modifies the fee rate structures and notification requirements applied by Nasdaq to issuers listing additional shares on either the Nasdaq National Market (''NNM'') or the Nasdaq SmallCap Market (''NSCM'').

Notice of the proposed rule change was published for a comment in the **Federal Register** on November 12, 1999.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The NASD proposes to revise its current fee schedule for listing additional shares. Currently, NNM issuers pay a fee of $0.02 per share for all issuances, subject to a cap of $17,500 per issuance, and NSCM issuers pay a fee of $0.01 per share for all issuances, subject to a cap of $7,500 per issuance. The fees are assessed only on certain transactions[4] and are not subject to annual maximum caps. Additionally, under the current administration, fees are assessed discretely on each eligible issuance of shares, and fees on multiple issuances cannot be combined. Under the revised fee schedule, multiple discrete issuances could be combined on a single form, or notification, to the NASD for the purpose of determining fees. Both NNM and NSCM issuers would pay a flat fee of $0.01 per share for all issuances of additional shares, subject to a cap of $17,500 per notification and $35,000 per year. Under the proposal, the minimum fee per notification will be $2,000. NSCM issuers are currently subject to a minimum fee of $1,000 per issuance and NNM issuers to a minimum fee of $2,000 per issuance.

The NASD represents that these fees will be used to support issuer-related initiatives such as surveillance, educational and training programs.[5] The NASD believes that the proposed revision of the fee schedule will better spread the costs of these issuer-related initiatives across the base of issuers benefiting from such initiatives. Specifically, the revised fee structure recognizes that Nasdaq does not distinguish between NNM issuers and NSCM issuers in providing educational initiatives or surveillance measures. Accordingly, the per-share fee for NNM issuers has been reduced to that of NSCM issuers and the minimum and maximum fees payable by NSCM issuers have been increased to the levels paid by NNM issuers. Furthermore, the proposed revised fee structure would eliminate the current fee structure's distinction between issuance of shares eligible to be assessed fees. This distinction, based generally on whether or not an issuance was deemed to raise revenue, caused confusion for issuers as they attempted to interpret the fee criteria and thereby create difficulty for the NASD in administering of the program for listing additional shares.

The proposed fee structure also would allow issuers to file notification of several issuances with the NASD on a single form and aggregate the fees assessed on those issuances toward the $17,500 maximum fee per notification.[6] Currently, issuers must file a separate notification form with respect to each discrete transaction that qualifies as a fee-assessable listing of additional shares, and each such transaction is subject to the maximum fee per issuance. Finally, the proposed $35,000 annual cap would limit the maximum fee an issuer would be required to pay which should help to ensure that no individual issuer will pay, as a result of frequent stock splits or capital raising transactions, a disproportionate share of the total costs of initiatives provided by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42108 (Nov. 4, 1999), 64 FR 61678.

[4] Generally, transactions involving the issuance of additional shares which raise revenues for an issuer are currently assessed fees, as distinguished from those transactions, such as the creation of an employee stock option or benefit plan, that do not. The proposal would eliminate this distinction and fees would be assessed on all issuances.

[5] The NASD described in detail the intended uses for such fee revenue when it established the additional shares program. *See* Securities Exchange Act Release No. 31289 (Oct 5, 1992), 57 FR 46887 (Oct. 13, 1992), SR–NASD–99–27).

[6] Each issuance must still be filed no later than 15 days prior to issuance of the underlying shares, as required by NASD Rule 4310(c)(17).

the Nasdaq to all NNM and NSCM issuers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission finds that the rule change is consistent with the provisions of Sections 15A(b) (5) and (6) of the Act.[7] Section 15A(b)(5) requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers and other persons using any facility or system which the NASD operates or controls. Section 15A(b)(6) requires in pertinent part that the rules of the NASD be designed to promote just and equitable principles of trade and not permit unfair discrimination between customers, issuers, brokers or dealers. The Commission believes that the revised NNM and NSCM fee structures, which affect the fees payable by issuers for listing additional shares, are consistent with the Act because they should serve to spread more evenly the costs of various issuer-related surveillance and educational initiatives among the issuers who may benefit from them.

IV. Conclusion

The Commission finds that the rule change is consistent with the Act, in general, and in particular with Sections 15A(b) (5) and (6) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–99–40) be, and hereby is, approved.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–391 Filed 1–6–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78o–3(b) (5) and (6).

[8] 15 U.S.C. 78s(b)(2).

[9] In approving the proposal, the Commission has considered the rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42280; File No. SR–NASD–99–72]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Effectiveness of the Pilot Injunctive Relief Rule

December 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by NASD Regulation. On December 28, 1999, NASD Regulation submitted Amendment No. 1 to the proposed rule change.[3] For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10335 of the Code of Arbitration (''Code'') of the NASD, to extend the pilot injunctive relief rule for one year, pending Commission action on a rule filing to amend Rule 10335 and make it a permanent part of the Code. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

10335. Injunctions

(i) Effective Date

This Rule shall apply to arbitration claims filed on or after January 3, 1996. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule. This Rule shall expire on [January 3, 2000] *January 5, 2001,* unless extended by the Association's Board of Governors.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Joan C. Conely, Senior Vice President and Corporate Secretary, NASD Regulation, dated December 23, 1999 (''Amendment No. 1'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD Regulation 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

Rule 10335 took effect on January 3, 1996 for a one-year pilot period. The Commission has periodically extended the initial pilot period in order to permit NASD Regulation's Office of Dispute Resolution to assess the effectiveness of the rule. The rule is currently due to expire on January 3, 2000. In July 1998, the NASD filed a rule filing proposing to amend Rule 10335 and to make it a permanent part of the Code. The NASD filed amendments and responses to comments received by the Commission regarding the rule filing in December 1998.

After considering additional comments received by the Commission regarding both the original rule filing and the amendments, as well as comments from the Commission staff, the Injunctive Relief Rule Subcommittee of NASD Regulation, Inc.'s National Arbitration and Mediation Committee (''NAMC'') reconsidered every aspect of the proposed rule change.

After careful consideration of the comments received, the Subcommittee unanimously approved new amendments to the rule filing. The amendments were approved by the Board of NASD Regulation, Inc. at its meeting on December 8, 1999 and will be filed with the Commission shortly.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect

[4] 15 U.S.C. 78*o*–3(b)(6).

investors and the public interest.[5] NASD Regulation believes that it is in the interest of members and associated persons that the rule remain in effect pending the filing of amendments to, and Commission action on, the permanent rule filing.[6] Therefore, the staff recommends that the pilot rule be extended to January 5, 2001. However, the permanent rule filing will make clear that, once approved, the permanent rule change would supersede the pilot in its entirety.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[7] Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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–99–72 and should be submitted by January 28, 2000.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2)[8] for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A of the Act and the rules regulations thereunder.[9] Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. Rule 10335 is intended principally to facilitate the disposition of employment disputes, and related disputes, concerning members who file for injunctive relief to prevent registered representatives from transferring their client accounts to their new firms.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will permit members to have the benefit of injunctive relief in arbitration pending filing of amendments to, and Commission action on, the permanent rule filing that would amend Rule 10335 and make it a permanent part of the Code. The Commission expects that during the extension of the pilot NASD Regulation will amend the proposal to permanently add Rule 10335 to the Code.[10] The Commission believes, therefore, that granting accelerated approval of the proposed rule change is consistent with Section 15A of the Act.[11]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, [12] that the proposed rule change (SR–NASD–99–72) is approved on an accelerated basis through January 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–392 Filed 1–6–00; 8:45 am]

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[5] *See* Amendment No. 1, *supra* note 3.

[6] *See* Securities Exchange Act Release No. 40441 (September 15, 1998), 63 FR 50611 (September 22, 1998).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78*o*–3.

[10] *See supra* note 6.

[11] *17 U.S.C. 78o*–3.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42304; File No. SR–NYSE–99–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Fee Structure Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Materials

December 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 1999, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the effectiveness of the pilot fees (''Pilot Fee Structure'') currently set forth in Exchange Rule 451, ''Transmission of Proxy Material,'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material,'' (collectively the ''Rules''). The Rules provide guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Fee Structure is presently scheduled to expire on January 3, 2000. The Exchange proposes to extend the Pilot Fee Structure through February 15, 2000.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

As first adopted, the Pilot Fee Structure revised the Rules to lower certain reimbursement guidelines, create incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees.[3] The Pilot Fee Structure has been modified and extended several times,[4] most recently by Commission order dated November 1, 1999.[5]

In June of 1999, the Exchange submitted a proposed rule change to the Commission (''June Filing'') to further revise the Pilot Fee Structure and extend its effectiveness through August 31, 2001.[6] The June Filing proposes to reduce the basic processing fee and nominee coordination fee that NYSE member organizations and proxy distribution intermediaries may recover in connection with the distribution of proxy and shareholder communication materials to shareholders. The June Filing also proposes to define the term ''nominee'' as it relates to the calculation of the nominee coordination fee.

The Exchange believes that an extension of the Pilot Fee Structure through February 15, 2000, will give the Commission additional time to fully consider the June Filing without a lapse in the current Rules. Absent an extension of the Pilot Fee Structure, the fees in effect prior to the Pilot Fee Structure (*i.e.*, the fees in effect prior to March 14, 1997) would return to effectiveness after January 3, 2000. The Exchange believes that such a result could be counterproductive and cause confusion among NYSE member organizations and issuers, especially given that the June Filing, proposing to extend the revised Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirement under Section 6(b)(5)[8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date; the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Exchange Act[10] and rule 19b–4(f)(6)[11] thereunder.

A proposed rule change filed under rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, rule 19b–4(f)(6)(iii) permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may become operative no later than January 3, 2000. The immediate effectiveness would allow the current Pilot Fee Structure to continue uninterrupted and would provide the Commission with additional time to complete its review of the June Filing.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing for the following reasons. The proposed rule change extends the expiration date of the Pilot Fee Structure from January 3, 2000, to February 15, 2000. The extension of the Pilot Fee Structure will provide the Commission with the additional time necessary to complete its review and evaluation of the June Filing.

The Commission notes that unless the current expiration date of the Pilot Fee Structure is extended, the reimbursement rates for proxy materials distributed after January 3, 2000, will revert to those in effect prior to March 14, 1997. The Commission believes that such a result could be confusing and counterproductive, especially given that the June Filing proposing to extend the Pilot Fee Structure through August 31, 2001, is still pending with the Commission.

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule

[3] *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Commission initially approved the Pilot Fee Structure as a one-year pilot and designated May 13, 1998, as the date of expiration.

[4] *See* Securities Exchange Act Release Nos. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998) (order extending Pilot Fee Structure through July 31, 1998, and lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50); 40289 (July 31, 1998), 63 FR 45652 (Aug. 10, 1998) (order extending Pilot Fee Structure through October 31, 1998); 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998) (order extending Pilot Fee Structure through February 12, 1999); 41044 (Feb. 11, 1999), 64 FR 8422 (Feb. 19, 1999) (order extending Pilot Fee Structure through March 15, 1999); 41177 (Mar. 16, 1999), 64 FR 14294 (Mar. 24, 1999) (order extending Pilot Fee Structure through August 31, 1999); and 41669 (July 29, 1999), 64 FR 43007 (Aug. 6. 1999) (order extending Pilot Fee Structure through November 1, 1999).

[5] *See* Securities Exchange Act Release No. 42086 (Nov. 1, 1999), 64 FR 60870 (Nov. 8, 1999) (order extending Pilot Fee Structure through January 3, 2000).

[6] *See* Securities Exchange Act Release No. 41549 (June 23, 1999), 64 FR 35229 (June 30, 1999).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78S(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

change become operative immediately upon the date of filing, December 28, 1999. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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, NW., Washington, DC 20549–0609. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–52 and should be submitted by January 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–388 Filed 1–6–99; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42301; File No. SR–PCX–99–25]

Self Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change To Allow Lead Market Makers To Perform Certain Floor Broker Functions

December 30, 1999.

I. Introduction

On July 13, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow PCX Lead Market Makers (''LMM''s) to perform certain Floor Broker Functions. Notice of the proposed rule change was published in the **Federal Register** on September 21, 1999.[3] No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change modifies the Exchange's current rules[4] to allow an LMM to perform certain Floor Broker functions in addition to Order Book Official (''OBO'') and Market Maker functions. Under the proposed changes, an LMM acting as a Floor Broker will be required to use due diligence and perform all other obligations of Floor Brokers pursuant to PCX Rules 6.43 through 6.48. An LMM will be permitted, but will not be obligated, to accept non-discretionary orders that are not eligible to be placed in the Public Order Book, and will be permitted to represent such orders as a Floor Broker. An LMM will not be permitted to represent discretionary orders, whether as a Floor Broker or otherwise, and all orders in the LMM's possession that are eligible to be booked will be required to be booked.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.[6] The Commission also finds that the proposal may serve to remove impediments to and perfect the mechanism of a free and open market by enabling Exchange LMMs to better serve customers.

The LMM system at the PCX was first approved, on an eighteen-month pilot basis, in 1990.[7] After granting a number of extensions to the pilot,[8] the Commission approved the program on a permanent basis on September 22, 1997.[9] The LMM program was created originally to enhance the ability of the Exchange to compete in a multiple trading environment, and was designed primarily for new option issues and option issues with comparatively low volume. Subsequently, all equity and index options traded on the PCX were made eligible for the LMM program.[10]

Exchange members appointed as LMMs assume responsibilities and acquire rights in their appointed options classes that extend beyond the obligations and rights of Market Makers who trade in the same options issue. In addition to performing the regular obligations of a Market Maker, an LMM must assume certain additional obligations that are designed to strengthen the LMM's market making activities.

Pursuant to PCX Rule 6.82, ''Lead Market Maker,'' each LMM is responsible for, among other things: assuring that disseminated market quotations are accurate; honoring guaranteed markets; determining the formula for generating automatically updated market quotations; being present at the designated trading post throughout each trading day; effecting, with respect to trading as a Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41868 (September 13, 1999), 64 FR 51173.

[4] *See* PCX Rule 6.82, ''Lead Market Makers,'' and PCX Rule 6.83, ''Limitations on Dealings of Lead Market Makers.''

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] *See* Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462 (January 24, 1990).

[8] *See* Securities Exchange Act Release Nos. 31063 (August 21, 1992), 57 FR 39255 (August 28, 1992); 31635 (December 22, 1992), 57 FR 62414 (December 30, 1992); 33854 (April 1, 1994), 59 FR 16873 (April 8, 1994); 34710 (September 23, 1994), 59 FR 50306 (October 3, 1994); 36293 (September 28, 1995), 60 FR 52243 (October 5, 1995); and 37767 (September 30, 1996), 61 FR 52483 (October 7, 1996).

[9] *See* Securities Exchange Act Release No. 39111 (September 22, 1997), 62 FR 51710 (October 2, 1997).

[10] *See* Securities Exchange Act Release No. 37780 (October 3, 1996), 61 FR 53247 (October 10, 1996).

Maker, trades that have a high degree of correlation with the overall pattern of trading of each series in the option issues involved; participating in the automatic execution system; actively promoting the Exchange as a marketplace; and responding to competition by offering competitive markets and competitively priced services. Subject to certain exceptions, LMMs receive a guaranteed 50% participation in transactions occurring on their disseminated bids and offers in their appointed issues.

Since its inception, the LMM position at the PCX has been designed to incorporate some of the functions performed by Designated Primary Market Makers (''DPM''s) at the Chicago Board Options Exchange (''CBOE''). Under the original LMM system at PCX, however, an LMM—unlike a DPM—was not authorized to manage the public limit order book (''the Book'') or perform certain Floor Broker functions.[11]

The PCX has in recent years sought to broaden the privileges of its LMMs to make its LMM system more competitive with similar systems at other options exchanges. In October 1996, the Commission approved a PCX pilot program that allowed a number of LMMs to perform the functions of the PCX OBO (*i.e.,* manage the Book) in certain designated options issues.[12] Participating LMMs were required to resolve trading disputes and errors, set rates for Book execution, and disclose Book information to members upon request. The pilot was subsequently extended and expanded to allow all LMMs to participate as OBOs.[13] In October 1998 this facet of the LMM system was permanently approved by the Commission.[14]

The PCX now seeks to further revise PCX Rule 6.82 to permit its LMMs to act as Floor Brokers, in addition to performing OBO and Market Maker functions. Floor Brokers are registered with the Exchange and are permitted to accept and execute options orders received on behalf of members while on the Exchange floor.

The PCX has proposed this rule change for competitive reasons. Specifically, the PCX believes that the proposed changes will afford its LMMs additional flexibility so that they can better compete with DPMs and specialists on other national securities exchanges.[15] the PCX also believes that the proposed changes will allow its LMMs to provide customers with a greater level of service and enable the LMMs to offer more competitive rates for the execution of customer orders.

Under the proposal, an LMM will be permitted, but will not be obligated, to accept non-discretionary orders that are not eligible to be placed in the Book,[16] and will be permitted to represent such orders as a Floor Broker. In handling an order as a Floor Broker, an LMM will be obligated to use due diligence to execute the order at the best available price, in accordance with the rules of the Exchange,[17] and will be further subject to all other obligations of Floor Brokers specified in PCX Rules 6.43 through 6.48.

At the same time, the proposal places restrictions on the types of orders that an LMM may represent as a Floor Broker, consistent with applicable rules of competing exchange.[18] An LMM will not be permitted to represent discretionary orders, whether as a Floor Broker or otherwise. In addition, all orders in the LMM's possession that are eligible to be booked will be required to be booked.

The Commission finds that the proposed rule change is an appropriate expansion of the functions performed by LMMs. The proposal implements a system that has been in place other exchanges, and is likely to enhance trading at the PCX. It provides a further incentive for Market Makers to become LMMs, and thus may add depth and liquidity to PCX-listed issues. The ability of LMMs to serve as Floor Brokers should also afford LMMs greater flexibility in responding to varying market conditions, and enable them to improve service to PCX customers by offering competitive service rates. Finally, by placing LMMs on a similar footing as DPMs and specialists at other options exchanges, the proposal should encourage further competition among the exchange markets.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2)[19] of the Act, that the proposed rule change (SR–PCX–99–25) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–389 Filed 1–6–00; 8:45 am]

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[11] These functions were accorded to DPMs at the CBOE from the beginning of the DPM program at that exchange. *See* Securities Exchange Act Release No. 24934 (September 22, 1987), 52 FR 36122 (September 25, 1987) (first approving the CBOE DPM program and depicting the DPM as a position ''akin to a specialist'').

[12] *See* Securities Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996).

[13] *See* Securities Exchange Act Release Nos. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997); 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997); 39667 (February 13, 1998), 63 FR 9895 (February 26, 1998); 40020 (May 21, 1998), 63 FR 29286 (May 28, 1998); and 40328 (August 17, 1998), 63 FR 45276 (August 25, 1998).

[14] *See* Securities Exchange Act Release No. 40548 (October 14, 1998), 63 FR 56283 (October 21, 1998). Until recently, the Exchange required participating LMMs to use Exchange personnel to assist the LMM in performing the OBO function, for which the Exchange charged the LMM a staffing fee. In July 1999, the Commission approved a rule change allowing qualified LMMs to manage their own employees in operating the Book. *See* Securities Exchange Act Release No. 41595 (July 2, 1999), 64 FR 38064 (July 14, 1999).

[15] The proposed rule change will generally allow LMMs on the PCX to perform the same functions that DPMs on the CBOE may perform. *See* CBOE Rule 8.80(c).

[16] The eligibility of orders to be placed in the Book is determined by reference to PCX Rule 6.52(a), which governs the types of orders that OBOs may accept. Such orders, as indicated in the Rule, ''shall include limit orders . . . and such other orders as may be designated by the Options Floor Trading Committee.'' According to the PCX, the Committee has not designated any additional types of orders that may be accepted by OBOs. Orders not eligible for the Book include, for example, contingency orders, spread orders, straddle orders, and combination orders. Telephone conversation between Robert P. Pacileo, Attorney, PCX, and Ira L. Brandriss, Attorney, Division of Market Regulation, Commission, on August 6, 1999.

[17] The PCX represented that it will provide detailed guidance concerning these responsibilities in a Regulatory Bulletin that will be disseminated to members upon the approval of this proposed rule change. The bulletin will specify, among other things, that in executing transactions for his own account as a Market Maker, an LMM (a) must accord priority to orders he represents as Floor Broker over his activity as Market Maker, and (b) must not initiate a transaction for his own account that would result in putting into effect any stop or stop limit order which may be in the Book or which he represents as Floor Broker, except with the approval of a Floor Official and a guarantee that the stop or stop limit order will be executed at the same price as the electing transaction. Telephone conversation between Robert P. Pacileo, Attorney, PCX, and Ira L. Brandriss, Attorney, Division of Market Regulation, Commission, on November 19, 1999.

[18] *See* CBOE Rule 8.80(c)(8).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Social Security Ruling, SSR 00–1c; Disability Insurance Benefits—Claims Filed Under Both the Social Security Act and the Americans With Disabilities Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling (SSR) 00–1c. This Ruling, based on the Supreme Court's decision in

Carolyn C. Cleveland v. *Policy Management Systems Corporation et al.*, ____ U.S. ____, 119 S.Ct. 1597 (1999), concerns whether a claim for disability insurance benefits filed under the Social Security Act would preclude the claimant from pursuing relief under the Americans with Disabilities Act.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Program Support, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and Agency interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

Dated: December 20, 1999.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income)

Kenneth S. Apfel,

Commissioner of Social Security.

Sections 222(c) and 223(a), (d)(2)(a), and (e)(1) of the Social Security Act (42 U.S.C. 422(c) and 423(a), (d)(2)(A), and (e)(1)) Disability Insurance Benefits—Claims Filed Under Both the Social Security Act and the Americans With Disabilities Act

20 CFR 404.1520(b)–(f), 404.1525, 404.1526, 404.1560(c), 404.1592, and 404.1592a

Carolyn C. Cleveland v. *Policy Management Systems Corporation et al.,* ____U.S.____, 119 S.Ct. 1597 (1999)

This Ruling concerns whether an individual's claim for, or receipt of, disability insurance benefits filed under the Social Security Act (the SSAct) would preclude the individual from pursuing relief under the Americans with Disabilities Act (ADA).

The SSAct and the ADA both help individuals with disabilities but in different ways. The SSAct provides monetary benefits to insured individuals who are under a disability, as defined in the SSAct. The ADA seeks to eliminate unwarranted discrimination against any individual who is considered a ''qualified individual with a disability'' as defined in the ADA.

In January 1994, the claimant filed for Social Security disability insurance benefits. By April 1994, her condition improved and she returned to work. She reported this to the Social Security Administration (SSA) which denied her claim. Her employer subsequently terminated her. She then asked SSA to reconsider its denial of her claim. SSA again denied her claim, but following a hearing, she was awarded benefits. However, before her Social Security award, the claimant brought an ADA lawsuit contending that her employer terminated her employment without reasonably accommodating her disability.

The District Court did not evaluate her ''reasonable accommodation'' claim on the merits, but granted summary judgment to the defendant because, in the court's view, the plaintiff, by applying for and receiving Social Security disability insurance benefits, had conceded that she was totally disabled. This fact, the court concluded, estopped the plaintiff from proving an essential element of her ADA claim, i.e., that she could ''perform the essential functions'' of her job with ''reasonable accommodation.''

The Fifth Circuit Court of Appeals affirmed the District Court's grant of summary judgment on the grounds that the plaintiff's statement on her Social Security application that she was totally disabled and unable to work was sufficient evidence to judicially estop her later ADA claim. In her ADA claim, the plaintiff contended that, for the time in question, with reasonable accommodation, she could perform the essential functions of her job. The Court of Appeals thought that her claims under both Acts would incorporate two directly conflicting propositions; namely, ''I am too disabled to work'' and ''I am not too disabled to work.'' That court, in an effort to prevent two conflicting claims under both Acts, used a special judicial presumption that it believed would prevent the plaintiff from successfully pursuing her ADA claim.

The Supreme Court (the Court) granted certiorari in light of the disagreement among the circuits concerning the legal effect upon an ADA claim of the application for, or receipt of, Social Security disability insurance benefits. The Court held that, despite the appearance of conflict between the two statutes, the two claims do not conflict to the point where courts should apply a special negative presumption as in the Court of Appeals' decision in this case. The Court believed that there are too many situations in which a Social Security claim and an ADA claim can comfortably exist side by side. The Court, therefore, vacated the judgment of the Court of Appeals and remanded the case for further proceedings consistent with the Court's opinion.

BREYER, Supreme Court Justice:

The Social Security Disability Insurance (SSDI) program provides benefits to a person with a disability so severe that she is ''unable to do (her) previous work'' and ''cannot * * * engage in any other kind of substantial gainful work which exists in the national economy.'' § 223(a) of the Social Security Act, as set forth in 42 U.S.C. 423(d)(2)(A). This case asks whether the law erects a special presumption that would significantly inhibit an SSDI recipient from simultaneously pursuing an action for disability discrimination under the Americans with Disabilities Act of 1990 (ADA), claiming that ''with * * * reasonable accommodation'' she could ''perform the essential functions'' of her job. Section 101, 104 Stat. 331, 42 U.S.C. 12111(8).

We believe that, in context, these two seemingly divergent statutory contentions are often consistent, each with the other. Thus pursuit, and receipt, of SSDI benefits does not automatically estop the recipient from pursuing an ADA claim. Nor does the law erect a strong presumption against the recipient's success under the ADA. Nonetheless, an ADA plaintiff cannot simply ignore her SSDI contention that she was too disabled to work. To survive a defendant's motion for summary judgment, she must explain why that SSDI contention is consistent with her ADA claim that she could ''perform the essential functions'' of her previous job, at least with ''reasonable accommodation.''

After suffering a disabling stroke and losing her job, Carolyn Cleveland sought and obtained SSDI benefits from the Social Security Administration (SSA). She has also brought this ADA suit in which she claims that her former

employer, Policy Management Systems Corporation, discriminated against her on account of her disability. The two claims developed in the following way:

August 1993: Cleveland began work at Policy Management Systems. Her job required her to perform background checks on prospective employees of Policy Management System's clients.

January 7, 1994: Cleveland suffered a stroke, which damaged her concentration, memory, and language skills.

January 28, 1994: Cleveland filed an SSDI application in which she stated that she was ''disabled'' and ''unable to work.'' App. 21.

April 11, 1994: Cleveland's condition having improved, she returned to work with Policy Management Systems. She reported that fact to the SSA two weeks later.

July 11, 1994: Noting that Cleveland had returned to work, the SSA denied her SSDI application.

July 15, 1994: Policy Management Systems fired Cleveland.

September 14, 1994: Cleveland asked the SSA to reconsider its July 11th SSDI denial. In doing so, she said, ''I was terminated [by Policy Management Systems] due to my condition and I have not been able to work since. I continue to be disabled.'' *Id.*, at 46. She later added that she had ''attempted to return to work in mid April,'' that she had ''worked for three months,'' and that Policy Management Systems terminated her because she ''could no longer do the job'' in light of her ''condition.'' *Id.*, at 47.

November 1994: The SSA denied Cleveland's request for reconsideration. Cleveland sought an SSA hearing, reiterating that ''I am unable to work due to my disability,'' and presenting new evidence about the extent of her injuries. *Id.*, at 79.

September 29, 1995: The SSA awarded Cleveland SSDI benefits retroactive to the day of her stroke, January 7, 1994.

On September 22, 1995, the week before her SSDI award, Cleveland brought this ADA lawsuit. She contended that Policy Management Systems had ''terminat[ed]'' her employment without reasonably ''accommodat(ing) her disability.'' *Id.*, at 7. She alleged that she requested, but was denied, accommodations such as training and additional time to complete her work. *Id.*, at 96. And she submitted a supporting affidavit from her treating physician. *Id.*, at 101. The District Court did not evaluate her reasonable accommodation claim on the merits, but granted summary judgment to the defendant because, in that court's view, Cleveland, by applying for and receiving SSDI benefits, had conceded that she was totally disabled. And that fact, the court concluded, now estopped Cleveland from proving an essential element of her ADA claim, namely that she could ''perform the essential functions'' of her job, at least with ''reasonable accommodation.'' 42 U.S.C. 12111(8).

The Fifth Circuit affirmed the District Court's grant of summary judgment. 120 F.3d 513 (1997). The court wrote:

''[T]he application for or the receipt of social security disability benefits creates a rebuttable presumption that the claimant or recipient of such benefits is judicially estopped from asserting that he is a 'qualified individual with a disability.' '' *Id.*, at 518.

The Circuit Court noted that it was ''at least theoretically conceivable that under some limited and highly unusual set of circumstances the two claims would not necessarily be mutually exclusive.'' *Id.*, at 517. But it concluded that, because

''Cleveland consistently represented to the SSA that she was totally disabled, she has failed to raise a genuine issue of material fact rebutting the presumption that she is judicially estopped from now asserting that for the time in question she was nevertheless a 'qualified individual with a disability' for purposes of her ADA claim.'' *Id.*, at 518–519.

We granted certiorari in light of disagreement among the Circuits about the legal effect upon an ADA suit of the application for, or receipt of, disability benefits. Compare, *e.g., Rascon* v. *U S West Communications, Inc.*, 143 F.3d 1324, 1332 (C.A.10 1998) (application for, and receipt of, SSDI benefits is relevant to, but does not estop plaintiff from bringing, an ADA claim); *Griffith* v. *Wal-Mart Stores, Inc.*, 135 F.3d 376, 382 (C.A.6 1998) (same), cert. pending, No. 97–1991; *Swanks* v. *Washington Metropolitan Area Transit Authority*, 116 F.3d 582, 586 (C.A.D.C. 1997) (same), with *McNemar* v. *Disney Store, Inc.*, 91 F.3d 610, 618–620 (C.A.3 1996) (applying judicial estoppel to bar plaintiff who applied for disability benefits from bringing suit under the ADA), cert. denied, 519 U.S. 1115, 117 S.Ct. 958, 136 L.Ed.2d 845 (1997), and *Kennedy* v. *Applause, Inc.*, 90 F.3d 1477, 1481–1482 (C.A.9 1996) (declining to apply judicial estoppel but holding that claimant who declared total disability in a benefits application failed to raise a genuine issue of material fact as to whether she was a qualified individual with a disability).

The Social Security Act and the ADA both help individuals with disabilities, but in different ways. The Social Security Act provides monetary benefits to every insured individual who ''is under a disability.'' 42 U.S.C. 423(a)(1). The Act defines ''disability'' as an

> ''inability to engage in any substantial gainful activity by reason of any * * * physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.'' Section 423(d)(1)(A).

The individual's impairment, as we have said, supra, at 1599, must be

> ''of such severity that [she] is not only unable to do [her] previous work but cannot, considering [her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *.'' Section 423(d)(2)(A).

The ADA seeks to eliminate unwarranted discrimination against disabled individuals in order both to guarantee those individuals equal opportunity and to provide the Nation with the benefit of their consequently increased productivity. See, *e.g.,* 42 U.S.C. 12101(a)(8), (9). The Act prohibits covered employers from discriminating ''against a qualified individual with a disability because of the disability of such individual.'' Section 12112(a). The Act defines a ''qualified individual with a disability'' as a disabled person ''who * * * can perform the essential functions'' of her job, including those who can do so only ''with * * * reasonable accommodation.'' Section 12111(8).

We here consider but one of the many ways in which these two statutes might interact. This case does not involve, for example, the interaction of either of the statutes before us with other statutes, such as the Federal Employers' Liability Act, 45 U.S.C. 51 *et seq*. Nor does it involve directly conflicting statements about purely factual matters, such as ''The light was red/green,'' or ''I can/cannot raise my arm above my head.'' An SSA representation of total disability differs from a purely factual statement in that it often implies a context-related legal conclusion, namely ''I am disabled for purposes of the Social Security Act.'' And our consideration of this latter kind of statement consequently leaves the law related to the former, purely factual, kind of conflict where we found it.

The case before us concerns an ADA plaintiff who both applied for, and received, SSDI benefits. It requires us to review a Court of Appeals decision upholding the grant of summary judgment on the ground that an ADA plaintiff's ''represent(ation) to the SSA that she was totally disabled'' created a

''rebuttable presumption'' sufficient to ''judicially esto[p]'' her later representation that, ''for the time in question,'' with reasonable accommodation, she could perform the essential functions of her job. 120 F.3d, at 518–519. The Court of Appeals thought, in essence, that claims under both Acts would incorporate two directly conflicting propositions, namely ''I am too disabled to work'' and ''I am not too disabled to work.'' And in an effort to prevent two claims that would embody that kind of factual conflict, the court used a special judicial presumption, which it believed would ordinarily prevent a plaintiff like Cleveland from successfully asserting an ADA claim.

In our view, however, despite the appearance of conflict that arises from the language of the two statutes, the two claims do not inherently conflict to the point where courts should apply a special negative presumption like the one applied by the Court of Appeals here. That is because there are too many situations in which an SSDI claim and an ADA claim can comfortably exist side by side.

For one thing, as we have noted, the ADA defines a ''qualified individual'' to include a disabled person ''who * * * can perform the essential functions'' of her job ''with reasonable accommodation.'' Reasonable accommodations may include:

> ''job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations.'' 42 U.S.C. 12111(9)(B).

By way of contrast, when the SSA determines whether an individual is disabled for SSDI purposes, it does not take the possibility of ''reasonable accommodation'' into account, nor need an applicant refer to the possibility of reasonable accommodation when she applies for SSDI. See Memorandum from Daniel L. Skoler, Associate Comm'r for Hearings and Appeals, SSA, to Administrative Appeals Judges, reprinted in 2 Social Security Practice Guide, App. Section 15C[9], pp. 15–401 to 15–402 (1998). The omission reflects the facts that the SSA receives more than 2.5 million claims for disability benefits each year; its administrative resources are limited; the matter of ''reasonable accommodation'' may turn on highly disputed workplace-specific matters; and an SSA misjudgment about that detailed, and often fact-specific matter would deprive a seriously disabled person of the critical financial support the statute seeks to provide. See Brief for *United States et al. as Amici Curiae* 10–11, and n. 2, 13. The result is that an ADA suit claiming that the plaintiff can perform her job with reasonable accommodation may well prove consistent with an SSDI claim that the plaintiff could not perform her own job (or other jobs) without it.

For another thing, in order to process the large number of SSDI claims, the SSA administers SSDI with the help of a five-step procedure that embodies a set of presumptions about disabilities, job availability, and their interrelation. The SSA asks:

Step One: Are you presently working? (If so, you are ineligible.) See 20 CFR 404.1520(b) (1998).

Step Two: Do you have a ''severe impairment,'' *i.e.,* one that ''significantly limits'' your ability to do basic work activities? (If not, you are ineligible.) See § 404.1520(c).

Step Three: Does your impairment ''mee[t] or equa[l]'' an impairment on a specific (and fairly lengthy) SSA list? (If so, you are eligible without more.) See §§ 404.1520(d), 404.1525, 404.1526.

Step Four: If your impairment does not meet or equal a listed impairment, can you perform your ''past relevant work?'' (If so, you are ineligible.) See § 404.1520(e).

Step Five: If your impairment does not meet or equal a listed impairment and you cannot perform your ''past relevant work,'' then can you perform other jobs that exist in significant numbers in the national economy? (If not, you are eligible.) See §§ 404.1520(f), 404.1560(c).

The presumptions embodied in these questions—particularly those necessary to produce Step Three's list, which, the Government tells us, accounts for approximately 60 percent of all awards, see Tr. of Oral Arg. 20—grow out of the need to administer a large benefits system efficiently. But they inevitably simplify, eliminating consideration of many differences potentially relevant to an individual's ability to perform a particular job. Hence, an individual might qualify for SSDI under the SSA's administrative rules and yet, due to special individual circumstances, remain capable of ''perform[ing] the essential functions'' of her job.

Further, the SSA sometimes grants SSDI benefits to individuals who not only can work, but are working. For example, to facilitate a disabled person's reentry into the workforce, the SSA authorizes a 9-month trial-work period during which SSDI recipients may receive full benefits. See 42 U.S.C. 422(c), 423(e)(1); 20 CFR 404.1592 (1998). See also § 404.1592a (benefits available for an additional 15-month [1] period depending upon earnings). Improvement in a totally disabled person's physical condition, while permitting that person to work, will not necessarily or immediately lead the SSA to terminate SSDI benefits. And the nature of an individual's disability may change over time, so that a statement about that disability at the time of an individual's application for SSDI benefits may not reflect an individual's capacities at the time of the relevant employment decision.

Finally, if an individual has merely applied for, but has not been awarded, SSDI benefits, any inconsistency in the theory of the claims is of the sort normally tolerated by our legal system. Our ordinary rules recognize that a person may not be sure in advance upon which legal theory she will succeed, and so permit parties to ''set forth two or more statements of a claim or defense alternatively or hypothetically,'' and to ''state as many separate claims or defenses as the party has regardless of consistency.'' Fed. Rule Civ. Proc. 8(e)(2). We do not see why the law in respect to the assertion of SSDI and ADA claims should differ. (And, as we said, we leave the law in respect to purely factual contradictions where we found it.)

In light of these examples, we would not apply a special legal presumption permitting someone who has applied for, or received, SSDI benefits to bring an ADA suit only in ''some limited and highly unusual set of circumstances.'' 120 F.3d, at 517.

Nonetheless, in some cases an earlier SSDI claim may turn out genuinely to conflict with an ADA claim. Summary judgment for a defendant is appropriate when the plaintiff ''fails to make a showing sufficient to establish the existence of an element essential to (her) case, and on which (she) will bear the burden of proof at trial.'' *Celotex Corp.* v. *Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). An ADA plaintiff bears the burden of proving that she is a ''qualified individual with a disability''—that is, a person ''who, with or without reasonable accommodation, can perform the essential functions'' of her job. 42 U.S.C. 12111(8). And a plaintiff's sworn assertion in an application for disability benefits that she is, for example, ''unable to work'' will appear to negate an essential element of her ADA case—

[1] Effective January 1, 1988, the law was amended to lengthen the reentitlement period to SSDI benefits from 15 months to 36 months. See section 223(a)(1) of the SSAct. [Ed. note]

at least if she does not offer a sufficient explanation. For that reason, we hold that an ADA plaintiff cannot simply ignore the apparent contradiction that arises out of the earlier SSDI total disability claim. Rather, she must proffer a sufficient explanation.

The lower courts, in somewhat comparable circumstances, have found a similar need for explanation. They have held with virtual unanimity that a party cannot create a genuine issue of fact sufficient to survive summary judgment simply by contradicting his or her own previous sworn statement (by, say, filing a later affidavit that flatly contradicts that party's earlier sworn deposition) without explaining the contradiction or attempting to resolve the disparity. See, e.g., *Colantuoni* v. *Alfred Calcagni & Sons, Inc.,* 44 F.3d 1, 5 (C.A.1 1994); *Rule* v. *Brine, Inc.,* 85 F.3d 1002, 1011 (C.A.2 1996); *Hackman* v. *Valley Fair,* 932 F.2d 239, 241 (C.A.3 1991); *Barwick* v. *Celotex Corp.,* 736 F.2d 946, 960 (C.A.4 1984); *Albertson* v. *T.J. Stevenson & Co.,* 749 F.2d 223, 228 (C.A.5 1984); *Davidson & Jones Development Co.* v. *Elmore Development Co.,* 921 F.2d 1343, 1352 (C.A.6 1991); *Slowiak* v. *Land O'Lakes, Inc.,* 987 F.2d 1293, 1297 (C.A.7 1993); *Camfield Tires, Inc.* v. *Michelin Tire Corp.,* 719 F.2d 1361, 1365–1366 (C.A.8 1983); *Kennedy* v. *Allied Mutual Ins. Co.,* 952 F.2d 262, 266 (C.A.9 1991); *Franks* v. *Nimmo,* 796 F.2d 1230, 1237 (C.A.10 1986); *Tippens* v. *Celotex Corp.,* 805 F.2d 949, 953–954 (C.A.11 1986); *Pyramid Securities Ltd.* v. *IB Resolution, Inc.,* 924 F.2d 1114, 1123 (C.A.D.C.), cert. denied, 502 U.S. 822, 112 S.Ct. 85, 116 L.Ed.2d 57 (1991); *Sinskey* v. *Pharmacia Ophthalmics, Inc.,* 982 F.2d 494, 498 (C.A.Fed. 1992), cert. denied, 508 U.S. 912, 113 S.Ct. 2346, 124 L.Ed.2d 256 (1993). Although these cases for the most part involve purely factual contradictions (as to which we do not necessarily endorse these cases, but leave the law as we found it), we believe that a similar insistence upon explanation is warranted here, where the conflict involves a legal conclusion. When faced with a plaintiff's previous sworn statement asserting ''total disability'' or the like, the court should require an explanation of any apparent inconsistency with the necessary elements of an ADA claim. To defeat summary judgment, that explanation must be sufficient to warrant a reasonable juror's concluding that, assuming the truth of, or the plaintiff's good faith belief in, the earlier statement, the plaintiff could nonetheless ''perform the essential functions'' of her job, with or without ''reasonable accommodation.''

III

In her brief in this Court, Cleveland explains the discrepancy between her SSDI statements that she was ''totally disabled'' and her ADA claim that she could ''perform the essential functions'' of her job. The first statements, she says, ''were made in a forum which does not consider the effect that reasonable workplace accommodations would have on the ability to work.'' Brief for Petitioner 43. Moreover, she claims the SSDI statements were ''accurate statements'' if examined ''in the time period in which they were made.'' *Ibid.* The parties should have the opportunity in the trial court to present, or to contest, these explanations, in sworn form where appropriate. Accordingly, we vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Justice Breyer delivered the opinion for a unanimous Court.

[FR Doc. 00–411 Filed 1–6–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3196]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Ancient Faces: Mummy Portraits from Roman Egypt''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition ''Ancient Faces: Mummy Portraits from Roman Egypt'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York City, from on or about February 14, to on or about May 7, 2000, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: December 22, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–406 Filed 1–6–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3197]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Masterpieces of Korean Ceramics from the Museum of Oriental Ceramics, Osaka''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition ''Masterpieces of Korean Ceramics from the Museum of Oriental Ceramics, Osaka'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York City, from on or about January 25, to on or about June 4, 2000, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301 4th Street, SW, Room 700, Washington, D.C. 20547–0001.

Dated: December 22, 1999.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–407 Filed 1–6–00; 8:45 am]

BILLING CODE 4710–08–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance with Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment.

SUMMARY: Pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (Section 1377), the Office of the United States Trade Representative (USTR) is reviewing, and requests comments on: the operation and effectiveness of—including implementation of and compliance with—the World Trade Organization (WTO) Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the North American Free Trade Agreement (NAFTA); and, other telecommunications trade agreements with the Asia Pacific Economic Cooperation (APEC) members, the European Union (EU), Japan, Korea, Mexico and Taiwan. The USTR will conclude the review on March 31, 2000.

DATES: Comments are due by noon on Tuesday, February 1, 2000.

ADDRESSES: Comments must be submitted to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: Section 1377 Comments, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William Corbett, Office of Industry (202) 395–9586; or Demetrios Marantis, Office of the General Counsel (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services of the United States that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into a telecommunications trade agreement with the United States is inconsistent with the terms of such agreement, or otherwise denies to U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its specific commitments under the WTO Basic Telecommunications Agreement or with other WTO obligations, *e.g.,* the WTO General Agreement on Trade in Services (GATS), including the Annex on Telecommunications, that affect market opportunities for U.S. telecommunications products and services;

(2) What steps to take regarding out-of-cycle reviews initiated in 1999 under Section 1377 regarding compliance by Germany and Mexico with telecommunications trade agreements;

(3) Whether Canada or Mexico has failed to comply with their commitments under NAFTA;

(4) Whether APEC members, the EU, Japan, Korea, Mexico or Taiwan have failed to comply with their commitments under bilateral telecommunications agreements with the United States.

See 63 FR 1140 (January 8, 1998) for further information concerning the agreements listed below and USTR Press Release 99–29 (available at www.ustr.gov) for the results of the 1998–99 section 1377 review concerning these agreements.

WTO Agreements

The GATS contains general obligations that apply to all WTO members and services and specific obligations that apply only to services listed in a member's schedule of commitments. As part of the GATS, WTO members have made both basic and value-added telecommunications commitments. Specifically, the Fourth Protocol to the GATS—generally referred to as the WTO Basic Telecommunications Agreement—is the legal instrument embodying seventy WTO members' basic telecommunications services commitments under the GATS. The agreement entered into force on February 6, 1998, and since that time, an additional eight WTO members have made telecommunications services commitments, some upon their accession to the WTO. Many members also took separate commitments in the area of value-added telecommunications services as part of the GATS, which entered into force on January 1, 1995. A description of each member's specific commitments is available on the Internet at www.wto.org.

Under the WTO Basic Telecommunications Agreement, members have made full or qualified commitments in three specific areas: market access, national treatment (including investment), and pro-competitive regulatory principles. Countries that have made full market access commitments have agreed to local, long-distance and international service through any means of network technology, either on a facilities basis or through resale of existing network capacity. Countries making full national treatment commitments have agreed to ensure treatment no less favorable to U.S. services or service suppliers than to services or service suppliers of the WTO member making the commitment (*e.g.,* U.S. companies can acquire, establish or hold a significant stake in foreign telecommunications companies to the same extent as companies of the WTO member making the commitment). And finally, countries have also adopted pro-competitive regulatory principles—set forth in a Reference Paper and incorporated in the members' schedules—which commit members to establish independent regulatory bodies, guarantee that U.S. companies will be able to interconnect with networks in foreign countries at fair prices, maintain appropriate measures to prevent anti-competitive practices such as cross-subsidization, and mandate transparency of government regulations and licensing.

The USTR seeks comment on whether any WTO member that has undertaken telecommunications services commitments under the GATS has failed to make the necessary legislative or regulatory changes to implement its commitments, or permits acts, policies, or practices in its markets that run counter to that country's commitments. In addition, the USTR seeks comments on whether any WTO member permits acts, policies, or practices that are inconsistent with other WTO obligations and that affect market opportunities for telecommunications products and services of the United States.

Out of Cycle Reviews Regarding Germany and Mexico

The USTR seeks comments on what steps to take regarding out-of-cycle reviews initiated under Section 1377 in 1999 regarding compliance by Germany and Mexico with telecommunications trade.

Germany—1999 out-of-cycle review: On August 11, 1999, USTR announced the extension of an out-of-cycle review

under Section 1377 of Germany's compliance with its WTO telecommunications commitments. The review, initiated on March 30, 1999, found that recent German regulatory decisions did not endorse restrictive and potentially WTO-inconsistent proposals made by Deutsche Telekom, the dominant German telecommunications carrier and former German monopoly operator. However, the review also concluded that those decisions might not be sufficient to prevent anti-competitive behavior by Deutsche Telekom as new interconnection arrangements applicable from March 1, 2000 are yet to be finalized. U.S. carriers have asserted to the U.S. Government that Deutsche Telekom's anti-competitive behavior continues to impede their efforts to provide service in Germany. Under the WTO Basic Telecom Agreement, Germany committed to maintain appropriate measures to prevent anti-competitive behavior. The German regulatory authority announced on December 23, 1999, new arrangements for interconnection prices and peak and off-peaks timing that will apply for the next thirteen months (for additional information concerning this decision, see www.regtp.de). The USTR seeks comments on whether the latest regulatory decision and other recent steps by the German regulatory authority are sufficient to meet Germany's WTO telecommunications commitments.

Mexico—1999 out-of-cycle review: On July 29, 1999, USTR announced the extension of an out-of-cycle review under Section 1377 of Mexico's compliance with its WTO telecommunications commitments. The review, initiated on March 30, 1999, found that Mexico is undertaking a consultative policy review and meeting regularly with U.S.-affiliated and all other Mexican carriers on international service and domestic regulatory issues under study. Interconnection and dominant carrier regulations in Mexico have yet to produce lower net domestic interconnection costs for new entrants; the Mexican regulatory authority has not created confidence that Telmex (the former state-owned monopolist) is not engaging in anti-competitive cross-subsidization of different telecom services; and, the Mexican regulatory authority has yet to identify a universal service program under which Telmex would be required to fund universal service on the same basis as its competitors. The results of the 1999 policy review are not apparent. The USTR seeks comments on whether Mexico is likely to address outstanding international service and domestic regulatory issues in a manner consistent with Mexico's WTO telecommunications commitments.

NAFTA and Bilateral Trade Agreements

The USTR seeks comments on the operation and effectiveness of certain bilateral trade agreements regarding telecommunications products and services, including the NAFTA. The NAFTA includes market access and national treatment commitments for value-added telecommunications services; and, it includes a national treatment commitment for conformity assessment in relation to telecommunications equipment standards.

Bilateral agreements include, on a country-by-country basis:

Canada: NAFTA Chapter 13 and other telecommunications-related provisions.

Japan: The 1999 Nippon Telegraph and Telephone (NTT) agreement; the 1994 U.S.-Japan Public Sector Procurement Agreement on Telecommunications Products and Services; and, additional telecommunications trade agreements with Japan, including a series of agreements on: international value-added network services (IVANS) (1990–91); open government procurement of all satellites, except for government research and development satellites (1990); network channel terminating equipment (NCTE) (1990); and cellular and third-party radio systems (1989) and cellular radio systems (1994).

Korea: Agreements in the areas of protection of intellectual property rights (IPR), type approval of telecommunications equipment, transparent standard-setting processes and non-discriminatory access to Korea Telecommunications' procurement of telecommunications products.

Mexico: NAFTA Chapter 13 and other telecommunications-related provisions; and, the 1997 understanding regarding test data acceptance agreements between product safety testing laboratories.

Mutual Recognition Agreements For Conformity Assessment of Telecommunications Equipment: Agreement on mutual recognition for conformity assessment of telecommunications equipment with the EU; and, an agreement among certain members of APEC.

Taiwan: The October 1999 and February 1998 agreements on WTO accession commitments in telecommunications services; the February 1998 agreement on interconnection pricing for provision of wireless services in Taiwan; and, the July 1996 agreement on the licensing and provision of wireless services through the establishment of a competitive, transparent and fair wireless market in Taiwan.

Public Comment: Requirements for Submissions

USTR requests comments on: the operation and effectiveness of—including implementation of and compliance with—the WTO Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the NAFTA; and other telecommunications trade agreements with APEC members, the EU, Japan, Korea, Mexico and Taiwan. All comments must be in English, identify on the first page of the comments the telecommunications trade agreement(s) discussed therein, be addressed to Gloria Blue, Executive Secretary, TPSC, ATTN: Section 1377 Comments, Office of the U.S. Trade Representative, and be submitted in 15 copies by noon on Tuesday, February 1, 2000.

All comments will be placed in the USTR Reading Room for inspection shortly after the filing deadline, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential information submitted in accordance with 15 CFR 2003.6, must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 15 copies, and must be accompanied by 15 copies of a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the USTR Public Reading Room.

An appointment to review the comments may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 00–117 Filed 1–6–00; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

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.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 7, 1999, [64 FR, pages 54720–54721].

DATES: Comments must be submitted on or before February 7, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Suspected Unapproved Parts Notification

Type of Request: Extension of a currently approved collection

OMB Control Number: 2120–0552

Forms(s) FAA Form 8120–11

Affected Public: 400 reporters of suspected unapproved parts

Abstract: The information collected on the FAA Form 8120–11 will be reported voluntarily by manufacturers, repair stations, aircraft owner/operators, air carriers, and the general public who wish to report suspected ''unapproved'' parts to the FAA for review. The information will be used to determine if an ''unapproved'' part investigation is warranted.

Estimated Annual Burden Hours: 60 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 3, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–345 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

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.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 7, 1999, [64 FR, pages 54720–54721].

DATES: Comments must be submitted on or before February 7, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Agricultural Aircraft Operator Certificate Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0049.

Forms(s): FAA Form 8710–3.

Affected Public: 3,980 applicants for a commercial or private agricultural aircraft operator certificate.

Abstract: Standards have been established for operation of agricultural aircraft and for the dispensing of chemicals, pesticides, and toxic substances. Information collected shows applicant compliance and eligibility for certification by FAA.

Estimated Annual Burden Hours: 14,037 burden hours annually.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 3, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–346 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

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.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 7, 1999 [FR 64, pages 54720–54721].

DATES: Comments must be submitted on or before February 7, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0571.

Form(s) FAA Form 9000–3.

Affected Public: 6,700 aviation operators.

Abstract: 14 CFR Part 121, Appendices I and J, require specified aviation employers to implement and conduct FAA-approved alcohol programs. To monitor program compliance, institute program improvements and anticipate program problem areas, the FAA receives alcohol test reports from the aviation industry.

Estimated Annual Burden Hours: 25,421 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 3, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–347 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 196; Night Vision Goggles (NVG) Appliances & Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–165 meeting to be held January 27–28, 2000, starting at 9:00 a.m. The meeting will be held at Riviera Hotel, 2901 Las Vegas Blvd South, Las Vegas, NV. The Host, Lorry Faber, FAA Rotocraft Directorate, DFW/ASW–110 may be reached at (817) 222–5151 (phone), Lorry.Faber@faa.gov (e-mail).

This new Special Committee 196(SC–196) has been established to develop the operational concepts, Minimum Operational Performance Standards (MOPS) and training guidelines for night vision goggles. The increased use of the night vision goggles and the related equipment currently in the design phase necessitates developing performance standards for the goggles. The Federal Aviation Administration would use the MOPS as a basis for issuing a Technical Standard Order for night vision goggles. The propose Term of Reference for the committee, RTCA Paper No. 276–99/PMC–065, has been developed and will be reviewed at this meeting.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Agenda Overview; (3) RTCA Functional Overview; (4) Review of FAA Night Vision Goggles (NVG) Mishaps; (5) JAA Harmonization Status; (6) Lighting Evaluation Methods; (7) Overview of Related Activities: a. SAE A–20 Status Brief, b. SAE G–10 Status Brief; (8) Overview SC–196 Working Group Activities: a. WG–1 (Operational Concept/Requirements), b. WG–2 (NVG MOPS), c. WG–3 (NVIS Lighting), d. WG–4 (Maintenance/Serviceability), e. WG–5 (Training Guidelines/Considerations); (9) Open Forum; (10) Workgroup Breakout Sessions; (11) Other Business; (12) Establish Agenda for Next Meeting; (13) Date and Place of Next Meeting; (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 1999.

Gregory D. Burke,

Designated Official.

[FR Doc. 00–348 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Santa Barbara Municipal Airport, Goleta, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Santa Barbara Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 7, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA, 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Karen Ramsdell, Airport Director of the city of Santa Barbara at the following address: 601 Firestone Road, Goleta, CA 93117. Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Santa Barbara under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Flynn, Lead Engineer, Standards Section, Airports Division, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 725–3632. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Santa Barbara Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On December 22, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Santa Barbara was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 21, 2000.

The following is a brief overview of the application No. 99–02–C–00–SBA:

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2000.

Proposed charge expiration date: August 31, 2008.

Total estimated PFC revenue: $5,512,330.

Brief description of proposed Impose and Use projects: Rehabilitate Taxiways

A, F and G, Master Plan Update, Install Terminal Ramp Lighting, Procure ARFF Vehicle, Upgrade Airfield Electrical System, Design Expansion and Upgrade of Terminal Access Road, Design Expansion and Upgrade of Terminal Building.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Unscheduled Part 135 Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application, in person at the Santa Barbara Municipal Airport Administration Office.

Issued in Hawthorne, California, on December 22, 1999.

Ellsworth Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 00–349 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6628]

Notice of Public Meeting to Address Identification and Publication of the Relative Safety Performance of Different Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: On February 9, 2000, NHTSA will conduct a public meeting to discuss the safety performance of child restraint systems and options for providing consumers with information on the safety performance of different child restraints. The intent of this meeting is to allow the sharing of viewpoints, information, and ideas on this important subject among all interested members of the public, including industry, government, and advocacy groups. Topics to be discussed include voluntary standards, strategies for enhancing compliance margins, improved labeling, and possible ways of rating child restraint safety performance. We also plan to discuss possible means of notifying consumers about any ratings that are developed, as well as other relevant safety information. We anticipate that improving consumer awareness of these matters will lead manufacturers to improve the safety of their child restraints.

DATES AND ADDRESSES: *Public Meeting:* NHTSA will hold the public meeting on February 9, 2000, from 9 a.m. to 12 noon, and continuing from 1 p.m to 4 p.m., if necessary. The public meeting will be held in room in Room 2230, U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC 20590. If you wish to participate in the meeting, please contact Deborah L. Parker or James Gilkey at the mailing address or telephone number listed below by January 21, 2000. If your presentation will include slides, motion pictures, or other visual aids, please so indicate and NHTSA will make the proper equipment available. Presenters should bring at least one copy of their presentation to the meeting so that NHTSA can readily include the material in the public record. Those speaking at the public meeting should limit the length of their presentations to 15 minutes.

Written Comments: The agency has established Docket No. NHTSA–1999–6628 as a repository for comments on the issues presented in this notice. Written comments may be made to this docket at any time. If you wish to submit written comments on the issues related to or discussed at this meeting, they should refer to Docket No. NHTSA–1999–6628 and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9 a.m. to 5 p.m.).

FOR FURTHER INFORMATION CONTACT: Deborah L. Parker (telephone 202–366–1768), Office of Vehicle Safety Compliance—NSA 30; James Gilkey (telephone 202–366–5295), Office of Vehicle Safety Compliance—NSA 32; or Mary Versailles (telephone 202–366–2057, Office of Safety Performance Standards—NPS 32, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

A. Background

We are all concerned with assuring the safety of our children, our most precious cargo. With the cooperation of numerous partners, including the child restraint industry, we have made great strides during the past few years in enhancing the safety of children riding in motor vehicles. For example, all states now have laws requiring children to be in child restraints, and many of these laws have been upgraded. More and more children are riding in child restraints, and they have saved an average of over 300 lives per year over the past five years.

There has also been an increased public awareness of the need to install child restraint systems properly and to keep children in appropriate child restraint systems as long as possible. To help assure proper installation, NHTSA has recently adopted a new safety standard establishing uniform attachment methods for child restraints. The child seat manufacturers, vehicle manufacturers, and others in the child safety community were instrumental in the development of this new standard. We also applaud the development by manufacturers of child restraint systems that are easier to install properly as well as creative, updated installation instructions that are easier for parents to understand and follow.

However, despite our joint successes in this area, there are issues that require further attention. As a key protective device for our Nation's children, child restraints must be designed and constructed with the highest levels of safety in mind. Any instance in which child restraints fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213 causes us concern. Even apart from actual noncompliances, our review of NHTSA's compliance test results during the past few years indicates that many restraints have been engineered to just comply with some of the most safety-critical requirements of the standard, rather than being engineered with substantial compliance margins. For example, with respect to the head excursion requirements of FMVSS No. 213, few of the restraints tested by NHTSA had a compliance margin of ten percent or more, and hardly any had more than a twenty percent compliance margin. Conversely, representatives of some vehicle manufacturers have advised us informally that they generally have a goal of a twenty percent compliance margin (although they acknowledge that this goal may not always be achieved.)

B. Dr. Martinez' Letter to Child Restraint Manufacturers

On September 14, 1999, former NHTSA Administrator Ricardo Martinez, MD, sent a letter to all manufacturers of child restraints sold in the United States. That letter identified the above-referenced concerns about child restraint safety and pointed out that, with the safety of our Nation's children at issue, mere compliance with the minimum requirements of the standard is not enough. When products are engineered with narrow compliance margins, there is room for safety

improvement, even if the product is in technical compliance with the minimum performance requirements established by the standard. He also noted that consumers were very interested in the relative performance of motor vehicles and motor vehicle equipment, such as child restraints.

Dr. Martinez urged each manufacturer of child restraints to ensure that their restraints perform above the minimum requirements of our standard, and indicated that the agency planned to schedule a meeting ''to discuss ways to maximize the safe transportation of children,'' including the possibility of establishing a rating system for child restraints.

The Juvenile Products Manufacturers Association (JPMA) responded on behalf of the child restraint manufacturers with a letter dated November 12, 1999. JPMA said that the historical performance of child restraint systems in compliance testing is excellent and that their performance in actual crashes is outstanding. Regarding a rating system, JPMA said that they believe there are many issues that need to be discussed before any decision can be made as to the appropriateness of developing such a program for child restraint systems. In closing, JPMA said that they feel it is in the best interest of all involved to develop an ongoing dialogue concerning child passenger safety.

C. Public Meeting

On February 9, 2000, NHTSA will conduct a public meeting to provide a forum for all interested persons to discuss the issues set out above. We are especially interested in non-regulatory initiatives that parties could undertake to improve the safety of child restraints. Specific topics to be discussed at the meeting include:

1. How can the safety performance of child restraints be further improved?

2. Even among complying child restraints, are some restraints safer than others? What data, other than NHTSA compliance test results, exist to answer this question?

3. Would the development of voluntary industry standards that exceed or build on the Federal standards be an effective means of improving child restraint system performance? The recent recalls to remedy problems with the handles on certain infant seats is an example of an issue that could have been addressed by the industry before the seats were brought to market. Could the problems with the handles have been avoided by use of voluntary industry standards? What other means are available that reduce the likelihood that such problems recur in the future?

4. Would increasing compliance margins improve the safety of child restraints? If so, what can be done to increase compliance margins?

5. Other international programs, such as those in Australia, Japan, and Europe, have developed or are developing safety ratings of child restraints under their New Car Assessment Programs (NCAP). Would ranking the relative performance of child restraints be of interest and value to consumers? If so:

—Should the performance of child restraints be ranked under test conditions that supplement the minimum requirements of FMVSS No. 213, as we do for vehicles in NCAP? If so, under what conditions (*e.g.*, sled test at 35 mph)?

—Should we consider a rating system based on the compliance margins of child restraints in current NHTSA tests? This approach would be less costly for the agency to implement than a separate high speed test program.

—Which performance requirements should be emphasized (*e.g.*, chest g's, HIC, head excursion, or some composite)?

—A child restraint that may have performed very well in the agency's comparative testing might not be the best choice for a particular vehicle or individual consumer, because performance may be affected by the vehicle seat, the vehicle configuration and performance, and proper consumer use based on manufacturers' instructions. Should and could these factors be reflected in a rating system? If so, how?

D. Oral Presentations

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of ''auxiliary aids'' (*e.g.*, sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Deborah Parker on (202) 366–1768, or James Gilkey on (202) 366–5295 by January 7, 2000.

E. Written Comments

Interested persons are invited to submit comments on this notice. Two copies should be submitted to DOT's Docket Management Office at the address given at the beginning of this document. Comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

Issued on: January 3, 2000.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

Noble N. Bowie,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–330 Filed 1–4–00; 12:45 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–4357; Notice 3]

Aprilia, S.p.A.; Reissuance of Grant of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

On August 13, 1999, we granted the application by Aprilia S.p.A. of Noale, Italy, for a temporary exemption from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays* (64 FR 44264, NHTSA Temporary Exemption No. 99–9, expiring July 1, 2001). The exemption was limited to Aprilia's Leonardo 150 model. For the reasons explained below, we are reissuing the exemption to include Aprilia's Scarabeo 150 model, and the exemption will expire on December 1, 2001.

Aprilia recently applied to us for a temporary exemption of its Scarabeo 150 model from S5.2.1 of Standard No. 123 on the same statutory basis as the Leonardo, that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles,'' 49 U.S.C. 30113(b)(3)(B)(iv). Because of the near identicality of the two motorcycles and the arguments in support of the

application, we have decided not to consider Aprilia's request as a petition *de novo* but to reissue NHTSA Temporary Exemption No. 99–9 to cover the Scarabeo. Further, for the reason indicated, reissued NHTSA Temporary Exemption No. 99–9 will expire December 1, 2001.

From our review of Aprilia's petitions, we consider the Scarabeo and Leonardo motorcycles to be mechanically similar in all respects relevant to the safety issues involved, differing primarily in their external sheet metal. Paragraph S5.2.1 of Standard No. 123 requires that, if a motorcycle is equipped with rear wheel brakes, those brakes be operable through the right foot control, though the left handlebar is a permissible brake control location for motor driven cycles (Item 11, Table 1). Aprilia would like to use the left handlebar as the control for the rear brakes of both the Leonardo and Scarabeo motorcycles, for the same reasons. Absent an exemption, it will be unable to import and sell the Scarabeo because the vehicle would not fully comply with Standard No. 123.

Aprilia's previous arguments in favor of the Leonardo and our comments on them are set forth in the notice at 64 FR 44264 and are incorporated herein by reference. Aprilia's new petition included copies of reports of brake tests conducted according to Standard No. 122, *Motorcycle Brake Systems*, and under the laws of the United Kingdom. These materials have been filed in the docket.

NHTSA provided an opportunity for public comment on the Leonardo petition on August 28, 1998 (63 FR 46097), and received only one in the more than 11 months that elapsed between the comment notice and the grant notice. That single comment, from Peugeot Motorcycles of France, supported Aprilia's petition.

On November 11, 1999, Aprilia USA informed us that, as of November 1, 1999, it had not imported or sold any Leonardo 150s under the exemption, and requested that we extend the effective date of the exemption accordingly. The company understands that it will not be able to import more than a total of 2,500 exempted Leonardo 150 and Scarabeo 150 motorcycles in any 12-month period that the exemption is in effect.

We have concluded that, given the recent opportunity for public comment, a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to reissue NHTSA Temporary Exemption No. 99–9 to include the Scarabeo in its coverage. We hereby incorporate our findings in our initial granting of the petition (64 FR 44264). Accordingly, NHTSA Temporary Exemption No. EX99–9 from the requirement of Item 11, Column 2, Table 1 of 49 CFR 571.123 Standard No. 123, *Motorcycle Controls and Displays*, that the rear wheel brakes be operable through the right foot control. is reissued to cover the Leonardo 150 and Scarabeo 150 motorcycles, and to expire on December 1, 2001.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on: January 3, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–422 Filed 1–6–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33786]

New Jersey Transit Corporation—Acquisition Exemption—Certain Assets of Consolidated Rail Corporation

The New Jersey Transit Corporation (NJ Transit), a noncarrier, has filed a verified notice of exemption under 49 CFR Part 1150, Subpart D—*Exempt Transactions*, to acquire from Consolidated Rail Corporation (Conrail) certain physical assets of a 31.83-mile rail line, known as the Bordentown Secondary Track, between Camden (Milepost 1.07) and Trenton, NJ (Milepost 32.9).[1] NJ Transit, which is an instrumentality of the State of New Jersey, proposes to construct and operate a light rail transit system on the line. NJ Transit states that Conrail will retain an easement and continue to operate freight service over the line on behalf of Norfolk Southern Railroad Company (NS), and CSX Transportation, Inc. (CSXT) under the terms of the South Jersey Shared Assets Area Operating Agreement (Agreement) among Conrail, NS and CSXT.[2] Consummation of the transaction was expected to occur on or after December 15, 1999, the effective date of the exemption.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33786, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly & Bayh, LPP, 1350 Eye Street, NW, Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 30, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–194 Filed 1–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] NJ Transit simultaneously filed a motion to dismiss the notice of exemption. The Board will address the jurisdictional issue raised by the motion in a subsequent decision.

[2] The Board approved the Agreement in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (STB served July 23, 1998).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–33 (Sub–No. 70)]

Union Pacific Railroad Company—Abandonment—Wallace Branch, ID

AGENCY: Surface Transportation Board.

ACTION: Notice of Availability of a Draft Supplemental Environmental Assessment and Request for Comments.

SUMMARY: The Surface Transportation Board's (Board's) Section of Environmental Analysis (SEA) has prepared, and now asks for public review and comment on, a Draft Supplemental Environmental Assessment (Draft Supplemental EA) to complete the environmental review process under the National Environmental Policy Act (NEPA) for this rail abandonment proceeding.

DATES: Written comments on the Draft Supplemental EA are due February 22, 2000 (45 days).

ADDRESSES: Send an original and 10 copies to Vernon A. Williams, Office of the Secretary, Room 711, Surface Transportation Board, 1925 K Street, NW, Washington, DC, 20423–0001, to the attention of Phillis Johnson-Ball. Please refer to Docket No. AB–33 (Sub-

No. 70) in all correspondence addressed to the Board.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball, (202) 565–1530 (TDD for the hearing impaired (202) 565–1695). Additional information is contained in the Draft Supplemental EA. To obtain a copy of the Draft Supplemental EA, contact D.C. News & Data, 1925 K Street, NW, Washington, D.C. 20423, phone (202) 289–4357 or visit the Board's website at ''WWW.STB.DOT.GOV''.

SUPPLEMENTARY INFORMATION: This Draft Supplemental EA addresses the Union Pacific Railroad Company's (UP's) filings with the Board on June 18, 1999 and October 19, 1999, of environmental information required to complete the environmental review process in this rail abandonment proceeding in accordance with the Court's decision in *State of Idaho* v. *ICC*, 35 F.3d 585 (D.C. Cir. 1994). UP now seeks final approval to salvage (*i.e.*, remove the tracks, ties, and roadbed) the rail lines known as the Wallace-Mullan Branches (Wallace Branch) in Benewah, Kootenai and Shoshone Counties, Idaho outside of the Bunker Hill Superfund Site (BHSS).[1]

To meet its obligations under NEPA, SEA has completed its independent review of the material submitted by UP and has prepared this Draft Supplemental EA to address UP's environmental information and evaluate (1) whether the six environmental conditions previously imposed by the Interstate Commerce Commission (ICC)[2] are met and (2) whether the environmental concerns regarding salvage activity raised during the course of the environmental review process have now been appropriately addressed and resolved. The document also contains SEA's preliminary recommendations for mitigating the potential environmental impacts from salvage activity that have been identified.

Based on SEA's independent evaluation of all the available information, SEA preliminarily concludes that the material provided by UP is sufficient to satisfy five of the six environmental conditions imposed by the ICC to ensure that, prior to salvage of the line, the potential significance of environmental effects related to the proposed track salvage will have been properly evaluated.[3] Furthermore, SEA concludes, based on the available information and the input of other agencies and government entities with specialized expertise, that if UP complies with the mitigation in the Engineering Evaluation/Cost Analysis and the Track Salvage Work Plan that were issued and approved by EPA, and the Biological Assessment prepared by UP and approved by the U.S. Fish and Wildlife Service, and if the additional mitigation SEA recommends in this Draft Supplemental EA is imposed and implemented by UP, UP's proposal to salvage the Wallace Branch would not have significant adverse environmental impacts.

SEA encourages the general public and interested agencies, government entities, and parties to participate in the environmental review of UP's salvage proposal by commenting on this Draft Supplemental EA during the 45-day comment period which ends February 22, 2000. SEA seeks public input on all aspects of this Draft Supplemental EA, as well as on the Board's environmental review process, so that SEA can assess public concerns and issues related to the UP proposal and determine whether additional environmental analysis and mitigation are necessary to analyze and effectively mitigate the potential environmental impacts that could occur as a result of track salvage activity on this line.

SEA will fully consider all comments that it receives in preparing final environmental recommendations to the Board, which will be based on further documentation and analysis, if any is needed. The Board then will consider the entire environmental record, the Draft Supplemental EA, all public comments, and SEA's Post EA recommendations, including SEA's final recommended environmental mitigation before issuing a decision either granting or denying UP final authority to salvage the portion of the Wallace Branch outside of the BHSS. In that decision, if UP's proposal is approved, the Board will impose any environmental conditions it deems appropriate.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams.

Secretary.

[FR Doc. 00–418 Filed 1–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The 71.5-mile line extends from milepost 16.5 near Plummer, to milepost 80.4, near Wallace, and then to milepost 7.6, near Mullan, in Benewah, Kootenai, and Shoshone Counties, Idaho. The line traverses the U.S. Postal Service zip codes 83851, 83861, 83833, 83810, 83839, 83837, 83846, and 83846. The Wallace Branch no longer has stations because rail service has already been discontinued. The 7.9-mile section of right-of-way within the BHSS was addressed in the BHSS Record of Decision (EPA 1992) and is not part of the salvage proposal before the Board. Section 121(e)(1), 42 U.S.C. 9261(e)(1), relieves railroads of the requirement to obtain Board approval to abandon the portions of rail lines within Superfund sites if they do so in connection with remediation actions carried out in compliance with the Comprehensive Environmental Response, Compensation and Liability Act.

[2] The ICC Termination Act of 1995 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and established the Board to assume some regulatory functions involving rail transportation matters that the ICC had administered, including the functions involving the abandonment of rail service at issue here. The ICC's six environmental conditions required consultation and possible permitting and review by appropriate agencies with specialized expertise prior to any salvage activity on this line.

[3] The only condition that has not yet been satisfied is the ICC's Environmental Condition No. 6, involving historic preservation. SEA recommends that the Board impose a modified historic preservation condition on any decision approving salvage to ensure completion of the historic review process.

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning January 1, 2000, the interest rates for overpayments will be 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will be 8 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to

overpayments: one for corporations and one for non-corporations. The interest rate applicable to underpayments is not so bifurcated.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 99–53 (*see*, 1999–50 IRB 1, dated December 13, 1999), the IRS determined the rates of interest for the second quarter of fiscal year (FY) 2000 (the period of January 1–March 31, 2000). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the third quarter of FY–2000 (the period of April 1–June 30, 2000).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Underpayments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
Prior to:				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7

Dated: January 3, 2000.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 00–304 Filed 1–6–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Office of the Comptroller of the Currency

Office of Thrift Supervision

Federal Deposit Insurance Corporation

National Credit Union Administration

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Suspicious Activity Report

AGENCIES: Financial Crimes Enforcement Network (FinCEN), Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA).

ACTION: Submission for OMB review; joint comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), FinCEN, OCC, OTS, FDIC, and NCUA (collectively, the ''agencies'') hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collections described below.

Although the OCC, OTS, FDIC, NCUA, and FinCEN are submitting the SAR information collection to OMB for extension, the Board of Governors of the Federal Reserve System (the Board) has participated in the review of this information collection and will process its extension under its Paperwork Reduction Act delegated authority.

On September 28, 1999, the agencies including the Board, requested public comment on the revision of the Suspicious Activity Report, which is being streamlined and reformatted for four-digit dates (a Year 2000 change). The OCC also requested comments on all information collections contained in 12 CFR part 21. The agencies are making the changes proposed and are making several additional changes suggested by the commenters. None of the changes will impose substantial additional burden on respondents.

DATES: Written comments should be received on or before February 7, 2000. The SAR form will be issued by the agencies with sufficient time for implementation.

ADDRESSES: You are invited to submit a written comment to any or all of the agencies. In addition, you should send a copy of your comment to the OMB desk officer for the agencies. Direct all written comments as follows:

FinCEN: Financial Crimes Enforcement Network, Department of the Treasury, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536, Attention: Revised SAR. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov'' with the caption in the body of the text, ''Attention: Revised SAR.''

OCC: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Attention: 1557–0180, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

OTS: Manager, Dissemination Branch, Information Management and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0003. These submissions may be hand delivered to 1700 G Street, NW., lower level, from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments over 25 pages in length should be sent to FAX Number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days. Copies of the form are available for inspection at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838: Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m., on business days.

NCUA: Clearance Officer: Mr. James L. Baylen, (703) 518–6410, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6433, E-mail:jbaylen@ncua.gov.

OMB: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection by contacting:

FinCEN: Deborah Groome, (703) 905–3744, or Scott Lodge, (703) 905–3606, both of the Office of Data Systems Support, Financial Crimes Enforcement Network, 2070 Chain Bridge Road, Vienna, VA 22182–2536.

OCC: Jessie Dunaway or Camille Dixon, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington DC 20219, (202) 874–5090.

OTS: Richard Stearns, Deputy Chief Counsel for Enforcement, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–7966.

FDIC: Tamara R. Manly, Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, (202) 898–7453.

NCUA: James L. Baylen, NCUA Clearance Officer, (703) 518–6410, or John K. Ianno, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

Title: Suspicious Activity Report. (The OCC is renewing all information collections covered under the information collection titled: ''(MA)—Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program (12 CFR 21).'')

OMB Numbers:

FinCEN: 1506–0001
OCC: 1557–0180
OTS: 1550–0003
FDIC: 3064–0077
NCUA: 3133–0094

Form Numbers:

FinCEN: TD F 90–22.47
OCC: None
OTS: 1601
FDIC: 6710/06
NCUA: 2362

Abstract: In 1985, the agencies issued procedures to be used by banks, thrifts, credit unions, their holding companies and certain other financial institutions operating in the United States to report

known or suspected criminal activities to the appropriate law enforcement agencies and the agencies. Beginning in 1994, the agencies completely redesigned the reporting process. This redesign resulted in the existing Suspicious Activity Report, which became effective in April 1996.[1]

Comments Received: On September 28, 1999, the agencies requested public comment for 60 days on the proposed revisions to the Suspicious Activity Report (64 FR 52363). The agencies received 17 comments, generally favorable, regarding the proposal. Three commenters were banking trade associations; three were national banks; two were credit union trade associations, two were credit unions, two were foreign banks, two were OCC employees, one was a state bank, and one was a brokerage house and a bank holding company. Further discussion of the comments received and action taken in response to those comments occurs later in this Notice.

Current Actions: The agencies are proposing to revise the SAR to a certain extent, but are not proposing to make substantial additions to the content of the information collected. The revisions would address a number of data collection, entry, and analysis problems encountered by filers and the end users of the information. In general, the revisions conform all date items to a four-digit year (Year 2000 change), make a number of other ministerial changes such as renumbering items, clarify the form, improve its usefulness to law enforcement and the agencies, and adopt various commenters' suggestions.

The agencies are expanding the blocks for a number of items to provide additional room for the requested information. Thus, the Zip Code blocks are expanded to provide room for a nine-digit Zip Code. Dollar blocks are expanded to provide more room for amounts (and lines are added to these items to separate digits).

A number of items now on the form are deleted. The questions regarding the asset size of the financial institution (Item 10 of the form now in use) is deleted. The question asking for the address of the law enforcement agency contacted is deleted and is replaced by a question asking for the name and telephone number of the person contacted in the law enforcement agency. The section ''Witness Information'' (Part IV of the form now is use) and the section ''Preparer Information'' (Part V of the form now in use) are deleted. The section ''Contact Information'' (Part VI of the form now in use) is all that will be required and the ''Institution Contact'' will be expected to be able to provide witness and preparer information to the agencies and to law enforcement investigators.

The agencies are clarifying several items on the form. The question concerning the type of report is clarified by eliminating ''Initial Report'' and ''Supplemental Report.'' Thus, the question asks only whether the report being filed is an ''Amended Report.'' If the report is an initial report or a supplemental report, the filer should just leave this question blank. However, if the report is correcting an earlier report, the filer should mark the ''Amended Report'' box and should fill out the information as directed on the form. The question regarding insider relationships is clarified by adding a box that asks, initially, whether the relationship is an insider relationship. A check box is added to the heading of Suspect Information for use if suspect information is unavailable. Under the section entitled Suspicious Activity Information, instead of the space now on the form for writing in the name of the law enforcement agency contacted, check boxes are added for indicating the specific law enforcement agency contacted. The instruction regarding the type of instrument involved (Part VII of the form now in use, Instruction k) is clarified by adding examples of the types of instruments.

The agencies are revising the question regarding the summary characterization of the activity by adding a new box ''Computer Intrusion.'' In the past, filers reporting computer intrusions either checked the ''Other'' box (Item 37r of the form now in use) and provided additional information in the space beside the box, or provided the information on the summary page. Additionally, the agencies are expanding the instructions to provide guidance regarding the circumstances constituting computer intrusion.

Comments Received and Agency Action Taken. The commenters raised various issues, some of which will need further agency monitoring and consideration, and others which can be resolved by fine-tuning the SAR. The comments, sorted by subject, and the agencies' responses follow.

I. Further Agency Monitoring and Consideration

Commenters suggested some areas of change that will require further agency monitoring and consideration. Some of the comments did not pertain to the issuance of the SAR and, consequently, will not be addressed here. Two of the comments were as follows:

(1) Incorrect SARs: One commenter suggested that FinCEN should return an incorrectly completed SAR to the institution submitting it so that the SAR can be resubmitted correctly.

The agencies agree with the commenter's concerns and believe that accurate and complete SAR filings are important to an effective program. The SAR data base manager is in the process of developing an error resolution process for the system. However, the primary responsibility for accurately filling out a SAR and reviewing its accuracy falls to the management and staff of the institution. If an institution determines that it has filed an inaccurate or incomplete SAR, it should timely file an amended form.

(2) Electronic Filing: Two commenters indicated that it would be beneficial to allow for electronic filing of the SAR.

The agencies agree that the ability to file SARs electronically would be beneficial and are working towards that goal, keeping in mind the security and confidentiality issues associated with such filings.

II. SAR Changes Considered

The 17 commenters made several suggestions regarding revisions to the SAR itself. Those suggestions and the agencies' responses to those suggestions follow.

(1) Initial/Supplemental/Amended Reports. The SAR should explain the box for supplemental reports.

In order to streamline the form, the agencies are removing the check boxes for ''Initial Report'' and ''Supplemental Report.'' Instead, a box for amended reports is added for use only if the filer is correcting a prior report.

(2) Primary Regulator. Item 3 of the form now in use should be modified to include the Securities and Exchange Commission (SEC) as a ''Primary Federal Regulator.''

The agencies believe that it is unnecessary to add the SEC to this field as the SAR is designed for use by the agencies and by the financial institutions that the agencies supervise.

(3) Location of Branch Where Activity Occurred. The SAR should be clarified to indicate which branch or subsidiary of a foreign bank should file the SAR and which primary regulator should be identified.

[1] The report is authorized by the following rules: 31 CFR 103.21 (FinCEN); 12 CFR 21.11 (OCC); 12 CFR 563.180 (OTS); 12 CFR 353.3 (FDIC); 12 CFR 748.1 (NCUA). The rules were issued under the authority of 31 U.S.C. 5318(g) (FinCEN); 12 U.S.C. 93a, 1818, 1881–84, 3401–22, 31 U.S.C. 5318 (OCC); 12 U.S.C. 1463 and 1464 (OTS); 12 U.S.C. 93a, 1818, 1881–84, 3401-22 (FDIC); 12 U.S.C. 1766(a), 1789(a) (NCUA).

The agencies believe that the branch where the suspicious activity occurred should be the branch that is identified under the heading Reporting Financial Institution Information. In addition, the SAR should identify as the Primary Federal Regulator the agency that supervises the branch or subsidiary where the suspicious activity occurred.

(4) Multiple Branches. The SAR should be corrected with regard to the instructions for listing multiple branches because there are no such instructions given. In addition, the form should provide for an entry which indicates, when appropriate, that no branch was involved.

The agencies agree with the first of these two comments and are striking the phrase ''(see instructions)'' in Item 9 of the proposed form. The agencies will place the directions for listing multiple branches on the form. With regard to the second comment, the agencies note that if no branch is involved, the filer can simply leave that part of the form blank.

(5) Multiple Suspects. There should be a way for an institution to enter multiple suspects without preparing a duplicate page 1 which asks for institution-related information as well as suspect-related information.

The institution, in filling out multiple pages for additional suspect information, can simply leave the institution-related information on the multiple pages blank since it was already provided on page 1.

(6) Forms of Identification. In Item 28 of the proposed form, 28(e) and (f) should be deleted and the information requested, ''number'' and ''issuing authority'' of the form of identification, should be incorporated within 28(a)–(d).

The agencies agree with this suggestion and are modifying this item so that the identifying number and issuing authority are listed next to each form of identification listed in 28(a)–(d).

(7) Types of Suspects. The agencies should add ''Monetary Instrument Purchaser'' and ''Account Applicant'' to the list of types of suspects and their relationship to the institution in Item 31 of the form currently in use.

The agencies believe that this addition is unnecessary. An institution can indicate ''Customer'' in these situations (although in some instances the individual may be turned away as an actual customer) or the institution can use the ''Other'' category.

(8) No Relationship to Institution. There should be a box within Item 31 of the form currently in use for the filer to indicate that the suspect has no relationship with the institution.

The agencies believe that this is unnecessary since the filer can either leave this section blank or can use the ''Other'' line to indicate the nature of the suspect.

(9) Confession. Item 34 of the form currently in use and Item 32 of the proposed form should be moved so that it is not juxtaposed to insider related information and thus confusing as to whether it applies only to insiders.

The agencies wish to collect information concerning a confession with regard to all suspects. Consequently, to clarify this, the agencies will physically move this item on the form so that it is separate from the insider related information.

(10) Range of Dates. The form should permit the filer to put down a range of dates over which the suspicious activity occurred rather than just one date.

The proposed form, in Item 33, will permit the filer to put in a range of dates.

(11) Computer Intrusion. The agencies should better define computer intrusion. Further, they should include specific examples of what would and would not be covered.

The agencies believe that the current definition is appropriate.

(12) Identity Theft. There should be an additional box under Item 37 of the form currently in use, ''Summary characterization of suspicious activity,'' to include ''identity theft'' as a specific category.

The agencies agree that identity theft is an important category of criminal activity. However, identity theft is frequently linked with other crimes that are specifically enumerated on the SAR, such as check fraud and credit card fraud. In addition, there are already 18 specific boxes under this category and institutions can use the ''Other'' box to report identity theft. Therefore, the agencies have decided, at this time, not to revise the SAR to include ''identity theft'' as a new category and expect that institutions will continue to use the ''Other'' box, or use other appropriate boxes. The agencies will continue to monitor this area and will reconsider their decision if warranted.

(13) Contacting Law Enforcement. In Item 40 of the proposed form there should be a ''Yes/No'' box indicating whether or not the filer has contacted a law enforcement agency.

The agencies believe that such a change is unnecessary since answering this item or leaving it blank will indicate whether or not the filer has contacted a law enforcement agency. Further, the agencies wish to eliminate as many entries on the form as possible.

(14) Witness Information. The agencies should either delete Part IV of the form currently in use, pertaining to Witness Information, or they should delete the requirement for a social security number of the witness. This requirement is unnecessary and potentially invasive of the individual's privacy.

The agencies agree with these comments and have decided to delete Part IV altogether. The agencies, however, expect that the ''Institution Contact,'' named in Part VI of the form currently in use, will maintain or will have access to all pertinent documentation and witness information for the agencies and law enforcement.

(15) Preparer Information. The agencies should retain Part V of the form currently in use, pertaining to Preparer Information, so that the ''Institution Contact'' can readily determine who prepared the form and where the necessary underlying information is.

The agencies believe that the ''Institution Contact'' should be able to maintain this information without the assistance of the form. In addition, as noted above, the agencies wish to eliminate as many entries on the form as possible.

(16) Instructions on the Narrative Explanation. The agencies should highlight the instructions in Part VII of the form currently in use, pertaining to the narrative explanation, by moving the instruction ''If necessary, continue the narrative on a duplicate of this page,'' to the bottom of the page and putting it in bold type.

In order to highlight this instruction, the agencies will put the instruction in bold type, but will leave it where it is, at the top of the page.

(17) Instructions on the Narrative Explanation. The agencies should delete many of the instructions in Part VII of the form currently in use in that they do not pertain strictly to the requirement for a narrative explanation.

The agencies believe that it is appropriate to retain in this section of the proposed form all the existing instructions contained in Part VII of the form currently in use.

Type of Review: Revision of a currently approved collection.

Affected Public: Business, for-profit institutions, and non-profit institutions.

Estimated Number of Respondents:

FinCEN: 18,600 [2]
OCC: 3,000
OTS: 925
FDIC: 6,500
NCUA: 4,200

Estimated Total Annual Responses:

[2] Many respondents included in this estimate are also counted in the agencies' estimates.

FinCEN: 47,500
OCC: 45,527
OTS: 2,081
FDIC: 6,500
NCUA: 4,200

Estimated Total Annual Burden:

(**Note:** The agencies have estimated 30 minutes per form.)

FinCEN: 23,750 hours [3]
OCC: 30,160 hours
OTS: 1,041 hours
FDIC: 3,250 hours
NCUA: 2,100 hours

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. A respondent must retain the supporting records to the SAR for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information shall have practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: December 27, 1999.

Connie J. Fenchel,

Acting Director, Financial Crimes Enforcement Network.

Dated: December 29, 1999.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated: December 28, 1999.

Frank DiGialleonardo,

Chief Information Officer and Director, Office of Information Systems, Office of Thrift Supervision.

By Order of the Board of Directors.

Dated at Washington, DC, this 28th day of December, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By the National Credit Union Administration Board on December 23, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–189 Filed 1–6–00; 8:45 am]

BILLING CODE 4820–03–P

[3] A respondent need only file one form. The estimated burden per form is 30 minutes; this estimate does not allocate time between agencies when copies of the form are filed to satisfy the rules of more than one agency.

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Harry S. Truman Scholarship 2000 Competition

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Notice of Closing for Nominations from Eligible Institutions of Higher Education.

SUMMARY: Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Public Law 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for 1999 Truman Scholarships. Procedures are prescribed in 45 CFR part 1801 (August 22, 1994; vol. 59, no. 161 sec. 13).

In order to be assured consideration, all documentation in support of nominations for the competition must be received by the Truman Scholarship Review Committee, 2201 North Dodge, P.O. Box 168, Iowa City, IA 52243 no later than February 1, 2000, from participating four year institutions.

Dated: December 17, 1999.

Louis H. Blair,

Executive Secretary.

[FR Doc. 00–318 Filed 1–6–00; 8:45 am]

BILLING CODE 6820–AD–M

Corrections

Federal Register

Vol. 65, No. 5

Friday, January 7, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Potential Yucca Mountain, Nevada, Respository; Board Meeting

Correction

In notice document 99–32688 beginning on page 70749, in the issue of Friday, December 17, 1999, make the following correction:

On page 70750, in the first column, in the eighth line from the bottom, the web address ''www.nwrb.gov.'' should read ''www.nwtrb.gov.''

[FR Doc. C9–32688 Filed 1–6–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday

January 7, 2000

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Purchase Price Allocations in Deemed and Actual Asset Acquisitions; Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8858]

RIN 1545–AZ58

Purchase Price Allocations in Deemed and Actual Asset Acquisitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the allocation of purchase price in deemed and actual asset acquisitions. The temporary regulations determine the amount realized and the amount of basis allocated to each asset transferred in a deemed or actual asset acquisition and affect transactions reported on either Form 8023 or Form 8594. The intended effect of the temporary regulations is to remove and replace many of the current temporary and final regulations sections under sections 338 and 1060 and renumber others.

DATES: Effective Date: These regulations are effective January 6, 2000.

Applicability Dates: For dates of applicability of these regulations, see § 1.338(i)–1T and § 1.1060–1T(a)(2).

FOR FURTHER INFORMATION CONTACT: Richard Starke of the Office of Assistant Chief Counsel (Corporate), (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these temporary regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under the control number 1545–1658.

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

The collections of information in these temporary regulations are in §§ 1.338–2T(d), 1.338–2T(e)(4), 1.338–5T(d)(3), 1.338–10T(a)(4), 1.338(h)(10)–1T(d)(2), and 1.1060–1T(e)(ii)(A) and (B). The collections of information are necessary to make an election to treat a sale of stock as a sale of assets, to calculate and collect the appropriate amount of tax in a deemed or actual asset acquisition, and to determine the bases of assets acquired in a deemed or actual asset acquisition.

These collections of information are required to obtain a benefit. The likely respondents and/or recordkeepers are small businesses or organizations, businesses, or other for-profit institutions, and farms.

The regulation provides that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023.

The regulation also provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594.

The burden for the collection of information in § 1.338–2T(e)(4) is as follows:

Estimated total annual reporting/recordkeeping burden: 25 hours.

Estimated average annual burden per respondent/recordkeeper: 0.56 hours.

Estimated number of respondents/recordkeepers: 45.

Estimated annual frequency of responses: On occasion.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

On August 10, 1999, the IRS and Treasury published in the **Federal Register** (REG–107069–97, 64 FR 43461 (1999–36 I.R.B. 346)) a notice of proposed rulemaking. The notice contained proposed regulations under sections 338 and 1060 of the Internal Revenue Code of 1986. The temporary and final regulations promulgated in this Treasury decision are substantively the same as the proposed regulations published on August 10, 1999. The Service and Treasury believe that the comments received on the proposed regulations warrant further consideration. For instance, the Service and the Treasury received several comments requesting reconsideration of (1) the provision in § 1.338–3(b)(2)(ii) of the proposed regulations stating that a purchase of target stock occurs only so long as more than a nominal amount is paid for such share, and (2) the example in § 1.338–1(a)(2) of the proposed regulations stating that if target is an insurance company for which a section 338 election is made, then the deemed asset sale will be characterized and taxed as an assumption-reinsurance transaction. The temporary regulations reserve the purchase issue addressed in § 1.338–3(b)(2)(ii) of the proposed regulations pending further consideration of the comments. The temporary regulations retain the assumption-reinsurance example because the example properly illustrates the principles of the proposed and temporary regulations. The Service and Treasury will give further consideration to the interaction of section 338 and the assumption-reinsurance rules and the need for additional guidance on how the assumption-reinsurance rules should work in the context of a deemed asset sale.

Notwithstanding such comments, the proposed regulations generally were favorably received, and the Service and Treasury are convinced that, in general, the proposed regulations provide clearer guidance and better rules than the current final and temporary regulations under sections 338 and 1060. Accordingly, pending further review of the comments received on the proposed regulations, the Service and Treasury are replacing existing temporary and final regulations with the proposed rules published on August 10, 1999.

As soon as feasible, final regulations will be promulgated, replacing these new temporary regulations. All comments received in response to the requests for comments contained in the notice of August 10, 1999, will be considered in the course of preparing the final regulations.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that a final regulatory flexibility analysis is required for the collection of information in this Treasury decision under 5 U.S.C. 604. This analysis is set forth below under the heading ''Final Regulatory Flexibility Act Analysis.'' 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.

Final Regulatory Flexibility Act Analysis

This analysis is required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). This regulatory action is intended to simplify and clarify the current rules relating to both deemed and actual asset acquisitions. The current rules were developed over a long period of time and have been repeatedly amended. The IRS and Treasury believe these temporary regulations will significantly improve the clarity of the rules relating to both deemed and actual asset acquisitions.

The major objective of these temporary regulations is to modify the rules for allocating purchase price in both deemed and actual asset acquisitions. In addition, these temporary regulations replace the general rules for electing to treat a stock sale as an asset sale.

These collections of information may affect small businesses if the stock of a corporation which is a small entity is acquired in a qualified stock purchase or if a trade or business which is also a small business is transferred in a taxable transaction. Form 8023 (on which an election to treat a stock sale as an asset sale is filed) has been submitted to and approved by the Office of Management and Budget. With respect to Form 8023, the IRS estimated that 201 forms would be filed each year and that each taxpayer would require 12.98 hours to comply. Form 8594 (on which a sale or acquisition of assets constituting a trade or business is reported) has also been submitted to and approved by the Office of Management and Budget. With respect to Form 8594, the IRS estimated that 20,000 forms would be filed each year and that each taxpayer would require 12.25 hours to comply. These estimates have been made available for public comment and no public comments have been received. The regulations do not impose new requirements on small businesses and, in fact, should lessen any difficulties associated with the existing reporting requirements by clarifying the rules associated with deemed and actual asset acquisitions.

The collections of information require taxpayers to file an election in order to treat a stock sale as an asset sale. In addition, taxpayers must file a statement regarding the amount of consideration allocated to each class of assets under the residual method. The professional skills that would be necessary to make the election or allocate the consideration would be the same as those required to prepare a return for the small business.

Consideration was given to limiting the reporting requirements under section 1060 to trades or businesses meeting a threshold level of business activity. However, any threshold derived without further information would be arbitrary. Instead, these regulations authorize the Commissioner to exclude certain transactions from the reporting requirements.

Drafting Information: The principal author of these regulations is Richard Starke, Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated extensively in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

83 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for 1.338(b)–1, 1.338(b)–3T, and 1.1060–1T and by adding entries in numerical order to read in part as follows:

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

Section 1.338–6T also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–7T also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–8 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–9 also issued under 26 U.S.C. 337(d), 338, and 1502.

Section 1.338–10T also issued under 26 U.S.C. 337(d), 338, and 1502. * * *

Section 1.1060–1T also issued under 26 U.S.C. 1060. * * *

Par. 2. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.56(g)–1(k)(1)	of § 1.338(b)–2T(b), if otherwise	of § 1.338–6T(b), if otherwise.
1.56(g)–1(k)(1)	of §§ 1.338(b)–2T(c)(1) and (2) also	of § 1.338–6T(c)(1) and (2) also.
1.368–1(a)	(k) and 1.338–2(c)(3)	(k) and 1.338–3T(c)(3).
1.368–1(e)(6), *Example 4,* paragraph (ii)	see § 1.338–2(c)(3) (which	see § 1.338–3T(c)(3) (which.
1.597–2(d)(5)(iii)(B)	(see § 1.338(b)–3T)	(see § 1.338–7T).
1.597–5(c)(3)(i)	under §§ 1.338(b)–2T(b), (c)(1) and (2)	under § 1.338–6T(b), (c)(1) and (2).
1.597–5(d)(2)(i)	under §§ 1.338(b)–2T(b), (c)(1) and (2)	under § 1.338–6T(b), (c)(1) and (2).
1.921–1T(b)(1), A–1	and § 1.338–1(d)	and § 1.338–2T(d).
1.1031(d)–1T	see § 1.1060–1T(b), (d), and (g) *Example (3)*	see § 1.1060–1T(b), (c), and (d) *Example 1.*
1.1031(j)–1(b)(2)(iii)	in § 1.1060–1T(d)	in § 1.338–6T(b), to which reference is made by § 1.1060–1T(c)(2).
1.1502–75(k)	See § 1.338(h)(10)–1(e)(6) for	See § 1.338(h)(10)–1T(d)(7) for
1.1502–76(b)(1)(ii)(A)(*1*)	See § 1.338–1(e)(5) (deemed	See § 1.338–10T(a)(5) (deemed.

§ 1.338–0 through 1.338–3 [Removed]

Par. 3. Sections 1.338–0 through 1.338–3 are removed.

Par. 4. Sections 1.338–0T through 1.338–3T are added to read as follows:

§ 1.338–0T Outline of topics (temporary).

This section lists the captions contained in the regulations under section 338 as follows:

§ 1.338–1T General principles; status of old target and new target (temporary).

(a) In general.
(1) Deemed transaction.
(2) Application of other rules of law.
(3) Overview.
(b) Treatment of target under other provisions of the Internal Revenue Code.
(1) General rule for subtitle A.
(2) Exceptions for subtitle A.
(3) General rule for other provisions of the Internal Revenue Code.
(c) Anti-abuse rule.
(1) In general.
(2) Examples.

§ 1.338–2T Nomenclature and definitions; mechanics of the section 338 election (temporary).

(a) Scope.
(b) Nomenclature.
(c) Definitions.
(1) Acquisition date.
(2) Acquisition date assets.
(3) Affiliated group.
(4) Common parent.
(5) Consistency period.
(6) Deemed asset sale.
(7) Deemed sale gain.
(8) Deemed sale return.
(9) Domestic corporation.
(10) Old target's final return.
(11) Purchasing corporation.
(12) Qualified stock purchase.
(13) Related persons.
(14) Section 338 election.
(15) Section 338(h)(10) election.
(16) Selling group.
(17) Target; old target; new target.
(18) Target affiliate.
(19) 12-month acquisition period.
(d) Time and manner of making election.
(e) Special rules for foreign corporations or DISCs.
(1) Elections by certain foreign purchasing corporations.
(i) General rule.
(ii) Qualifying foreign purchasing corporation.
(iii) Qualifying foreign target.
(iv) Triggering event.
(v) Subject to United States tax.
(2) Acquisition period.
(3) Statement of section 338 may be filed by United States shareholders in certain cases.
(4) Notice requirement for U.S. persons holding stock in foreign market.
(i) General rule.
(ii) Limitation.
(iii) Form of notice.
(iv) Timing of notice.
(v) Consequence of failure to comply.
(vi) Good faith effort to comply.

§ 1.338–3T Qualification for the section 338 election (temporary).

(a) Scope.
(b) Rules relating to qualified stock purchases.
(1) Purchasing corporation requirement.
(2) Purchase.
(i) Definition.
(ii) Purchase of target. [Reserved]
(iii) Purchase of target affiliate.
(3) Acquisitions of stock from related corporations.
(i) In general.
(ii) Time for testing relationship.
(iii) Cases where section 338(h)(3)(C) applies—acquisitions treated as purchases.
(iv) Examples.
(4) Acquisition date for tiered targets.
(i) Stock sold in deemed asset sale.
(ii) Examples.
(5) Effect of redemptions.
(i) General rule.
(ii) Redemptions from persons unrelated to the purchasing corporation.
(iii) Redemptions from the purchasing corporation or related persons during 12-month acquisition period.
(A) General rule.
(B) Exception for certain redemptions from related corporations.
(iv) Examples.
(c) Effect of post-acquisition events on eligibility for section 338 election.
(1) Post-acquisition elimination of target.
(2) Post-acquisition elimination of the purchasing corporation.
(3) Consequences of post-acquisition elimination of target.
(i) Scope.
(ii) Continuity of interest.
(iii) Control requirement.
(iv) Example.

§ 1.338–4T Aggregate deemed sale price; various aspects of taxation of the deemed asset sale (temporary).

(a) Scope.
(b) Determination of ADSP.
(1) General rule.
(2) Time and amount of ADSP.
(i) Original determination.
(ii) Redetermination of ADSP.
(iii) Example.
(c) Grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock.
(1) Determination of amount.
(2) Example.
(d) Liabilities of old target.
(1) In general.
(2) Time and amount of liabilities.
(3) Interaction with deemed sale gain.
(e) Calculation of deemed sale gain.
(f) Other rules apply in determining ADSP.
(g) Examples.
(h) Deemed sale of target affiliate stock.
(1) Scope.
(2) In general.
(3) Deemed sale of foreign target affiliate by a domestic target.
(4) Deemed sale producing effectively connected income.
(5) Deemed sale of insurance company target affiliate electing under section 953(d).
(6) Deemed sale of DISC target affiliate.
(7) Anti-stuffing rule.
(8) Examples.

§ 1.338–5T Adjusted grossed-up basis (temporary).

(a) Scope.
(b) Determination of AGUB.
(1) General rule.
(2) Time and amount of AGUB.
(i) Original determination.
(ii) Redetermination of AGUB.
(iii) Examples.
(c) Grossed-up basis of recently purchased stock.
(d) Basis of nonrecently purchased stock; gain recognition election.
(1) No gain recognition election.
(2) Procedure for making gain recognition election.
(3) Effect of gain recognition election.
(i) In general.
(ii) Basis amount.
(iii) Losses not recognized.
(iv) Stock subject to election.
(e) Liabilities of new target.
(1) In general.
(2) Time and amount of liabilities.
(3) Interaction with deemed sale gain.
(f) Adjustments by the Internal Revenue Service.
(g) Examples.

§ 1.338–6T Allocation of ADSP and AGUB among target assets (temporary).

(a) Scope.
(1) In general.
(2) Fair market value.
(i) In general.
(ii) Transaction costs.
(iii) Internal Revenue Service authority.
(b) General rule for allocating ADSP and AGUB.
(1) Reduction in the amount of consideration for Class I assets.
(2) Other assets.
(i) In general.
(ii) Class II assets.
(iii) Class III assets.
(iv) Class IV assets.
(v) Class V assets.
(vi) Class VI assets.
(vii) Class VII assets.
(3) Other items designated by the Internal Revenue Service.
(c) Certain limitations and other rules for allocation to an asset.
(1) Allocation not to exceed fair market value.
(2) Allocation subject to other rules.
(3) Special rule for allocating AGUB when purchasing corporation has nonrecently purchased stock.
(i) Scope.
(ii) Determination of hypothetical purchase price.
(iii) Allocation of AGUB.
(4) Liabilities taken into account in determining amount realized on subsequent disposition.
(d) Examples.

§ 1.338–7T Allocation of redetermined ADSP and AGUB among target assets (temporary).

(a) Scope.
(b) Allocation of redetermined ADSP and AGUB.
(c) Special rules for ADSP.
(1) Increases or decreases in deemed sale gain taxable notwithstanding old target ceases to exist.
(2) Procedure for transactions in which section 338(h)(10) is not elected.
(i) Deemed sale gain included in new target's return.
(ii) Carryovers and carrybacks.
(A) Loss carryovers to new target taxable years.
(B) Loss carrybacks to taxable years of old target.
(C) Credit carryovers and carrybacks.
(3) Procedure for transactions in which section 338(h)(10) is elected.
(d) Special rules for AGUB.
(1) Effect of disposition or depreciation of acquisition date assets.
(2) Section 38 property.
(e) Examples.

§ 1.338–8 Asset and stock consistency.

(a) Introduction.
(1) Overview.
(2) General application.
(3) Extension of the general rules.

(4) Application where certain dividends are paid.
(5) Application to foreign target affiliates.
(6) Stock consistency.
(b) Consistency for direct acquisitions.
(1) General rule.
(2) Section 338(h)(10) elections.
(c) Gain from disposition reflected in basis of target stock.
(1) General rule.
(2) Gain not reflected if section 338 election made for target.
(3) Gain reflected by reason of distributions.
(4) Controlled foreign corporations.
(5) Gain recognized outside the consolidated group.
(d) Basis of acquired assets.
(1) Carryover basis rule.
(2) Exceptions to carryover basis rule for certain assets.
(3) Exception to carryover basis rule for de minimis assets.
(4) Mitigation rule.
(i) General rule.
(ii) Time for transfer.
(e) Examples.
(1) In general.
(2) Direct acquisitions.
(f) Extension of consistency to indirect acquisitions.
(1) Introduction.
(2) General rule.
(3) Basis of acquired assets.
(4) Examples.
(g) Extension of consistency if dividends qualifying for 100 percent dividends received deduction are paid.
(1) General rule for direct acquisitions from target.
(2) Other direct acquisitions having same effect.
(3) Indirect acquisitions.
(4) Examples.
(h) Consistency for target affiliates that are controlled foreign corporations.
(1) In general.
(2) Income or gain resulting from asset dispositions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(iii) Operating rule.
(iv) Increase in asset or stock basis.
(3) Stock issued by target affiliate that is a controlled foreign corporation.
(4) Certain distributions.
(i) General rule.
(ii) Basis of controlled foreign corporation stock.
(iii) Increase in asset or stock basis.
(5) Examples.
(i) [Reserved]
(j) Anti-avoidance rules.
(1) Extension of consistency rules.
(2) Qualified stock purchase and 12-month acquisition period.
(3) Acquisitions by conduits.
(i) Asset ownership.
(A) General rule.
(B) Application of carryover basis rule.
(ii) Stock acquisitions.
(A) Purchase by conduit.
(B) Purchase of conduit by corporation.
(C) Purchase of conduit by conduit.
(4) Conduit.
(5) Existence of arrangement.
(6) Predecessor and successor.
(i) Persons.
(ii) Assets.
(7) Examples.

§ 1.338–9 International aspects of section 338.

(a) Scope.
(b) Application of section 338 to foreign targets.
(1) In general.
(2) Ownership of FT stock on the acquisition date.
(3) Carryover FT stock.
(i) Definition.
(ii) Carryover of earnings and profits.
(iii) Cap on carryover of earnings and profits.
(iv) Post-acquisition date distribution of old FT earnings and profits.
(v) Old FT earnings and profits unaffected by post-acquisition date deficits.
(vi) Character of FT stock as carryover FT stock eliminated upon disposition.
(4) Passive foreign investment company stock.
(c) Dividend treatment under section 1248(e).
(d) Allocation of foreign taxes.
(e) Operation of section 338(h)(16). [Reserved]
(f) Examples.

§ 1.338–10T Filing of returns (temporary).

(a) Returns including tax liability from deemed asset sale.
(1) In general.
(2) Old target's final taxable year otherwise included in consolidated return of selling group.
(i) General rule.
(ii) Separate taxable year.
(iii) Carryover and carryback of tax attributes.
(iv) Old target is a component member of purchasing corporation's controlled group.
(3) Old target is an S corporation.
(4) Combined deemed sale return.
(i) General rule.
(ii) Gain and loss offsets.
(iii) Procedure for filing a combined return.
(iv) Consequences of filing a combined return.
(5) Deemed sale excluded from purchasing corporation's consolidated return.
(6) Due date for old target's final return.
(i) General rule.
(ii) Application of § 1.1502–76(c).
(A) In general.
(B) Deemed extension.
(C) Erroneous filing of deemed sale return.
(D) Erroneous filing of return for regular tax year.
(E) Last date for payment of tax.
(7) Examples.
(b) Waiver.
(1) Certain additions to tax.
(2) Notification.
(3) Elections or other actions required to be specified on a timely filed return.
(i) In general.
(ii) New target in purchasing corporation's consolidated return.
(4) Examples.

§ 1.338(h)(10)–1T Deemed asset sale and liquidation (temporary).

(a) Scope.
(b) Definitions.
(1) Consolidated target.
(2) Selling consolidated group.
(3) Selling affiliate; affiliated target.
(4) S corporation target.
(5) S corporation shareholders.
(6) Liquidation.
(c) Section 338(h)(10) election.
(1) In general.
(2) Simultaneous joint election requirement.
(3) Irrevocability.
(4) Effect of invalid election.
(d) Certain consequences of section 338(h)(10) election.
(1) P.
(2) New T.
(3) Old T—deemed sale.
(i) In general.
(ii) Tiered targets.
(4) Old T and selling consolidated group, selling affiliate, or S corporation shareholders—deemed liquidation; tax characterization.
(i) In general.
(ii) Tiered targets.
(5) Selling consolidated group, selling affiliate, or S corporation shareholders.
(i) In general.
(ii) Basis and holding period of T stock not acquired.
(iii) T stock sale.
(6) Nonselling minority shareholders other than nonselling S corporation shareholders.
(i) In general.
(ii) T stock sale.
(iii) T stock not acquired.
(7) Consolidated return of selling consolidated group.
(8) Availability of the section 453 installment method.
(i) In deemed asset sale.
(ii) In deemed liquidation.
(9) Treatment consistent with an actual asset sale.
(e) Examples.
(f) Inapplicability of provisions.
(g) Required information.

§ 1.338(i)–1T Effective dates (temporary).

§ 1.338–1T General principles; status of old target and new target (temporary).

(a) *In general*—(1) *Deemed transaction.* Elections are available under section 338 when a purchasing corporation acquires the stock of another corporation (the target) in a qualified stock purchase. One type of election, under section 338(g), is available to the purchasing corporation. Another type of election, under section 338(h)(10), is, in more limited circumstances, available jointly to the purchasing corporation and the sellers of the stock. (Rules concerning eligibility for these elections are contained in §§ 1.338–2T, 1.338–3T, and 1.338(h)(10)–1T.) Although target is a single corporation under corporate law, if a section 338 election is made, then two separate corporations, old target and new target, generally are considered to exist for purposes of subtitle A of the Internal Revenue Code. Old target is treated as transferring all of its assets to an unrelated

person in exchange for consideration that includes the assumption of, or taking subject to, liabilities, and new target is treated as acquiring all of its assets from an unrelated person in exchange for consideration that includes the assumption of or taking subject to liabilities. (Such transaction is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset sale and the income tax consequences thereof as the deemed sale gain.) If a section 338(h)(10) election is made, old target is also deemed to liquidate following the deemed asset sale.

(2) *Application of other rules of law.* Other rules of law apply to determine the tax consequences to the parties as if they had actually engaged in the transactions deemed to occur under section 338 and §§ 1.338–0T through 1.338–7T, 1.338–8, 1.338–9, 1.338–10T, 1.338(h)(10)–1T, and 1.338(i)–1T except to the extent otherwise provided in §§ 1.338–0T through 1.338–7T, 1.338–8, 1.338–9, 1.338–10T, 1.338(h)(10)–1T, and 1.338(i)–1T. See also § 1.338–6T(c)(2). Other rules of law may characterize the transaction as something other than or in addition to a sale and purchase of assets; however, it must be a taxable transaction. For example, if target is an insurance company for which a section 338 election is made, the deemed asset sale would be characterized and taxed as an assumption-reinsurance transaction under applicable Federal income tax law. See § 1.817–4(d).

(3) *Overview.* Definitions and special nomenclature and rules for making the section 338 election are provided in § 1.338–2T. Qualification for the section 338 election is addressed in § 1.338–3T. The amount for which old target is treated as selling all of its assets (the aggregate deemed sale price, or ADSP) is addressed in § 1.338–4T. The amount for which new target is deemed to have purchased all its assets (the adjusted grossed-up basis, or AGUB) is addressed in § 1.338–5T. Section 1.338–6T addresses allocation both of ADSP among the assets old target is deemed to have sold and of AGUB among the assets new target is deemed to have purchased. Section 1.338–7T addresses allocation of ADSP or AGUB when those amounts change after the close of new target's first taxable year. Asset and stock consistency are addressed in § 1.338–8. International aspects of section 338 are covered in § 1.338–9. Rules for the filing of returns are provided in § 1.338–10T. Eligibility for and treatment of section 338(h)(10) elections is addressed in § 1.338(h)(10)–1T.

(b) *Treatment of target under other provisions of the Internal Revenue Code*—(1) *General rule for subtitle A.* Except as provided in this section, new target is treated as a new corporation that is unrelated to old target for purposes of subtitle A of the Internal Revenue Code. Thus—

(i) New target is not considered related to old target for purposes of section 168 and may make new elections under section 168 without taking into account the elections made by old target; and

(ii) New target may adopt, without obtaining prior approval from the Commissioner, any taxable year that meets the requirements of section 441 and any method of accounting that meets the requirements of section 446. Notwithstanding § 1.441–1T(b)(2), a new target may adopt a taxable year on or before the last day for making the election under section 338 by filing its first return for the desired taxable year on or before that date.

(2) *Exceptions for subtitle A.* New target and old target are treated as the same corporation for purposes of—

(i) The rules applicable to employee benefit plans (including those plans described in sections 79, 104, 105, 106, 125, 127, 129, 132, 137, and 220), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simplified employee pensions (section 408(k)), tax qualified stock option plans (sections 422 and 423), welfare benefit funds (sections 419, 419A, 512(a)(3), and 4976), voluntary employee benefit associations (section 501(c)(9) and the regulations thereunder);

(ii) Sections 1311 through 1314 (relating to the mitigation of the effect of limitations) if a section 338(h)(10) election is not made for target;

(iii) Section 108(e)(5) (relating to the reduction of purchase money debt);

(iv) Section 45A (relating to the Indian Employment Credit), section 51 (relating to the Work Opportunity Credit), section 51A (relating to the Welfare to Work Credit), and section 1396 (relating to the Empowerment Zone Act);

(v) Sections 401(h) and 420 (relating to medical benefits for retirees);

(vi) Section 414 (relating to definitions and special rules); and

(vii) Any other provision designated in the Internal Revenue Bulletin by the Internal Revenue Service. See § 601.601(d)(2)(ii) of this chapter (relating to the Internal Revenue Bulletin). See § 1.1001–3(e)(4)(F) providing that an election under section 338 does not result in the substitution of a new obligor on target's debt.

(3) *General rule for other provisions of the Internal Revenue Code.* Except as provided in the regulations under section 338 or in the Internal Revenue Bulletin by the Internal Revenue Service (see § 601.601(d)(2)(ii) of this chapter), new target is treated as a continuation of old target for purposes other than subtitle A of the Internal Revenue Code. For example—

(i) New target is liable for old target's Federal income tax liabilities, including the tax liability for the deemed sale gain and those tax liabilities of the other members of any consolidated group that included old target that are attributable to taxable years in which those corporations and old target joined in the same consolidated return (see § 1.1502–6(a));

(ii) Wages earned by the employees of old target are considered wages earned by such employees from new target for purposes of sections 3101 and 3111 (Federal Insurance Contributions Act) and section 3301 (Federal Unemployment Tax Act); and

(iii) Old target and new target must use the same employer identification number.

(c) *Anti-abuse rule*—(1) *In general.* For purposes of applying the residual method of §§ 1.338–0T through 1.338–7T, 1.338–8, 1.338–9, 1.338–10T, 1.338(h)(10)–1T, and 1.338(i)–1T, the Commissioner is authorized to treat any property (including cash) transferred by old target in connection with the transactions resulting in the application of the residual method as, nonetheless, property of target at the close of the acquisition date if the property so transferred, within 24 months after the deemed asset sale, is owned by new target, or is owned, directly or indirectly, by a member of the affiliated group of which new target is a member and continues after the election to be held or used to more than an insignificant extent in connection with one or more of the activities of new target. The Commissioner is authorized to treat any property (including cash) transferred to old target in connection with the transactions resulting in the application of the residual method as, nonetheless, not being property of target at the close of the acquisition date if the property so transferred by the transferor is, within 24 months after the deemed asset sale, not owned by new target but owned, directly or indirectly, by a member of the affiliated group of which new target is a member or owned by new target but held or used to more than an insignificant extent in connection with an activity conducted, directly or indirectly, by another member of the affiliated group of which new target is a member in combination with other property acquired, directly or indirectly, from the transferor of the property (or a member of the same affiliated group) to old target. For purposes of this paragraph (c)(1), an interest in an entity is considered held or used in connection with an activity if property of the entity is so held or used. The authority under this paragraph (c)(1) includes the making of any necessary correlative adjustments.

(2) *Examples.* The following examples illustrate this paragraph (c):

Example 1. Prior to a qualified stock purchase under section 338, target transfers

one of its assets to a related party. The purchasing corporation then purchases the target stock and also purchases the transferred asset from the related party. After its purchase of target, the purchasing corporation and target are members of the same affiliated group. A section 338 election is made. Under an arrangement with the purchaser, target continues to use the separately transferred asset to more than an insignificant extent in connection with its own activities. Applying the anti-abuse rule of this paragraph (c), the Commissioner may consider target to own the transferred asset for purposes of applying section 338 and its allocation rules.

Example 2. Target (T) owns all the stock of T1. T1 leases intellectual property to T, which T uses in connection with its own activities. P, a purchasing corporation, wishes to buy the T–T1 chain of corporations. P, in connection with its planned purchase of the T stock, contracts to consummate a purchase of all the stock of T1 on March 1 and of all the stock of T on March 2. Section 338 elections are thereafter made for both T and T1. Immediately after the purchases, P, T and T1 are members of the same affiliated group. T continues to lease the intellectual property from T1 and to use the property to more than an insignificant extent in connection with its own activities. Thus, an asset of T, the T1 stock, was removed from T's own assets prior to the qualified stock purchase of the T stock, T1's own assets are used after the deemed asset sale in connection with T's own activities, and the T1 stock is after the deemed asset sale owned by P, a member of the same affiliated group of which T is a member. Applying the anti-abuse rule of this paragraph (c), the Commissioner may, for purposes of application of section 338 both to T and to T1, consider P to have bought only the stock of T, with T at the time of the qualified stock purchases of both T and T1 (the qualified stock purchase of T1 being triggered by the deemed sale under section 338 of T's assets) owning T1. The Commissioner would accordingly apply section 338 first at the T level and then at the T1 level.

§ 1.338–2T Nomenclature and definitions; mechanics of the section 338 election (temporary).

(a) *Scope.* This section prescribes rules relating to elections under section 338.

(b) *Nomenclature.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) T is a domestic target corporation that has only one class of stock outstanding. Old T refers to T for periods ending on or before the close of T's acquisition date; new T refers to T for subsequent periods.

(2) P is the purchasing corporation.

(3) The P group is an affiliated group of which P is a member.

(4) P1, P2, etc., are domestic corporations that are members of the P group.

(5) T1, T2, etc., are domestic corporations that are target affiliates of T. These corporations (T1, T2, etc.) have only one class of stock outstanding and may also be targets.

(6) S is a domestic corporation (unrelated to P and B) that owns T prior to the purchase of T by P. (S is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by a domestic corporation.)

(7) A, a U.S. citizen or resident, is an individual (unrelated to P and B) who owns T prior to the purchase of T by P. (A is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by an individual who is a U.S. citizen or resident. Ownership of T by A and ownership of T by S are mutually exclusive circumstances.)

(8) B, a U.S. citizen or resident, is an individual (unrelated to T, S, and A) who owns the stock of P.

(9) F, used as a prefix with the other terms in this paragraph (b), connotes foreign, rather than domestic, status. For example, FT is a foreign corporation (as defined in section 7701(a)(5)) and FA is an individual other than a U.S. citizen or resident.

(10) CFC, used as a prefix with the other terms in this paragraph (b) referring to a corporation, connotes a controlled foreign corporation (as defined in section 957, taking into account section 953(c)). A corporation identified with the prefix F may be a controlled foreign corporation. The prefix CFC is used when the corporation's status as a controlled foreign corporation is significant.

(c) *Definitions.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) *Acquisition date.* The term *acquisition date* has the same meaning as in section 338(h)(2).

(2) *Acquisition date assets. Acquisition date assets* are the assets of the target held at the beginning of the day after the acquisition date (other than assets that were not assets of old target).

(3) *Affiliated group.* The term *affiliated group* has the same meaning as in section 338(h)(5). Corporations are affiliated on any day they are members of the same affiliated group.

(4) *Common parent.* The term *common parent* has the same meaning as in section 1504.

(5) *Consistency period.* The *consistency period* is the period described in section 338(h)(4)(A) unless extended pursuant to § 1.338–8(j)(1).

(6) *Deemed asset sale.* The *deemed asset sale* is the transaction described in § 1.338–1T(a)(1) that is deemed to occur for purposes of subtitle A of the Internal Revenue Code if a section 338 election is made.

(7) *Deemed sale gain. Deemed sale gain* refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset sale. *Deemed sale gain* also refers to the Federal income tax consequences of the transfer of a particular asset in the deemed asset sale.

(8) *Deemed sale return.* The *deemed sale return* is the return on which target's deemed sale gain is reported that does not include any other items of target. Target files a deemed sale return when a section 338 election (but not a section 338(h)(10) election) is filed for target and target is a member of a selling group (defined in paragraph (c)(16) of this section) that files a consolidated return for the period that includes the acquisition date or is an S corporation. See § 1.338–10T.

(9) *Domestic corporation.* A *domestic corporation* is a corporation—

(i) That is domestic within the meaning of section 7701(a)(4) or that is treated as domestic for purposes of subtitle A of the Internal Revenue Code (*e.g.,* to which an election under section 953(d) or 1504(d) applies); and (ii) That is not a DISC, a corporation described in section 1248(e), or a corporation to which an election under section 936 applies.

(10) *Old target's final return. Old target's final return* is the income tax return of old target for the taxable year ending at the close of the acquisition date that includes the deemed sale gain. If the disaffiliation rule of § 1.338–10T(a)(2)(i) applies or if target is an S corporation, target's deemed sale return is considered old target's final return.

(11) *Purchasing corporation.* The term *purchasing corporation* has the same meaning as in section 338(d)(1). The purchasing corporation may also be referred to as purchaser. Unless otherwise provided, any reference to the purchasing corporation is a reference to all members of the affiliated group of which the purchasing corporation is a member. See sections 338(h)(5) and (8). Also, unless otherwise provided, any reference to the purchasing corporation is, with respect to a deemed purchase of stock under section 338(a)(2), a reference to new target with respect to its own deemed purchase of stock in another target.

(12) *Qualified stock purchase.* The term *qualified stock purchase* has the same meaning as in section 338(d)(3).

(13) *Related persons.* Two persons are related if stock in a corporation owned by one of the persons would be

attributed under section 318(a) (other than section 318(a)(4)) to the other.

(14) *Section 338 election.* A *section 338 election* is an election to apply section 338(a) to target. A section 338 election is made by filing a statement of section 338 election pursuant to paragraph (d) of this section. The form on which this statement is filed is referred to in the regulations under section 338 as the Form 8023 Elections Under Section 338 for Corporations Making Qualified Stock Purchases.

(15) *Section 338(h)(10) election.* A *section 338(h)(10) election* is an election to apply section 338(h)(10) to target. A section 338(h)(10) election is made by making a joint election for target under § 1.338(h)(10)–1T.

(16) *Selling group.* The *selling group* is the affiliated group (as defined in section 1504) eligible to file a consolidated return that includes target for the taxable period in which the acquisition date occurs. However, a selling group is not an affiliated group of which target is the common parent on the acquisition date.

(17) *Target; old target; new target. Target* is the target corporation as defined in section 338(d)(2). *Old target* refers to target for periods ending on or before the close of target's acquisition date. *New target* refers to target for subsequent periods.

(18) *Target affiliate.* The term *target affiliate* has the same meaning as in section 338(h)(6) (applied without section 338(h)(6)(B)(i)). Thus, a corporation described in section 338(h)(6)(B)(i) is considered a target affiliate for all purposes of section 338. If a target affiliate is acquired in a qualified stock purchase, it is also a target.

(19) *12-Month acquisition period.* The *12-month acquisition period* is the period described in section 338(h)(1), unless extended pursuant to § 1.338–8(j)(2).

(d) *Time and manner of making election.* The purchasing corporation makes a section 338 election for target by filing a statement of section 338 election on Form 8023 in accordance with the instructions to the form. The section 338 election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs. A section 338 election is irrevocable. See § 1.338(h)(10)–1T(c)(2) for section 338(h)(10) elections.

(e) *Special rules for foreign corporations or DISCs*—(1) *Elections by certain foreign purchasing corporations*—(i) *General rule.* A qualifying foreign purchasing corporation is not required to file a statement of section 338 election for a qualifying foreign target before the earlier of 3 years after the acquisition date and the 180th day after the close of the purchasing corporation's taxable year within which a triggering event occurs.

(ii) *Qualifying foreign purchasing corporation.* A purchasing corporation is *a qualifying foreign purchasing corporation* only if, during the acquisition period of a qualifying foreign target, all the corporations in the purchasing corporation's affiliated group are foreign corporations that are not subject to United States tax.

(iii) *Qualifying foreign target.* A target is a *qualifying foreign target* only if target and its target affiliates are foreign corporations that, during target's acquisition period, are not subject to United States tax (and will not become subject to United States tax during such period because of a section 338 election). A target affiliate is taken into account for purposes of the preceding sentence only if, during target's 12-month acquisition period, it is or becomes a member of the affiliated group that includes the purchasing corporation.

(iv) *Triggering event.* A *triggering event* occurs in the taxable year of the qualifying foreign purchasing corporation in which either that corporation or any corporation in its affiliated group becomes subject to United States tax.

(v) *Subject to United States tax.* For purposes of this paragraph (e)(1), a foreign corporation is considered subject to United States tax—

(A) For the taxable year for which that corporation is required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(B)(*2*)) to file a United States income tax return; or

(B) For the period during which that corporation is a controlled foreign corporation, a passive foreign investment company for which an election under section 1295 is in effect, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

(2) *Acquisition period.* For purposes of this paragraph (e), the term *acquisition period* means the period beginning on the first day of the 12-month acquisition period and ending on the acquisition date.

(3) *Statement of section 338 election may be filed by United States shareholders in certain cases.* The United States shareholders (as defined in section 951(b)) of a foreign purchasing corporation that is a controlled foreign corporation (as defined in section 957 (taking into account section 953(c))) may file a statement of section 338 election on behalf of the purchasing corporation if the purchasing corporation is not required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(B)(*2*)) to file a United States income tax return for its taxable year that includes the acquisition date. Form 8023 must be filed as described in the form and its instructions and also must be attached to the Form 5471 (information return with respect to a foreign corporation) filed with respect to the purchasing corporation by each United States shareholder for the purchasing corporation's taxable year that includes the acquisition date (or, if paragraph (e)(1)(i) of this section applies to the election, for the purchasing corporation's taxable year within which it becomes a controlled foreign corporation). The provisions of § 1.964–1(c) (including § 1.964–1(c)(7)) do not apply to an election made by the United States shareholders.

(4) *Notice requirement for U.S. persons holding stock in foreign market*—(i) *General rule.* If a target subject to a section 338 election was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to—

(A) Each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member (the purchasing group member)) that, on the acquisition date of the foreign target, holds stock in the foreign target; and

(B) Each U.S. person (other than a purchasing group member) that sells stock in the foreign target to a purchasing group member during the foreign target's 12-month acquisition period.

(ii) *Limitation.* The notice requirement of this paragraph (e)(4) applies only where the section 338 election for the foreign target affects income, gain, loss, deduction, or credit of the U.S. person described in paragraph (e)(4)(i) of this section under section 551, 951, 1248, or 1293.

(iii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must—

(A) Contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which is organized, the purchasing corporation and the relevant

target (*i.e.,* target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (e)(4)(i) of this section);

(B) Identify those corporations as the purchasing corporation and the foreign target, respectively; and

(C) Contain the following declaration (or a substantially similar declaration): THIS DOCUMENT SERVES AS NOTICE OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS SECTION 1.338–2T(e)(4). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 551, 951, 1248, OR 1293 OF THE INTERNAL REVENUE CODE OF 1986 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS SECTION 1.338–9(b). YOU MAY BE REQUIRED TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS.

(iv) *Timing of notice.* The notice required by this paragraph (e)(4) must be delivered to the U.S. person on or before the later of the 120th day after the acquisition date of the particular target or the day on which Form 8023 is filed. The notice is considered delivered on the date it is mailed to the proper address (or an address similar enough to complete delivery), unless the date it is mailed cannot be reasonably determined. The date of mailing will be determined under the rules of section 7502. For example, the date of mailing is the date of U.S. postmark or the applicable date recorded or marked by a designated delivery service.

(v) *Consequence of failure to comply.* A statement of section 338 election is not valid if timely notice is not given to one or more U.S. persons described in this paragraph (e)(4). If the form of notice fails to comply with all requirements of this paragraph (e)(4), the section 338 election is valid, but the waiver rule of § 1.338–10T(b)(1) does not apply.

(vi) *Good faith effort to comply.* The purchasing corporation will be considered to have complied with this paragraph (e)(4), even though it failed to provide notice or provide timely notice to each person described in this paragraph (e)(4), if the Commissioner determines that the purchasing corporation made a good faith effort to identify and provide timely notice to those U.S. persons.

§ 1.338–3T Qualification for the section 338 election (temporary).

(a) *Scope.* This section provides rules on whether certain acquisitions of stock are qualified stock purchases and on other miscellaneous issues under section 338.

(b) *Rules relating to qualified stock purchases*—(1) *Purchasing corporation requirement.* An individual cannot make a qualified stock purchase of target. Section 338(d)(3) requires, as a condition of a qualified stock purchase, that a corporation purchase the stock of target. If an individual forms a corporation (new P) to acquire target stock, new P can make a qualified stock purchase of target if new P is considered for tax purposes to purchase the target stock. Facts that may indicate that new P does not purchase the target stock include new P's merging downstream into target, liquidating, or otherwise disposing of the target stock following the purported qualified stock purchase.

(2) *Purchase*—(i) *Definition.* The term *purchase* has the same meaning as in section 338(h)(3).

(ii) *Purchase of target.* [Reserved]

(iii) *Purchase of target affiliate.* Stock in a target affiliate acquired by new target in the deemed asset sale of target's assets is considered purchased if, under general principles of tax law, new target is considered to own stock of the target affiliate meeting the requirements of section 1504(a)(2), notwithstanding that no amount may be allocated to target's stock in the target affiliate.

(3) *Acquisitions of stock from related corporations*—(i) *In general.* Stock acquired by a purchasing corporation from a related corporation (R) is generally not considered acquired by purchase. See section 338(h)(3)(A)(iii).

(ii) *Time for testing relationship.* For purposes of section 338(h)(3)(A)(iii), a purchasing corporation is treated as related to another person if the relationship specified in section 338(h)(3)(A)(iii) exists—

(A) In the case of a single transaction, immediately after the purchase of Target stock;

(B) In the case of a series of acquisitions otherwise constituting a qualified stock purchase within the meaning of section 338(d)(3), immediately after the last acquisition in such series; and

(C) In the case of a series of transactions effected pursuant to an integrated plan to dispose of Target stock, immediately after the last transaction in such series.

(iii) *Cases where section 338(h)(3)(C) applies—acquisitions treated as purchases.* If section 338(h)(3)(C) applies and the purchasing corporation is treated as acquiring stock by purchase from R, solely for purposes of determining when the stock is considered acquired, target stock acquired from R is considered to have been acquired by the purchasing corporation on the day on which the purchasing corporation is first considered to own that stock under section 318(a) (other than section 318(a)(4)).

(iv) *Examples.* The following examples illustrate this paragraph (b)(3):

Example 1. (i) S is the parent of a group of corporations that are engaged in various businesses. Prior to January 1, Year 1, S decided to discontinue its involvement in one line of business. To accomplish this, S forms a new corporation, Newco, with a nominal amount of cash. Shortly thereafter, on January 1, Year 1, S transfers all the stock of the subsidiary conducting the unwanted business (Target) to Newco in exchange for 100 shares of Newco common stock and a Newco promissory note. Prior to January 1, Year 1, S and Underwriter (U) had entered into a binding agreement pursuant to which U would purchase 60 shares of Newco common stock from S and then sell those shares in an Initial Public Offering (IPO). On January 6, Year 1, the IPO closes.

(ii) Newco's acquisition of Target stock is one of a series of transactions undertaken pursuant to one integrated plan. The series of transactions ends with the closing of the IPO and the transfer of all the shares of stock in accordance with the agreements. Immediately after the last transaction effected pursuant to the plan, S owns 40 percent of Newco, which does not give rise to a relationship described in section 338(h)(3)(A)(iii). *See* § 1.338–2T(b)(3)(ii)(C). Accordingly, S and Newco are not related for purposes of section 338(h)(3)(A)(iii).

(iii) Further, because Newco's basis in the Target stock is not determined by reference to S's basis in the Target stock and because the transaction is not an exchange to which section 351, 354, 355, or 356 applies, Newco's acquisition of the Target stock is a purchase within the meaning of section 338(h)(3).

Example 2. (i) On January 1 of Year 1, P purchases 75 percent in value of the R stock. On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, R acquires an additional 16 shares of T stock. On December 1 of Year 1, P purchases 70 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by R.

(ii) Of the 12 shares of T stock purchased by P from R on December 1 of Year 1, 3 of those shares are deemed to have been acquired by P on January 1 of Year 1, the date on which 3 of the 4 shares of T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.,* $4 \times .75$). The remaining 9 shares of T stock purchased by P from R on December 1 of Year 1, are deemed to have been acquired by P on June 1 of Year 1, the date on which an additional 12 of the 20 shares of T stock owned by R on that date were first considered owned by P under section

318(a)(2)(C) (*i.e.,* (20 × .75) − 3). Because stock acquisitions by P sufficient for a qualified stock purchase of T occur within a 12-month period (*i.e.,* 3 shares constructively on January 1 of Year 1, 9 shares constructively on June 1 of Year 1, and 70 shares actually on December 1 of Year 1), a qualified stock purchase is made on December 1 of Year 1.

Example 3. (i) On February 1 of Year 1, P acquires 25 percent in value of the R stock from B (the sole shareholder of P). That R stock is not acquired by purchase. See section 338(h)(3)(A)(iii). On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, P purchases an additional 25 percent in value of the R stock, and on January 1 of Year 2, P purchases another 25 percent in value of the R stock. On June 1 of Year 2, R acquires an additional 16 shares of the T stock. On December 1 of Year 2, P purchases 68 shares of the T stock from an unrelated person and 12 of the 20 shares of the T stock held by R.

(ii) Of the 12 shares of the T stock purchased by P from R on December 1 of Year 2, 2 of those shares are deemed to have been acquired by P on June 1 of Year 1, the date on which 2 of the 4 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.,* 4 × .5). For purposes of this attribution, the R stock need not be acquired by P by purchase. See section 338(h)(1). (By contrast, the acquisition of the T stock by P from R does not qualify as a purchase unless P has acquired at least 50 percent in value of the R stock by purchase. Section 338(h)(3)(C)(i).) Of the remaining 10 shares of the T stock purchased by P from R on December 1 of Year 2, 1 of those shares is deemed to have been acquired by P on January 1 of Year 2, the date on which an additional 1 share of the 4 shares of the T stock held by R on that date was first considered owned by P under section 318(a)(2)(C) (*i.e.,* (4 × .75) − 2). The remaining 9 shares of the T stock purchased by P from R on December 1 of Year 2, are deemed to have been acquired by P on June 1 of Year 2, the date on which an additional 12 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.,* (20 × .75) − 3). Because a qualified stock purchase of T by P is made on December 1 of Year 2, only if all 12 shares of the T stock purchased by P from R on that date are considered acquired during a 12-month period ending on that date (so that, in conjunction with the 68 shares of the T stock P purchased on that date from the unrelated person, 80 of T's 100 shares are acquired by P during a 12-month period) and because 2 of those 12 shares are considered to have been acquired by P more than 12 months before December 1 of Year 2 (*i.e.,* on June 1 of Year 1), a qualified stock purchase is not made. (Under § 1.338–8(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 4. Assume the same facts as in Example 3, except that on February 1 of Year 1, P acquires 25 percent in value of the R stock by purchase. The result is the same as in *Example 3.*

(4) *Acquisition date for tiered targets*—(i) Stock sold in deemed asset sale. If an election under section 338 is made for target, old target is deemed to sell target's assets and new target is deemed to acquire those assets. Under section 338(h)(3)(B), new target's deemed purchase of stock of another corporation is a purchase for purposes of section 338(d)(3) on the acquisition date of target. If new target's deemed purchase causes a qualified stock purchase of the other corporation and if a section 338 election is made for the other corporation, the acquisition date for the other corporation is the same as the acquisition date of target. However, the deemed sale and purchase of the other corporation's assets is considered to take place after the deemed sale and purchase of target's assets.

(ii) Examples. The following examples illustrate this paragraph (b)(4):

Example 1. A owns all of the T stock. T owns 50 of the 100 shares of X stock. The other 50 shares of X stock are owned by corporation Y, which is unrelated to A, T, or P. On January 1 of Year 1, P makes a qualified stock purchase of T from A and makes a section 338 election for T. On December 1 of Year 1, P purchases the 50 shares of X stock held by Y. A qualified stock purchase of X is made on December 1 of Year 1, because the deemed purchase of 50 shares of X stock by new T because of the section 338 election for T and the actual purchase of 50 shares of X stock by P are treated as purchases made by one corporation. Section 338(h)(8). For purposes of determining whether those purchases occur within a 12-month acquisition period as required by section 338(d)(3), T is deemed to purchase its X stock on T's acquisition date, *i.e.,* January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T and makes a section 338 election for T. On that day, T sells all of the stock of T1 to A. Although T held all of the T1 stock on T's acquisition date, T is not considered to have purchased the T1 stock because of the section 338 election for T. In order for T to be treated as purchasing the T1 stock, T must hold the T1 stock when T's deemed asset sale occurs. The deemed asset sale is considered the last transaction of old T at the close of T's acquisition date. Accordingly, the T1 stock actually disposed of by T on the acquisition date is not included in the deemed asset sale. Thus, T does not make a qualified stock purchase of T1.

(5) *Effect of redemptions*—(i) *General rule.* Except as provided in this paragraph (b)(5), a qualified stock purchase is made on the first day on which the percentage ownership requirements of section 338(d)(3) are satisfied by reference to target stock that is both—

(A) Held on that day by the purchasing corporation; and

(B) Purchased by the purchasing corporation during the 12-month period ending on that day.

(ii) *Redemptions from persons unrelated to the purchasing corporation.* Target stock redemptions from persons unrelated to the purchasing corporation that occur during the 12-month acquisition period are taken into account as reductions in target's outstanding stock for purposes of determining whether target stock purchased by the purchasing corporation in the 12-month acquisition period satisfies the percentage ownership requirements of section 338(d)(3).

(iii) *Redemptions from the purchasing corporation or related persons during 12-month acquisition period*—(A) *General rule.* For purposes of the percentage ownership requirements of section 338(d)(3), a redemption of target stock during the 12-month acquisition period from the purchasing corporation or from any person related to the purchasing corporation is not taken into account as a reduction in target's outstanding stock.

(B) *Exception for certain redemptions from related corporations.* A redemption of target stock during the 12-month acquisition period from a corporation related to the purchasing corporation is taken into account as a reduction in target's outstanding stock to the extent that the redeemed stock would have been considered purchased by the purchasing corporation (because of section 338(h)(3)(C)) during the 12-month acquisition period if the redeemed stock had been acquired by the purchasing corporation from the related corporation on the day of the redemption. See paragraph (b)(3) of this section.

(iv) *Examples.* The following examples illustrate this paragraph (b)(5):

Example 1. QSP on stock purchase date; redemption from unrelated person during 12-month period. A owns all 100 shares of T stock. On January 1 of Year 1, P purchases 40 shares of the T stock from A. On July 1 of Year 1, T redeems 25 shares from A. On December 1 of Year 1, P purchases 20 shares of the T stock from A. P makes a qualified stock purchase of T on December 1 of Year 1, because the 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (*i.e.,* 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 2. QSP on stock redemption date; redemption from unrelated person during 12-month period. The facts are the same as in Example 1, except that P purchases 60 shares of T stock on January 1 of Year 1 and none

on December 1 of Year 1. P makes a qualified stock purchase of T on July 1 of Year 1, because that is the first day on which the T stock purchased by P within the preceding 12-month period satisfies the 80-percent ownership requirements of section 338(d)(3) (*i.e.,* 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 3. Redemption from purchasing corporation not taken into account. On December 15 of Year 1, T redeems 30 percent of its stock from P. The redeemed stock was held by P for several years and constituted P's total interest in T. On December 1 of Year 2, P purchases the remaining T stock from A. P does not make a qualified stock purchase of T on December 1 of Year 2. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of P's T stock on December 15 of Year 1 is not taken into account as a reduction in T's outstanding stock.

Example 4. Redemption from related person taken into account. On January 1 of Year 1, P purchases 60 of the 100 shares of X stock. On that date, X owns 40 of the 100 shares of T stock. On April 1 of Year 1, T redeems X's T stock and P purchases the remaining 60 shares of T stock from an unrelated person. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of the T stock from X (a person related to P) is taken into account as a reduction in T's outstanding stock. If P had purchased the 40 redeemed shares from X on April 1 of Year 1, all 40 of the shares would have been considered purchased (because of section 338(h)(3)(C)(i)) during the 12-month period ending on April 1 of Year 1 (24 of the 40 shares would have been considered purchased by P on January 1 of Year 1 and the remaining 16 shares would have been considered purchased by P on April 1 of Year 1). See paragraph (b)(3) of this section. Accordingly, P makes a qualified stock purchase of T on April 1 of Year 1, because the 60 shares of T stock purchased by P on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (*i.e.,* 60/60 shares), determined by taking into account the redemption of 40 shares.

(c) *Effect of post-acquisition events on eligibility for section 338 election*—(1) *Post-acquisition elimination of target.* (i) The purchasing corporation may make an election under section 338 for target even though target is liquidated on or after the acquisition date. If target liquidates on the acquisition date, the liquidation is considered to occur on the following day and immediately after new target's deemed purchase of assets. The purchasing corporation may also make an election under section 338 for target even though target is merged into another corporation, or otherwise disposed of by the purchasing corporation provided that, under the facts and circumstances, the purchasing corporation is considered for tax purposes as the purchaser of the target stock.

(ii) The following examples illustrate this paragraph (c)(1):

Example 1. On January 1 of Year 1, P purchases 100 percent of the outstanding common stock of T. On June 1 of Year 1, P sells the T stock to an unrelated person. Assuming that P is considered for tax purposes as the purchaser of the T stock, P remains eligible, after June 1 of Year 1, to make a section 338 election for T that results in a deemed asset sale of T's assets on January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T. On that date, T owns the stock of T1. On March 1 of Year 1, T sells the T1 stock to an unrelated person. On April 1 of Year 1, P makes a section 338 election for T. Notwithstanding that the T1 stock was sold on March 1 of Year 1, the section 338 election for T on April 1 of Year 1 results in a qualified stock purchase by T of T1 on January 1 of Year 1. See paragraph (b)(4)(i) of this section.

(2) *Post-acquisition elimination of the purchasing corporation.* An election under section 338 may be made for target after the acquisition of assets of the purchasing corporation by another corporation in a transaction described in section 381(a), provided that the purchasing corporation is considered for tax purposes as the purchaser of the target stock. The acquiring corporation in the section 381(a) transaction may make an election under section 338 for target.

(3) *Consequences of post-acquisition elimination of target*—(i) *Scope.* The rules of this paragraph (c)(3) apply to the transfer of target assets to the purchasing corporation (or another member of the same affiliated group as the purchasing corporation) (the transferee) following a qualified stock purchase of target stock, if the purchasing corporation does not make a section 338 election for target. Notwithstanding the rules of this paragraph (c)(3), section 354(a) (and so much of section 356 as relates to section 354) cannot apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer of target assets is pursuant to a reorganization as determined without regard to this paragraph (c)(3).

(ii) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization.

(iii) *Control requirement.* By virtue of section 338, the acquisition of target stock in the qualified stock purchase will not prevent the purchasing corporation from qualifying as a shareholder of the target transferor for the purpose of determining whether, immediately after the transfer of target assets, a shareholder of the transferor is in control of the corporation to which the assets are transferred within the meaning of section 368(a)(1)(D).

(iv) *Example.* The following example illustrates this paragraph (c)(3):

Example. (i) *Facts.* P, T, and X are domestic corporations. T and X each operate a trade or business. A and K, individuals unrelated to P, own 85 and 15 percent, respectively, of the stock of T. P owns all of the stock of X. The total adjusted basis of T's property exceeds the sum of T's liabilities plus the amount of liabilities to which T's property is subject. P purchases all of A's T stock for cash in a qualified stock purchase. P does not make an election under section 338(g) with respect to its acquisition of T stock. Shortly after the acquisition date, and as part of the same plan, T merges under applicable state law into X in a transaction that, but for the question of continuity of interest, satisfies all the requirements of section 368(a)(1)(A). In the merger, all of T's assets are transferred to X. P and K receive X stock in exchange for their T stock. P intends to retain the stock of X indefinitely.

(ii) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied, P's T stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of T's business enterprise prior to the transfer that can be continued in a reorganization through P's continuing ownership of X. Thus, the continuity of interest requirement is satisfied and the merger of T into X is a reorganization within the meaning of section 368(a)(1)(A). Moreover, by virtue of section 338, the requirement of section 368(a)(1)(D) that a target shareholder control the transferee immediately after the transfer is satisfied because P controls X immediately after the transfer. In addition, all of T's assets are transferred to X in the merger and P and K receive the X stock exchanged therefor in pursuance of the plan of reorganization. Thus, the merger of T into X is also a reorganization within the meaning of section 368(a)(1)(D).

(iii) *Treatment of T and X.* Under section 361(a), T recognizes no gain or loss in the merger. Under section 362(b), X's basis in the assets received in the merger is the same as the basis of the assets in T's hands. X succeeds to and takes into account the items of T as provided in section 381.

(iv) *Treatment of P.* By virtue of section 338, the transfer of T assets to X is a reorganization. Pursuant to that reorganization, P exchanges its T stock solely for stock of X, a party to the reorganization. Because P is the purchasing corporation, section 354 applies to P's exchange of T stock for X stock in the merger of T into X. Thus, P recognizes no gain or loss on the exchange.

Under section 358, P's basis in the X stock received in the exchange is the same as the basis of P's T stock exchanged therefor.

(v) *Treatment of K.* Because K is not the purchasing corporation (or an affiliate thereof), section 354 cannot apply to K's exchange of T stock for X stock in the merger of T into X unless the transfer of T's assets is pursuant to a reorganization as determined without regard to this paragraph (c)(3). Under general principles of tax law applicable to reorganizations, the continuity of interest requirement is not satisfied because P's stock purchase and the merger of T into X are pursuant to an integrated transaction in which A, the owner of 85 percent of the stock of T, received solely cash in exchange for A's T stock. See, *e.g., Yoc Heating* v. *Commissioner,* 61 T.C. 168 (1973); *Kass* v. *Commissioner,* 60 T.C. 218 (1973), aff'd, 491 F.2d 749 (3d Cir. 1974). Thus, the requisite continuity of interest under § 1.368–1(b) is lacking and section 354 does not apply to K's exchange of T stock for X stock. K recognizes gain or loss, if any, pursuant to section 1001(c) with respect to its T stock.

§§ 1.338–4 and 1.338–5 [Redesignated as §§ 1.338–8 and 1.338–9]

Par. 5. Sections 1.338–4 and 1.338–5 are redesignated as §§ 1.338–8 and 1.338–9, respectively.

Par. 6. New §§ 1.338–4T and 1.338–5T are added to read as follows:

§ 1.338–4T Aggregate deemed sale price; various aspects of taxation of the deemed asset sale (temporary).

(a) *Scope.* This section provides rules under section 338(a)(1) to determine the aggregate deemed sale price (ADSP) for target. ADSP is the amount for which old target is deemed to have sold all of its assets in the deemed asset sale. ADSP is allocated among target's assets in accordance with § 1.338–6T to determine the amount for which each asset is deemed to have been sold. When an increase or decrease with respect to an element of ADSP is required, under general principles of tax law, after the close of new target's first taxable year, redetermined ADSP is allocated among target's assets in accordance with § 1.338–7T. This section also provides rules regarding the recognition of gain or loss on the deemed sale of target affiliate stock. Notwithstanding section 338(h)(6)(B)(ii), stock held by a target affiliate in a foreign corporation or in a corporation that is a DISC or that is described in section 1248(e) is not excluded from the operation of section 338.

(b) *Determination of ADSP*—(1) *General rule.* ADSP is the sum of—

(i) The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock (as defined in section 338(b)(6)(A)); and

(ii) The liabilities of old target.

(2) *Time and amount of ADSP*—(i) *Original determination.* ADSP is initially determined at the beginning of the day after the acquisition date of target. General principles of tax law apply in determining the timing and amount of the elements of ADSP.

(ii) *Redetermination of ADSP.* ADSP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, for the elements of ADSP. For example, ADSP is redetermined because of an increase or decrease in the amount realized for recently purchased stock or because liabilities not originally taken into account in determining ADSP are subsequently taken into account. An increase or decrease to one element of ADSP may cause an increase or decrease to the other element of ADSP. For example, if an increase in the amount realized for recently purchased stock of target is taken into account after the acquisition date, any increase in the tax liability of target for the deemed sale gain is also taken into account when ADSP is redetermined. Increases or decreases with respect to the elements of ADSP that are taken into account before the close of new target's first taxable year are taken into account for purposes of determining ADSP and the deemed sale gain as if they had been taken into account at the beginning of the day after the acquisition date. Increases or decreases with respect to the elements of ADSP that are taken into account after the close of new target's first taxable year result in the reallocation of ADSP among target's assets under § 1.338–7T.

(iii) *Example.* The following example illustrates this paragraph (b)(2):

Example. In Year 1, T, a manufacturer, purchases a customized delivery truck from X with purchase money indebtedness having a stated principal amount of $100,000. P acquires all of the stock of T in Year 3 for $700,000 and makes a section 338 election for T. Assume T has no liabilities other than its purchase money indebtedness to X. In Year 4, when T is neither insolvent nor in a title 11 case, T and X agree to reduce the amount of the purchase money indebtedness to $80,000. Assume further that the reduction would be a purchase price reduction under section 108(e)(5). T and X's agreement to reduce the amount of the purchase money indebtedness would not, under general principles of tax law that would apply if the deemed asset sale had actually occurred, change the amount of liabilities of old target taken into account in determining its amount realized. Accordingly, ADSP is not redetermined at the time of the reduction. See § 1.338–5T(b)(2)(iii) *Example 1* for the effect on AGUB.

(c) *Grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock*—(1) *Determination of amount.* The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock is an amount equal to—

(i) The amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock determined as if old target were the selling shareholder and the installment method were not available and determined without regard to the selling costs taken into account in paragraph (c)(1)(iii) of this section;

(ii) Divided by the percentage of target stock (by value, determined on the acquisition date) attributable to that recently purchased target stock;

(iii) Less the selling costs incurred by the selling shareholders in connection with the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock that reduce their amount realized on the sale of the stock (*e.g.,* brokerage commissions and any similar costs to sell the stock).

(2) *Example.* The following example illustrates this paragraph (c):

Example. T has two classes of stock outstanding, voting common stock and preferred stock not taken into account for purposes of section 1504(a)(2). On March 1 of Year 1, P purchases 40 percent of the outstanding T stock from S1 for $500, 20 percent of the outstanding T stock from S2 for $225, and 20 percent of the outstanding T stock from S3 for $275. On that date, the fair market value of all the T voting common stock is $1,250 and the preferred stock $750. S1, S2, and S3 respectively incur $40, $35, and $25 of selling costs. S1 continues to own the remaining 20 percent of the outstanding T stock. The grossed-up amount realized on the sale to P of P's recently purchased T stock is calculated as follows: The total amount realized (without regard to selling costs) is $1,000 (500 + 225 + 275). The percentage of T stock by value on the acquisition date attributable to the recently purchased T stock is 50% (1,000/(1,250 + 750)). The selling costs are $100 (40 + 35 + 25). The grossed-up amount realized is $1,900 (1,000/.5 − 100).

(d) *Liabilities of old target*—(1) *In general.* The liabilities of old target are the liabilities of target (and the liabilities to which target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). In order to be taken into account in ADSP, a

liability must be a liability of target that is properly taken into account in amount realized under general principles of tax law that would apply if old target had sold its assets to an unrelated person for consideration that included that person's assumption of, or taking subject to, the liability. Thus, ADSP takes into account both tax credit recapture liability arising because of the deemed asset sale and the tax liability for the deemed sale gain unless the tax liability is borne by some person other than the target. For example, ADSP would not take into account the tax liability for the deemed sale gain when a section 338(h)(10) election is made for a target S corporation because the S corporation shareholders bear that liability. However, if a target S corporation is subject to a tax under section 1374 or 1375, the liability for tax imposed by those sections is a liability of target taken into account in ADSP (unless the S corporation shareholders expressly assume that liability).

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining ADSP and the amount of the liabilities taken into account is determined as if old target had sold its assets to an unrelated person for consideration that included the unrelated person's assumption of or taking subject to the liabilities. For example, if no amount of a target liability is properly taken into account in amount realized as of the beginning of the day after the acquisition date, the liability is not initially taken into account in determining ADSP (although it may be taken into account at some later date). As a further example, an increase or decrease in a liability that does not affect the amount of old target's basis, deductions, or noncapital nondeductible items arising from the incurrence of the liability is not taken into account in redetermining ADSP.

(3) *Interaction with deemed sale gain.* Though deemed sale gain increases or decreases ADSP by creating or reducing a tax liability, the amount of the tax liability itself is a function of the size of the deemed sale gain. Thus, the determination of ADSP may require trial and error computations.

(e) *Calculation of deemed sale gain.* Deemed sale gain on each asset is computed by reference to the ADSP allocated to that asset.

(f) *Other rules apply in determining ADSP.* ADSP may not be applied in such a way as to contravene other applicable rules. For example, a capital loss cannot be applied to reduce ordinary income in calculating the tax liability on the deemed sale for purposes of determining ADSP.

(g) *Examples.* The following examples illustrate this section. For purposes of the examples in this paragraph (g), unless otherwise stated, T is a calendar year taxpayer that files separate returns and that has no loss, tax credit, or other carryovers to Year 1. Depreciation for Year 1 is not taken into account. T has no liabilities other than the Federal income tax liability resulting from the deemed asset sale, and the T shareholders have no selling costs. Assume that T's tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent and that any capital loss is offset by capital gain. On July 1 of Year 1, P purchases all of the stock of T and makes a section 338 election for T. The examples are as follows:

Example 1. One class. (i) On July 1 of Year 1, T's only asset is an item of section 1245 property with an adjusted basis to T of $50,400, a recomputed basis of $80,000, and a fair market value of $100,000. P purchases all of the T stock for $75,000, which also equals the amount realized for the stock determined as if old target were the selling shareholder.

(ii) ADSP is determined as follows (In the following formula, G is the grossed-up amount realized on the sale to P of P's recently purchased T stock, L is T's liabilities other than T's tax liability for the deemed sale gain, T_R is the applicable tax rate, and B is the adjusted basis of the asset deemed sold):

$ADSP = G + L + T_R (ADSP - B)$
$ADSP = (\$75,000/1) + \$0 + .34 (ADSP - \$50,400)$
$ADSP = \$75,000 + .34ADSP - \$17,136$
$.66ADSP = \$57,864$
$ADSP = \$87,672.72$

(iii) Because ADSP for T ($87,672.72) does not exceed the fair market value of T's asset ($100,000), a Class V asset, T's entire ADSP is allocated to that asset. Thus, T has deemed sale gain of $37,272.72 (consisting of $29,600 of ordinary income and $7,672.72 of capital gain).

(iv) The facts are the same as in paragraph (i) of this *Example 1,* except that on July 1 of Year 1, P purchases only 80 of the 100 shares of T stock for $60,000. The grossed-up amount realized on the sale to P of P's recently purchased T stock (G) is $75,000 ($60,000/.8). Consequently, ADSP and deemed sale gain are the same as in paragraphs (ii) and (iii) of this *Example 1.*

(v) The facts are the same as in paragraph (i) of this *Example 1,* except that T also has goodwill (a Class VII asset) with an appraised value of $10,000. The results are the same as in paragraphs (ii) and (iii) of this *Example 1.* Because ADSP does not exceed the fair market value of the Class V asset, no amount is allocated to the Class VII asset (goodwill).

Example 2. More than one class. (i) P purchases all of the T stock for $140,000, which also equals the amount realized for the stock determined as if old target were the selling shareholder. On July 1 of Year 1, T has liabilities (not including the tax liability for the deemed sale gain) of $50,000, cash (a Class I asset) of $10,000, actively traded securities (a Class II asset) with a basis of $4,000 and a fair market value of $10,000, goodwill (a Class VII asset) with a basis of $3,000, and the following Class V assets:

Asset	Basis	FMV	Ratio of asset fmv to total Class V fmv
Land	$5,000	$35,000	.14
Building	10,000	50,000	.20
Equipment A (Recomputed basis $80,000)	5,000	90,000	.36
Equipment B (Recomputed basis $20,000)	10,000	75,000	.30
Totals	$30,000	$250,000	1.00

(ii) ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities. The amount allocated to an asset (other than a Class VII asset) cannot exceed its fair market value (however, the fair market value of any property subject to nonrecourse indebtedness is treated as being not less than the amount of such indebtedness; see § 1.338–6T(a)(2)). See § 1.338–6T(c)(1) (relating to fair market value limitation).

(iii) The portion of ADSP allocable to the Class V assets is preliminarily determined as follows (in the formula, the amount allocated to the Class I assets is referred to as I and the amount allocated to the Class II assets as II):

$ADSP_V = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_V - B_V)]$
$ADSP_V = (\$140,000 - (\$10,000 + \$10,000)) + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (ADSP_V - (\$5,000 + \$10,000 + \$5,000 + \$10,000))]$

$ADSP_V = \$161,840 + .34\ ADSP_V$
$.66\ ADSP_V = \$161,840$
$ADSP_V = \$245,212.12$

(iv) Because, under the preliminary calculations of ADSP, the amount to be allocated to the Class I, II, III, IV, V, and VI assets does not exceed their aggregate fair market value, no ADSP amount is allocated to goodwill. Accordingly, the deemed sale of the goodwill results in a capital loss of $3,000. The portion of ADSP allocable to the Class V assets is finally determined by taking into account this loss as follows:

$ADSP_V = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_V - B_V) + (ADSP_{VII} - BV_{II})]$
$ADSP_V = (\$140,000 - (\$10,000 + \$10,000)) + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (ADSP_V - \$30,000) + (\$0 - \$3,000)]$
$ADSP_V = \$160,820 + .34\ ADSP_V$
$.66\ ADSP_V = \$160,820$
$ADSP_V = \$243,666.67$

(v) The allocation of $ADSP_V$ among the Class V assets is in proportion to their fair market values, as follows:

Asset	ADSP	Gain
Land	$34,113.33	$29,113.33 (capital gain).
Building	48,733.34	38,733.34 (capital gain).
Equipment A	87,720.00	82,720.00 (75,000 ordinary income 7,720 capital gain).
Equipment B	73,100.00	63,100.00 (10,000 ordinary income 53,100 capital gain).
Totals	$243,666.67	$213,666.67.

Example 3. More than one class. (i) The facts are the same as in *Example 2,* except that P purchases the T stock for $150,000, rather than $140,000. The amount realized for the stock determined as if old target were the selling shareholder is also $150,000.

(ii) As in *Example 2,* ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities.

(iii) The portion of ADSP allocable to the Class V assets as preliminarily determined under the formula set forth in paragraph (iii) of *Example 2* is $260,363.64. The amount allocated to the Class V assets cannot exceed their aggregate fair market value ($250,000). Thus, preliminarily, the ADSP amount allocated to Class V assets is $250,000.

(iv) Based on the preliminary allocation, the ADSP is determined as follows (in the formula, the amount allocated to the Class I assets is referred to as I, the amount allocated to the Class II assets as II, and the amount allocated to the Class V assets as V):

$ADSP = G + L + T_R \times [(II - B_{II}) + (V - B_V) + (ADSP - (I + II + V + B_{VII}))]$
$ADSP = \$150,000 + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (\$250,000 - \$30,000) + (ADSP - (\$10,000 + \$10,000 + \$250,000 + \$3,000))]$
$ADSP = \$200,000 + .34ADSP - \$15,980$
$.66ADSP = \$184,020$
$ADSP = \$278,818.18$

(v) Because ADSP as determined exceeds the aggregate fair market value of the Class I, II, III, IV, V, and VI assets, the $250,000 amount preliminarily allocated to the Class V assets is appropriate. Thus, the amount of ADSP allocated to Class V assets equals their aggregate fair market value ($250,000), and the allocated ADSP amount for each Class V asset is its fair market value. Further, because there are no Class VI assets, the allocable ADSP amount for the Class VII asset (goodwill) is $8,818.18 (the excess of ADSP over the aggregate ADSP amounts for the Class I, II, III, IV, V and VI assets).

Example 4. Amount allocated to T1 stock. (i) The facts are the same as in *Example 2,* except that T owns all of the T1 stock (instead of the building), and T1's only asset is the building. The T1 stock and the building each have a fair market value of $50,000, and the building has a basis of $10,000. A section 338 election is made for T1 (as well as T), and T1 has no liabilities other than the tax liability for the deemed sale gain. T is the common parent of a consolidated group filing a final consolidated return described in § 1.338–10T(a)(1).

(ii) ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities.

(iii) Because T does not recognize any gain on the deemed sale of the T1 stock under paragraph (h)(2) of this section, appropriate adjustments must be made to reflect accurately the fair market value of the T and T1 assets in determining the allocation of ADSP among T's Class V assets (including the T1 stock). In preliminarily calculating $ADSP_V$ in this case, the T1 stock can be disregarded and, because T owns all of the T1 stock, the T1 asset can be treated as a T asset. Under this assumption, $ADSP_V$ is $243,666.67. See paragraph (iv) of *Example 2.*

(iv) Because the portion of the preliminary ADSP allocable to Class V assets ($243,666.67) does not exceed their fair market value ($250,000), no amount is allocated to Class VII assets for T. Further, this amount ($243,666.67) is allocated among T's Class V assets in proportion to their fair market values. See paragraph (v) of *Example 2.* Tentatively, $48,733.34 of this amount is allocated to the T1 stock.

(v) The amount tentatively allocated to the T1 stock, however, reflects the tax incurred on the deemed sale of the T1 asset equal to $13,169.34 (.34 × ($48,733.34 − $10,000)). Thus, the ADSP allocable to the Class V assets of T, and the ADSP allocable to the T1 stock, as preliminarily calculated, each must be reduced by $13,169.34. Consequently, these amounts, respectively, are $230,497.33 and $35,564.00. In determining ADSP for T1, the grossed-up amount realized on the deemed sale to new T of new T's recently purchased T1 stock is $35,564.00.

(vi) The facts are the same as in paragraph (i) of this *Example 4,* except that the T1 building has a $12,500 basis and a $62,500 value, all of the outstanding T1 stock has a $62,500 value, and T owns 80 percent of the T1 stock. In preliminarily calculating $ADSP_V$, the T1 stock can be disregarded but, because T owns only 80 percent of the T1 stock, only 80 percent of T1 asset basis and value should be taken into account in calculating T's ADSP. By taking into account 80 percent of these amounts, the remaining calculations and results are the same as in paragraphs (ii), (iii), (iv), and (v) of this *Example 4,* except that the grossed-up amount realized on the sale of the recently purchased T1 stock is $44,455.00 ($35,564.00/0.8).

(h) *Deemed sale of target affiliate stock*—(1) *Scope.* This paragraph (h) prescribes rules relating to the treatment of gain or loss realized on the deemed sale of stock of a target affiliate when a section 338 election (but not a section 338(h)(10) election) is made for the target affiliate. For purposes of this paragraph (h), the definition of domestic corporation in § 1.338–2T(c)(9) is applied without the exclusion therein for DISCs, corporations described in section 1248(e), and corporations to which an election under section 936 applies.

(2) *In general.* Except as otherwise provided in this paragraph (h), if a section 338 election is made for target, target recognizes no gain or loss on the deemed sale of stock of a target affiliate having the same acquisition date and for which a section 338 election is made if—

(i) Target directly owns stock in the target affiliate satisfying the requirements of section 1504(a)(2);

(ii) Target and the target affiliate are members of a consolidated group filing a final consolidated return described in § 1.338–10T(a)(1); or

(iii) Target and the target affiliate file a combined return under § 1.338–10T(a)(4).

(3) *Deemed sale of foreign target affiliate by a domestic target.* A domestic target recognizes gain or loss on the deemed sale of stock of a foreign target affiliate. For the proper treatment of such gain or loss, see, *e.g.*, sections 1246, 1248, 1291 *et seq.*, and 338(h)(16) and § 1.338–9.

(4) *Deemed sale producing effectively connected income.* A foreign target recognizes gain or loss on the deemed

sale of stock of a foreign target affiliate to the extent that such gain or loss is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(5) *Deemed sale of insurance company target affiliate electing under section 953(d).* A domestic target recognizes gain (but not loss) on the deemed sale of stock of a target affiliate that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(6) *Deemed sale of DISC target affiliate.* A foreign or domestic target recognizes gain (but not loss) on the deemed sale of stock of a target affiliate that is a DISC or a former DISC (as defined in section 992(a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain is included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(7) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to a target affiliate as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of such target affiliate's stock, the gain or loss recognized by target on the deemed sale of stock of the target affiliate is determined as if such asset had not been contributed or transferred.

(8) *Examples.* The following examples illustrate this paragraph (h):

Example 1. (i) P makes a qualified stock purchase of T and makes a section 338 election for T. T's sole asset, all of the T1 stock, has a basis of $50 and a fair market value of $150. T's deemed purchase of the T1 stock results in a qualified stock purchase of T1 and a section 338 election is made for T1. T1's assets have a basis of $50 and a fair market value of $150.

(ii) T realizes $100 of gain on the deemed sale of the T1 stock, but the gain is not recognized because T directly owns stock in T1 satisfying the requirements of section 1504(a)(2) and a section 338 election is made for T1.

(iii) T1 recognizes gain of $100 on the deemed sale of its assets.

Example 2. The facts are the same as in *Example 1,* except that P does not make a section 338 election for T1. Because a section 338 election is not made for T1, the $100 gain realized by T on the deemed sale of the T1 stock is recognized.

Example 3. (i) P makes a qualified stock purchase of T and makes a section 338 election for T. T owns all of the stock of T1 and T2. T's deemed purchase of the T1 and T2 stock results in a qualified stock purchase of T1 and T2 and section 338 elections are made for T1 and T2. T1 and T2 each own 50 percent of the vote and value of T3 stock. The deemed purchases by T1 and T2 of the T3 stock result in a qualified stock purchase of T3 and a section 338 election is made for T3. T is the common parent of a consolidated group and all of the deemed asset sales are reported on the T group's final consolidated return. See § 1.338–10T(a)(1).

(ii) Because T, T1, T2 and T3 are members of a consolidated group filing a final consolidated return, no gain or loss is recognized by T, T1 or T2 on their respective deemed sales of target affiliate stock.

Example 4. (i) T's sole asset, all of the FT1 stock, has a basis of $25 and a fair market value of $150. FT1's sole asset, all of the FT2 stock, has a basis of $75 and a fair market value of $150. FT1 and FT2 each have $50 of accumulated earnings and profits for purposes of section 1248(c) and (d). FT2's assets have a basis of $125 and a fair market value of $150, and their sale would not generate subpart F income under section 951. The sale of the FT2 stock or assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(ii) P makes a qualified stock purchase of T and makes a section 338 election for T. T's deemed purchase of the FT1 stock results in a qualified stock purchase of FT1 and a section 338 election is made for FT1. Similarly, FT1's deemed purchase of the FT2 stock results in a qualified stock purchase of FT2 and a section 338 election is made for FT2.

(iii) T recognizes $125 of gain on the deemed sale of the FT1 stock under paragraph (h)(3) of this section. FT1 does not recognize $75 of gain on the deemed sale of the FT2 stock under paragraph (h)(2) of this section. FT2 recognizes $25 of gain on the deemed sale of its assets. The $125 gain T recognizes on the deemed sale of the FT1 stock is included in T's income as a dividend under section 1248, because FT1 and FT2 have sufficient earnings and profits for full recharacterization ($50 of accumulated earnings and profits in FT1, $50 of accumulated earnings and profits in FT2, and $25 of deemed sale earnings and profits in FT2). § 1.338–9(b). For purposes of sections 901 through 908, the source and foreign tax credit limitation basket of $25 of the recharacterized gain on the deemed sale of the FT1 stock is determined under section 338(h)(16).

§ 1.338–5T Adjusted grossed-up basis (temporary).

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis (AGUB) for target. AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under section 338(a)(2). AGUB is allocated among target's assets in accordance with § 1.338–6T to determine the price at which the assets are deemed to have been purchased. When an increase or decrease with respect to an element of AGUB is required, under general principles of tax law, after the close of new target's first taxable year, redetermined AGUB is allocated among target's assets in accordance with § 1.338–7T.

(b) *Determination of AGUB*—(1) *General rule.* AGUB is the sum of—

(i) The grossed-up basis in the purchasing corporation's recently purchased target stock;

(ii) The purchasing corporation's basis in nonrecently purchased target stock; and

(iii) The liabilities of new target.

(2) *Time and amount of AGUB*—(i) *Original determination.* AGUB is initially determined at the beginning of the day after the acquisition date of target. General principles of tax law apply in determining the timing and amount of the elements of AGUB.

(ii) *Redetermination of AGUB.* AGUB is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, with respect to an element of AGUB. For example, AGUB is redetermined because of an increase or decrease in the amount paid or incurred for recently purchased stock or nonrecently purchased stock or because liabilities not originally taken into account in determining AGUB are subsequently taken into account. An increase or decrease to an element of ADSP may cause an increase or decrease to an element of AGUB. For example, if an increase in the amount realized for recently purchased stock of target is taken into account after the acquisition date, any increase in tax liability of target for the deemed sale gain is also taken into account when AGUB is redetermined. An increase or decrease to one element of AGUB may also cause an increase or decrease to another element of AGUB. For example, if there is an increase in the amount paid or incurred for recently purchased stock after the acquisition date, any increase in the basis of nonrecently purchased stock because a gain recognition election was made is also taken into account when AGUB is redetermined. Increases or decreases with respect to the elements of AGUB that are taken into account before the close of new target's first taxable year are taken into account for purposes of determining AGUB and the basis of target's assets as if they had been taken into account at the beginning of the day after the acquisition date. Increases or decreases with respect to the elements of AGUB

that are taken into account after the close of new target's first taxable year result in the reallocation of AGUB among target's assets under § 1.338–7T.

(iii) *Examples.* The following examples illustrate this paragraph (b)(2):

Example 1. In Year 1, T, a manufacturer, purchases a customized delivery truck from X with purchase money indebtedness having a stated principal amount of $100,000 . P acquires all of the stock of T in Year 3 for $700,000 and makes a section 338 election for T. Assume T has no liabilities other than its purchase money indebtedness to X. In Year 4, when T is neither insolvent nor in a title 11 case, T and X agree to reduce the amount of the purchase money indebtedness to $80,000. Assume that the reduction would be a purchase price reduction under section 108(e)(5). T and X's agreement to reduce the amount of the purchase money indebtedness would, under general principles of tax law that would apply if the deemed asset sale had actually occurred, change the amount of liabilities of old target taken into account in determining its basis. Accordingly, AGUB is redetermined at the time of the reduction. See paragraph (e)(2) of this section. Thus the purchase price reduction affects the basis of the truck only indirectly, through the mechanism of §§ 1.338–6T and 1.338–7T. See § 1.338–4T(b)(2)(iii) *Example* for the effect on ADSP.

Example 2. T, an accrual basis taxpayer, is a chemical manufacturer. In Year 1, T is obligated to remediate environmental contamination at the site of one of its plants. Assume that all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy but economic performance has not occurred with respect to the liability within the meaning of section 461(h). P acquires all of the stock of T in Year 1 and makes a section 338 election for T. Assume that, if a corporation unrelated to T had actually purchased T's assets and assumed T's obligation to remediate the contamination, the corporation would not satisfy the economic performance requirements until Year 5. Under section 461(h), the assumed liability would not be treated as incurred and taken into account in basis until that time. The incurrence of the liability in Year 5 under the economic performance rules is an increase in the amount of liabilities properly taken into account in basis and results in the redetermination of AGUB. (Respecting ADSP, compare § 1.461–4(d)(5), which provides that economic performance occurs for old T as the amount of the liability is properly taken into account in amount realized on the deemed asset sale. Thus ADSP is not redetermined when new T satisfies the economic performance requirements.)

(c) *Grossed-up basis of recently purchased stock.* The purchasing corporation's grossed-up basis of recently purchased target stock (as defined in section 338(b)(6)(A)) is an amount equal to—

(1) The purchasing corporation's basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section;

(2) Multiplied by a fraction, the numerator of which is 100 percent minus the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock, and the denominator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's recently purchased target stock;

(3) Plus the acquisition costs the purchasing corporation incurred in connection with its purchase of the recently purchased stock that are capitalized in the basis of such stock (*e.g.,* brokerage commissions and any similar costs incurred by the purchasing corporation to acquire the stock).

(d) *Basis of nonrecently purchased stock; gain recognition election*—(1) *No gain recognition election.* In the absence of a gain recognition election under section 338(b)(3) and this section, the purchasing corporation retains its basis in the nonrecently purchased stock.

(2) *Procedure for making gain recognition election.* A gain recognition election may be made for nonrecently purchased stock of target (or a target affiliate) only if a section 338 election is made for target (or the target affiliate). The gain recognition election is made by attaching a gain recognition statement to a timely filed Form 8023 for target. The gain recognition statement must contain the information specified in the form and its instructions. The gain recognition election is irrevocable. If a section 338(h)(10) election is made for target, see § 1.338(h)(10)–1T(d)(1) (providing that the purchasing corporation is automatically deemed to have made a gain recognition election for its nonrecently purchased T stock).

(3) *Effect of gain recognition election*—(i) In general. If the purchasing corporation makes a gain recognition election, then for all purposes of the Internal Revenue Code—

(A) The purchasing corporation is treated as if it sold on the acquisition date the nonrecently purchased target stock for the basis amount determined under paragraph (d)(3)(ii) of this section; and

(B) The purchasing corporation's basis on the acquisition date in nonrecently purchased target stock immediately following the deemed sale in paragraph (d)(3)(i)(A) of this section is the basis amount.

(ii) *Basis amount.* The basis amount is equal to the amount in paragraph (c)(1) of this section (the purchasing corporation's basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section) multiplied by a fraction the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. Thus, if target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.

(iii) *Losses not recognized.* Only gains (unreduced by losses) on the nonrecently purchased target stock are recognized.

(iv) *Stock subject to election.* The gain recognition election applies to—

(A) All nonrecently purchased target stock; and

(B) Any nonrecently purchased stock in a target affiliate having the same acquisition date as target if such target affiliate stock is held by the purchasing corporation on such date.

(e) *Liabilities of new target*—(1) *In general.* The liabilities of new target are the liabilities of target (and the liabilities to which target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). In order to be taken into account in AGUB, a liability must be a liability of target that is properly taken into account in basis under general principles of tax law that would apply if new target had acquired its assets from an unrelated person for consideration that included the assumption of, or taking subject to, the liability. See § 1.338–4T(d)(1) for examples of when tax liabilities are considered liabilities assumed by new target.

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining AGUB and the amount of the liabilities taken into account is determined as if new target had acquired its assets from an unrelated person for consideration that included the assumption of, or taking subject to, the liabilities. For example, an increase or decrease in a liability that does not affect the amount

of new target's basis arising from the assumption of, or taking subject to, the liability is not taken into account in redetermining AGUB.

(3) *Interaction with deemed sale gain.* See § 1.338–4T(d)(3).

(f) *Adjustments by the Internal Revenue Service.* In connection with the examination of a return, the District Director may increase (or decrease) AGUB under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that AGUB and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by the purchasing corporation after the acquisition date from minority shareholders.

(g) *Examples.* The following examples illustrate this section. For purposes of the examples in this paragraph (g), T has no liabilities other than the tax liability for the deemed sale gain, T shareholders incur no costs in selling the T stock, and P incurs no costs in acquiring the T stock. The examples are as follows:

Example 1. (i) Before July 1 of Year 1, P purchases 10 of the 100 shares of T stock for $5,000. On July 1 of Year 2, P purchases 80 shares of T stock for $60,000 and makes a section 338 election for T. As of July 1 of Year 2, T's only asset is raw land with an adjusted basis to T of $50,400 and a fair market value of $100,000. T has no loss or tax credit carryovers to Year 2. T's marginal tax rate for any ordinary income or net capital gain resulting from the deemed asset sale is 34 percent. The 10 shares purchased before July 1 of Year 1 constitute nonrecently purchased T stock with respect to P's qualified stock purchase of T stock on July 1 of Year 2.

(ii) The ADSP formula as applied to these facts is the same as in § 1.338-4T(g) *Example 1.* Accordingly, the ADSP for T is $87,672.72. The existence of nonrecently purchased T stock is irrelevant for purposes of the ADSP formula, because that formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P.

(iii) The total tax liability resulting from T's deemed asset sale, as calculated under the ADSP formula, is $12,672.72.

(iv) If P does not make a gain recognition election, the AGUB of new T's assets is $85,172.72, determined as follows (In the following formula below, GRP is the grossed-up basis in P's recently purchased T stock, BNP is P's basis in nonrecently purchased T stock, L is T's liabilities, and X is P's acquisition costs for the recently purchased T stock):

$$AGUB = GRP + BNP + L + X$$
$$AGUB = \$60,000 \times [(1 - .1)/.8] + \$5,000 + \$12,672.72 + 0$$
$$AGUB = \$85,172.72$$

(v) If P makes a gain recognition election, the AGUB of new T's assets is $87,672.72, determined as follows:

$$AGUB = \$60,000 \times [(1 - .1)/.8] + \$60,000 [(1 - .1)/.8] \times [.1/(1 - .1)] + \$12,672.72$$
$$AGUB = \$87,672.72$$

(vi) The calculation of AGUB if P makes a gain recognition election may be simplified as follows:

$$AGUB = \$60,000/.8 + \$12,672.72$$
$$AGUB = \$87,672.72$$

(vii) As a result of the gain recognition election, P's basis in its nonrecently purchased T stock is increased from $5,000 to $7,500 (*i.e.,* $60,000 × [(1 − .1)/.8] × [.1/(1 − .1)]). Thus, P recognizes a gain in Year 2 with respect to its nonrecently purchased T stock of $2,500 (*i.e.,* $7,500 − $5,000).

Example 2. On January 1 of Year 1, P purchases one-third of the T stock. On March 1 of Year 1, T distributes a dividend to all of its shareholders. On April 15 of Year 1, P purchases the remaining T stock and makes a section 338 election for T. In appropriate circumstances, the District Director may decrease the AGUB of T to take into account the payment of the dividend and properly reflect the fair market value of T's assets deemed purchased.

Example 3. (i) T's sole asset is a building worth $100,000. At this time, T has 100 shares of stock outstanding. On August 1 of Year 1, P purchases 10 of the 100 shares of T stock for $8,000. On June 1 of Year 2, P purchases 50 shares of T stock for $50,000. On June 15 of Year 2, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30 of Year 2, P purchases the remaining 40 shares of T stock for $40,000 and makes a section 338 election for T. The AGUB of T is $108,800.

(ii) To prevent the shifting of basis from the contributed property to other assets of T, the District Director may allocate $10,800 of the AGUB to the land, leaving $98,000 to be allocated to the building. See paragraph (f) of this section. Otherwise, applying the allocation rules of § 1.338–6T would, on these facts, result in an allocation to the recently contributed land of an amount less than its value of $10,800, with the difference being allocated to the building already held by T.

Par. 7. Sections 1.338–6T and 1.338–7T are added to read as follows:

§ 1.338–6T Allocation of ADSP and AGUB among target assets (temporary).

(a) *Scope*—(1) *In general.* This section prescribes rules for allocating ADSP and AGUB among the acquisition date assets of a target for which a section 338 election is made.

(2) *Fair market value*—(i) *In general.* Generally, the fair market value of an asset is its gross fair market value (*i.e.,* fair market value determined without regard to mortgages, liens, pledges, or other liabilities). However, for purposes of determining the amount of old target's deemed sale gain, the fair market value of any property subject to a nonrecourse indebtedness will be treated as being not less than the amount of such indebtedness. (For purposes of the preceding sentence, a liability that was incurred because of the acquisition of the property is disregarded to the extent that such liability was not taken into account in determining old target's basis in such property.)

(ii) *Transaction costs.* Transaction costs are not taken into account in allocating ADSP or AGUB to assets in the deemed sale (except indirectly through their effect on the total ADSP or AGUB to be allocated).

(iii) *Internal Revenue Service authority.* In connection with the examination of a return, the Internal Revenue Service may challenge the taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties. For example, in certain cases the Internal Revenue Service may make an independent showing of the value of goodwill and going concern value as a means of calling into question the validity of the taxpayer's valuation of other assets.

(b) *General rule for allocating ADSP and AGUB*—(1) *Reduction in the amount of consideration for Class I assets.* Both ADSP and AGUB, in the respective allocation of each, are first reduced by the amount of Class I acquisition date assets. Class I assets are cash and general deposit accounts (including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions. If the amount of Class I assets exceeds AGUB, new target will immediately realize ordinary income in an amount equal to such excess. The amount of ADSP or AGUB remaining after the reduction is to be allocated to the remaining acquisition date assets.

(2) *Other assets*—(i) *In general.* Subject to the limitations and other rules of paragraph (c) of this section, ADSP and AGUB (as reduced by the amount of Class I assets) are allocated among Class II acquisition date assets of target in proportion to the fair market values of such Class II assets at such time, then among Class III assets so held in such proportion, then among Class IV assets so held in such proportion, then

among Class V assets so held in such proportion, then among Class VI assets so held in such proportion, and finally to Class VII assets.

(ii) *Class II assets.* Class II assets are actively traded personal property within the meaning of section 1092(d)(1) and § 1.1092(d)–1 (determined without regard to section 1092(d)(3)). In addition, Class II assets include certificates of deposit and foreign currency even if they are not actively traded personal property. Examples of Class II assets include U.S. government securities and publicly traded stock.

(iii) *Class III assets.* Class III assets are accounts receivable, mortgages, and credit card receivables from customers which arise in the ordinary course of business.

(iv) *Class IV assets.* Class IV assets are stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(v) *Class V assets.* Class V assets are all assets other than Class I, II, III, IV, VI, and VII assets.

(vi) *Class VI assets.* Class VI assets are all section 197 intangibles, as defined in section 197, except goodwill and going concern value.

(vii) *Class VII assets.* Class VII assets are goodwill and going concern value (whether or not the goodwill or going concern value qualifies as a section 197 intangible).

(3) *Other items designated by the Internal Revenue Service.* Similar items may be added to any class described in this paragraph (b) by designation in the Internal Revenue Bulletin by the Internal Revenue Service (see § 601.601(d)(2) of this Chapter).

(c) *Certain limitations and other rules for allocation to an asset*—(1) *Allocation not to exceed fair market value.* The amount of ADSP or AGUB allocated to an asset (other than Class VII assets) cannot exceed the fair market value of that asset at the beginning of the day after the acquisition date.

(2) *Allocation subject to other rules.* The amount of ADSP or AGUB allocated to an asset is subject to other provisions of the Internal Revenue Code or general principles of tax law in the same manner as if such asset were transferred to or acquired from an unrelated person in a sale or exchange. For example, if the deemed asset sale is a transaction described in section 1056(a) (relating to basis limitation for player contracts transferred in connection with the sale of a franchise), the amount of AGUB allocated to a contract for the services of an athlete cannot exceed the limitation imposed by that section. As another example, the amount of AGUB allocated to an amortizable section 197 intangible resulting from an assumption-reinsurance transaction is determined under section 197(f)(5).

(3) *Special rule for allocating AGUB when purchasing corporation has nonrecently purchased stock*—(i) *Scope.* This paragraph (c)(3) applies if at the beginning of the day after the acquisition date—

(A) The purchasing corporation holds nonrecently purchased stock for which a gain recognition election under section 338(b)(3) and § 1.338–5T(d) is not made; and

(B) The hypothetical purchase price determined under paragraph (c)(3)(ii) of this section exceeds the AGUB determined under § 1.338–5T(b).

(ii) *Determination of hypothetical purchase price.* Hypothetical purchase price is the AGUB that would result if a gain recognition election were made.

(iii) *Allocation of AGUB.* Subject to the limitations in paragraphs (c)(1) and (2) of this section, the portion of AGUB (after reduction by the amount of Class I assets) to be allocated to each Class II, III, IV, V, VI, and VII asset of target held at the beginning of the day after the acquisition date is determined by multiplying—

(A) The amount that would be allocated to such asset under the general rules of this section were AGUB equal to the hypothetical purchase price; by

(B) A fraction, the numerator of which is actual AGUB (after reduction by the amount of Class I assets) and the denominator of which is the hypothetical purchase price (after reduction by the amount of Class I assets).

(4) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, the entire amount of any liability taken into account in AGUB is considered to be an amount taken into account in determining new target's basis in property that secures the liability for purposes of applying § 1.1001–2(a). Thus, if a liability is taken into account in AGUB, § 1.1001–2(a)(3) does not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4) as a result of new target's sale or disposition of the property which secures such liability.

(d) *Examples.* The following examples illustrate §§ 1.338–4T, 1.338–5T, and this section:

Example 1. (i) T owns 90 percent of the outstanding T1 stock. P purchases 100 percent of the outstanding T stock for $2,000. There are no acquisition costs. P makes a section 338 election for T and, as a result, T1 is considered acquired in a qualified stock purchase. A section 338 election is made for T1. The grossed-up basis of the T stock is $2,000 (*i.e.,* $2,000 1/1).

(ii) The liabilities of T as of the beginning of the day after the acquisition date (including the tax liability for the deemed sale gain) that would, under general principles of tax law, be properly taken into account before the close of new T's first taxable year, are as follows:

Liabilities (nonrecourse mortgage plus unsecured liabilities)	$700
Taxes Payable	300
Total	$1,000

(iii) The AGUB of T is determined as follows:

Grossed-up basis	$2,000
Total liabilities	1,000
AGUB	$3,000

(iv) Assume that ADSP is also $3,000.

(v) Assume that, at the beginning of the day after the acquisition date, T's cash and the fair market values of T's Class II, III, IV, and V assets are as follows:

Asset class	Asset	Fair market value
I	Cash	*$200
II	Portfolio of actively traded securities.	0
III	Accounts receivable	600
IV	Inventory	300
V	Building	800
V	Land	200
V	Investment in T1	450
Total		$2,850

*Amount.

(vi) Under paragraph (b)(1) of this section, the amount of ADSP and AGUB allocable to T's Class II, III, IV, and V assets is reduced by the amount of cash to $2,800, i.e., $3,000 $200. $300 of ADSP and of AGUB is then allocated to actively traded securities. $600 of ADSP and of AGUB is then allocated to accounts receivable. $300 of ADSP and of AGUB is then allocated to the inventory. Since the remaining amount of ADSP and of AGUB is $1,600 (i.e., $3,000 ($200 + $300 + $600 + $300)), an amount which exceeds the sum of the fair market values of T's Class V assets, the amount of ADSP and of AGUB allocated to each Class V asset is its fair market value:

Building	$800
Land	200
Investment in T1	450
Total	$1,450

(vii) T has no Class VI assets. The amount of ADSP and of AGUB allocated to T's Class VII assets (goodwill and going concern value) is $150, *i.e.,* $1,600–$1,450.

(viii) The grossed-up basis of the T1 stock is $500, *i.e.,* $450 × 1/.9.

(ix) The liabilities of T as of the beginning of the day after the acquisition date (including the tax liability for the deemed sale gain) that would, under general principles of tax law, be properly taken into account before the close of new T's first taxable year, are as follows:

General Liabilities	$100
Taxes Payable	20
Total	$120

(x) The AGUB of T1 is determined as follows:

Grossed-up basis of T1 Stock	$500
Liabilities	120
AGUB	$620

(xi) Assume that ADSP is also $620.

(xii) Assume that at the beginning of the day after the acquisition date, T1's cash and the fair market values of its Class IV and VI assets are as follows:

Asset class	Asset	Fair market value
I	Cash	*$50
IV	Inventory	200
VI	Patent	350
	Total	$600

*Amount.

(xiii) The amount of ADSP and of AGUB allocable to T1's Class IV and VI assets is first reduced by the $50 of cash.

(xiv) Because the remaining amount of ADSP and of AGUB ($570) is an amount which exceeds the fair market value of T1's only Class IV asset, the inventory, the amount allocated to the inventory is its fair market value ($200). After that, the remaining amount of ADSP and of AGUB ($370) exceeds the fair market value of T1's only Class VI asset, the patent. Thus, the amount of ADSP and of AGUB allocated to the patent is its fair market value ($350).

(xv) The amount of ADSP and of AGUB allocated to T1's Class VII assets (goodwill and going concern value) is $20, *i.e.*, $570 − $550.

Example 2. (i) Assume that the facts are the same as in *Example 1* except that P has, for five years, owned 20 percent of T's stock, which has a basis in P's hands at the beginning of the day after the acquisition date of $100, and P purchases the remaining 80 percent of T's stock for $1,600. P does not make a gain recognition election under section 338(b)(3).

(ii) Under § 1.338–5T(c), the grossed-up basis of recently purchased T stock is $1,600, *i.e.*, $1,600 × (1 − .2)/.8.

(iii) The AGUB of T is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5T(c) ($1,600 × (1 − .2)/.8)	$1,600
Basis of nonrecently purchased stock	100
Liabilities	1,000
AGUB	$2,700

(iv) Since P holds nonrecently purchased stock, the hypothetical purchase price of the T stock must be computed and is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5T(c) ($1,600 × (1 − .2)/.8)	$1,600
Basis of nonrecently purchased stock as if the gain recognition election under § 1.338–5T(d)(2) had been made ($1,600 × .2/(1 − .2))	400
Liabilities	1,000
Total	$3,000

(v) Since the hypothetical purchase price ($3,000) exceeds the AGUB ($2,700) and no gain recognition election is made under section 338(b)(3), AGUB is allocated under paragraph (c)(3) of this section.

(vi) First, an AGUB amount equal to the hypothetical purchase price ($3,000) is allocated among the assets under the general rules of this section. The allocation is set forth in the column below entitled *Original Allocation.* Next, the allocation to each asset in Class II through Class VII is multiplied by a fraction having a numerator equal to the actual AGUB reduced by the amount of Class I assets ($2,700 − $200 = $2,500) and a denominator equal to the hypothetical purchase price reduced by the amount of Class I assets ($3,000 − $200 = $2,800), or 2,500/2,800. This produces the *Final Allocation:*

Class	Asset	Original allocation	Final allocation
I	Cash	$200	$200
II	Portfolio of actively traded securities	300	*268
III	Accounts receivable	600	536
IV	Inventory	300	268
V	Building	800	714
V	Land	200	178
V	Investment in T1	450	402
VII	Goodwill and going concern value	150	134
Total		$3,000	$2,700

*All numbers rounded for convenience.

§ 1.338–7T Allocation of redetermined ADSP and AGUB among target assets (temporary).

(a) *Scope.* ADSP and AGUB are redetermined at such time and in such amount as an increase or decrease would be required under general principles of tax law for the elements of ADSP or AGUB. This section provides rules for allocating redetermined ADSP or AGUB when increases or decreases with respect to the elements of ADSP or AGUB are required after the close of new target's first taxable year. For determining and allocating ADSP or AGUB when increases or decreases are required with respect to the elements of ADSP or AGUB before the close of new target's first taxable year, see §§ 1.338–4T, 1.338–5T, and 1.338–6T.

(b) *Allocation of redetermined ADSP and AGUB.* When ADSP or AGUB is redetermined, a new allocation of ADSP or AGUB is made by allocating the redetermined ADSP or AGUB amount under the rules of § 1.338–6T. If the allocation of the redetermined ADSP or AGUB amount under § 1.338–6T to a given asset is different from the original allocation to it, the difference is added to or subtracted from the original allocation to the asset, as appropriate. Amounts allocable to an acquisition date asset (or with respect to a disposed-of acquisition date asset) are subject to all the asset allocation rules (for example, the fair market value limitation in § 1.338–6T(c)(1)) as if the redetermined ADSP or AGUB were the ADSP or AGUB on the acquisition date.

(c) *Special rules for ADSP*—(1) *Increases or decreases in deemed sale gain taxable notwithstanding old target ceases to exist.* To the extent general principles of tax law would require a seller in an actual asset sale to account for events relating to the sale that occur after the sale date, target must make

such an accounting. Target is not precluded from realizing additional deemed sale gain because the target is treated as a new corporation after the acquisition date.

(2) *Procedure for transactions in which section 338(h)(10) is not elected*—(i) *Deemed sale gain included in new target's return.* If an election under section 338(h)(10) is not made, any additional deemed sale gain of old target resulting from an increase or decrease in the ADSP is included in new target's income tax return for new target's taxable year in which the increase or decrease is taken into account. For example, if after the acquisition date there is an increase in the allocable ADSP of section 1245 property for which the recomputed basis (but not the adjusted basis) exceeds the portion of the ADSP allocable to that particular asset on the acquisition date, the additional gain is treated as ordinary income to the extent it does not exceed such excess amount. See paragraph (c)(2)(ii) of this section for the special treatment of old target's carryovers and carrybacks. Although included in new target's income tax return, the deemed sale gain is separately accounted for as an item of old target and may not be offset by income, gain, deduction, loss, credit, or other amount of new target. The amount of tax on income of old target resulting from an increase or decrease in the ADSP is determined as if such deemed sale gain had been recognized in old target's taxable year ending at the close of the acquisition date.

(ii) *Carryovers and carrybacks*—(A) *Loss carryovers to new target taxable years.* A net operating loss or net capital loss of old target may be carried forward to a taxable year of new target, under the principles of section 172 or 1212, as applicable, but is allowed as a deduction only to the extent of any recognized income of old target for such taxable year, as described in paragraph (c)(2)(i) of this section. For this purpose, however, taxable years of new target are not taken into account in applying the limitations in section 172(b)(1) or 1212(a)(1)(B) (or other similar limitations). In applying sections 172(b) and 1212(a)(1), only income, gain, loss, deduction, credit, and other amounts of old target are taken into account. Thus, if old target has an unexpired net operating loss at the close of its taxable year in which the deemed asset sale occurred that could be carried forward to a subsequent taxable year, such loss may be carried forward until it is absorbed by old target's income.

(B) *Loss carrybacks to taxable years of old target.* An ordinary loss or capital loss accounted for as a separate item of old target under paragraph (c)(2)(i) of this section may be carried back to a taxable year of old target under the principles of section 172 or 1212, as applicable. For this purpose, taxable years of new target are not taken into account in applying the limitations in section 172(b) or 1212(a) (or other similar limitations).

(C) *Credit carryovers and carrybacks.* The principles described in paragraphs (c)(2)(ii)(A) and (B) of this section apply to carryovers and carrybacks of amounts for purposes of determining the amount of a credit allowable under part IV, subchapter A, chapter 1 of the Internal Revenue Code. Thus, for example, credit carryovers of old target may offset only income tax attributable to items described in paragraph (c)(2)(i) of this section.

(3) *Procedure for transactions in which section 338(h)(10) is elected.* If an election under section 338(h)(10) is made, any additional deemed sale gain resulting from an increase or decrease in the ADSP is accounted for in determining the taxable income (or other amount) of the member of the selling consolidated group, the selling affiliate, or the S corporation shareholders to which such income, loss, or other amount is attributable for the taxable year in which such increase or decrease is taken into account.

(d) *Special rules for AGUB*—(1) *Effect of disposition or depreciation of acquisition date assets.* If an acquisition date asset has been disposed of, depreciated, amortized, or depleted by new target before an amount is added to the original allocation to the asset, the increased amount otherwise allocable to such asset is taken into account under general principles of tax law that apply when part of the cost of an asset not previously taken into account in basis is paid or incurred after the asset has been disposed of, depreciated, amortized, or depleted. A similar rule applies when an amount is subtracted from the original allocation to the asset. For purposes of the preceding sentence, an asset is considered to have been disposed of to the extent that its allocable portion of the decrease in AGUB would reduce its basis below zero.

(2) *Section 38 property.* Section 1.47–2(c) applies to a reduction in basis of section 38 property under this section.

(e) *Examples.* The following examples illustrate this section. Any amount described in the following examples is exclusive of interest. For rules characterizing deferred contingent payments as principal or interest, see §§ 1.483–4, 1.1274–2(g), and 1.1275–4(c). The examples are as follows:

Example 1. (i)(A) T's assets other than goodwill and going concern value, and their fair market values at the beginning of the day after the acquisition date, are as follows:

Asset Class	Asset	Fair market value
V	Building	$100
V	Stock of X (not a target)	200
Total		$300

(B) T has no liabilities other than a contingent liability that would not be taken into account under general principles of tax law in an asset sale between unrelated parties when the buyer assumed the liability or took property subject to it.

(ii)(A) On September 1, 2000, P purchases all of the outstanding stock of T for $270 and makes a section 338 election for T. The grossed-up basis of the T stock and T's AGUB are both $270. The AGUB is ratably allocated among T's Class V assets in proportion to their fair market values as follows:

Asset	Basis
Building ($270 × 100/300)	$90
Stock ($270 × 200/300)	180
Total	$270

(B) No amount is allocated to the Class VII assets. New T is a calendar year taxpayer. Assume that the X stock is a capital asset in the hands of new T.

(iii) On January 1, 2001, new T sells the X stock and uses the proceeds to purchase inventory.

(iv) Pursuant to events on June 30, 2002, the contingent liability of old T is at that time properly taken into account under general principles of tax law. The amount of the liability is $60.

(v) T's AGUB increases by $60 from $270 to $330. This $60 increase in AGUB is first allocated among T's acquisition date assets in accordance with the provisions of § 1.338–6T. Because the redetermined AGUB for T ($330) exceeds the sum of the fair market values at the beginning of the day after the acquisition date of the Class V acquisition date assets ($300), AGUB allocated to those assets is limited to those fair market values under § 1.338–6T(c)(1). As there are no Class VI assets, the remaining AGUB of $30 is allocated to goodwill and going concern value (Class VII assets). The amount of increase in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Building	$90	$100	$10
X Stock	180	200	20
Goodwill and going concern value	0	30	30
Total	$270	$330	$60

(vi) Since the X stock was disposed of before the contingent liability was properly taken into account for tax purposes, no amount of the increase in AGUB attributable to such stock may be allocated to any T asset. Rather, such amount ($20) is allowed as a capital loss to T for the taxable year 2002 under the principles of *Arrowsmith* v. *Commissioner,* 344 U.S. 6 (1952). In addition, the $10 increase in AGUB allocated to the building and the $30 increase in AGUB allocated to the goodwill and going concern value are treated as basis redeterminations in 2002. See paragraph (d)(1) of this section.

Example 2. (i) On January 1, 2002, P purchases all of the outstanding stock of T and makes a section 338 election for T. Assume that ADSP and AGUB of T are both $500 and are allocated among T's acquisition date assets as follows:

Asset Class	Asset	Basis
V	Machinery	$150
V	Land	250
VII	Goodwill and going concern value.	100
Total		$500

(ii) On September 30, 2004, P filed a claim against the selling shareholders of T in a court of appropriate jurisdiction alleging fraud in the sale of the T stock.

(iii) On January 1, 2007, the former shareholders refund $140 of the purchase price to P in a settlement of the lawsuit. Assume that, under general principles of tax law, both the seller and the buyer properly take into account such refund when paid. Assume also that the refund has no effect on the tax liability for the deemed sale gain. This refund results in a decrease of T's ADSP and AGUB of $140, from $500 to $360.

(iv) The redetermined ADSP and AGUB of $360 is allocated among T's acquisition date assets. Because ADSP and AGUB do not exceed the fair market value of the Class V assets, the ADSP and AGUB amounts are allocated to the Class V assets in proportion to their fair market values at the beginning of the day after the acquisition date. Thus, $135 ($150 × ($360/($150 + $250))) is allocated to the machinery and $225 ($250 × ($360/($150 + $250))) is allocated to the land. Accordingly, the basis of the machinery is reduced by $15 ($150 original allocation − $135 redetermined allocation) and the basis of the land is reduced by $25 ($250 original allocation − $225 redetermined allocation). No amount is allocated to the Class VII assets. Accordingly, the basis of the goodwill and going concern value is reduced by $100 ($100 original allocation − $0 redetermined allocation).

(v) Assume that, as a result of deductions under section 168, the adjusted basis of the machinery immediately before the decrease in AGUB is zero. The machinery is treated as if it were disposed of before the decrease is taken into account. In 2007, T recognizes income of $15, the character of which is determined under the principles of *Arrowsmith* v. *Commissioner,* 344 U.S. 6 (1952), and the tax benefit rule. No adjustment to the basis of T's assets is made for any tax paid on this amount. Assume also that, as a result of amortization deductions, the adjusted basis of the goodwill and going concern value immediately before the decrease in AGUB is $40. A similar adjustment to income is made in 2007 with respect to the $60 of previously amortized goodwill and going concern value.

(vi) In summary, the basis of T's acquisition date assets, as of January 1, 2007, is as follows:

Asset	Basis
Machinery	$0
Land	225
Goodwill and going concern value	0

Example 3. (i) Assume that the facts are the same as § 1.338–6T(d) Example 2 except that the recently purchased stock is acquired for $1,600 plus additional payments that are contingent upon T's future earnings. Assume that, under general principles of tax law, such later payments are properly taken into account when paid. Thus, T's AGUB, determined as of the beginning of the day after the acquisition date (after reduction by T's cash of $200), is $2,500 and is allocated among T's acquisition date assets under § 1.338–6T(c)(3)(iii) as follows:

Class	Asset	Final Allocation
I	Cash	$200
II	Portfolio of actively traded securities	*268
III	Accounts receivable	536
IV	Inventory	268
V	Building	714
V	Land	178
V	Investment in T1	402
VII	Goodwill and going concern value	134
Total		$2,700

*All numbers rounded for convenience.

(ii) After the close of new target's first taxable year, P pays an additional $200 for its recently purchased T stock. Assume that the additional consideration paid would not increase T's tax liability for the deemed sale gain.

(iii) T's AGUB increases by $200, from $2,700 to $2,900. This $200 increase in AGUB is accounted for in accordance with the provisions of § 1.338-6T(c)(3)(iii).

(iv) The hypothetical purchase price of the T stock is redetermined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5T(c) ($1,800 × (1 − .2)/.8)	$1,800
Basis of nonrecently purchased stock as if the gain recognition election under § 1.338–5T(d)(2) had been made ($1,800 × .2/(1 − .2))	450
Liabilities	1,000
Total	$3,250

(v) Since the redetermined hypothetical purchase price ($3,250) exceeds the redetermined AGUB ($2,900) and no gain recognition election was made under section 338(b)(3), the rules of § 1.338–6T(c)(3)(iii) are reapplied using the redetermined hypothetical purchase price and the redetermined AGUB.

(vi) First, an AGUB amount equal to the redetermined hypothetical purchase price ($3,250) is allocated among the assets under the general rules of § 1.338–6T. The allocation is set forth in the column below entitled *Hypothetical Allocation*. Next, the allocation to each asset in Class II through Class VII is multiplied by a fraction with a numerator equal to the actual redetermined AGUB reduced by the amount of Class I assets ($2,900 − $200 = $2,700) and a denominator equal to the redetermined hypothetical purchase price reduced by the amount of Class I assets ($3,250 $200 = $3,050), or 2,700/3,050. This produces the *Final Allocation*:

Class	Asset	Hypothetical allocation	Final allocation
I	Cash	$200	$200
II	Portfolio of actively traded securities	300	*266
III	Accounts receivable	600	531
IV	Inventory	300	266
V	Building	800	708
V	Land	200	177
V	Investment in T1	450	398
VII	Goodwill and going concern value	400	354
Total		$3,250	$2900

*All numbers rounded for convenience.

(vii) As illustrated by this example, reapplying § 1.338–6T(c)(3) results in a basis increase for some assets and a basis decrease for other assets. The amount of redetermined AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original (c)(3) allocation	Redetermined (c)(3) allocation	Increase (decrease)
Portfolio of actively traded securities	$268	$266	$(2)
Accounts receivable	536	531	(5)
Inventory	268	266	(2)
Building	714	708	(6)
Land	178	177	(1)
Investment in T1	402	398	(4)
Goodwill and going concern value	134	354	220
Total	$2,500	$2,700	$200

Example 4. (i) On January 1, 2001, P purchases all of the outstanding T stock and makes a section 338 election for T. P pays $700 of cash and promises also to pay a maximum $300 of contingent consideration at various times in the future. Assume that, under general principles of tax law, such later payments are properly taken into account by P when paid. Assume also, however, that the current fair market value of the contingent payments is reasonably ascertainable. The fair market value of T's assets (other than goodwill and going concern value) as of the beginning of the following day is as follows:

Asset class	Assets	Fair market value
V	Equipment	$200
V	Non-actively traded securities.	100
V	Building	500
Total		$800

(ii) T has no liabilities. The AGUB is $700. In calculating ADSP, assume that, under § 1.1001–1, the current amount realized attributable to the contingent consideration is $200. ADSP is therefore $900 ($700 cash plus $200).

(iii) (A) The AGUB of $700 is ratably allocated among T's Class V acquisition date assets in proportion to their fair market values as follows:

Asset	Basis
Equipment ($700 × 200/800)	$175.00
Non-actively traded securities ($700 × 100/800)	87.50
Building ($700 × 500/800)	437.50
Total	$700.00

(B) No amount is allocated to goodwill or going concern value.

(iv) (A) The ADSP of $900 is ratably allocated among T's Class V acquisition date assets in proportion to their fair market values as follows:

Asset	Basis
Equipment	$200
Non-actively traded securities	100
Building	500
Total	$800

(B) The remaining ADSP, $100, is allocated to goodwill and going concern value (Class VII).

(v) P and T file a consolidated return for 2001 and each following year with P as the common parent of the affiliated group.

(vi) In 2004, a contingent amount of $120 is paid by P. Assume that, under general principles of tax law, the payment is properly taken into account by P at the time made. In 2004, there is an increase in T's AGUB of $120. The amount of the increase allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Equipment	$175.00	$200.00	$25.00
Land	87.50	100.00	12.50
Building	437.50	500.00	62.50
Goodwill and going concern value	0.00	20.00	20.00
Total	$700.00	$820.00	$120.00

Par. 8. Section 1.338–10T is added to read as follows:

§ 1.338–10T Filing of returns (temporary).

(a) *Returns including tax liability from deemed asset sale*—(1) *In general.* Except as provided in paragraphs (a)(2) and (3) of this section, any deemed sale gain is reported on the final return of old target filed for old target's taxable year that ends at the close of the acquisition date. If old target is the common parent of an affiliated group, the final return may be a consolidated return (any such consolidated return must also include any deemed sale gain of any members of the consolidated group that are acquired by the purchasing corporation on the same acquisition date as old target).

(2) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* If the selling group files a consolidated return for the period that includes the acquisition date, old target is disaffiliated from that group immediately before the deemed asset sale and must file a deemed sale return separate from the group that includes only the deemed sale gain and the carryover items specified in paragraph (a)(2)(iii) of this section. The deemed asset sale occurs at the close of the acquisition date and is the last transaction of old target. Any transactions of old target occurring on the acquisition date other than the deemed asset sale are included in the selling group's consolidated return. A deemed sale return includes a combined deemed sale return as defined in paragraph (a)(4) of this section.

(ii) *Separate taxable year.* The deemed asset sale included in the deemed sale return under this paragraph (a)(2) occurs in a separate taxable year, except that old target's taxable year of the sale and the consolidated year of the selling group that includes the acquisition date are treated as the same year for purposes of determining the number of years in a carryover or carryback period.

(iii) *Carryover and carryback of tax attributes.* Target's attributes may be carried over to, and carried back from, the deemed sale return under the rules applicable to a corporation that ceases to be a member of a consolidated group.

(iv) *Old target is a component member of purchasing corporation's controlled group.* For purposes of its deemed sale return, target is a component member of the controlled group of corporations including the purchasing corporation unless target is treated as an excluded member under section 1563(b)(2).

(3) *Old target is an S corporation.* If target is an S corporation for the period that ends on the day before the acquisition date, old target must file a deemed sale return as a C corporation. For this purpose, the principles of paragraph (a)(2) of this section apply. This paragraph (a)(3) does not apply if an election under section 338(h)(10) is made for the S corporation.

(4) *Combined deemed sale return*—(i) *General rule.* Under section 338(h)(15), a combined deemed sale return (combined return) may be filed for all targets from a single selling consolidated group (as defined in § 1.338(h)(10)–1T(b)(3)) that are acquired by the purchasing corporation on the same acquisition date and that otherwise would be required to file separate deemed sale returns. The combined return must include all such targets. For example, T and T1 may be included in a combined return if——

(A) T and T1 are directly owned subsidiaries of S;

(B) S is the common parent of a consolidated group; and

(C) P makes qualified stock purchases of T and T1 on the same acquisition date.

(ii) *Gain and loss offsets.* Gains and losses recognized on the deemed asset sales by targets included in a combined return are treated as the gains and losses of a single target. In addition, loss carryovers of a target that were not subject to the separate return limitation year restrictions (SRLY restrictions) of the consolidated return regulations while that target was a member of the selling consolidated group may be applied without limitation to the gains of other targets included in the combined return. If, however, a target has loss carryovers that were subject to the SRLY restrictions while that target was a member of the selling consolidated group, the use of those losses in the combined return continues to be subject to those restrictions, applied in the same manner as if the combined return were a consolidated return. A similar rule applies, when appropriate, to other tax attributes.

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed asset sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include an attachment prominently identified as an ''ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15).'' The attachment must—

(A) Contain the name, address, and employer identification number of each target required to be included in the combined return;

(B) Contain the following declaration (or a substantially similar declaration): EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN;

(C) For each target, be signed by a person who states under penalties of perjury that he or she is authorized to act on behalf of such target.

(iv) *Consequences of filing a combined return.* Each target included in a combined return is severally liable for any tax associated with the combined return. See § 1.338–1T(b)(3).

(5) *Deemed sale excluded from purchasing corporation's consolidated return.* Old target may not be considered a member of any affiliated group that includes the purchasing corporation with respect to its deemed asset sale.

(6) *Due date for old target's final return*—(i) *General rule.* Old target's final return is generally due on the 15th day of the third calendar month following the month in which the acquisition date occurs. See section 6072 (time for filing income tax returns).

(ii) *Application of § 1.1502–76(c)*—(A) *In general.* Section 1.1502–76(c) applies to old target's final return if old target was a member of a selling group that did not file consolidated returns for the taxable year of the common parent that precedes the year that includes old target's acquisition date. If the selling group has not filed a consolidated return that includes old target's taxable period that ends on the acquisition date, target may, on or before the final return due date (including extensions), either—

(*1*) File a deemed sale return on the assumption that the selling group will file the consolidated return; or

(*2*) File a return for so much of old target's taxable period as ends at the close of the acquisition date on the assumption that the consolidated return will not be filed.

(B) *Deemed extension.* For purposes of applying § 1.1502–76(c)(2), an extension of time to file old target's final return is considered to be in effect until the last date for making the election under section 338.

(C) *Erroneous filing of deemed sale return.* If, under this paragraph (a)(6)(ii), target files a deemed sale return but the selling group does not file a consolidated return, target must file a substituted return for old target not later than the due date (including extensions) for the return of the common parent with which old target would have been included in the consolidated return. The substituted return is for so much of old target's taxable year as ends at the close of the acquisition date. Under § 1.1502–76(c)(2), the deemed sale return is not considered a return for purposes of section 6011 (relating to the general requirement of filing a return) if a substituted return must be filed.

(D) *Erroneous filing of return for regular tax year.* If, under this paragraph (a)(6)(ii), target files a return for so much of old target's regular taxable year as ends at the close of the acquisition date but the selling group files a consolidated return, target must file an amended return for old target not later than the due date (including extensions) for the selling group's consolidated return. (The amended return is a deemed sale return.)

(E) *Last date for payment of tax.* If either a substituted or amended final return of old target is filed under this paragraph (a)(6)(ii), the last date prescribed for payment of tax is the final return due date (as defined in paragraph (a)(6)(i) of this section).

(7) *Examples.* The following examples illustrate this paragraph (a):

Example 1. (i) S is the common parent of a consolidated group that includes T. The S group files calendar year consolidated returns. At the close of June 30 of Year 1, P makes a qualified stock purchase of T from S. P makes a section 338 election for T, and T's deemed asset sale occurs as of the close of T's acquisition date (June 30).

(ii) T is considered disaffiliated for purposes of reporting the deemed sale gain. Accordingly, T is included in the S group's consolidated return through T's acquisition date except that the tax liability for the deemed sale gain is reported in a separate deemed sale return of T. Provided that T is not treated as an excluded member under section 1563(b)(2), T is a component member of P's controlled group for the taxable year of the deemed asset sale, and the taxable income bracket amounts available in calculating tax on the deemed sale return must be limited accordingly.

(iii) If P purchased the stock of T at 10 a.m. on June 30 of Year 1, the results would be the same. See paragraph (a)(2)(i) of this section.

Example 2. The facts are the same as in *Example 1,* except that the S group does not file consolidated returns. T must file a separate return for its taxable year ending on June 30 of Year 1, which return includes the deemed asset sale.

(b) *Waiver*—(1) *Certain additions to tax.* An addition to tax or additional amount (addition) under subchapter A of chapter 68 of the Internal Revenue Code arising on or before the last day for making the election under section 338 because of circumstances that would not exist but for an election under section 338, is waived if—

(i) Under the particular statute the addition is excusable upon a showing of reasonable cause; and

(ii) Corrective action is taken on or before the last day.

(2) *Notification.* The Internal Revenue Service should be notified at the time of correction (*e.g.*, by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (b) is being asserted.

(3) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If paragraph (b)(1) of this section applies or would apply if there were an underpayment, any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in paragraph (b)(1) of this section is considered timely if specified on a late-filed return filed on or before the last day for making the election under section 338.

(ii) *New target in purchasing corporation's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the affiliated group of which the purchasing corporation is a member on or before the last day for making the election under section 338, any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) is considered timely if specified in an amended return filed on or before such last day, at the place where the consolidated return was filed.

(4) *Examples.* The following examples illustrate this paragraph (b):

Example 1. T is an unaffiliated corporation with a tax year ending March 31. At the close of September 20 of Year 1, P makes a qualified stock purchase of T. P does not join in filing a consolidated return. P makes a section 338 election for T on or before June 15 of Year 2, which causes T's taxable year to end as of the close of September 20 of Year 1. An income tax return for T's taxable period ending on September 20 of Year 1 was due on December 15 of Year 1. Additions to tax for failure to file a return and to pay tax shown on a return will not be imposed if T's return is filed and the tax paid on or before June 15 of Year 2. (This waiver applies even if the acquisition date coincides with the last day of T's former taxable year, *i.e.,* March 31 of Year 2.) Interest on any underpayment of tax for old T's short taxable year ending September 20 of Year 1 runs from December 15 of Year 1. A statement indicating that the waiver rule of this paragraph is being asserted should be attached to T's return.

Example 2. Assume the same facts as in *Example 1.* Assume further that new T adopts the calendar year by filing, on or before June 15 of Year 2, its first return (for the period beginning on September 21 of Year 1 and ending on December 31 of Year 1) indicating that a calendar year is chosen. See § 1.338–1T(b)(1). Any additions to tax or amounts described in this paragraph (b) that arise because of the late filing of a return for the period ending on December 31 of Year 1 are waived, because they are based on circumstances that would not exist but for the section 338 election. Notwithstanding this waiver, however, the return is still considered due March 15 of Year 2, and interest on any underpayment runs from that date.

Example 3. Assume the same facts as in *Example 2,* except that T's former taxable year ends on October 31. Although prior to the election old T had a return due on January 15 of Year 2 for its year ending October 31 of Year 1, that return need not be filed because a timely election under section 338 was made. Instead, old T must file a final return for the period ending on September 20 of Year 1, which is due on December 15 of Year 1.

§§ 1.338(b)–1, 1.338(b)–2T, 1.338(b)–3T, and 1.338(h)(10)–1 [Removed]

Par. 9. Sections 1.338(b)–1, 1.338(b)–2T, and 1.338(b)–3T, and 1.338(h)(10)–1 are removed.

Par. 10. Section 1.338(h)(10)–1T is added to read as follows:

§ 1.338(h)(10)–1T Deemed asset sale and liquidation (temporary).

(a) *Scope.* This section prescribes rules for qualification for a section 338(h)(10) election and for making a section 338(h)(10) election. This section also prescribes the consequences of such election. The rules of this section are in addition to the rules of §§ 1.338–0T through 1.338–7T, 1.338–8, 1.338–9, 1.338–10T, and 1.338(i)–1T and, in appropriate cases, apply instead of the rules of §§ 1.338–0T through 1.338–7T, 1.338–8, 1.338–9, 1.338–10T, and 1.338(i)–1T.

(b) *Definitions*—(1) *Consolidated target.* A *consolidated target* is a target that is a member of a consolidated group within the meaning of § 1.1502–1(h) on the acquisition date and is not the common parent of the group on that date.

(2) *Selling consolidated group.* A *selling consolidated group* is the consolidated group of which the consolidated target is a member on the acquisition date.

(3) *Selling affiliate; affiliated target.* A *selling affiliate* is a domestic corporation that owns on the acquisition date an amount of stock in a domestic target, which amount of stock is described in section 1504(a)(2), and does not join in filing a consolidated return with the target. In such case, the target is an *affiliated target.*

(4) *S corporation target.* An *S corporation target* is a target that is an S corporation immediately before the acquisition date.

(5) *S corporation shareholders. S corporation shareholders* are the S corporation target's shareholders. Unless otherwise indicated, a reference to S corporation shareholders refers both to S corporation shareholders who do and those who do not sell their target stock.

(6) *Liquidation.* Any reference in this section to a *liquidation* is treated as a reference to the transfer described in paragraph (d)(4) of this section notwithstanding its ultimate characterization for Federal income tax purposes.

(c) *Section 338(h)(10) election*—(1) *In general.* A section 338(h)(10) election may be made for T if P acquires stock meeting the requirements of section 1504(a)(2) from a selling consolidated group, a selling affiliate, or the S corporation shareholders in a qualified stock purchase.

(2) *Simultaneous joint election requirement.* A section 338(h)(10) election is made jointly by P and the selling consolidated group (or the selling affiliate or the S corporation shareholders) on Form 8023 in accordance with the instructions to the form. S corporation shareholders who do not sell their stock must also consent to the election. The section 338(h)(10) election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(3) *Irrevocability.* A section 338(h)(10) election is irrevocable. If a section 338(h)(10) election is made for T, a section 338 election is deemed made for T.

(4) *Effect of invalid election.* If a section 338(h)(10) election for T is not valid, the section 338 election for T is also not valid.

(d) *Certain consequences of section 338(h)(10) election.* For purposes of subtitle A of the Internal Revenue Code (except as provided in § 1.338–1T(b)(2)), the consequences to the parties of making a section 338(h)(10) election for T are as follows:

(1) *P.* P is automatically deemed to have made a gain recognition election for its nonrecently purchased T stock, if any. The effect of a gain recognition election includes a taxable deemed sale by P on the acquisition date of any nonrecently purchased target stock. See § 1.338–5T(d).

(2) *New T.* The AGUB for new T's assets is determined under § 1.338–5T and is allocated among the acquisition date assets under §§ 1.338–6T and 1.338–7T. Notwithstanding paragraph (d)(4) of this section (deemed liquidation of old T), new T remains liable for the tax liabilities of old T (including the tax liability for the deemed sale gain). For example, new T remains liable for the tax liabilities of the members of any consolidated group that are attributable to taxable years in which those corporations and old T joined in the same consolidated return. See § 1.1502–6(a).

(3) *Old T—deemed sale*—(i) *In general.* Old T is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the assumption of or taking subject to liabilities in a single transaction at the close of the acquisition date (but before the deemed liquidation). See § 1.338–1T(a) regarding the tax characterization of the deemed asset sale. ADSP for old T is determined under § 1.338–4T and allocated among the acquisition date assets under §§ 1.338–6T and 1.338–7T. Old T realizes the deemed sale gain from the deemed asset sale before the close of the acquisition date while old T is a member of the selling consolidated group (or owned by the selling affiliate or owned by the S corporation shareholders). If T is an affiliated target, or an S corporation target, the principles of §§ 1.338–2T(c)(10) and 1.338–10T(a)(1), (5), and (6)(i) apply to the return on which the deemed sale gain is reported. When T is an S corporation target, T's S election continues in effect through the close of the acquisition date (including the time of the deemed asset sale and the deemed liquidation) notwithstanding section 1362(d)(2)(B). Also, when T is an S corporation target, any direct and indirect subsidiaries of T which T has elected to treat as qualified subchapter S subsidiaries under section 1361(b)(3) remain qualified subchapter S subsidiaries through the close of the acquisition date. No similar rule applies when a qualified subchapter S subsidiary, as opposed to the S corporation that is its owner, is the target the stock of which is actually purchased.

(ii) *Tiered targets.* In the case of parent-subsidiary chains of corporations making elections under section 338(h)(10), the deemed asset sale of a parent corporation is considered to precede that of its subsidiary. See § 1.338–3T(4)(i).

(4) *Old T and selling consolidated group, selling affiliate, or S corporation shareholders—deemed liquidation; tax characterization*—(i) *In general.* Old T is treated as if, before the close of the acquisition date, after the deemed asset sale in paragraph (d)(3) of this section, and while old T is a member of the selling consolidated group (or owned by the selling affiliate or owned by the S corporation shareholders), it transferred all of its assets to members of the selling consolidated group, the selling affiliate, or S corporation shareholders and ceased to exist. The transfer from old T is characterized for Federal income tax purposes in the same manner as if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur. For example, the transfer may be treated as a distribution in pursuance of a plan of reorganization, a distribution in complete cancellation or redemption of all its stock, one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation, or part of a circular flow of cash. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 336 or 337 applies.

(ii) *Tiered targets.* In the case of parent-subsidiary chains of corporations making elections under section

338(h)(10), the deemed liquidation of a subsidiary corporation is considered to precede the deemed liquidation of its parent.

(5) *Selling consolidated group, selling affiliate, or S corporation shareholders*—(i) *In general.* If T is an S corporation target, S corporation shareholders (whether or not they sell their stock) take their pro rata share of the deemed sale gain into account under section 1366 and increase or decrease their basis in T stock under section 1367. Members of the selling consolidated group, the selling affiliate, or S corporation shareholders are treated as if, after the deemed asset sale in paragraph (d)(3) of this section and before the close of the acquisition date, they received the assets transferred by old T in the transaction described in paragraph (d)(4)(i) of this section. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 331 or 332 applies.

(ii) *Basis and holding period of T stock not acquired.* A member of the selling consolidated group (or the selling affiliate or an S corporation shareholder) retaining T stock is treated as acquiring the stock so retained on the day after the acquisition date for its fair market value. The holding period for the retained stock starts on the day after the acquisition date. For purposes of this paragraph, the fair market value of all of the T stock equals the grossed-up amount realized on the sale to P of P's recently purchased target stock. See § 1.338–4T(c).

(iii) *T stock sale.* Members of the selling consolidated group (or the selling affiliate or S corporation shareholders) recognize no gain or loss on the sale or exchange of T stock included in the qualified stock purchase (although they may recognize gain or loss on the T stock in the deemed liquidation).

(6) *Nonselling minority shareholders other than nonselling S corporation shareholders*—(i) *In general.* This paragraph (d)(6) describes the treatment of shareholders of old T other than the following: members of the selling consolidated group, the selling affiliate, S corporation shareholders (whether or not they sell their stock), and P. For a description of the treatment of S corporation shareholders, see paragraph (d)(5) of this section. A shareholder to which this paragraph (d)(6) applies is called a minority shareholder.

(ii) *T stock sale.* A minority shareholder recognizes gain or loss on the shareholder's sale or exchange of T stock included in the qualified stock purchase.

(iii) *T stock not acquired.* A minority shareholder does not recognize gain or loss under this section with respect to shares of T stock retained by the shareholder. The shareholder's basis and holding period for that T stock is not affected by the section 338(h)(10) election.

(7) *Consolidated return of selling consolidated group.* If P acquires T in a qualified stock purchase from a selling consolidated group—

(i) The selling consolidated group must file a consolidated return for the taxable period that includes the acquisition date;

(ii) A consolidated return for the selling consolidated group for that period may not be withdrawn on or after the day that a section 338(h)(10) election is made for T; and

(iii) Permission to discontinue filing consolidated returns cannot be granted for, and cannot apply to, that period or any of the immediately preceding taxable periods during which consolidated returns continuously have been filed.

(8) *Availability of the section 453 installment method.* Solely for purposes of applying sections 453, 453A, and 453B, and the regulations thereunder (the installment method) to determine the consequences to old T in the deemed asset sale and to old T (and its shareholders, if relevant) in the deemed liquidation, the rules in paragraphs (d)(1) through (7) of this section are modified as follows:

(i) *In deemed asset sale.* Old T is treated as receiving in the deemed asset sale new T installment obligations, the terms of which are identical (except as to the obligor) to P installment obligations issued in exchange for recently purchased stock of T. Old T is treated as receiving in cash all other consideration in the deemed asset sale other than the assumption of, or taking subject to, old T liabilities. For example, old T is treated as receiving in cash any amounts attributable to the grossing-up of amount realized under § 1.338–4T(c). The amount realized for recently purchased stock taken into account in determining ADSP is adjusted (and, thus, ADSP is redetermined) to reflect the amounts paid under an installment obligation for the stock when the total payments under the installment obligation are greater or less than the amount realized.

(ii) *In deemed liquidation.* Old T is treated as distributing in the deemed liquidation the new T installment obligations that it is treated as receiving in the deemed asset sale. The members of the selling consolidated group, the selling affiliate, or the S corporation shareholders are treated as receiving in the deemed liquidation the new T installment obligations that correspond to the P installment obligations they actually received individually in exchange for their recently purchased stock. The new T installment obligations may be recharacterized under other rules. See for example § 1.453–11(a)(2) which, in certain circumstances, treats the new T installment obligations deemed distributed by old T as if they were issued by new T in exchange for the members' of the selling consolidated group, the selling affiliate's, or the S corporation shareholders' stock in old T. The members of the selling consolidated group, the selling affiliate, or the S corporation shareholders are treated as receiving all other consideration in the deemed liquidation in cash.

(9) *Treatment consistent with an actual asset sale.* Old T may not assert any provision in section 338(h)(10) or this section to obtain a tax result that would not be obtained if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur.

(e) *Examples.* The following examples illustrate this section:

Example 1. (i) S1 owns all of the T stock and T owns all of the stock of T1 and T2. S1 is the common parent of a consolidated group that includes T, T1, and T2. P makes a qualified stock purchase of all of the T stock from S1. S1 joins with P in making a section 338(h)(10) election for T and for the deemed purchase of T1. A section 338 election is not made for T2.

(ii) S1 does not recognize gain or loss on the sale of the T stock and T does not recognize gain or loss on the sale of the T1 stock because section 338(h)(10) elections are made for T and T1. Thus, for example, gain or loss realized on the sale of the T or T1 stock is not taken into account in earnings and profits. However, because a section 338 election is not made for T2, T must recognize any gain or loss realized on the deemed sale of the T2 stock. See § 1.338–4T(h).

(iii) The results would be the same if S1, T, T1, and T2 are not members of any consolidated group, because S1 and T are selling affiliates.

Example 2. (i) S and T are solvent corporations. S owns all of the outstanding stock of T. S and P agree to undertake the following transaction: T will distribute half its assets to S, and S will assume half of T's liabilities. Then, P will purchase the stock of T from S. S and P will jointly make a section 338(h)(10) election with respect to the sale of T. The corporations then complete the transaction as agreed.

(ii) Under section 338(a), the assets present in T at the close of the acquisition date are deemed sold by old T to new T. Under paragraph (d)(4) of this section, the

transactions described in paragraph (d) of this section are treated in the same manner as if they had actually occurred. Because S and P had agreed that, after T's actual distribution to S of part of its assets, S would sell T to P pursuant to an election under section 338(h)(10), and because paragraph (d)(4) of this section deems T subsequently to have transferred all its assets to its shareholder, T is deemed to have adopted a plan of complete liquidation under section 332. T's actual transfer of assets to S is treated as a distribution pursuant to that plan of complete liquidation.

Example 3. (i) S1 owns all of the outstanding stock of both T and S2. All three are corporations. S1 and P agree to undertake the following transaction. T will transfer substantially all of its assets and liabilities to S2, with S2 issuing no stock in exchange therefor, and retaining its other assets and liabilities. Then, P will purchase the stock of T from S1. S1 and P will jointly make a section 338(h)(10) election with respect to the sale of T. The corporations then complete the transaction as agreed.

(ii) Under section 338(a), the assets present in T at the close of the acquisition date are deemed sold by old T to new T. Under paragraph (d)(4) of this section, the transactions described in this section are treated in the same manner as if they had actually occurred. Because old T transferred substantially all of its assets to S2, and is deemed to have distributed all its remaining assets and gone out of existence, the transfer of assets to S2, taking into account the related transfers, deemed and actual, qualifies as a reorganization under section 368(a)(1)(D). Section 361(c)(1) and not section 332 applies to T's deemed liquidation.

Example 4. (i) T owns two assets: An actively traded security (Class II) with a fair market value of $100 and an adjusted basis of $100, and inventory (Class IV) with a fair market value of $100 and an adjusted basis of $100. T has no liabilities. S is negotiating to sell all the stock in T to P for $100 cash and contingent consideration. Assume that under generally applicable tax accounting rules, P's adjusted basis in the T stock immediately after the purchase would be $100, because the contingent consideration is not taken into account. Thus, under the rules of § 1.338–5T, AGUB would be $100. Under the allocation rules of § 1.338–6T, the entire $100 would be allocated to the Class II asset, the actively traded security, and no amount would be allocated to the inventory. P, however, plans immediately to cause T to sell the inventory, but not the actively traded security, so it requests that, prior to the stock sale, S cause T to create a new subsidiary, Newco, and contribute the actively traded security to the capital of Newco. Because the stock in Newco, which would not be actively traded, is a Class V asset, under the rules of § 1.338–6T $100 of AGUB would be allocated to the inventory and no amount of AGUB would be allocated to the Newco stock. Newco's own AGUB, $0 under the rules of § 1.338–5T, would be allocated to the actively traded security. When P subsequently causes T to sell the inventory, T would realize no gain or loss instead of realizing gain of $100.

(ii) Assume that, if the T stock had not itself been sold but T had instead sold both its inventory and the Newco stock to P, T would for tax purposes be deemed instead to have sold both its inventory and actively traded security directly to P, with P deemed then to have created Newco and contributed the actively traded security to the capital of Newco. Section 338, if elected, generally recharacterizes a stock sale as a deemed sale of assets. The tax results of the deemed sale of assets should, where possible, be like those of an actual asset sale. Hence, the deemed sale of assets under section 338(h)(10) should be treated as one of the inventory and actively traded security themselves, not of the inventory and Newco stock. That is the substance of the transaction. The anti-abuse rule of § 1.338–1T(c) does not apply, because the substance of the deemed sale of assets is a sale of the inventory and the actively traded security themselves, not of the inventory and the Newco stock. Otherwise, the anti-abuse rule might apply.

Example 5. (i) T, a member of a selling consolidated group, has only one class of stock, all of which is owned by S1. On March 1 of Year 2, S1 sells its T stock to P for $80,000, and joins with P in making a section 338(h)(10) election for T. There are no selling costs or acquisition costs. On March 1 of Year 2, T owns land with a $50,000 basis and $75,000 fair market value and equipment with a $30,000 adjusted basis, $70,000 recomputed basis, and $60,000 fair market value. T also has a $40,000 liability. S1 pays old T's allocable share of the selling group's consolidated tax liability for Year 2 including the tax liability for the deemed sale gain (a total of $13,600).

(ii) ADSP of $120,000 ($80,000 + $40,000 + 0) is allocated to each asset as follows:

Assets	Basis	FMV	Fraction	Allocable ADSP
Land	$50,000	$75,000	5/9	$66,667
Equipment	30,000	60,000	4/9	53,333
Total	$80,000	$135,000	1	$120,000

(iii) Under paragraph (d)(3) of this section, old T has gain on the deemed sale of $40,000 (consisting of $16,667 of capital gain and $23,333 of ordinary income).

(iv) Under paragraph (d)(5)(iii) of this section, S1 recognizes no gain or loss upon its sale of the old T stock to P. S1 also recognizes no gain or loss upon the deemed liquidation of T. See paragraph (d)(4) of this section and section 332.

(v) P's basis in new T stock is P's cost for the stock, $80,000. See section 1012.

(vi) Under § 1.338–5T, the AGUB for new T is $120,000, *i.e.,* P's cost for the old T stock ($80,000) plus T's liability ($40,000). This AGUB is allocated as basis among the new T assets under §§ 1.338–6T and 1.338–7T.

Example 6. (i) The facts are the same as in Example 5, except that S1 sells 80 percent of the old T stock to P for $64,000, rather than 100 percent of the old T stock for $80,000.

(ii) The consequences to P, T, and S1 are the same as in Example 5, except that:

(A) P's basis for its 80-percent interest in the new T stock is P's $64,000 cost for the stock. See section 1012.

(B) Under § 1.338–5T, the AGUB for new T is $120,000 (*i.e.,* $64,000/.8 + $40,000 + $0).

(C) Under paragraph (d)(4) of this section, S1 recognizes no gain or loss with respect to the retained stock in T. See section 332.

(D) Under paragraph (d)(5)(ii) of this section, the basis of the T stock retained by S1 is $16,000 (*i.e.,* $120,000 − $40,000 (the ADSP amount for the old T assets over the sum of new T's liabilities immediately after the acquisition date) × 20 (the proportion of T stock retained by S1)).

Example 7. (i) The facts are the same as in *Example 6,* except that K, a shareholder unrelated to T or P, owns the 20 percent of the T stock that is not acquired by P in the qualified stock purchase. K's basis in its T stock is $5,000.

(ii) The consequences to P, T, and S1 are the same as in *Example 6.*

(iii) Under paragraph (d)(6)(iii) of this section, K recognizes no gain or loss, and K's basis in its T stock remains at $5,000.

Example 8. (i) The facts are the same as in *Example 5,* except that the equipment is held by T1, a wholly-owned subsidiary of T, and a section 338(h)(10) election is also made for T1. The T1 stock has a fair market value of $60,000. T1 has no assets other than the equipment and no liabilities. S1 pays old T's and old T1's allocable shares of the selling group's consolidated tax liability for Year 2 including the tax liability for T and T1's deemed sale gain.

(ii) ADSP for T is $120,000, allocated $66,667 to the land and $53,333 to the stock. Old T's deemed sale gain is $16,667 (the capital gain on its deemed sale of the land). Under paragraph (d)(5)(iii) of this section, old T does not recognize gain or loss on its deemed sale of the T1 stock. See section 332.

(iii) ADSP for T1 is $53,333 (*i.e.,* $53,333 + $0 + $0). On the deemed sale of the equipment, T1 recognizes ordinary income of $23,333.

(iv) Under paragraph (d)(5)(iii) of this section, S1 does not recognize gain or loss upon its sale of the old T stock to P.

Example 9. (i) The facts are the same as in *Example 8,* except that P already owns 20 percent of the T stock, which is nonrecently purchased stock with a basis of $6,000, and that P purchases the remaining 80 percent of the T stock from S1 for $64,000.

(ii) The results are the same as in *Example 8,* except that under paragraph (d)(1) of this section and § 1.338–5T(d), P is deemed to have made a gain recognition election for its nonrecently purchased T stock. As a result, P recognizes gain of $10,000 and its basis in the nonrecently purchased T stock is increased from $6,000 to $16,000. P's basis in all the T stock is $80,000 (*i.e.,* $64,000 + $16,000). The computations are as follows:

(A) P's grossed-up basis for the recently purchased T stock is $64,000 (*i.e.,* $64,000 (the basis of the recently purchased T stock) × (1 − .2)/(.8) (the fraction in section 338(b)(4))).

(B) P's basis amount for the nonrecently purchased T stock is $16,000 (i.e., $64,000 (the grossed-up basis in the recently purchased T stock) × (.2)/(1.0 − .2) (the fraction in section 338(b)(3)(B))).

(C) The gain recognized on the nonrecently purchased stock is $10,000 (*i.e.,* $16,000 − $6,000).

Example 10. (i) T is an S corporation whose sole class of stock is owned 40 percent each by A and B and 20 percent by C. T, A, B, and C all use the cash method of accounting. A and B each has an adjusted basis of $10,000 in the stock. C has an adjusted basis of $5,000 in the stock. A, B, and C hold no installment obligations to which section 453A applies. On March 1 of Year 1, A sells its stock to P for $40,000 in cash and B sells its stock to P for a $25,000 note issued by P and real estate having a fair market value of $15,000. The $25,000 note, due in full in Year 7, is not publicly traded and bears adequate stated interest. A and B have no selling expenses. T's sole asset is real estate, which has a value of $110,000 and an adjusted basis of $35,000. Also, T's real estate is encumbered by long-outstanding purchase-money indebtedness of $10,000. The real estate does not have built-in gain subject to section 1374. A, B, and C join with P in making a section 338(h)(10) election for T.

(ii) Solely for purposes of application of sections 453, 453A, and 453B, old T is considered in its deemed asset sale to receive back from new T the $25,000 note (considered issued by new T) and $75,000 of cash (total consideration of $80,000 paid for all the stock sold, which is then divided by .80 in the grossing-up, with the resulting figure of $100,000 then reduced by the amount of the installment note). Absent an election under section 453(d), gain is reported by old T under the installment method.

(iii) In applying the installment method to old T's deemed asset sale, the contract price for old T's assets deemed sold is $100,000, the $110,000 selling price reduced by the indebtedness of $10,000 to which the assets are subject. (The $110,000 selling price is itself the sum of the $80,000 grossed-up in paragraph (ii) above to $100,000 and the $10,000 liability.) Gross profit is $75,000 ($110,000 selling price old − T's basis of $35,000). Old T's gross profit ratio is 0.75 (gross profit of $75,000 ÷ $100,000 contract price). Thus, $56,250 (0.75× the $75,000 cash old T is deemed to receive in Year 1) is Year 1 gain attributable to the sale, and $18,750 ($75,000 − $56,250) is recovery of basis.

(iv) In its liquidation, old T is deemed to distribute the $25,000 note to B, since B actually sold the stock partly for that consideration. To the extent of the remaining liquidating distribution to B, it is deemed to receive, along with A and C, the balance of old T's liquidating assets in the form of cash. Under section 453(h), B, unless it makes an election under section 453(d), is not required to treat the receipt of the note as a payment for the T stock; P's payment of the $25,000 note in Year 7 to B is a payment for the T stock. Because section 453(h) applies to B, old T's deemed liquidating distribution of the note is, under section 453B(h), not treated as a taxable disposition by old T.

(v) Under section 1366, A reports 40 percent, or $22,500, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases A's $10,000 adjusted basis in the T stock to $32,500. Next, in old T's deemed liquidation, A is considered to receive $40,000 for its old T shares, causing it to recognize an additional $7,500 gain in Year 1.

(vi) Under section 1366, B reports 40 percent, or $22,500, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases B's $10,000 adjusted basis in its T stock to $32,500. Next, in old T's deemed liquidation, B is considered to receive the $25,000 note and $15,000 of other consideration. Applying section 453, including section 453(h), to the deemed liquidation, B's selling price and contract price are both $40,000. Gross profit is $7,500 ($40,000 selling price − B's basis of $32,500). B's gross profit ratio is 0.1875 (gross profit of $7,500 ÷ $40,000 contract price). Thus, $2,812.50 (0.1875 × $15,000) is Year 1 gain attributable to the deemed liquidation. In Year 7, when the $25,000 note is paid, B has $4,687.50 (0.1875 × $25,000) of additional gain.

(vii) Under section 1366, C reports 20 percent, or $11,250, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases C's $5,000 adjusted basis in its T stock to $16,250. Next, in old T's deemed liquidation, C is considered to receive $20,000 for its old T shares, causing it to recognize an additional $3,750 gain in Year 1. Finally, under paragraph (d)(5)(ii) of this section, C is considered to acquire its stock in T on the day after the acquisition date for $20,000 (fair market value = grossed-up amount realized of $100,000 × 20%). C's holding period in the stock deemed received in new T begins at that time.

(f) *Inapplicability of provisions.* The provisions of section 6043, § 1.331–1(d), and § 1.332–6 (relating to information returns and recordkeeping requirements for corporate liquidations) do not apply to the deemed liquidation of old T under paragraph (d)(4) of this section.

(g) *Required information.* The Commissioner may exercise the authority granted in section 338(h)(10)(C)(iii) to require provision of any information deemed necessary to carry out the provisions of section 338(h)(10) by requiring submission of information on any tax reporting form.

§ 1.338(i)–1 [Removed]

Par. 11. Section 1.338(i)–1 is removed.

Par. 12. Section 1.338(i)–1T is added to read as follows:

§ 1.338(i)–1T Effective dates (temporary).

The provisions of §§ 1.338–0T through 1.338–7T, 1.338–10T and 1.338(h)(10)–1T apply to any qualified stock purchase occurring after January 5, 2000. For rules applicable to qualified stock purchases on or before January 5, 2000, see §§ 1.338–0 through 1.338–5, 1.338(b)–1, 1.338(b)–2T, 1.338(b)–3T, 1.338(h)(10)–1, and 1.338(i)–1 in effect prior to January 6, 2000 (see 26 CFR part 1 revised April 1, 1999).

Par. 13. Section 1.1060–1T is revised to read as follows:

§ 1.1060–1T Special allocation rules for certain asset acquisitions (temporary).

(a) *Scope*—(1) *In general.* This section prescribes rules relating to the requirements of section 1060, which, in the case of an applicable asset acquisition, requires the transferor (the seller) and the transferee (the purchaser) each to allocate the consideration paid or received in the transaction among the assets transferred in the same manner as amounts are allocated under section 338(b)(5) (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made). In the case of an applicable asset acquisition described in paragraph (b)(1) of this section, sellers and purchasers must allocate the consideration under the residual method as described in §§ 1.338–6T and 1.338–7T in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets. For rules relating to distributions of partnership property or transfers of partnership interests which are subject to section 1060(d), see § 1.755–2T.

(2) *Effective date.* The provisions of this section apply to any asset acquisition occurring after January 5, 2000. For rules applicable to asset acquisitions on or before January 5, 2000, see § 1.1060–1T in effect prior to January 6, 2000 (see 26 CFR part 1 revised April 1, 1999).

(3) *Outline of topics.* In order to facilitate the use of this section, this paragraph (a)(3) lists the major paragraphs in this section as follows:

(a) Scope.
(1) In general.
(2) Effective date.
(3) Outline of topics.
(b) Applicable asset acquisition.
(1) In general.
(2) Assets constituting a trade or business.
(i) In general.
(ii) Goodwill or going concern value.
(iii) Factors indicating goodwill or going concern value.
(3) Examples.
(4) Asymmetrical transfers of assets.
(5) Related transactions.
(6) More than a single trade or business.
(7) Covenant entered into by the seller.
(8) Partial non-recognition exchanges.
(c) Allocation of consideration among assets under the residual method.
(1) Consideration.
(2) Allocation of consideration among assets.
(3) Certain costs.
(4) Effect of agreement between parties.
(d) Examples.
(e) Reporting requirements.
(1) Applicable asset acquisitions.
(i) In general.
(ii) Time and manner of reporting.
(A) In general.
(B) Additional reporting requirement.
(2) Transfers of interests in partnerships.

(b) *Applicable asset acquisition*—(1) *In general.* An applicable asset acquisition is any transfer, whether direct or indirect, of a group of assets if the assets transferred constitute a trade or business in the hands of either the seller or the purchaser and, except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration.

(2) *Assets constituting a trade or business*—(i) *In general.* For purposes of this section, a group of assets constitutes a trade or business if—

(A) The use of such assets would constitute an active trade or business under section 355; or

(B) Its character is such that goodwill or going concern value could under any circumstances attach to such group.

(ii) *Goodwill or going concern value.* Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any other factor. Going concern value is the additional value that attaches to property because of its existence as an integral part of an ongoing business activity. Going concern value includes the value attributable to the ability of a trade or business (or a part of a trade or business) to continue functioning or generating income without interruption notwithstanding a change in ownership. It also includes the value that is attributable to the immediate use or availability of an acquired trade or business, such as, for example, the use of the revenues or net earnings that otherwise would not be received during any period if the acquired trade or business were not available or operational.

(iii) *Factors indicating goodwill or going concern value.* In making the determination in this paragraph (b)(2), all the facts and circumstances surrounding the transaction are taken into account. Whether sufficient consideration is available to allocate to goodwill or going concern value after the residual method is applied is not relevant in determining whether goodwill or going concern value could attach to a group of assets. Factors to be considered include—

(A) The presence of any intangible assets (whether or not those assets are section 197 intangibles), provided, however, that the transfer of such an asset in the absence of other assets will not be a trade or business for purposes of section 1060;

(B) The existence of an excess of the total consideration over the aggregate book value of the tangible and intangible assets purchased (other than goodwill and going concern value) as shown in the financial accounting books and records of the purchaser; and

(C) Related transactions, including lease agreements, licenses, or other similar agreements between the purchaser and seller (or managers, directors, owners, or employees of the seller) in connection with the transfer.

(3) *Examples.* The following examples illustrate paragraphs (b)(1) and (2) of this section:

Example 1. S is a high grade machine shop that manufactures microwave connectors in limited quantities. It is a successful company with a reputation within the industry and among its customers for manufacturing unique, high quality products. Its tangible assets consist primarily of ordinary machinery for working metal and plating. It has no secret formulas or patented drawings of value. P is a company that designs, manufactures, and markets electronic components. It wants to establish an immediate presence in the microwave industry, an area in which it previously has not been engaged. P is acquiring assets of a number of smaller companies and hopes that these assets will collectively allow it to offer a broad product mix. P acquires the assets of S in order to augment its product mix and to promote its presence in the microwave industry. P will not use the assets acquired from S to manufacture microwave connectors. The assets transferred are assets that constitute a trade or business in the hands of the seller. Thus, P's purchase of S's assets is an applicable asset acquisition. The fact that P will not use the assets acquired from S to continue the business of S does not affect this conclusion.

Example 2. S, a sole proprietor who operates a car wash, both leases the building housing the car wash and sells all of the car wash equipment to P. S's use of the building and the car wash equipment constitute a trade or business. P begins operating a car wash in the building it leases from S. Because the assets transferred together with the asset leased are assets which constitute a trade or business, P's purchase of S's assets is an applicable asset acquisition.

Example 3. S, a corporation, owns a retail store business in State X and conducts activities in connection with that business enterprise that meet the active trade or business requirement of section 355. P is a minority shareholder of S. S distributes to P all the assets of S used in S's retail business in State X in complete redemption of P's stock in S held by P. The distribution of S's assets in redemption of P's stock is treated as a sale or exchange under sections 302(a) and 302(b)(3), and P's basis in the assets distributed to it is determined wholly by reference to the consideration paid, the S stock. Thus, S's distribution of assets constituting a trade or business to P is an applicable asset acquisition.

Example 4. S is a manufacturing company with an internal financial bookkeeping department. P is in the business of providing a financial bookkeeping service on a contract basis. As part of an agreement for P to begin providing financial bookkeeping services to S, P agrees to buy all of the assets associated with S's internal bookkeeping operations and provide employment to any of S's bookkeeping department employees who choose to accept a position with P. In addition to selling P the assets associated with its bookkeeping operation, S will enter into a long term contract with P for bookkeeping services. Because assets transferred from S to P, along with the related contract for bookkeeping services, are a trade or business in the hands of P, the sale of the bookkeeping assets from S to P is an applicable asset acquisition.

(4) *Asymmetrical transfers of assets.* If, under general principles of tax law, a seller is not treated as transferring the same assets as the purchaser is treated as acquiring, the assets acquired by the purchaser constitute a trade or business, and, except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration, then the purchaser is subject to section 1060.

(5) *Related transactions.* Whether the assets transferred constitute a trade or business is determined by aggregating all transfers from the seller to the purchaser in a series of related transactions. Except as provided in paragraph (b)(8) of this section, all assets transferred from the seller to the purchaser in a series of related transactions are included in the group of assets among which the consideration paid or received in such series is allocated under the residual method.

The principles of § 1.338–1T(c) are also applied in determining which assets are included in the group of assets among which the consideration paid or received is allocated under the residual method.

(6) *More than a single trade or business.* If the assets transferred from a seller to a purchaser include more than one trade or business, then, in applying this section, all of the assets transferred (whether or not transferred in one transaction or a series of related transactions and whether or not part of a trade or business) are treated as a single trade or business.

(7) *Covenant entered into by the seller.* If, in connection with an applicable asset acquisition, the seller enters into a covenant (*e.g.,* a covenant not to compete) with the purchaser, that covenant is treated as an asset transferred as part of a trade or business.

(8) *Partial non-recognition exchanges.* A transfer may constitute an applicable asset acquisition notwithstanding the fact that no gain or loss is recognized with respect to a portion of the group of assets transferred. All of the assets transferred, including the non-recognition assets, are taken into account in determining whether the group of assets constitutes a trade or business. The allocation of consideration under paragraph (c) of this section is done without taking into account either the non-recognition assets or the amount of money or other property that is treated as transferred in exchange for the non-recognition assets (together, the non-recognition exchange property). The basis in and gain or loss recognized with respect to the non-recognition exchange property are determined under such rules as would otherwise apply to an exchange of such property. The amount of the money and other property treated as exchanged for non-recognition assets is the amount by which the fair market value of the non-recognition assets transferred by one party exceeds the fair market value of the non-recognition assets transferred by the other (to the extent of the money and the fair market value of property transferred in the exchange). The money and other property that are treated as transferred in exchange for the non-recognition assets (and which are not included among the assets to which section 1060 applies) are considered to come from the following assets in the following order: First from Class I assets, then from Class II assets, then from Class III assets, then from Class IV assets, then from Class V assets, then from Class VI assets, and then from Class VII assets. For this purpose, liabilities assumed (or to which a non-recognition exchange property is subject) are treated as Class I assets. See *Example 1* in paragraph (d) of this section for an example of the application of section 1060 to a single transaction which is, in part, a non-recognition exchange.

(c) *Allocation of consideration among assets under the residual method*—(1) *Consideration.* The seller's consideration is the amount, in the aggregate, realized from selling the assets in the applicable asset acquisition under section 1001(b). The purchaser's consideration is the amount, in the aggregate, of its cost of purchasing the assets in the applicable asset acquisition that is properly taken into account in basis.

(2) *Allocation of consideration among assets.* For purposes of determining the seller's amount realized for each of the assets sold in an applicable asset acquisition, the seller allocates consideration to all the assets sold by using the residual method under §§ 1.338–6T and 1.338–7T, substituting consideration for ADSP. For purposes of determining the purchaser's basis in each of the assets purchased in an applicable asset acquisition, the purchaser allocates consideration to all the assets purchased by using the residual method under §§ 1.338–6T and 1.338–7T, substituting consideration for AGUB. In allocating consideration, the rules set forth in paragraphs (c)(3) and (4) of this section apply in addition to the rules in §§ 1.338–6T and 1.338–7T.

(3) *Certain costs.* The seller and purchaser each adjusts the amount allocated to an individual asset to take into account the specific identifiable costs incurred in transferring that asset in connection with the applicable asset acquisition (*e.g.,* real estate transfer costs or security interest perfection costs). Costs so allocated increase, or decrease, as appropriate, the total consideration that is allocated under the residual method. No adjustment is made to the amount allocated to an individual asset for general costs associated with the applicable asset acquisition as a whole or with groups of assets included therein (*e.g.,* non-specific appraisal fees or accounting fees). These latter amounts are taken into account only indirectly through their effect on the total consideration to be allocated.

(4) *Effect of agreement between parties.* If, in connection with an applicable asset acquisition, the seller and purchaser agree in writing as to the allocation of any amount of consideration to, or as to the fair market value of, any of the assets, such agreement is binding on them to the extent provided in this paragraph (c)(4). Nothing in this paragraph (c)(4) restricts the Commissioner's authority to challenge the allocations or values arrived at in an allocation agreement. This paragraph (c)(4) does not apply if the parties are able to refute the allocation or valuation under the standards set forth in *Commissioner* v. *Danielson,* 378 F.2d 771 (3d Cir.), *cert. denied,* 389 U.S. 858 (1967) (a party wishing to challenge the tax consequences of an agreement as construed by the Commissioner must offer proof that, in an action between the parties to the agreement, would be admissible to alter that construction or show its unenforceability because of mistake, undue influence, fraud, duress, etc.).

(d) *Examples.* The following examples illustrate this section:

Example 1. (i) On January 1, 2001, A transfers assets X, Y, and Z to B in exchange for assets D, E, and F plus $1,000 cash.

(ii) Assume the exchange of assets constitutes an exchange of like-kind property to which section 1031 applies. Assume also that goodwill or going concern value could under any circumstances attach to each of the DEF and XYZ groups of assets and, therefore, each group constitutes a trade or business under section 1060.

(iii) Assume the fair market values of the assets and the amount of money transferred are as follows:

By A		By B	
Asset	Fair market value	Asset	Fair market value
X	$400	D	$40
Y	400	E	30
Z	200	F	30
		Cash (amount).	1,000
Total	$1,000	Total	$1,100

(iv) Under paragraph (b)(8) of this section, for purposes of allocating consideration under paragraph (c) of this section, the like-kind assets exchanged and any money or other property that are treated as transferred in exchange for the like-kind property are excluded from the application of section 1060.

(v) Since assets X, Y, and Z are like-kind property, they are excluded from the application of the section 1060 allocation rules.

(vi) Since assets D, E, and F are like-kind property, they are excluded from the application of the section 1060 allocation rules. In addition, $900 of the $1,000 cash B gave to A for A's like-kind assets is treated as transferred in exchange for the like-kind property in order to equalize the fair market values of the like-kind assets. Therefore, $900 of the cash is excluded from the application of the section 1060 allocation rules.

(vii) $100 of the cash is allocated under section 1060 and paragraph (c) of this section.

(viii) A, as transferor of assets X, Y, and Z, received $100 that must be allocated under section 1060 and paragraph (c) of this section. Since A transferred no Class I, II, III, IV, V, or VI assets to which section 1060 applies, in determining its amount realized for the part of the exchange to which section 1031 does not apply, the $100 is allocated to Class VII assets (goodwill and going concern value).

(ix) A, as transferee of assets D, E, and F, gave consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 and paragraph (c) of this section are not applied to determine the bases of the assets A received.

(x) B, as transferor of assets D, E, and F, received consideration only for assets to which section 1031 applies. Therefore, the allocation rules of section 1060 do not apply in determining B's gain or loss.

(xi) B, as transferee of assets X, Y, and Z, gave A $100 that must be allocated under section 1060 and paragraph (c) of this section. Since B received from A no Class I, II, III, IV, V, or VI assets to which section 1060 applies, the $100 consideration is allocated by B to Class VII assets (goodwill and going concern value).

Example 2. (i) On January 1, 2001, S, a sole proprietor, sells to P, a corporation, a group of assets that constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes in P's favor a covenant not to compete. P pays S $3,000 in cash and assumes $1,000 in liabilities. Thus, the total consideration is $4,000.

(ii) On the purchase date, P and S also execute a separate agreement that states that the fair market values of the Class II, Class III, Class V, and Class VI assets S sold to P are as follows:

Asset class	Asset	Fair market value
II	Actively traded securities.	$500
	Total Class II	500
III	Accounts receivable	200
	Total Class III	200
V	Furniture and fixtures	800
	Building	800
	Land	200
	Equipment	400
	Total Class V	2,200
VI	Covenant not to compete.	900
	Total Class VI	900

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (c) of this section in accordance with the agreed upon fair market values of the assets, so that $500 is allocated to Class II assets, $200 is allocated to the Class III asset, $2,200 is allocated to Class V assets, $900 is allocated to Class VI assets, and $200 ($4,000 total consideration less $3,800 allocated to assets in Classes II, III, V, and VI) is allocated to the Class VII assets (goodwill and going concern value).

(iv) In connection with the examination of P's return, the District Director, in determining the fair market values of the assets transferred, may disregard the parties' agreement. Assume that the District Director correctly determines that the fair market value of the covenant not to compete was $500. Since the allocation of consideration among Class II, III, V, and VI assets results in allocation up to the fair market value limitation, the $600 of unallocated consideration resulting from the District Director's redetermination of the value of the covenant not to compete is allocated to Class VII assets (goodwill and going concern value).

(e) *Reporting requirements*—(1) *Applicable asset acquisitions*—(i) *In general.* Unless otherwise excluded from this requirement by the Commissioner, the seller and the purchaser in an applicable asset acquisition each must report information concerning the amount of consideration in the transaction and its allocation among the assets transferred. They also must report information concerning subsequent adjustments to consideration.

(ii) *Time and manner of reporting*—(A) *In general.* The seller and the purchaser each must file asset acquisition statements on Form 8594 with their income tax returns or returns of income for the taxable year that includes the first date assets are sold pursuant to an applicable asset acquisition. This reporting requirement applies to all asset acquisitions described in this section. For reporting requirements relating to asset acquisitions occurring before January 6, 2000, as described in paragraph (a)(2) of this section, see the temporary regulations under section 1060 in effect prior to January 6, 2000 (§ 1.1060–1T as contained in 26 CFR part 1 revised April 1, 1999).

(B) *Additional reporting requirement.* When an increase or decrease in consideration is taken into account after the close of the first taxable year that includes the first date assets are sold in an applicable asset acquisition, the seller and the purchaser each must file a supplemental asset acquisition statement on Form 8594 with the income tax return or return of income for the taxable year in which the increase (or decrease) is properly taken into account.

(2) *Transfers of interests in partnerships.* For reporting requirements relating to the transfer of a partnership interest, see § 1.755–2T(c).

PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT

Par. 14. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 15. In § 602.101, paragraph (b) is amended by removing the entries for §§ 1.338–1, 1.338(b)–1, 1.338(h)(10)–1, and 1.1060–1T from the tables and adding new entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.338–2T	1545–1658
1.338–5T	1545–1658
1.338–10T	1545–1658
1.338(h)(10)–1T	1545–1658
* * * * *	
1.1060–1T	1545–1658
* * * * *	

Approved: December 22, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–7 Filed 1–5–00; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Friday
January 7, 2000

Part III

General Services Administration

41 CFR Part 301–10

Federal Travel Regulation; Privately Owned Automobile Mileage Reimbursement; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 88]

RIN 3090–AH19

Federal Travel Regulation; Privately Owned Automobile Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule increases the mileage reimbursement rate for use of a privately owned automobile (POA) on official travel to reflect current costs of operation as determined in a cost study conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a POA from 31 to 32.5 cents per mile.

EFFECTIVE DATE: This final rule is effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, Program Analyst, telephone 202–501–3781.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for automobiles (including trucks), motorcycles, and airplanes. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POA and is reporting the cost per mile determination. The results of the investigation have been reported to Congress and a copy of the report appears as an attachment to this document. GSA's cost study shows the Administrator of General Services has determined the per-mile operating costs of a POA to be 32.5 cents. Additionally, as provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 32.5 cents effective January 1, 2000. With regard to motorcycles and airplanes, the mileage rates for these two modes of transportation are being updated to reflect current operating costs. We are currently collecting the data from sources outside of Government; updated data will be incorporated upon completion of the investigation.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 301–10 is amended to read as follows:

PART 301–10—TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

2. Section 301–10.303 is amended by revising the entry ''Privately owned automobile'' in the table to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
* * * * *	
Privately owned automobile	[1] 32.5
* * * * *	

[1] Cents per mile.

Dated: December 30, 1999.

David J. Barram,

Administrator of General Services.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicles

Subparagraph (b)(1)(A) of Section 5707 of Title 5, United States Code, requires the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, to periodically investigate the cost of travel and the operation of privately owned vehicles (airplanes, automobiles, and motorcycles) to Government employees while on official business, to report the results of the investigations to Congress, and to publish the report in the **Federal Register**. This report is being published to comply with the requirements of the law.

Dated: December 30, 1999.

David J. Barram,

Administrator of General Services.

Report to Congress

Subparagraph (b)(1)(A) of Section 5707 of Title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Subparagraph (b)(2)(B) of section 5707 of Title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of subparagraph (b)(1)(A) of Section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an

investigation of the cost of operating a privately owned automobile (POA). Additionally, as provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 32.5 cents effective January 1, 2000.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on the cost study conducted by GSA, I have determined the per-mile operating costs of a POA to be 32.5 cents. With regard to motorcycles and airplanes, the mileage rates for these two modes of transportation are being updated to reflect current operating costs. We are currently collecting the data from sources outside of Government; updated data will be incorporated upon completion of the investigation.

I will issue a regulation to increase the current 31 cents to 32.5 cents per mile for POAs. This report to Congress on the cost of operating POAs will be published in the **Federal Register**.

[FR Doc. 00–302 Filed 1–6–00; 8:45 am]

BILLING CODE 6820–34–P

Federal Register

Friday

January 7, 2000

Part IV

Department of Health and Human Services

Centers for Disease Control and Prevention

Capacity Building Assistance (CBA) To Improve the Delivery and Effectiveness of Human Virus (HIV) Prevention Services; Notice of Availability of Funds; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00003]

Capacity-Building Assistance (CBA) To Improve the Delivery and Effectiveness of Human Virus (HIV) Prevention Services for Racial/Ethnic Minority Populations; Notice of Availability of Funds

Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year (FY) 2000 funds for a cooperative agreement program for Capacity-building assistance to improve the delivery and effectiveness of Human Immunodeficiency Virus (HIV) prevention services for racial/ethnic minority populations. This program addresses the ''Healthy People 2000'' priority area of HIV Infection. The purpose of this program is to provide financial and programmatic assistance to national, regional, and local non-governmental organizations to develop and implement regionally structured, integrated capacity-building assistance systems. These systems will sustain, improve, and expand local HIV prevention services for racial/ethnic minority individuals whose behaviors place them at risk for acquiring or transmitting HIV and other sexually transmitted diseases (STDs).

Note: For this program announcement, the term ''capacity-building assistance'' means the provision of information, new HIV prevention technologies, consultation, technical services, and training for individuals and organizations to improve the delivery and effectiveness of HIV prevention services.

Capacity-building assistance developed under this program will be provided in four priority areas:

A. Priority Area 1—Strengthening Organizational Infrastructure for HIV Prevention
B. Priority Area 2—Enhancing HIV Prevention Interventions
C. Priority Area 3—Strengthening Community Capacity for HIV Prevention
D. Priority Area 4—Strengthening HIV Prevention Community Planning

For Priority Areas 1, 2, and 4, capacity-building assistance will be regionally structured and delivered in four regional groups as follows:

Northeast Region: CT, MA, ME, NH, NJ, NY, PA, PR, RI, VT, U.S. Virgin Islands.

Midwest Region: IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI.

South Region: AL, AR, DC, DE, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV.

West Region: AK, AZ, CA, CO, HI, ID, NV, NM, OR, MT, UT, WA, WY, American Samoa, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of Marshall Islands, Palau.

For Priority Area 3, capacity-building assistance can be structured and delivered regionally or according to identifiable patterns of minority cultures and affinity groups, regardless of regional boundaries (e.g., migrant streams, faith leaders, injection drug user networks).

Goals

The goals for this program are as follows:

A. Priority Area 1: Strengthening Organizational Infrastructure for HIV Prevention. Improve the capacity of community-based organizations (CBOs) and community coalition development (CCD) projects to develop and sustain organizational infrastructures that support the delivery of effective HIV prevention services and interventions to racial/ethnic minority individuals whose behavior places them at risk for acquiring or transmitting HIV and other STDs.

The emphasis of Priority Area 1 is providing capacity-building assistance to CDC-funded CBOs (currently numbering approximately 180) and CDC-funded CCD projects (currently numbering approximately 23). Other CBOs and CCD projects can be provided assistance only if resources are sufficient for expanded services.

B. Priority Area 2: Enhancing HIV Prevention Interventions. Improve the capacity of CBOs to design, develop, implement, and evaluate effective HIV prevention interventions for racial/ethnic minority individuals whose behavior places them at risk for acquiring or transmitting HIV and other STDs.

The emphasis of Priority Area 2 is providing capacity-building assistance to CBOs funded directly by CDC (currently numbering approximately 180). Other CBOs can be provided assistance only if resources are sufficient for expanded services.

C. Priority Area 3: Strengthening Community Capacity for HIV Prevention

Improve the capacity of CBOs, CCD projects, and other community stakeholders to engage and develop their communities for the purpose of increasing community awareness, leadership, participation, and support for HIV prevention.

Note: For this program announcement, ''community stakeholders'' are defined as individuals, groups, or organizations in the target community that have an interest or stake in preventing HIV transmission and are potential or actual agents of change.

The emphasis of Priority Area 3 is providing capacity-building assistance to CBOs, CCD projects, and other community stakeholders in racial/ethnic minority communities heavily affected by the HIV/AIDS epidemic.

D. Priority Area 4: Strengthening HIV Prevention Community Planning

1. Enhance the capacity of CBOs, CCD projects, and other community stakeholders to effectively participate in and support HIV prevention community planning by increasing their knowledge about, and skill and involvement in, the community planning process.

2. As part of CDC's HIV prevention community planning technical assistance network, enhance the capacity of community planning groups (CPGs) and health departments to include racial and ethnic minority participants in the community planning process and increase parity, inclusion, and representation (PIR) on CPGs.

The emphasis of Priority Area 4 is providing capacity-building assistance to CBOs and CCD projects funded directly by CDC. Other CBOs, CCD projects, and community stakeholders can be provided assistance only if resources are sufficient for expanded services.

Pre-application Technical Consultation

Technical consultation audio-conference calls for all priority areas are being scheduled from 1:00–2:30 PM EST, January 14 and 19, 2000. Participants may call toll-free 1–800–713–1971. Please have the conference code (942617) and name of the audio-conference (Capacity-Building 00003) ready. For more information, please contact CDC's National Prevention Information Network (NPIN) at 1–800–458–5231; visit its web site at www.cdcnpin.org; or send requests by fax to 1–888–282–7681 (TTY users: 1–800–243–7012).

Priority Areas

Information about eligible applicants, availability of funds, use of funds, funding priorities, program requirements, and application content is provided for each of the four priority areas in Sections A–D below.

Note: An organization may apply for more than one priority area; however, a separate

application must be submitted for each priority area.

A. Priority Area 1: Strengthening Organizational Infrastructure

1. Eligibility

An organization funded under Priority Area 1 must provide assistance to CBOs and CCD projects that serve racial/ethnic minority populations, regardless of which of the four major racial/ethnic minority groups they serve: Black/African American, Hispanic/Latino, Asian/Pacific Islander, and American Indian/Alaska Native.

An eligible applicant is a national non-profit, nongovernmental organization proposing to serve CBOs that work with any of the four racial/ethnic minority groups in up to four of the regions specified in the Purpose section of this announcement, or a regional non-profit, nongovernmental organization proposing to serve CBOs that work with any of the four racial/ethnic minority groups in only one of the regions. Applicants must meet the following criteria:

a. Have a currently valid Internal Revenue Service (IRS) 501(c)(3) tax-exempt status;

b. Have an executive board or governing body with more than 50 percent of its members belonging to any combination of the four major racial/ethnic minority groups (i.e., board members may all belong to one racial/ethnic minority group or may be multicultural, with members belonging to more than one racial/ethnic minority group);

c. Have racial/ethnic minority persons serving in more than 50 percent of key management, supervisory, and administrative positions (e.g., executive director, program director, fiscal director) and more than 50 percent of key service provision positions (e.g., technical assistance provider, trainer, curriculum development specialist, group facilitator) in the organization;

d. Have a documented 3-year record of providing organizational capacity-building assistance (i.e., materials development, training, technical consultation, or technical service) to CBOs serving racial/ethnic minority populations in multiple States; and

e. Have the specific charge from its Articles of Incorporation, Bylaws, or a resolution from its executive board or governing body to operate regionally or nationally (i.e., multistate/territory) within the United States or its Territories.

f. Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this priority area. However, applicants are encouraged to include private or public universities and colleges as collaborators or subcontractors, when appropriate.

Note: Public Law 104–65 states that an organization, described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

2. Availability of Funds

Approximately $2.0 million is expected to be available annually to fund from one to four programs, as follows: Northeast Region—approximately $800,000; Midwest Region—approximately $140,000; South Region—approximately $800,000; and West Region—approximately $260,000. However, in FY2000, CDC expects approximately $1 million to be available to fund from one to four programs for a six-month budget period, as follows: Northeast Region—approximately $400,000; Midwest Region—approximately $70,000; South Region—approximately $400,000; and West Region—approximately 130,000. It is expected that the awards will begin in May, 2000. In subsequent years, awards will be made for a 12-month budget period. The total project period will be four years and six months.

Funding estimates may change based on the availability of funds, scope and quality of the applications received, appropriateness and reasonableness of the budget justifications, and proposed use of project funds.

Continuation awards for a new 12-month budget period within an approved project period will be made on the basis of availability of funds and the applicant's satisfactory progress toward achieving the stated objectives. Satisfactory progress toward achieving objectives will be determined by required progress reports submitted by the recipient and site visits conducted by CDC representatives. Proof of continued eligibility will be required with all noncompeting continuation applications.

a. Use of Funds

1. Funds available under this announcement must support capacity-building assistance that improves the capacity of CBOs and CCD projects to develop and sustain organizational infrastructures that support the delivery of effective HIV prevention services for racial/ethnic minority individuals whose behavior places them at high risk for HIV and other STDs.

2. These federal funds may not supplant or duplicate existing funding.

3. The applicant must perform a substantial portion of the program activities and cannot serve merely as a fiduciary agent. Applications requesting funds to support only managerial and administrative functions will not be accepted.

4. No funds will be provided for direct patient care, including substance abuse treatment, medical treatment, or medications.

5. These federal funds may not be used to support the cost of developing applications for other federal funds.

6. Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's NPIN maintains a collection of HIV, STD, and TB resources for use by organizations and the public. Successful applicants will be contacted by NPIN for information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1–800–458–5231; visit its web site at www.cdcnpin.org; or send requests by fax to 1–888–282–7681 (TTY users: 1–800–243–7012).

b. Funding Preferences

For these awards, preferences for funding are to:

1. Ensure capacity-building assistance for all CDC-funded CBOs and CCD projects that serve racial/ethnic minority populations in all four regions,

2. Ensure that funding for capacity-building assistance is distributed in proportion to the HIV/AIDS disease burden among racial/ethnic minority populations and the number of CBOs, other nongovernmental minority organizations, and CCD projects funded directly by CDC in each region; and

3. Address gaps in current national capacity-building assistance services. Under CDC Program Announcement 99095, approximately $1.25 million was made available for capacity-building assistance related to strengthening

organizational infrastructure for CDC-funded CBOs providing services to African Americans in all four regions. Under this program announcement, preference will be given to funding one organization to provide capacity-building assistance in Priority Area 1 to CDC-funded CBOs that are not covered by services provided under Program Announcement 99095.

3. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities that follow:

a. Program Activities

1. Include CBOs and CCD projects funded directly by CDC, and other potential consumers of the proposed services in planning and evaluating the proposed capacity-building assistance program.

2. Assess the organizational infrastructure systems needs (e.g., governance, management, administration, and fiscal systems) of all CBOs and CCD projects funded directly by CDC in the region(s) for which the recipient has responsibility.

3. Create and support a regionally structured capacity-building resource network that includes the applicant's current and proposed staff and other subject matter experts (e.g., consultants, academicians, small minority businesses, subcontractors) with expertise in strengthening organizational infrastructure. A regional resource network should be created in each region for which the recipient has responsibility. The resource networks should emphasize the use of locally-based consultants and experts. They must provide assistance to CDC-funded CBOs and CCD projects in each region for which the recipient has responsibility, regardless of which of the four major racial/ethnic minority populations those organizations serve (i.e., Black/African American, Latino/Hispanic, Asian/Pacific Islander, and American Indian/Alaska Native).

Support services for the resource networks include, but are not limited to, developing training materials and conducting orientation and training for consultants to help them deliver effective and efficient services that follow relevant, available national standards of practice and are in accordance with CDC's standards and expectations for conducting fiscal, administrative, and programmatic activities.

4. Ensure the effective and efficient provision of capacity-building assistance to strengthen organizational infrastructure. Examples include, but are not limited to, organizational assessment; fiscal management assessment and follow up; resource development (including development of funding strategies); proposal development and grant writing; human resources management (including staff recruitment, retention, and training); board development; organizational quality assurance and monitoring; program marketing and public relations; program policy development; personnel policy development; volunteer recruitment and management; information management; strategic planning; leadership development and team building; collaboration and coalition development; and cross-cultural communications.

These services are to be provided through the use of information transfer, skills building, technical consultation, technical services, and technology transfer (e.g., development and dissemination of replication packages).

5. Implement a plan for developing and maintaining ongoing capacity-building relationships with CBOs and CCD projects funded directly by CDC in the region(s) for which the recipient has responsibility (see Attachment 4). The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long term.

6. Implement a system that responds to capacity-building assistance requests from CBOs and CCD projects in the region(s) for which the recipient has responsibility. CBOs and CCD projects funded directly by CDC must receive the highest priority. This system must include mechanisms for assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas 2, 3 and 4 of this program; delivering capacity-building services; and conducting quality assurance.

7. Identify and complement the capacity-building efforts available locally. Cooperate with other national, regional, State, and local capacity-building providers to (a) avoid duplication of effort and (b) ensure that capacity-building assistance is allocated according to gaps in available services and the needs of CBOs and CCD projects funded directly by CDC. (Note: For this announcement, the term ''cooperate'' means exchanging information, altering activities, and sharing resources with other organizations for mutual benefit.)

8. Coordinate program activities with appropriate national, regional, State, and local governmental and non-governmental HIV prevention partners (e.g., health departments, CBOs) and CPGs.

Note: For this announcement, the term ''coordinate'' means exchanging information and altering activities for mutual benefit.

9. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

10. Participate in a CDC-coordinated capacity-building network to enhance communication, coordination, cooperation, and training.

b. Quality Assurance

1. Identify the capacity-building needs of your own program and develop and implement a plan to address these needs.

2. Identify the training needs of your staff and develop and implement a plan to address these needs.

3. In collaboration with CDC, develop and implement a standardized system for tracking, assessing, and documenting all capacity-building assistance requests and delivery.

c. Program Monitoring and Evaluation

1. Conduct process evaluation of your capacity-building assistance activities to determine if your process objectives are being achieved.

2. Monitor the results of capacity-building assistance services to determine what works and what does not work in order to improve the program.

d. Communication and Information Dissemination

1. Implement an effective strategy for marketing the capacity-building assistance available through your proposed program.

2. Facilitate the dissemination of information about successful capacity-building assistance strategies and ''lessons learned'' through replication packages, peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

e. Resource Development

Implement a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement, expand services provided through the proposed program, and enhance the likelihood of its continuation after the end of the project period.

f. Other Activities

Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

4. Application Content

a. General

1. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow the format provided in laying out your program proposal.

2. The narrative should be no more than 40 pages (excluding budget and attachments).

3. Number each page, including appendices and attachments, sequentially and provide a complete Table of Contents to the application and its attachments. Please begin each separate section of the application on a new page.

4. The original and each copy of the application set must be submitted unstapled and unbound.

5. All material must be typewritten; single spaced, with a font of 10 pitch or 12 point on 8½″ by 11″ paper, with at least 1″ margins, headings and footers; and printed on one side only.

6. Materials which should be part of the basic plan will not be accepted if placed in the attachments.

In developing the application, follow the format and instructions below:

b. Priority Area (Not scored). Clearly state the Priority Area for which this application is being submitted (i.e., Priority Area 1—Strengthening Organizational Infrastructure).

c. Region(s) to be served (Not scored). Which region(s) are you proposing to serve with your capacity-building assistance program?

d. Proof of Eligibility. Applicants must complete this section on ''Proof of Eligibility,'' including providing the following documents as appropriate. Failure to provide the required documentation will result in your application being disqualified and returned to you without further review.

1. Is your organization a national organization or is it a regional organization?

2. Does your organization have a currently valid 501(c)(3) tax-exempt status?

Note: Attach to this section a copy of the current, valid Internal Revenue Service (IRS) determination letter of your organization's 501(c)(3) tax-exempt status.

3. Does your organization have an executive board or governing body with more than 50 percent of its members belonging to racial/ethnic minority populations?

Note: Attach to this section a complete list of the members of your board or governing body, along with their positions on the board, their race/ethnicity, and their gender.

4. Do racial/ethnic minority persons serve in more than 50 percent of key management, supervisory, and administrative positions (e.g., executive director, program director, fiscal director) and more than 50 percent of key service provision positions (e.g., technical assistance providers, trainers, curriculum development specialists, group facilitators) in your organization?

Note: Attach to this section a list of all existing personnel in key positions in your organization, along with their position in the organization, their race/ethnicity, their gender, and their areas of expertise. Also attach a similar list of proposed personnel.

5. Does your organization have a documented 3-year record of providing organizational capacity-building assistance to CBOs serving racial/ethnic minority populations in multiple States?

Note: Attach to this section a list of such clients, including the organization name, location (i.e., city and State), dates of service, and type(s) of assistance provided. Also, provide copies of complete documents as evidence of this three year history. Documents can include memoranda of understanding, agreements, or contracts/consultants. This information will also be used in evaluating Organizational History and Experience (Section A.4.k.).

6. Does your organization have the specific charge from its executive board or governing body to operate regionally or nationally (i.e., multistate/territory) within the United States and its Territories?

Note: Attach to this section a copy of the section of your organization's Articles of Incorporation, Bylaws, or Board Resolution that indicates the organization's charge to operate regionally or nationally.

7. Is your organization a governmental or municipal agency, an affiliate of a governmental or municipal agency (e.g., health department, school board, public hospital), or a private or public university or college? If so, your organization is not eligible for funding under this priority area.

8. Is your organization included in the category of organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1986? If so, your organization is not eligible to apply for funding under this priority area.

e. Abstract (Not scored). Please provide a brief summary of your proposed program activities, including

1. which region(s) the program will serve and, if serving more than one region, how it will be regionally structured;

2. what specific types of capacity-building assistance will be provided by the program (including members of the applicant's current and proposed staff, consultants, academicians, and other subject matter experts);

3. how you will develop ongoing capacity-building relationships with CBOs and CCD projects funded directly by CDC; and

4. how you will respond to requests for a wide variety of capacity-building assistance.

The abstract should not exceed two pages.

f. Program Activities (Total = 400 points; Scoring criteria: likelihood of achieving program goals; soundness of proposed systems; basis in science, theory, concept, or proven program experience; feasibility of the program plan; innovativeness; specificity, feasibility, time phasing, and measurability of stated objectives)

1. Including potential consumers of services in program planning (35 points).

a. How will CBOs and CCD projects funded directly by CDC, and other potential consumers of your proposed services be involved in planning and evaluating your proposed capacity-building assistance program?

b. For your first year of operation, what are your specific process objectives related to obtaining this input?

Note: Objectives should be specific, realistic, time-phased, and measurable.

2. Assessment of CBOs and CCD projects funded directly by CDC (45 points).

a. How will you assess the organizational infrastructure systems needs (e.g., governance, management, administration, and fiscal systems) of all CBOs and CCD projects funded directly by CDC in the region(s) for which your organization will have responsibility

b. In conducting these assessments, what are your specific process objectives for your first year of operation?

3. Creating and supporting a resource network (45 points).

a. How will you create a regionally structured resource network that includes your current and proposed staff and other subject matter experts with expertise in strengthening organizational infrastructure?

b. How will this network be structured, and how will the consultants and other subject matter experts be used, to meet regional needs and allow local delivery of capacity-building services?

c. How will you support the resource network (e.g., developing training materials, orienting and training

consultants and other network members to assist in delivering effective and efficient services that adhere to national standards of practice)?

d. In developing this resource network, what are your specific process objectives for your first year of operation?

4. Ensuring effective provision of capacity-building assistance (45 points).

a. What specific types of capacity-building assistance will the proposed program provide to strengthen organizational infrastructure (e.g., organizational assessment; fiscal management assessment and follow up; resource development [including development of a funding strategy]; proposal development and grant writing; human resources management [including staff recruitment, retention, and training]; board development; organizational quality assurance and monitoring; program marketing and public relations; program policy development; personnel policy development; volunteer recruitment and management; information management; strategic planning; leadership development and team building; collaboration and coalition development; and cross-cultural communications)?

b. How will you ensure that this assistance is provided effectively and efficiently?

5. Developing ongoing relationships with CBOs and CCD projects funded directly by CDC (45 points).

a. How will you develop and maintain ongoing capacity-building relationships with CBOs and CCD projects funded directly by CDC, including conducting ongoing needs assessments and implementing tailored capacity-building packages to be delivered over the long term?

b. In developing these ongoing capacity-building relationships, what are your specific process objectives for your first year of operation?

6. Responding to capacity-building assistance requests (45 points).

a. How will you respond to capacity-building requests (including assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas 2, 3, and 4 of this program; and delivering capacity-building services)?

b. In implementing this strategy or strategies, what are your specific process objectives for your first year of operation?

7. Identifying and complementing other capacity-building efforts (35 points).

a. How will you identify and complement other capacity-building efforts available locally and cooperate with other national, regional, State, and local capacity-building providers to avoid duplication of effort and ensure that capacity-building assistance is allocated according to gaps in available services and the needs of CBOs and CCD projects funded directly by CDC (i.e., with what entities will you cooperate and what will each bring to the cooperative relationship)?

b. In identifying and complementing other capacity-building efforts and developing cooperative relationships with other capacity-building providers, what are your specific process objectives for your first year of operation?

8. Coordinating with appropriate governmental and nongovernmental HIV prevention partners and community planning groups (35 points).

a. How will you coordinate with appropriate national, regional, State, and local HIV prevention partners (e.g., health departments, CBOs) and CPGs (i.e., with what entities will you coordinate activities and what activities will be coordinated)?

9. Incorporating cultural competency into capacity-building activities (35 points). How will you ensure that the capacity-building assistance provided will be culturally competent, sensitive to issues of sexual identity, developmentally and educationally appropriate, linguistically specific, and targeted to the needs of organizations serving racial/ethnic minority populations?

10. Management and staffing of the program (35 points).

a. How will the proposed program be managed and staffed?

b. What are the skills and experience of the applicant's program staff?

c. Which activities in your proposed program will be conducted by cooperating organizations?

d. In staffing your proposed program and developing cooperative relationships with other organizations, what are your specific process objectives for your first year of operation?

11. Time line (Not scored). Provide a time line that identifies major implementation steps in your proposed program and assigns approximate dates for inception and completion of each step.

g. Quality Assurance (150 points; Scoring criteria: completeness, appropriateness, and feasibility of the quality assurance plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you identify the capacity-building assistance needs of your own program and address these needs?

2. How will you identify the training needs of your staff and meet these needs?

3. In implementing these quality assurance plans, what are your specific process objectives for the first year of operation?

Note: Systems for tracking, assessing, and documenting capacity-building assistance requests and delivery will be developed in collaboration with CDC.

h. Program Monitoring and Evaluation (150 points; Scoring Criteria: completeness, technical soundness, and feasibility of the program monitoring and evaluation plan; specificity, feasibility, time phasing, and measurability of stated objectives)

1. How will you conduct process evaluation of your capacity-building activities to determine if the process objectives are being achieved?

2. How will you monitor the results of capacity-building assistance services to determine what works and what does not work in order to improve the program?

3. What data will be collected for evaluation purposes and how will the data be collected, analyzed, reported, and used to improve the program?

4. Who will be responsible for designing and implementing evaluation activities?

5. In implementing this program monitoring and evaluation plan, what are your specific process objectives for the first year of operation?

i. Communication and Information Dissemination (50 points; Scoring criteria: completeness, appropriateness, and feasibility of the communication and information dissemination plan; specificity, feasibility, time phasing, and measurability of stated objectives)

1. How will you market the capacity-building assistance available through your proposed program?

2. How will you disseminate information about successful capacity-building assistance strategies and ''lessons learned''?

3. In implementing this communication and information dissemination plan, what are your specific process objectives for the first year of operation?

j. Resource Development (100 points; Scoring criteria: completeness, appropriateness, and feasibility of the resource development plan; specificity, feasibility, time phasing, and measurability of stated objectives)

1. How will you obtain additional resources from non-CDC sources to supplement the program conducted

through this cooperative agreement, expand services provided through the proposed program, and enhance the likelihood of its continuation after the end of the project period?

2. In implementing this resource development plan, what are your specific process objectives for the first year of operation?

k. Organizational History and Experience (150 points; Scoring criteria: extent and relevance of applicant organization's experience. Note: Information provided under Proof of Eligibility, Section A.4.d.(5), will also be taken into consideration in scoring this section.)

1. What types of capacity-building assistance does your organization have experience providing (e.g., board development, fiscal management), and for how long?

2. With what mechanisms of delivering capacity-building assistance does your organization have experience (e.g., information transfer, skills building, technical consultation, technical services, technology transfer)?

3. What experience does your organization have in providing capacity-building assistance in organizational infrastructure development to CBOs and other types of organizations serving the HIV prevention needs of racial/ethnic minority populations, and for how long?

4. What experience does your organization have in assessing the organizational infrastructure systems needs (e.g., governance, management, administration, and fiscal systems) of CBOs or other organizations that provide health care or prevention services?

5. What experience does your organization have in developing and using resource or consultant networks to provide capacity-building assistance and in supporting such networks (e.g., developing training materials and conducting orientation and training for consultants)?

6. What experience does your organization have in developing and maintaining ongoing capacity-building relationships with CBOs or other organizations that provide health or prevention services?

7. What experience does your organization have in responding to capacity-building assistance requests, including assessing and prioritizing requests, linking requests to other capacity-building assistance resources, and delivering capacity-building assistance?

8. What experience does your organization have in establishing and maintaining cooperative relationships with other capacity-building providers?

9. What experience does your organization have in coordinating program activities with national, regional, State, and local governmental and nongovernmental HIV prevention partners (e.g., health departments, CBOs) and CPGs?

10. What experience does your organization have in providing capacity-building assistance that responds effectively to the cultural, gender, environmental, social, and linguistic characteristics of CBOs serving multiple racial/ethnic minority populations? (In answering this question, describe the types of services provided and list any culturally, linguistically, and developmentally appropriate curricula and materials that your organization has developed.)

l. Organizational Structure and Infrastructure (Not scored).

1. What is the structure of your organization, including management, administrative, and program components, and where will the proposed program be located in this structure?

2. What fiscal management systems does your organization have in place and how do they function?

3. What human resources management systems does your organization have in place (including staff recruitment, orientation, training, and support; leadership development; team building; personnel policy development) and how do they function?

4. What quality assurance systems does your organization have in place and how do they function?

5. What information management systems does your organization have in place and how do they function?

6. How does your organization do its strategic planning and develop its program policies and priorities?

m. Budget and Staffing Breakdown and Justification (Not scored). In this application, applicants should provide a 6-month budget for the initial (FY2000) budget period.

1. Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the planned activities and stated objectives. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

2. For each contract and consultant contained within the application budget, describe the type(s) of organizations or parties to be selected and the method of selection; identify the specific contractor(s), if known; describe the services to be performed and justify the use of a third party to perform these services; provide a breakdown of and justification for the estimated costs of the contracts and consultants; specify the period of performance; and describe the methods to be used for contract monitoring.

3. Provide a job description for each position, specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities that would be funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, his/her name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project, provide job descriptions.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

n. Attachments. In addition to the documents required in the Proof of Eligibility section of your application, the following attachments should be included with your application, if relevant:

1. A list of all organizations with which you will cooperate to avoid duplication of effort and ensure that gaps in capacity-building services are addressed. Include memoranda of agreement from each such organization as evidence of cooperative relationships. Memoranda of agreement should specifically describe the proposed cooperative activities. These documents must be submitted annually with each continuation application.

2. A list summarizing services, curricula, and materials that are currently being delivered that are culturally, linguistically, and developmentally appropriate.

3. A description of funding received from CDC or other sources to conduct similar activities that includes:

a. A summary of funds and income received to conduct capacity-building assistance programs. This summary must include the name of the sponsoring organization/source of income, level of funding, a description of how the funds have been used, and the budget period. In addition, identify proposed personnel who will conduct the activities of this project and who are supported by other funding sources (include their roles and responsibilities);

b. A summary of the objectives and activities of the funded programs that are described above;

c. An explanation of how funds requested in this application will be used differently or in ways that will expand upon programs that are supported with existing or future funds.

d. An assurance that the requested funds will not duplicate or supplant funds that have been received from any other Federal or non-Federal source. CDC-awarded funds may be used to expand or enhance services supported by other Federal or non-Federal funding sources.

4. Independent audit statements from a certified public accountant for the previous 2 years.

5. A copy of the organization's current negotiated Federal indirect cost rate agreement, if applicable.

PRIORITY AREA 1 ENDS HERE.

Please refer to the following sections of this announcement for additional important information: CDC Activities, Submission and Deadline, Review and Evaluation of Applications, Other Requirements, Authority and Catalog of Federal Domestic Assistance Number, Where to Obtain Additional Information, and Attachments 1–3.

B. Priority Area 2: Enhancing HIV Prevention Interventions

1. Eligibility

A program funded under Priority Area 2 must serve CBOs in all four of the regions specified in the Purpose section of this announcement and provide assistance to CBOs serving primarily one of the four major racial/ethnic minority groups: Black/African American, Hispanic/Latino, Asian/Pacific Islander, and American Indian/Alaska Native.

An eligible applicant is a national or regional non-profit, non governmental organization proposing to function as the lead organization within a coalition (i.e., a collaborative contractual partnership with other organizations) that will provide assistance to CBOs that serve a specific racial/ethnic minority group in all four regions. A coalition must include, at a minimum, an organization located within each of the four regions. (The lead applicant can represent one of the four regions.) Applicants must apply to serve primarily only one of the four major racial/ethnic groups.

Note: For this announcement, the term ''coalition'' means a group of organizations in which each member organization is responsible for specific, defined, integral activities within the proposed program, and all member organizations share responsibility for the overall planning, implementation, and evaluation of the program.

In a collaborative contractual partnership, one organization must be the legal applicant and function as the lead organization in the coalition. The legal applicant must meet the following criteria:

a. Have a currently valid Internal Revenue Service (IRS) 501(c)(3) tax-exempt status;

b. Have an executive board or governing body with more than 50 percent of its members belonging to the racial/ethnic minority population to be served;

c. Have more than 50 percent of key management, supervisory, and administrative positions (e.g., executive director, program director, fiscal director) and more than 50 percent of key service provision positions (e.g., technical assistance provider, trainer, curriculum development specialist, group facilitator) in the organization filled by members of the racial/ethnic minority population to be served.

d. Have a documented 3-year record of providing capacity-building assistance (i.e., materials development, training, technical consultation, or technical service) in HIV prevention intervention design, development, implementation, and evaluation to CBOs serving the targeted racial/ethnic minority population in multiple States; and

e. Have the specific charge from its Articles of Incorporation, Bylaws, or a resolution from its executive board or governing body to operate regionally or nationally (i.e., multi state/territory) within the United States or its Territories.

f. Each member organization of the coalition must meet all of the above criteria except item d. (3-year record).

g. Governmental or municipal agencies and their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals) are not eligible for funding under this priority area.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

2. Availability of Funds

Approximately $3.5 million is expected to be available annually to fund four programs, as follows: African American—approximately $2,010,000; Latino—approximately $1,040,000; Asian/Pacific Islander—approximately $225,000; and American Indian/Alaska Native—approximately $225,000. However, in FY2000, CDC expects approximately $1,750,000 to be available to fund four programs for a six-month budget period, as follows: African American—approximately $1,005,000; Latino—approximately $520,000; Asian/Pacific Islander—approximately $112,500; and American Indian/Alaska Native—approximately $112,500. It is expected that the awards will begin in May, 2000. In subsequent years, awards will be made for a 12-month budget period. The total project period will be four years and six months.

Funding estimates may change based on the availability of funds, scope and quality of the applications received, appropriateness and reasonableness of the budget justifications, and proposed use of project funds.

Continuation awards for a new 12-month budget period within an approved project period will be made on the basis of availability of funds and satisfactory progress toward achieving stated objectives. Satisfactory progress toward achieving objectives will be determined by required progress reports submitted by the recipient and site visits conducted by CDC representatives. Proof of continued eligibility will be required with all noncompeting continuation applications.

a. Use of Funds

1. Funds available under this announcement must support capacity-building assistance that improves the capacity of CDC-funded and other CBOs to design, develop, implement, and evaluate effective HIV prevention interventions for racial/ethnic minority individuals whose behavior places them at high risk for acquiring or transmitting HIV and other STDs.

2. These federal funds may not supplant or duplicate existing funding.

3. The applicant must perform a substantial portion of the program activities and cannot serve merely as a fiduciary agent. Applications requesting funds to support only managerial and administrative functions will not be accepted.

4. No funds will be provided for direct patient care, including substance abuse treatment, medical treatment, or medications.

5. These federal funds may not be used to support the cost of developing applications for other federal funds.

6. Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's NPIN maintains a collection of HIV, STD, and TB resources for use by organizations and the public. Successful applicants will be contacted by NPIN for information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation.

For further information on NPIN services and resources, contact NPIN at 1–800-458–5231; visit its web site at www.cdcnpin.org; or send requests by fax to 1–888–282–7681 (TTY users: 1–800–243-7012).

b. Funding Preferences

For these awards, preferences for funding will be:

1. ensuring that capacity-building assistance is available for all CDC-funded CBOs in all four regions and serving all four major racial/ethnic minority groups; and

2. ensuring that funding for capacity-building assistance is distributed in proportion to the HIV/AIDS disease burden in the four major racial/ethnic minority populations and the number of CDC-funded CBOs serving each of these four minority populations in each region.

3. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

a. Program Activities

1. Include CDC-funded CBOs, other CBOs, and other potential consumers of the proposed services in planning and evaluating the proposed capacity-building assistance program.

2. Establish and support a coalition (i.e., a collaborative contractual partnership) to implement the proposed program. The coalition must represent all four regions. Support services for the coalition include, but are not limited to, establishing ongoing communication mechanisms, establishing reporting standards, conducting process evaluation, establishing standards of practice, and conducting quality assurance.

3. Create and support four regionally-based capacity-building resource networks that include the applicant's and coalition members' current and proposed staff and other subject matter experts (e.g., consultants, researchers, academicians). Emphasize the use of locally based consultants and experts. Support services for the resource networks include, but are not limited to, developing training materials, diffusion of best program practices and intervention models, and conducting orientation and training for consultants to assist in delivering effective and efficient services that follow relevant, available national standards of practice and are in accordance with CDC's standards and expectations for conducting HIV prevention educational programs and interventions.

4. Ensure the effective and efficient provision of capacity-building assistance to enhance the design, development, implementation, and evaluation of HIV prevention interventions. Examples include, but are not limited to, curriculum development, intervention replication or adaptation, use of behavioral and social sciences to increase intervention effectiveness (including the development of behavioral risk assessments), increasing the cultural competence and linguistic appropriateness of interventions, service integration, developing effective health communications messages, conducting population-based needs assessments (including the use of epidemiology and social marketing methods), setting priorities for interventions and target populations, developing or identifying effective and appropriate interventions, and evaluation planning and implementation. Recipients should work closely with CDC to identify interventions that have a sound basis in science or proven program experience and are suitable for dissemination.

These services are to be provided through the use of information transfer, skills building, technical consultation, technical services, and technology transfer. These services should be culturally appropriate and based in science.

5. Implement a plan for developing and maintaining ongoing capacity-building relationships with CDC-funded CBOs serving the target racial/ethnic minority population. The plan should include strategies for conducting ongoing needs assessments of CBOs, evaluating HIV prevention interventions and the support structures needed to deliver these interventions, and developing tailored capacity-building packages to be delivered over the long term.

6. Implement a system that responds to capacity-building assistance requests. This system must give the highest priority to CDC-funded CBOs. The system must include mechanisms for assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas 1, 3 and 4 of this program; delivering capacity-building services; and conducting quality assurance.

7. Identify and complement the capacity-building efforts available locally. Cooperate with other national, regional, State, and local capacity-building providers to (a) avoid duplication of effort and (b) ensure that capacity-building assistance is allocated according to gaps in available services and the needs of CDC-funded and other CBOs serving minority populations at high risk for acquiring and transmitting HIV and other STDs. (Note: For this announcement, the term ''cooperate'' means exchanging information, altering activities, and sharing resources with other organizations for mutual benefit.)

8. Coordinate program activities with appropriate national, regional, State, and local governmental and non-governmental HIV prevention partners (e.g., health departments, CBOs) and CPGs.

Note: For this announcement, the term ''coordinate'' means exchanging information and altering activities for mutual benefit.

9. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities;

10. Participate in a CDC-coordinated capacity-building network to enhance communication, coordination, and training.

b. Quality Assurance

1. Identify the capacity-building needs of your own program (including your organization and other member organizations in the coalition) and develop and implement a plan to address these needs.

2. Identify the training needs of your staff (including staff in your own organization and in other member organizations in the coalition) and develop and implement a plan to address these needs.

3. In collaboration with CDC, develop and implement a standardized system for tracking, assessing, and documenting all capacity-building assistance requests and delivery.

c. Program Monitoring and Evaluation

1. Conduct process evaluation of your capacity-building assistance activities to determine if your process objectives are being achieved.

2. Monitor the results of capacity-building assistance services to determine what works and what does not work in order to improve the program.

d. Communication and Information Dissemination

1. Implement an effective strategy for marketing capacity-building assistance available through your proposed program.

2. Facilitate the dissemination of information about successful capacity-building assistance strategies and ''lessons learned'' through replication packages, peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

e. Resource Development

Implement a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement, expand services provided through the proposed program, and enhance the likelihood of its continuation after the end of the project period.

f. Other Activities

Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

4. Application Content

a. General

1. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated according to the quality of the responses to the following questions, so it is important to follow the format provided below in laying out your program proposal.

2. The narrative should be no more than 40 pages (excluding budget and attachments).

3. Number each page, including appendices and attachments, sequentially and provide a complete Table of Contents to the application and its attachments. Please begin each separate section of the application on a new page.

4. The original and each copy of the application set must be submitted unstapled and unbound.

5. All material must be typewritten; single spaced, with a font of 10 pitch or 12 point on 8½″ by 11″ paper, with at least 1″ margins, headings and footers; and printed on one side only.

6. Materials that should be part of the basic plan will not be accepted if placed in the attachments.

In developing the application, use the following format and instructions:

b. Priority Area (Not scored). Clearly state the Priority Area for which this application is being submitted (i.e., Priority Area 2—Enhancing HIV Prevention Interventions).

c. Population to be Served (Not scored). Which racial/ethnic minority group will be the primary focus of the proposed program?

d. Proof of Eligibility. Applicants must complete this section on ''Proof of Eligibility,'' including providing the following documents as appropriate. Failure to provide the required documentation will result in your application being disqualified and returned to you without further review.

1. What organizations will be members of your proposed coalition?

Note: Attach to this section a list of all organizations that will be members of the proposed coalition (i.e., collaborative contractual partnership), including their locations (i.e., city and State), a brief description of each organization, and a brief description of what role(s) each organization will serve in the coalition.

Include memoranda of agreement from all organizations that will be members of the proposed coalition as evidence of collaborative relationships. Memoranda of agreement should specifically describe the proposed collaborative activities. These documents must be submitted annually with each continuation application.

Please answer the following questions and provide the requested documents for the lead organization (the legal applicant) and for each member organization of the coalition:

2. Is the organization a national organization or is it a regional organization?

3. Does the organization have a currently valid 501(c)(3) tax-exempt status?

Note: Attach to this section a copy of the current, valid Internal Revenue Service (IRS) determination letter of the organization's 501(c)(3) tax-exempt status.

4. Does the organization have an executive board or governing body with more than 50 percent of its members belonging to the racial/ethnic minority population to be served?

Note: Attach to this section a complete list of the members of the executive board or governing body, along with their positions on the board, their race/ethnicity, and their gender.

5. Do persons of the target racial/ethnic minority population serve in more than 50 percent of key management, supervisory, and administrative positions (e.g., executive director, program director, fiscal director) and more than 50 percent of key service provision positions (e.g., technical assistance provider, trainer, curriculum development specialist, group facilitator) in the organization?

Note: Attach to this section a list of all existing personnel in key positions in the organization, along with their position in the organization, their race/ethnicity, their gender, and their area(s) of expertise. Also attach a similar list of proposed personnel.

6. (A response to this question is required for the lead organization, but is optional for other member organizations of the coalition.) Does the organization have a documented 3-year record of providing capacity-building assistance in HIV prevention intervention design, development, implementation, and evaluation to CBOs serving the target racial/ethnic minority population in multiple States?

Note: Attach to this section a list of such clients, including the organization name, location (i.e., city and State), dates of service, and type(s) of assistance provided. Also, provide copies of complete documents as evidence of this three year history. Documents can include memoranda of understanding, agreements, or contracts/consultants. This information will also be used in evaluating Organizational History and Experience (Section B.4.k.).

7. Does the organization have the specific charge from its executive board or governing body to operate regionally or nationally (i.e., multistate/territory) within the United States and its Territories?

Note: Attach to this section a copy of the section of the organization's Articles of Incorporation, Bylaws, or Board Resolution that indicates the organization's charge to operate regionally or nationally.

8. Is the organization a governmental or municipal agency or an affiliate of a governmental or municipal agency (e.g., health department, school board, public hospital)? If so, the organization is not eligible for funding under this priority area.

9. Is the organization included in the category of organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1986? If so, the organization is not eligible for funding under this priority area.

e. Abstract (Not scored). Please provide a brief summary of your proposed program activities, including:

1. Which racial/ethnic minority group will be the focus of the proposed program;

2. What organizations will form the coalition;

3. How the program will be regionally structured;

4. What specific types of capacity-building assistance will be provided by the program (including members of the

applicant's and coalition members' current and proposed staff, consultants, researchers, academicians, and other subject matter experts);

5. How you will develop ongoing capacity-building relationships with CBOs; and

6. How you will respond to requests for a wide variety of capacity-building assistance.

The abstract should not exceed two pages.

f. Program Activities (Total = 400 points; Scoring criteria: likelihood of achieving program goals; soundness of proposed systems; basis in science, theory, concept, or proven program experience; feasibility of the program plan; innovativeness; specificity, feasibility, time phasing, and measurability of stated objectives)

1. Including potential consumers of services in program planning (35 points).

a. How will CDC-funded CBOs, other CBOs, and other potential consumers of your proposed services be involved in planning and evaluating your proposed capacity-building assistance program?

b. For your first year of operation, what are your specific process objectives related to obtaining this input?

Note: Objectives should be specific, realistic, time-phased, and measurable.

2. Establishment of a coalition (i.e., collaborative contractual partnership) (45 points).

a. How will your coalition be structured to implement the proposed program in all four regions?

b. How will you support the coalition (e.g., establishing ongoing communication mechanisms, establishing standards of practice)?

c. In establishing and supporting the coalition, what are your specific process objectives for your first year of operation?

3. Creating and supporting resource networks (45 points).

a. How will you create regionally-based resource networks that include the applicant and coalition members' current and proposed staff, researchers, academicians, consultants, and other subject matter experts?

b. How will these networks be structured and how will the consultants and other subject matter experts be used to meet regional needs and allow local delivery of capacity-building services?

c. How will you support these resource networks (e.g., developing training materials, diffusion of best program practices and intervention models, and conducting orientation and training for consultants to assist them in delivering effective and efficient services that follow national standards of practice and complement CDC's standards and expectations for conducting HIV educational programs and interventions)?

d. In developing these resource networks, what are your specific process objectives for your first year of operation?

4. Ensuring effective provision of capacity-building assistance (45 points).

a. What specific types of capacity-building assistance will the proposed program (including the applicant's and coalition members' current and proposed staff, consultants, researcher, academicians, and other subject matter experts) provide to strengthen HIV prevention intervention design, development, implementation, and evaluation (e.g., curriculum development, intervention replication or adaptation, use of behavioral and social sciences to increase intervention effectiveness [including the development of behavioral risk assessments], increasing the cultural competence and linguistic appropriateness of interventions, service integration, developing effective health communications messages, conducting population-based needs assessments [including the use of epidemiology and social marketing methods], setting priorities for interventions and target populations, developing or identifying effective and appropriate interventions, and evaluation planning and implementation)?

b. How will you ensure that this assistance is provided effectively and efficiently?

5. Developing ongoing relationships with CDC-funded CBOs (45 points).

a. How will you develop and maintain ongoing capacity-building relationships with CDC-funded CBOs, including conducting ongoing needs assessments, evaluating HIV prevention interventions and the support structures to deliver these interventions, and developing tailored multi component capacity-building packages to be delivered over the long term?

b. In developing these ongoing capacity-building relationships, what are your specific process objectives for your first year of operation?

6. Responding to capacity-building assistance requests (45 points).

a. How will you respond to capacity-building requests (including assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas 1, 3, and 4 of this program; and delivering capacity-building services)?

b. In implementing this strategy or strategies, what are your specific process objectives for your first year of operation?

7. Identifying and complementing other capacity-building efforts (35 points).

a. How will you identify and complement other capacity-building efforts available locally and cooperate with other national, regional, State, and local capacity-building providers to avoid duplication of effort and ensure that capacity-building assistance is allocated according to gaps in available services and the needs of CDC-funded and other CBOs serving the target racial/ethnic minority population (i.e., with what entities will you cooperate and what will each bring to the cooperative relationship)?

b. In identifying and complementing other capacity-building efforts and developing cooperative relationships with other capacity-building providers, what are your specific process objectives for your first year of operation?

8. Coordinating with appropriate governmental and nongovernmental HIV prevention partners and community planning groups (35 points).

a. How will you coordinate program activities with appropriate national, regional, State, and local HIV prevention partners (e.g., health departments, CBOs) and CPGs (i.e., with what entities will you coordinate activities and what activities will be coordinated)?

9. Incorporating cultural competency into capacity-building activities (35 points).

a. How will you ensure that the capacity-building assistance provided will be culturally competent, sensitive to issues of sexual identity, developmentally and educationally appropriate, linguistically specific, and targeted to the needs of organizations serving the targeted racial/ethnic minority population?

10. Management and staffing of the program (35 points).

a. How will the proposed program be managed and staffed?

b. What are the skills and experience of the applicant's program staff?

c. Which activities in your proposed program will be conducted by coalition members and which will be conducted by other cooperating organizations?

d. In staffing your proposed program and developing cooperative relationships with other organizations, what are your specific process objectives for your first year of operation?

11. Time line (Not scored). Provide a time line that identifies major implementation steps in your proposed program and assigns approximate dates for inception and completion of each step.

g. Quality Assurance (150 points; Scoring criteria: completeness, appropriateness, and feasibility of the quality assurance plan; specificity, feasibility, time phasing, and measurability of stated objectives)

1. How will you identify the capacity-building assistance needs of your own program (including your organization and other member organizations in the coalition) and address these needs?

2. How will you identify the training needs of your staff (including staff in your organization and in other member organizations in the coalition) and meet these needs?

3. In implementing these quality assurance plans, what are your specific process objectives for the first year of operation?

Note: Systems for tracking, assessing, and documenting capacity-building assistance requests and delivery will be developed in collaboration with CDC.

h. Program Monitoring and Evaluation (150 points; Scoring Criteria: completeness, technical soundness, and feasibility of the program monitoring and evaluation plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you conduct process evaluation of your capacity-building activities to determine if the process objectives are being achieved?

2. How will you monitor the results of capacity-building assistance services to determine what works and what does not work in order to improve the program?

3. What data will be collected for evaluation purposes and how will the data be collected, analyzed, reported, and used to improve the program?

4. Who will be responsible for designing and implementing evaluation activities?

5. In implementing this program evaluation plan, what are your specific process objectives for the first year of operation?

i. Communication and Information Dissemination (75 points; Scoring criteria: completeness, appropriateness, and feasibility of the communication and information dissemination plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you market the capacity-building assistance available through your proposed program?

2. How will you disseminate information about successful capacity-building assistance strategies and ''lessons learned''?

3. In implementing this communication and information dissemination plan, what are your specific process objectives for the first year of operation?

j. Resource Development (75 points; Scoring criteria: completeness, appropriateness, and feasibility of the resource development plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you obtain additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement, expand services provided through the proposed program, and enhance the likelihood of its continuation after the end of the project period?

2. In implementing this resource development plan, what are your specific process objectives for the first year of operation?

k. Organizational History and Experience (150 points; Scoring criteria: extent and relevance of applicant organization's experience. Note: Information provided under Proof of Eligibility, Section B.4.d.(6), will also be taken into consideration in scoring this section.)

Please address Questions 1–14 for the lead organization (the legal applicant). Please also address Questions 1, 2, 3, 6, 7, 8, 9, and 10 for each member organization of the coalition.

1. What types of capacity-building assistance does the organization have experience providing (e.g., curriculum development, increasing the cultural competence of interventions) and for how long?

2. With what mechanisms of delivering capacity-building assistance does the organization have experience (e.g., information transfer, skills building, technical consultation, technical services, technology transfer)?

3. What experience does the organization have in providing capacity-building assistance in HIV prevention intervention design, development, implementation, and evaluation to CBOs and other types of organizations serving the HIV prevention needs of the target racial/ethnic minority population, and for how long?

4. What experience does the organization have in establishing and supporting coalitions for the delivery of capacity-building assistance services?

5. What experience does the organization have in developing and using resource or consultant networks to provide capacity-building assistance and in supporting such networks (e.g., developing training materials and conducting orientation and training for consultants)?

6. What experience does the organization have in developing and maintaining ongoing capacity-building relationships with CBOs or other organizations that provide health or prevention services?

7. What experience does the organization have in responding to capacity-building assistance requests, including assessing and prioritizing requests, linking requests to other capacity-building assistance resources, and delivering capacity-building assistance?

8. What experience does the organization have in establishing and maintaining cooperative relationships with other capacity-building providers?

9. What experience does the organization have in coordinating program activities with national, regional, State, and local governmental and nongovernmental HIV prevention programs (e.g., health departments, CBOs) and CPGs?

10. What experience does the organization have in providing capacity-building assistance that responds effectively to the cultural, gender, environmental, social, and linguistic characteristics of CBOs serving multiple racial/ethnic minority populations? (In answering this question, describe the types of services provided and list any culturally, linguistically, and developmentally appropriate curricula and materials that your organization has developed.)

l. Organizational Structure and Infrastructure (Not scored). Please address Questions 1–6 for the lead organization (the legal applicant). Please also address Questions 1 and 2 for each member organization of the coalition.

1. What is the structure of the organization, including management, administrative, and program components, and where will the proposed program be located in this structure?

2. What fiscal management systems does your organization have in place and how do they function?

3. What human resources management systems the your organization have in place (including staff recruitment, orientation, training, and support; leadership development; team building; personnel policy development) and how do they function?

4. What quality assurance systems does the organization have in place and how do they function?

5. What information management systems does the organization have in place and how do they function?

6. How does the organization do its strategic planning and develop its program policies and priorities?

m. Budget and Staffing Breakdown and Justification (Not scored). In this application, applicants should provide a 6-month budget for the initial (FY2000) budget period.

1. Provide a detailed budget or each proposed activity. Justify all operating expenses in relation to the planned activities and stated objectives. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

2. For each contract or consultant contained within the application budget, describe the type(s) of organizations or parties to be selected and the method of selection; identify the specific contractor(s), if known; describe the services to be performed and justify the use of a third party to perform these services; provide a breakdown of and justification for the estimated costs of the contracts and consultants; specify the period of performance; and describe the methods to be used for monitoring the contract.

3. Provide a job description for each position, specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities that would be funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, his/her name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project, provide job descriptions.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

n. Attachments. In addition to the documents required in the Proof of Eligibility section of your application, the following attachments should be included with your application, if relevant:

1. A list of all organizations that are not formal members of the coalition and with which you will cooperate to avoid duplication of effort and ensure that gaps in capacity-building services are addressed. Include memoranda of agreement from each as evidence of cooperative relationships. Memoranda of agreement should specifically describe the proposed cooperative activities. These documents must be submitted annually with each continuation application.

2. A list summarizing services, curricula, and materials that are currently being delivered that are culturally, linguistically, and developmentally appropriate.

3. A description of funding received from CDC or other sources to conduct similar activities that includes:

a. A summary of funds and income received to conduct capacity-building assistance programs. This summary must include the name of the sponsoring organization/source of income, level of funding, description of how the funds have been used, and the budget period. In addition, identify proposed personnel who will conduct the activities of this project and who are supported by other funding sources (include their roles and responsibilities).

b. A summary of the objectives and activities of the funded programs that are described above.

c. An explanation of how funds requested in this application will be used differently or in ways that will expand upon programs that are supported with existing or future funds.

d. An assurance that the requested funds will not duplicate or supplant funds that have been received from any other Federal or non-Federal source. CDC-awarded funds may be used to expand or enhance services supported by other Federal or non-Federal funding sources.

4. Independent audit statements from a certified public accountant for the previous 2 years.

5. A copy of the organization's current negotiated Federal indirect cost rate agreement, if applicable.

PRIORITY AREA 2 ENDS HERE.

Please refer to the following sections of this announcement for additional important information: CDC Activities, Submission and Deadline, Review and Evaluation of Applications, Other Requirements, Authority and Catalog of Federal Domestic Assistance Number, Where to Obtain Additional Information, and Attachments 1–3.

C. Priority Area 3: Strengthening Community Capacity for HIV Prevention

1. Eligibility

An organization funded under Priority Area 3 will provide capacity-building assistance services to a specific community which may be defined by locality, lifestyle, risk behaviors, social or economic circumstances, patterned social interaction, collective identity, or other modes of group identification (e.g., migrant farm workers, soon-to-be- and recently-released incarcerated persons). At a minimum, Priority Area (3) activities must be conducted in two or more States.

An eligible applicant is a national, regional, or local non-profit, nongovernmental organization that meets the following criteria:

a. Has a currently valid Internal Revenue Service (IRS) 501(c)(3) tax-exempt status;

b. Has an executive board or governing body with more than 50 percent of its members belonging to the racial/ethnic minority population(s) to be served;

c. Has more than 50 percent of key management, supervisory, and administrative positions (e.g., executive director, program director, fiscal director) and more than 50 percent of key service provision positions (e.g., technical assistance provider, trainer, curriculum development specialist, group facilitator) in the organization filled by members of the racial/ethnic minority population(s) to be served;

d. Has a documented 3-year record of providing capacity-building assistance (i.e., materials development, training, technical consultation, or technical service) in community engagement and development to CBOs and other community stakeholders serving the target population (i.e., the target population as defined by locality, lifestyle, risk behaviors, social or economic circumstances, patterned social interaction, collective identity, or other modes of group identification); and

e. Has the specific charge from its Articles of Incorporation, Bylaws, or a resolution from its executive board or governing body to operate in multiple States and territories.

f. Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this priority area.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

2. Availability of Funds

Approximately $1.4 million is expected to be available annually to fund approximately seven programs. The maximum annual award will be $200,000. However, in FY2000, CDC expects approximately $700,000 to be available to fund approximately seven programs. The maximum six-month award will be $100,000. It is expected

that the awards will begin in May, 2000. In subsequent years, awards will be made for a 12-month budget period. The total project period will be four years and six months.

Funding estimates may change based on the availability of funds, scope and quality of the applications received, appropriateness and reasonableness of the budget justifications, and proposed use of project funds.

Continuation awards for a new 12-month budget period within an approved project period will be made on the basis of availability of funds and the applicant's satisfactory progress toward achieving stated objectives. Satisfactory progress toward achieving objectives will be determined by required progress reports submitted by the recipient and site visits conducted by CDC representatives. Proof of continued eligibility will be required with all noncompeting continuation applications.

a. Use of Funds

1. Funds available under this announcement must support capacity-building assistance that improves the capacity of CBOs, CCD projects, and other community stakeholders to engage and develop their communities for the purpose of increasing community awareness, leadership, participation, and support for HIV prevention.

2. These federal funds may not supplant or duplicate existing funding.

3. The applicant must perform a substantial portion of the program activities and cannot serve merely as a fiduciary agent. Applications requesting funds to support only managerial and administrative functions will not be accepted.

4. No funds will be provided for direct patient care, including substance abuse treatment, medical treatment, or medications.

5. These federal funds may not be used to support the cost of developing applications for other federal funds.

6. Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's NPIN maintains a collection of HIV, STD, and TB resources for use by organizations and the public. Successful applicants will be contacted by NPIN for information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1–800–458–5231; visit its web site at www.cdcnpin.org; or send requests by fax to 1–888–282–7681 (TTY users: 1–800–243–7012).

b. Funding Preferences

For these awards, preferences for funding will be:

1. Ensuring that capacity-building assistance is available to a variety of target populations in terms of race/ethnicity, gender, risk behavior, and geography; and

2. addressing gaps in current national capacity-building assistance services (gaps may be defined by geography, race/ethnicity, risk behavior, or type of capacity-building assistance). Under CDC Program Announcements 99091, 99095, and 99096, funds were made available for capacity-building assistance related to strengthening community capacity for HIV prevention for African-American community stakeholders, and CBOs that provide services to African American, Latino, Asian/Pacific Islander, and American Indian/Alaska Native gay men; African American communities in general; and the African American faith community.

3. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

a. Program Activities

1. Within the defined community, identify major opinion leaders who can identify high-risk groups in the community, involve these leaders in undertaking a community assessment, and build consensus on actions that are necessary to strengthen HIV prevention within the targeted community.

2. Establish a community board(s) composed of diverse stakeholders (e.g., community leaders in the areas of health, education, public health, religion, business, and politics; representatives of parent groups; leaders of civic organizations) who can identify and adopt a vision of their community and develop a practical, acceptable, and feasible HIV prevention agenda.

3. Develop and implement a plan of action to provide capacity-building assistance to CBOs and CCD project staff and other community stakeholders that enables them to engage and develop their community. This plan of action may include, but is not limited to, community leadership development, communication and resource network development, partnership and coalition building and maintenance, community mobilization strategy development, community resource and needs assessments, community infrastructure development, policy development and analysis, and services integration and linkage development.

These services are to be provided through the use of the following delivery mechanisms: information transfer, skills building, technical consultation, technical services, and technology transfer.

4. Implement a plan for developing and maintaining ongoing capacity-building relationships with CBOs, CCD projects, and other appropriate community stakeholders. The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long term.

5. Implement a system that responds to requests for assistance in mobilizing communities for HIV prevention. This system must include mechanisms for assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas 1, 2, and 4 of this program; delivering services; and conducting quality assurance.

6. Coordinate program activities with appropriate national, regional, State, and local governmental and nongovernmental HIV prevention partners (e.g., health departments, CBOs), capacity-building providers, and CPGs.

Note: For this announcement, the term ''coordinate'' means exchanging information and altering activities for mutual benefit.

7. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

8. Participate in a CDC-coordinated capacity-building network to enhance communication, coordination, collaboration, and training.

b. Quality Assurance

1. Identify the capacity-building needs of your own program and develop and implement a plan to address these needs.

2. Identify the training needs of your staff and develop and implement a plan to address these needs.

3. In collaboration with CDC, develop and implement a standardized system for tracking, assessing, and documenting

all capacity-building assistance requests and delivery.

c. Program Monitoring and Evaluation

1. Conduct process evaluation of your capacity-building assistance activities to determine if your process objectives are being achieved.

2. Monitor the results of capacity-building assistance services to determine what works and what does not work in order to improve the program.

d. Communication and Information Dissemination

1. Implement an effective strategy for marketing the capacity-building assistance available through your proposed program.

2. Facilitate the dissemination of information about successful capacity-building assistance strategies and ''lessons learned'' related to community engagement and development activities through replication packages, peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

e. Resource Development

1. Implement a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement, expand services provided through the proposed program, and enhance the likelihood of its continuation after the end of the project period.

f. Other Activities

Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

4. Application Content

a. General

1. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated on the criteria listed, so it is important to follow the format provided in laying out your program proposal.

2. The narrative should be no more than 40 pages (excluding budget and attachments).

3. Number each page, including appendices and attachments, sequentially and provide a complete Table of Contents to the application and its attachments. Please begin each separate section of the application on a new page.

4. The original and each copy of the application set must be submitted unstapled and unbound.

5. All material must be typewritten; single spaced, with a font of 10 pitch or 12 point on 8½″ by 11″ paper, with at least 1″ margins, headings and footers; and printed on one side only.

6. Materials which should be part of the basic plan will not be accepted if placed in the attachments.

In developing the application, use the following format and instructions:

b. Priority Area (Not scored). Clearly state the Priority Area for which this application is being submitted (i.e., Priority Area 3—Strengthening Community Capacity for HIV Prevention).

c. Target Community (Not scored). What community, as defined by locality, lifestyle, risk behaviors, social or economic circumstances, patterned social interaction, collective identity, or other modes of group identification, will be the focus of the proposed program?

d. Proof of Eligibility. Applicants must complete this section on ''Proof of Eligibility,'' including providing the following documents as appropriate. Failure to provide the required documentation will result in your application being disqualified and returned to you without further review.

1. Does your organization have currently valid 501(c)(3) tax-exempt status?

Note: Attach to this section a copy of the current, valid Internal Revenue Service (IRS) determination letter of your organization's 501(c)(3) tax-exempt status.

2. Does your organization have an executive board or governing body with more than 50 percent of its members belonging to the racial/ethnic minority population(s) to be served?

Note: Attach to this section a complete list of the members of your board or governing body, along with their positions on the board, their race/ethnicity, and their gender.

3. Are more than 50 percent of key management, supervisory, and administrative positions (e.g., executive director, program director, fiscal director) and more than 50 percent of key service provision positions (e.g., technical assistance provider, trainer, curriculum development specialist, group facilitator) in your organization filled by members of the racial/ethnic minority population(s) to be served?

Note: Attach to this section a list of all existing personnel in key positions in your organization, along with their position in the organization, their race/ethnicity, their gender, and their areas of expertise. Also attach a similar list of proposed personnel.

4. Does your organization have a documented 3-year record of providing capacity-building assistance in community engagement and development to CBOs and other community stakeholders serving the target population (i.e., as defined by locality, lifestyle, risk behaviors, social or economic circumstances, patterned social interaction, collective identity, or other modes of group identification)?

Note: Attach to this section a list of such clients, including the name of the organization or other community stakeholder, location (i.e., city and State), dates of service, and type(s) of assistance provided. Also, provide copies of complete documents as evidence of this three year history. Documents can include memoranda of understanding, agreements, or contracts/consultants. This information will also be used in evaluating Organizational History and Experience (Section C.4.k.).

5. Does your organization have the specific charge from its executive board or governing body to operate in multiple States and territories?

Note: Attach to this section a copy of the section of your organization's Articles of Incorporation, Bylaws, or Board Resolution that indicates the organization's charge to operate in multiple States.

6. Is your organization a governmental or municipal agency, an affiliate of a governmental or municipal agency (e.g., health department, school board, public hospital), or a private or public university or college? If so, your organization is not eligible for funding under this priority area.

7. Is your organization included in the category of organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1986? If so, your organization is not eligible for funding under this priority area.

e. Abstract (Not scored). Please provide a brief summary of your proposed program activities, including:

1. a description of the community on which the proposed program will focus;

2. how you will identify opinion leaders in the target community and involve them in undertaking a community assessment;

3. how you will establish a community board to develop an HIV prevention agenda;

4. what specific types of capacity-building assistance will be provided by the program;

5. how you will develop ongoing capacity-building relationships with CBOs and other community stakeholders; and

6. how you will respond to requests for capacity-building assistance.

The abstract should not exceed two pages.

f. Description of Target Community and Justification of Need (100 points; Scoring criteria: Effective use of

epidemiologic, behavioral, socioeconomic, and other data to define the community, its risk for HIV, and its need for community mobilization).

1. What community will be the focus of your proposed community capacity-building program?

Note: The community can be as defined by locality, lifestyle, risk behaviors, social or economic circumstances, patterned social interaction, collective identity, or other modes of group identification [e.g., migrant farm workers, soon-to-be- and recently released incarcerated persons].

2. How and to what extent has this community been affected by the HIV/AIDS epidemic (e.g., HIV incidence or prevalence, AIDS incidence or prevalence, AIDS mortality, socioeconomic effects)?

3. What characteristics of the community contribute to the risk of HIV transmission or present barriers to HIV prevention (e.g., unsafe sexual behaviors as indicated by rates of STDs or teen pregnancy; substance use rates; environmental, social, cultural, or linguistic characteristics)?

4. Why does this community need an increase in awareness, leadership, participation, and support for HIV prevention, and how were these needs identified (e.g., community needs assessments, resource inventories)?

5. Why do CBOs and other community stakeholders need capacity-building assistance with engaging and developing this community for the purpose of increasing community awareness, leadership, participation, and support for HIV prevention, and how were these needs identified (e.g., organizational or community needs assessments, resource inventories)?

g. Program Activities (Total = 350 points; Scoring criteria: likelihood of achieving program goals; soundness of proposed systems; basis in science, theory, concept, or proven program experience; feasibility of the program plan; innovativeness; specificity, feasibility, time phasing, and measurability of stated objectives).

1. Identifying opinion leaders (35 points).

a. How will you identify major opinion leaders within the target community who can identify high-risk groups within the community, and how will you involve these opinion leaders in undertaking a community assessment and building consensus on actions that are necessary to strengthen HIV prevention in the target community?

b. What are your specific process objectives related to these activities during your first year of operation?

Note: Objectives should be specific, realistic, time-phased, and measurable.

2. Establishing a community board(s) (35 points).

a. How will you establish a community board(s) composed of diverse stakeholders (e.g., community leaders in the areas of health, education, public health, religion, business, and politics; representatives of parent groups; and leaders of civic organizations) who can identify and adopt a vision of their community and develop a practical, acceptable, and feasible HIV prevention agenda?

b. In conducting these activities, what are your specific process objectives for your first year of operation?

3. Developing and implementing a capacity-building assistance plan (50 points).

a. How will you develop and implement a plan of action to provide capacity-building assistance to CBO and CCD project staff and other community stakeholders that enables them to engage and develop their community?

b. In what areas of expertise will you provide capacity-building assistance (e.g., community leadership development, communication and resource network development, partnership and coalition building and maintenance, community mobilization strategy development, community resource and needs assessments, community infrastructure development, policy development and analysis, and services integration and linkage development)?

c. In developing and implementing this plan, what are your specific process objectives for your first year of operation?

4. Developing ongoing relationships with CBOs, CCD projects, and other community stakeholders (55 points).

a. How will you develop and maintain ongoing capacity-building relationships with CBOs, CCD projects, and other community stakeholders, including conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long term?

b. In developing these ongoing capacity-building relationships, what are your specific process objectives for your first year of operation?

5. Responding to capacity-building assistance requests (55 points).

a. How will you respond to capacity-building requests (including assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas 1, 2, and 4 of this program; and delivering capacity-building services)?

b. In implementing this strategy or strategies, what are your specific process objectives for your first year of operation?

6. Coordinating with appropriate governmental and nongovernmental HIV prevention partners, capacity-building providers, and community planning groups (35 points).

a. How will you coordinate program activities with appropriate national, regional, State, and local HIV prevention partners (e.g., health departments, CBOs), capacity-building providers, and CPGs (i.e., with what entities will you coordinate activities and what activities will be coordinated)?

7. Incorporating cultural competency into capacity-building activities (50 points).

a. How will you ensure that the capacity-building assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally and educationally appropriate, linguistically specific, and targeted to the needs of organizations serving racial/ethnic minority populations?

8. Management and staffing of the program (35 points).

a. How will the proposed program be managed and staffed?

b. What are the skills and experience of the applicant's program staff?

c. Which activities in your proposed program will be conducted by cooperating or collaborating organizations or subcontractors?

d. In staffing your proposed program and developing cooperative or collaborative relationships with other organizations or subcontractors, what are your specific process objectives for your first year of operation?

9. Time line (Not scored).

a. Provide a time line that identifies major implementation steps in your proposed program and assigns approximate dates for inception and completion of each step.

h. Quality Assurance (125 points; Scoring criteria: completeness, appropriateness, and feasibility of the quality assurance plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you identify the capacity-building assistance needs of your own program and address these needs?

2. How will you identify the training needs of your staff and meet these needs?

3. In implementing these quality assurance plans, what are your specific process objectives for the first year of operation?

Note: Systems for tracking, assessing, and documenting capacity-building assistance

requests and delivery will be developed in collaboration with CDC.

i. Program Monitoring and Evaluation (125 points; Scoring Criteria: completeness, technical soundness, and feasibility of the program monitoring and evaluation plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you conduct process evaluation of your capacity-building activities to determine if the process objectives are being achieved?

2. How will you monitor the results of capacity-building assistance services to determine what works and what does not work in order to improve the program?

3. What data will be collected for evaluation purposes, and how will the data be collected, analyzed, reported, and used to improve the program?

4. Who will be responsible for designing and implementing evaluation activities?

5. In implementing this program evaluation plan, what are your specific process objectives for the first year of operation?

j. Communication and Information Dissemination (75 points; Scoring criteria: completeness, appropriateness, and feasibility of the communication and information dissemination plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you market the capacity-building assistance available through your proposed program?

2. How will you disseminate information about successful capacity-building assistance strategies related to community engagement and development activities for HIV prevention?

3. In implementing this communication and information dissemination plan, what are your specific process objectives for the first year of operation?

k. Resource Development (75 points; Scoring criteria: completeness, appropriateness, and feasibility of the resource development plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you obtain additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement, expand services provided through the proposed program, and enhance the likelihood of its continuation after the end of the project period?

2. In implementing this resource development plan, what are your specific process objectives for the first year of operation?

l. Organizational History and Experience (150 points; Scoring criteria: extent and relevance of applicant organization's experience. Note: Information provided under Proof of Eligibility, Section C.4.d.(4), will also be taken into consideration in scoring this section.)

1. What types of capacity-building assistance does your organization have experience providing (e.g., community leadership development, coalition building), and for how long?

2. With what mechanisms of delivering capacity-building assistance does your organization have experience (e.g., information transfer, skills building, technical consultation, technical services, technology transfer)?

3. What experience does your organization have in providing capacity-building assistance in community capacity-building to CBOs and other community stakeholders working with the community targeted by this program, and for how long?

4. What experience does your organization have in working with community opinion leaders to assess community needs and build consensus on actions necessary to strengthen networks for change in the community?

5. What experience does your organization have in establishing community boards to develop health prevention agendas for a community or communities?

6. What experience does your organization have in developing and maintaining ongoing capacity-building relationships with CBOs or other organizations that provide health or prevention services?

7. What experience does your organization have in responding to capacity-building assistance requests, including assessing and prioritizing requests, linking requests to other capacity-building assistance resources, and delivering capacity-building assistance?

8. What experience does your organization have in coordinating program activities with national, regional, State, and local governmental and nongovernmental HIV prevention programs (e.g., health departments, CBOs), capacity-building providers, and community planning groups?

9. What experience does your organization have in providing capacity-building assistance that responds effectively to the cultural, gender, environmental, social, and linguistic characteristics of CBOs serving the target community? (In answering this question, describe the types of services provided and list any culturally, linguistically, and developmentally appropriate curricula and materials that your organization has developed.)

m. Organizational Structure and Infrastructure (Not scored).

1. What is the structure of your organization, including management, administrative, and program components, and where will the proposed program be located in this structure?

2. What fiscal management systems does your organization have in place and how do they function?

3. What human resources management systems does your organization have in place (including staff recruitment, orientation, training, and support; leadership development; team building; personnel policy development) and how do they function?

4. What quality assurance systems does your organization have in place and how do they function?

5. What information management systems does your organization have in place and how do they function?

6. How does your organization do its strategic planning and develop its program policies and priorities?

n. Budget and Staffing Breakdown and Justification (Not scored). In this application, applicants should provide a 6-month budget for the initial (FY2000) budget period.

1. Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the planned activities and stated objectives. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

2. For each contract or consultant contained within the application budget, describe the type(s) of organizations or parties to be selected and the method of selection; identify the specific contractor(s), if known; describe the services to be performed and justify the use of a third party to perform these services; provide a breakdown of and justification for the estimated costs of the contracts and consultants; specify the period of performance; and describe the methods to be used for monitoring the contract.

3. Provide a job description for each position, specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities that would be funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, his/her name and resume should be attached. Experience and training related to the proposed project should be noted. If the

identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project, provide job descriptions.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

o. Attachments. In addition to the documents required in the Proof of Eligibility section of your application, the following attachments should be included with your application, if relevant:

1. If any activities in your proposed program will be conducted by other cooperating or collaborating organizations, provide a list of all such entities and memoranda of agreement from each as evidence of cooperative or collaborative relationships. Memoranda of agreement should specifically describe the proposed cooperative or collaborative activities. These documents must be submitted annually with each continuation application.

2. A list summarizing services, curricula, and materials that are currently being delivered that are culturally, linguistically, and developmentally appropriate.

3. A description of funding received from CDC or other sources to conduct similar activities that includes:

a. A summary of funds and income received to conduct capacity-building assistance programs. This summary must include the name of the sponsoring organization/source of income, level of funding, description of how the funds have been used, and budget period. In addition, identify proposed personnel who will conduct the activities of this project and who are supported by other funding sources (include their roles and responsibilities);

b. A summary of the objectives and activities of the funded programs that are described above;

c. An explanation of how funds requested in this application will be used differently or in ways that will expand upon programs that are supported with existing or future funds.

d. An assurance that the requested funds will not duplicate or supplant funds that have been received from any other Federal or non-Federal source. CDC awarded funds may be used to expand or enhance services supported by other Federal or non-Federal funding sources.

4. Independent audit statements from a certified public accountant for the previous 2 years.

5. A copy of the organization's current negotiated Federal indirect cost rate agreement, if applicable.

PRIORITY AREA 3 ENDS HERE

Please refer to the following sections of this announcement for additional important information: CDC Activities, Submission and Deadline, Review and Evaluation of Applications, Other Requirements, Authority and Catalog of Federal Domestic Assistance Number, Where to Obtain Additional Information, and Attachments 1–3.

D. Priority Area (4): Strengthening HIV Prevention Community Planning

1. Eligibility

A program funded under Priority Area 4 must provide services in all four of the regions specified in the Purpose section of this announcement and must serve only one of the four major racial/ethnic minority groups: Black/African American, Latino/Hispanic, Asian/Pacific Islander, and American Indian/Alaska Native.

An eligible applicant is a national or regional non-profit, nongovernmental organization proposing to provide assistance to CBOs that serve a specific racial/ethnic minority group in all four regions. Applicants must apply to serve primarily only one of the four major racial/ethnic groups.

The applicant must meet the following criteria:

a. Have a currently valid Internal Revenue Service (IRS) 501(c)(3) tax-exempt status;

b. Have an executive board or governing body with more than 50 percent of its members belonging to the racial/ethnic minority population to be served;

c. Have more than 50 percent of key management, supervisory, and administrative positions (e.g., executive director, program director, fiscal director) and more than 50 percent of key service provision positions (e.g., technical assistance provider, trainer, curriculum development specialist, group facilitator) in the organization filled by members of the racial/ethnic minority population to be served;

d. Have a documented 3-year record of providing capacity-building assistance (i.e., materials development, training, technical consultation, or technical service) in HIV prevention community planning to CBOs serving the target racial/ethnic minority population, CPGs, health departments, and other community stakeholders in multiple States; and

e. Have the specific charge from its Articles of Incorporation, Bylaws, or a resolution from its executive board or governing body to operate regionally or nationally (i.e., multistate/territory) within the United States or its Territories.

f. Governmental or municipal agencies, their affiliate organizations or agencies (e.g., health departments, school boards, public hospitals), and private or public universities and colleges are not eligible for funding under this priority area. However, applicants are encouraged to include private or public universities and colleges as collaborators or subcontractors, when appropriate.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

2. Availability of Funds

Approximately $1.5 million is expected to be available annually to fund four programs, as follows: African American—approximately $825,000; Latino—approximately $425,000; Asian/Pacific Islander—approximately $125,000; and American Indian/Alaska Native—approximately $125,000. However, in FY2000, CDC expects approximately $750,000 to be available to fund four programs, as follows: African American—approximately $412,500; Latino—approximately $212,500; Asian/Pacific Islander—approximately $62,500; and American Indian/Alaska Native—approximately $62,500. It is expected that the awards will begin in May, 2000. In subsequent years, awards will be made for a 12-month budget period. The total project period will be four years and six months.

Funding estimates may change based on the availability of funds, scope and quality of the applications received, appropriateness and reasonableness of the budget justifications, and proposed use of project funds.

Continuation awards for a new 12-month budget period within an approved project period will be made on the basis of availability of funds and the applicant's satisfactory progress toward achieving stated objectives. Satisfactory progress toward achieving objectives will be determined by required progress reports submitted by the recipient and site visits conducted by CDC representatives. Proof of continued eligibility will be required with all noncompeting continuation applications.

a. Use of Funds

1. Funds available under this announcement must support capacity-building assistance that enhances (a) the

capacity of CBOs, CCD projects, and other community stakeholders to effectively participate in and support the HIV prevention community planning process; and (b) the capacity of CPGs and health departments to support and involve racial/ethnic minority participants in the community planning process and increase parity, inclusion, and representation on CPGs.

2. These federal funds may not supplant or duplicate existing funding.

3. The applicant must perform a substantial portion of the program activities and cannot serve merely as a fiduciary agent. Applications requesting funds to support only managerial and administrative functions will not be accepted.

4. No funds will be provided for direct patient care, including substance abuse treatment, medical treatment, or medications.

5. The federal funds may not be used to support the cost of developing applications for other federal funds.

6. Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

CDC's NPIN maintains a collection of HIV, STD, and TB resources for use by organizations and the public. Successful applicants will be contacted by NPIN for information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1–800-458–5231; visit its web site at www.cdcnpin.org; or send requests by fax to 1–888–282–7681 (TTY users: 1–800–243–7012).

b. Funding Preferences

For these awards, preferences for funding will be:

1. ensuring that capacity-building assistance is available for all four regions and all four major racial/ethnic minority groups;

2. ensuring that funding for capacity-building assistance is distributed in proportion to the HIV/AIDS disease burden in the four major racial/ethnic minority populations and the number of CDC-funded CBOs and CCD projects serving each of the four minority groups in each region; and

3. addressing gaps in current national capacity-building assistance services (gaps may be defined by geography, race/ethnicity, risk behavior, or type of capacity-building assistance). Under CDC Program Announcements 99091, 99095, and 99096, funds were made available for capacity-building assistance related to strengthening HIV prevention community planning for CBOs that provide services to African American, Latino, Asian/Pacific Islander, and American Indian/Alaska Native gay men; African American communities in general; and the African American faith community.

3. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

a. Program Activities

1. Include CBOs, CCD projects, other community stakeholders, CPGs, health departments, and other potential consumers of the proposed services in planning and evaluating the proposed capacity-building assistance program.

2. Develop action plans for each region to provide capacity-building assistance to CDC-funded CBOs and CCD projects that will increase their knowledge about and skill and involvement in HIV prevention community planning. Other CBOs, CCD projects, and other community stakeholders can be included in the regional action plans if resources are sufficient for expanded services.

3. Through participation in CDC's HIV prevention community planning technical assistance network, provide capacity-building assistance to CPGs and health departments to improve the parity, inclusion, and representation of racial/ethnic minority populations in State and local HIV prevention community planning groups.

4. Create and support four regionally-based capacity-building resource networks to use in delivering the capacity-building assistance described in items (2) and (3), above. These networks can include the applicant's current and proposed staff and other subject matter experts (e.g., consultants, researchers, academicians). They should complement, not duplicate, resources available through CDC's community planning technical assistance network. Emphasize the use of locally based consultants and experts. Support services for the resource networks include, but are not limited to, developing training materials, diffusion of best program practices and intervention models, and conducting orientation and training for consultants to help them deliver effective and efficient services that follow relevant, available national standards of practice and are in accordance with CDC's standards and expectations for conducting effective community planning and HIV prevention services.

5. Ensure the effective and efficient provision of capacity-building assistance to CBOs, CCD projects, and other community stakeholders to increase their knowledge about and skill and involvement in community planning. Examples include, but are not limited to, leadership development, understanding the community planning guidance and process, use of data for decision-making, use of prioritization strategies, public speaking and persuasion, parliamentary procedures and meeting processes, group and meeting facilitation, and learning about public health delivery systems.

Ensure the effective and efficient provision of capacity-building assistance to CPGs and health departments to improve parity, inclusion, and representation in the community planning process. Examples include, but are not limited to, conflict management, increasing cultural sensitivity, consensus building, nomination and selection of new members, recruitment and orientation of members, methods for reaching under served and marginalized populations, and planning culturally and linguistically appropriate activities.

These services are to be provided through information transfer, skills building, technical consultation, technical services, and technology transfer.

6. Implement a plan for developing and maintaining ongoing capacity-building relationships with CDC-funded CBOs and CCD projects serving the target racial/ethnic minority population and with CPGs and health departments (see Attachment 4). The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long term. This plan must be shared with the appropriate health departments and CPGs. Other CBOs, CCD projects, and other community stakeholders can be included if resources are sufficient for expanded services.

7. Implement a system that responds to requests for capacity-building assistance in strengthening HIV prevention community planning. CDC-funded CBOs and CCD projects, CPGs, and health departments must receive

the highest priority. This system must include mechanisms for assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas 1, 2, and 3 of this program; delivering services; and conducting quality assurance.

8. Identify and complement the capacity-building resources available locally. Cooperate with other national, regional, State, and local capacity-building providers to (a) avoid duplication of effort and (b) ensure that capacity-building assistance is allocated according to gaps in available services and the needs of CBOs, CCD projects, other community stakeholders, CPGs, and health departments for assistance with community planning participation and effectiveness.

Note: For this announcement, the term ''cooperate'' means exchanging information, altering activities, and sharing resources with other organizations for mutual benefit.

9. Coordinate program activities with appropriate national, regional, State, and local governmental and nongovernmental HIV prevention partners (e.g., health departments, CBOs) and CPGs.

Note: For this announcement, the term ''coordinate'' means exchanging information and altering activities for mutual benefit.

10. Incorporate cultural competency and linguistic and educational appropriateness into all capacity-building activities.

11. Participate as an integral member of CDC's HIV prevention community planning technical assistance network.

12. Participate in a CDC-coordinated capacity-building network to enhance communication, coordination, collaboration, and training.

b. Quality Assurance

1. Identify the capacity-building needs of your own program (including your organization and other member organizations in the coalition) and develop and implement a plan to address these needs.

2. Identify the training needs of your staff and develop and implement a plan to address these needs.

3. In collaboration with CDC, develop and implement a standardized system for tracking, assessing, and documenting all capacity-building assistance requests and delivery.

c. Program Monitoring and Evaluation

1. Conduct process evaluation of your capacity-building assistance activities to determine if your process objectives are being achieved.

2. Monitor the results of capacity-building assistance services to determine what works and what does not work in order to improve the program.

d. Communication and Information Dissemination

1. Implement an effective strategy for marketing the capacity-building assistance available through your proposed program.

2. Facilitate the dissemination of information about successful capacity-building assistance strategies and ''lessons learned'' through replication packages, peer-to-peer interactions, meetings, workshops, conferences, and communications with CDC project officers.

e. Resource Development. Implement a strategy for obtaining additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement, expand services provided through the proposed program, and enhance the likelihood of its continuation after the end of the project period.

f. Other Activities. Adhere to CDC policies for securing approval for CDC sponsorship of conferences.

4. Application Content

a. General

1. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan so it is important to follow the format provided in laying out your program proposal.

2. The narrative should be no more than 40 pages (excluding budget and attachments).

3. Number each page, including appendices and attachments, sequentially and provide a complete Table of Contents to the application and its attachments. Please begin each separate section of the application on a new page.

4. The original and each copy of the application set must be submitted unstapled and unbound.

5. All material must be typewritten; single spaced, with a font of 10 pitch or 12 point on 8½'' by 11'' paper, with at least 1'' margins, headings and footers; and printed on one side only.

6. Materials which should be part of the basic plan will not be accepted if placed in the attachments.

In developing the application, use the following format and instructions:

b. Priority Area (Not scored). Clearly state the Priority Area for which this application is being submitted (*i.e.,* Priority Area 4—Strengthening HIV Prevention Community Planning.

c. Population to be Served (Not scored). Which racial/ethnic minority group will be the primary focus of the proposed program?

d. Proof of Eligibility. Applicants must complete this section on ''Proof of Eligibility,'' including providing the following documents as appropriate. Failure to provide the required documentation will result in your application being disqualified and returned to you without further review. Please answer the following questions and provide the requested documents for the applicant:

1. Is the organization a national organization or is it a regional organization?

2. Does the organization have currently valid 501(c)(3) tax-exempt status?

Note: Attach to this section a copy of the current, valid Internal Revenue Service (IRS) determination letter of the organization's 501(c)(3) tax-exempt status.

3. Does the organization have an executive board or governing body with more than 50 percent of its members belonging to the racial/ethnic minority population to be served?

Note: Attach to this section a complete list of the members of the executive board or governing body, along with their positions on the board, their race/ethnicity, and their gender.

4. Are more than 50 percent of key management, supervisory, and administrative positions (e.g., executive director, program director, fiscal director) and more than 50 percent of key service provision positions (e.g., technical assistance provider, trainer, curriculum development specialist, group facilitator) in the organization filled by persons from the racial/ethnic minority population to be served?

Note: Attach to this section a list of all existing personnel in key positions in the organization, along with their position in the organization, their race/ethnicity, their gender, and their area(s) of expertise. Also attach a similar list of proposed personnel.

5. Does the organization have a documented 3-year record of providing capacity-building assistance in HIV prevention community planning to CBOs serving the target racial/ethnic minority population, other community stakeholders, CPGs, and health departments in multiple States?

Note: Attach to this section a list of such clients, including the organization name, location (i.e., city and State), dates of service, and type(s) of assistance provided. Also, provide copies of complete documents as

evidence of this three year history. Documents can include memoranda of understanding, agreements, or contracts/consultants. This information will also be used in evaluating Organizational History and Experience (Section D.4.k.).

6. Does the organization have the specific charge from its executive board or governing body to operate regionally or nationally (i.e., multistate/territory) within the United States and its Territories?

Note: Attach to this section a copy of the section of the organization's Articles of Incorporation, Bylaws, or Board Resolution that indicates the organization's charge to operate regionally or nationally.

7. Is the organization a governmental or municipal agency, an affiliate of a governmental or municipal agency (e.g., health department, school board, public hospital), or a private or public university or college? If so, the organization is not eligible for funding under this priority area.

8. Is the organization included in the category of organizations that engage in lobbying activities, as described in section 501(c)(4) of the Internal Revenue Code of 1986? If so, the organization is not eligible for funding under this priority area.

e. Abstract (Not scored). Please provide a brief summary of your proposed program activities, including:

1. Which racial/ethnic minority group will be the focus of the proposed program;

2. How the program will be regionally structured;

3. What specific types of capacity-building assistance will be provided by the program (including members of the applicant's current and proposed staff, consultants, researchers, academicians, and other subject matter experts);

4. How you will develop ongoing capacity-building relationships with CBOs, CCD projects, other community stakeholders, CPGs, and health departments; and

5. How you will respond to requests for a wide variety of capacity-building assistance.

The abstract should not exceed two pages.

f. Program Activities (Total = 400 points; Scoring criteria: likelihood of achieving program goals; soundness of proposed systems; basis in science, theory, concept, or proven program experience; feasibility of the program plan; innovativeness; specificity, feasibility, time phasing, and measurability of stated objectives)

1. Including potential consumers of services in program planning (30 points)

a. How will CBOs, CCD projects, other community stakeholders, CPGs, and health departments be involved in planning and evaluating your proposed capacity-building assistance program?

b. For your first year of operation, what are your specific process objectives related to obtaining this input?

Note: Objectives should be specific, realistic, time-phased, and measurable.

2. Developing regional action plans (45 points).

a. How will you develop regional action plans to provide capacity-building assistance to CDC-funded CBOs and CCD projects and other community stakeholders to increase their knowledge about and skills and involvement in HIV prevention community planning?

b. In developing these action plans, what are your specific process objectives for your first year of operation?

3. Creating and supporting resource networks (45 points).

a. How will you create regionally-based resource networks that include the applicant and coalition members' current and proposed staff, researchers, academicians, consultants, and other subject matter experts?

b. How will these networks be structured and how will the consultants and other subject matter experts be used to meet regional needs and allow local delivery of capacity-building services?

c. How will you ensure that these networks complement, not duplicate, resources available through CDC's community planning technical assistance network?

d. How will you support these resource networks (e.g., developing training materials, diffusion of best program practices and intervention models, and conducting orientation and training for consultants to assist them in delivering effective and efficient services that follow national standards of practice and complement CDC's standards and expectations for conducting HIV educational programs and interventions)?

e. In developing these resource networks, what are your specific process objectives for your first year of operation?

4. Ensuring effective provision of capacity-building assistance (45 points).

a. What specific types of capacity-building assistance will the proposed program (including the applicant's and coalition members' current and proposed staff, consultants, researchers, academicians, and other subject matter experts) provide to CBOs, CCD projects, and other community stakeholders to increase their knowledge about and skill and involvement in community planning (e.g., leadership development, understanding the community planning guidance and process, use of data for decision-making, use of prioritization strategies, public speaking and persuasion, parliamentary procedures and meeting processes, group and meeting facilitation, and learning about public health delivery systems)?

b. What specific types of capacity-building assistance will the proposed program provide to CPGs and health departments to improve parity, inclusion, and representation in the community planning process (e.g., conflict management, increasing cultural sensitivity, consensus building, nomination and selection of new members, recruitment and orientation of members, methods for reaching under served and marginalized populations, and planning culturally and linguistically appropriate activities)?

c. How will you ensure that this assistance is provided effectively and efficiently?

5. Developing ongoing relationships with CDC-funded CBOs and CCD projects (40 points).

a. How will you develop and maintain ongoing capacity-building relationships with CDC-funded CBOs and CCD projects, including conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long term?

b. In developing these ongoing capacity-building relationships, what are your specific process objectives for your first year of operation?

6. Responding to capacity-building assistance requests (45 points).

a. How will you respond to capacity-building requests (including assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas 1, 2, and 3 of this program; and delivering capacity-building services)?

b. In implementing this strategy or strategies, what are your specific process objectives for your first year of operation?

7. Identifying and complementing other capacity-building efforts (40 points).

a. How will you identify and complement other capacity-building efforts available locally and cooperate with other national, regional, State, and local capacity-building providers to avoid duplication of effort and ensure that capacity-building assistance is allocated according to gaps in available services and the needs of CBOs, CCD projects, other community stakeholders, CPGs, and health departments for

assistance with community planning participation and effectiveness (i.e., with what entities will you cooperate and what will each bring to the cooperative relationship)?

b. In identifying and complementing other capacity-building efforts and developing cooperative relationships with other capacity-building providers, what are your specific process objectives for your first year of operation?

8. Coordinating with appropriate governmental and nongovernmental HIV prevention partners and community planning groups (40 points).How will you coordinate program activities with appropriate national, regional, State, and local HIV prevention partners (e.g., health departments, CBOs) and CPGs (i.e., with what entities will you coordinate activities and what activities will be coordinated)?

9. Incorporating cultural competency into capacity-building activities (40 points). How will you ensure that the capacity-building assistance provided will be culturally competent, sensitive to issues of sexual and gender identity, developmentally and educationally appropriate, linguistically specific, and targeted to the needs of organizations serving the target racial/ethnic minority population?

10. Management and staffing of the program (30 points).

a. How will the proposed program be managed and staffed?

b. What are the skills and experience of the applicant's program staff?

c. Which activities in your proposed program will be conducted by coalition members and which will be conducted by other cooperating organizations?

d. In staffing your proposed program and developing cooperative relationships with other organizations, what are your specific process objectives for your first year of operation?

11. Time line (Not scored).

a. Provide a time line that identifies major implementation steps in your proposed program and assigns approximate dates for inception and completion of each step.

g. Quality Assurance (150 points; Scoring criteria: completeness, appropriateness, and feasibility of the quality assurance plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you identify the capacity-building assistance needs of your own program and address these needs?

2. How will you identify the training needs of your staff and meet these needs?

3. In implementing these quality assurance plans, what are your specific process objectives for the first year of operation?

Note: Systems for tracking, assessing, and documenting capacity-building assistance requests and delivery will be developed in collaboration with CDC.

h. Program Monitoring and Evaluation (150 points; Scoring Criteria: completeness, technical soundness, and feasibility of the program monitoring and evaluation plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you conduct process evaluation of your capacity-building activities to determine if the process objectives are being achieved?

2. How will you monitor the results of capacity-building assistance services to determine what works and what does not work in order to improve the program?

3. What data will be collected for evaluation purposes, and how will the data be collected, analyzed, reported, and used to improve the program?

4. Who will be responsible for designing and implementing evaluation activities?

5. In implementing this program evaluation plan, what are your specific process objectives for the first year of operation?

i. Communication and Information Dissemination (75 points; Scoring criteria: completeness, appropriateness, and feasibility of the communication and information dissemination plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you market the capacity-building assistance available through your proposed program?

2. How will you disseminate information about successful capacity-building assistance strategies and ''lessons learned''?

3. In implementing this communication and information dissemination plan, what are your specific process objectives for the first year of operation?

j. Resource Development (75 points; Scoring criteria: completeness, appropriateness, and feasibility of the resource development plan; specificity, feasibility, time phasing, and measurability of stated objectives).

1. How will you obtain additional resources from non-CDC sources to supplement the program conducted through this cooperative agreement, expand services provided through the proposed program, and enhance the likelihood of its continuation after the end of the project period?

2. In implementing this resource development plan, what are your specific process objectives for the first year of operation?

k. Organizational History and Experience (150 points; Scoring criteria: extent and relevance of applicant organization's experience. Note: Information provided under *Proof of Eligibility*, Section D.4.d.(6), will also be taken into consideration in scoring this section.)

Please address all questions.

1. What types of capacity-building assistance does the organization have experience providing (e.g., conflict management; use of prioritization strategies; increasing parity, inclusion, and representation in community planning), and for how long?

2. With what mechanisms of delivering capacity-building assistance does the organization have experience (e.g., information transfer, skills building, technical consultation, technical services, technology transfer)?

3. What experience does the organization have in providing capacity-building assistance in HIV prevention community planning effectiveness and participation to CPGs, health departments, CBOs serving the target racial/ethnic minority population, CCD projects, and other community stakeholders, and for how long?

4. What experience does the organization have in developing and using resource or consultant networks to provide capacity-building assistance and in supporting such networks (e.g., developing training materials and conducting orientation for consultants)?

5. What experience does the organization have in developing and maintaining ongoing capacity-building relationships with CPGs, health departments, CBOs, CCD projects, or other community stakeholders involved in the planning of community health or prevention services?

6. What experience does the organization have in responding to capacity-building assistance requests, including assessing and prioritizing requests, linking requests to other capacity-building assistance resources, and delivering capacity-building assistance?

7. What experience does the organization have in establishing and maintaining cooperative relationships with other capacity-building providers?

8. What experience does the organization have in coordinating program activities with national, regional, State, and local governmental and nongovernmental HIV prevention programs (e.g., health departments, CBOs) and CPGs?

9. What experience does the organization have in providing capacity-building assistance that responds effectively to the cultural, gender, environmental, social, and linguistic characteristics of CBOs serving multiple racial/ethnic minority populations? (In answering this question, describe the types of services provided and list any culturally, linguistically, and developmentally appropriate curricula and materials that your organization has developed.)

l. Organizational Structure and Infrastructure (Not scored).

Please address all questions.

1. What is the structure of the organization, including management, administrative, and program components, and where will the proposed program be located in this structure?

2. What fiscal management systems does the organization have in place and how do they function?

3. What human resources management systems does the organization have in place (including staff recruitment, orientation, training, and support; leadership development; team building; personnel policy development) and how do they function?

4. What quality assurance systems does the organization have in place and how do they function?

5. What information management systems does the organization have in place and how do they function?

6. How does the organization do its strategic planning and develop its program policies and priorities?

m. Budget and Staffing Breakdown and Justification (Not scored).

In this application, applicants should provide a 6-month budget for the initial (FY2000) budget period.

1. Provide a detailed budget for each proposed activity. Justify all operating expenses in relation to the planned activities and stated objectives. CDC may not approve or fund all proposed activities. Be precise about the program purpose of each budget item and itemize calculations wherever appropriate.

2. For each contract or consultant contained within the application budget, describe the type(s) of organizations or parties to be selected and the method of selection; identify the specific contractor(s), if known; describe the services to be performed and justify the use of a third party to perform these services; provide a breakdown of and justification for the estimated costs of the contracts and consultants; specify the period of performance; and describe the methods to be used for monitoring the contract.

3. Provide a job description for each position, specifying job title; function, general duties, and activities; salary range or rate of pay; and the level of effort and percentage of time spent on activities that would be funded through this cooperative agreement. If the identity of any key personnel who will fill a position is known, his/her name and resume should be attached. Experience and training related to the proposed project should be noted. If the identity of staff is not known, describe your recruitment plan. If volunteers are involved in the project, provide job descriptions.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

n. Attachments. In addition to the documents required in the Proof of Eligibility section of your application, the following attachments should be included with your application, if relevant:

1. A list of all organizations with which you will cooperate to avoid duplication of effort and ensure that gaps in capacity-building assistance services are addressed. Include memoranda of agreement from each as evidence of cooperative relationships. Memoranda of agreement should specifically describe the proposed cooperative activities. These documents must be submitted annually with each continuation application.

2. A list summarizing services, curricula, and materials that are currently being delivered that are culturally, linguistically, and developmentally appropriate.

3. A description of funding received from CDC or other sources to conduct similar activities that includes:

a. A summary of funds and income received to conduct capacity-building assistance programs. This summary must include the name of the sponsoring organization/source of income, level of funding, description of how the funds have been used, and budget period. In addition, identify proposed personnel who will conduct the activities of this project and who are supported by other funding sources (include their roles and responsibilities);

b. A summary of the objectives and activities of the funded programs that are described above;

c. An explanation of how funds requested in this application will be used differently or in ways that will expand upon programs that are supported with existing or future funds.

d. An assurance that the requested funds will not duplicate or supplant funds that have been received from any other Federal or non-Federal source. CDC awarded funds may be used to expand or enhance services supported by other Federal or non-Federal funding sources.

4. Independent audit statements from a certified public accountant for the previous 2 years.

5. A copy of the organization's current negotiated Federal indirect cost rate agreement, if applicable.

PRIORITY AREA 4 ENDS HERE.

Please refer to the following sections of this announcement for additional important information: CDC Activities, Submission and Deadline, Review and Evaluation of Applications Other Requirements, Authority and Catalog of Federal Domestic Assistance Number, Where to Obtain Additional Information, and Attachments 1–3.

CDC Activities

To support this program, the CDC will undertake the following activities:

A. Serve as the coordinator for CDC's capacity-building programs, which will include organizations providing capacity-building assistance under this program announcement.

B. Provide consultation to recipients regarding planning, developing, implementing and evaluating capacity-building services. CDC will provide consultation and assistance and may also employ contractors; national, regional, and local organizations; and peer-to-peer assistance from CDC-funded partners.

C. Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and program strategies for the prevention of HIV infection. Work closely with recipients to identify interventions that have a sound basis in science or proven program experience and are suitable for dissemination.

D. Facilitate and promote collaboration through the exchange of program information, coalition maintenance strategies, and technical assistance among CBOs; State and local health departments; HIV prevention community planning groups; national, regional, and local organizations; and other HIV prevention partners.

E. Support train-the-trainer opportunities that enhance capacity-building assistance delivery systems.

F. Facilitate and collaborate in the dissemination of successful capacity-building strategies and successful innovations through meetings of grantees, workshops, and conferences.

G. Collaborate with recipients to standardize a system for tracking and

reporting all capacity-building assistance requests and delivery.

H. Monitor the performance of program activities, protection of client confidentiality, and compliance with federally mandated requirements.

I. Coordinate an evaluation of the overall capacity-building assistance program.

Submission and Deadline

Submit the original and two copies of PHS 5161 (OMB Number 0937-0189). Forms are available in the application kit or at the following Internet address: www.cdc.gov/od/pgo/funding/grantmain.htm or in the application kit. On or before February 24, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for submission to the Independent Review Group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications

Applications that do not meet the criteria in (A) or (B) above are considered late applications, will not be considered for review, and will be returned to the applicant.

Evaluation Criteria

Each application will be evaluated individually by an independent review group appointed by CDC. Applications will be rated according to the quality of responses to the questions listed in the Application Content section of this announcement and the quality of the stated process objectives. The criteria against which the questions will be rated and the number of points allocated to each component of the application (e.g., program activities, program evaluation plan) also are indicated in the Application Content section.

Site visits by CDC staff may be conducted before final funding decisions are made. A fiscal Recipient Capability Assessment (RCA) may be required of some applicants before funds are awarded.

Other Requirements

A. If funded, the applicant will be required to provide CDC with the original plus two copies of:

1. Progress reports (quarterly);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

B. The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–7 Executive Order 12372 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2010
AR98–12 Lobbying Restrictions
AR98–14 Accounting System Requirements

Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 301(a)[42 U.S.C. 241(a)], 317(k)(2) [42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance Number is 93.939.

Where To Obtain Additional Information

To receive additional written information and to request an application and tool kit, call NPIN at 1–800–458–5231 (TTY users: 1–800–243–7012); visit its Web site at http://www.cdcnpin.org/; send requests by fax to 1–888–282–7681; or send requests by e-mail: application-CBA@cdcnpin.org. This information also is posted on the Division of HIV/AIDS Prevention (DHAP)Web site at http://www.cdc.gov/nchstp/hiv__aids/funding/toolkit/; or http://www.cdc.gov/nchstp/hiv__aids/funding.htm

CDC maintains a Listserv (HIV–PREV) related to this program announcement. By subscribing to the HIV–PREV Listserv, members can submit questions and will receive information via e-mail with the latest news regarding the program announcement. Frequently asked questions on the Listserv will be posted to the Web site. You can subscribe to the Listserv on-line or via e-mail by sending a message to listserv@listserv.cdc.gov and writing the following in the body of the message: subscribe hiv-prev first name last name.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Maggie S. Warren, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 00003, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146; Telephone (770) 488–2736, E-mail: mcs9@cdc.gov

For program technical assistance, contact: Samuel Taveras or Carrie Salone, Community Assistance, Planning, and National Partnerships Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mail-stop E–58, Atlanta, GA 30333; Telephone (404) 639–5230, E-mail address: syta@cdc.gov

Dated: December 17, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–394 Filed 1–6–00; 8:45 am]

BILLING CODE 4163–18–P

Federal Register

Friday
January 7, 2000

Part V

Office of Management and Budget

Draft Report to Congress on the Costs and Benefits of Federal Regulations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Draft Report to Congress on the Costs and Benefits of Federal Regulations

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Request for comment on draft report on the costs and benefits of federal regulations.

SUMMARY: OMB requests public comment on its Draft Report to Congress on the Costs and Benefits of Federal Regulations (1999). It will submit its final version of the report in February, as required by section 638(a) of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act.

DATES: To ensure consideration of comments as OMB prepares its final report for submission to Congress in February 2000, please submit all comments to OMB so that they are received no later than January 21, 2000.

ADDRESSES: Please address all comments on the Draft Report to John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW, Washington, DC 20503.

You may submit comments by regular mail, by facsimile to (202) 395–6974, or by electronic mail to *jmorrall@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You can review the Report on the Internet at: ''http://www.whitehouse.gov/omb/inforeg/index.html''. You may also request a copy from John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget, NEOB, Room 10235, 725 17th Street, NW, Washington, DC 20503. Telephone: (202) 395–7316. E-mail: jmorrall@omb.eop.gov.

SUPPLEMENTARY INFORMATION: The Draft Report has four chapters. Chapter I presents OMB's estimates of total annual costs and benefits of Federal regulation and paperwork in the aggregate, by agency, and by agency program. It presents an analysis of the impact of Federal regulation on State, local, and tribal government, small business, wages, and economic growth. It also presents estimates of the costs and benefits by agency of the major final regulations issued between April 1, 1995 and March 31, 1999 for which OMB could quantify and monetize impacts. Chapter II uses agency regulatory impact analyses to present quantitative estimates and qualitative descriptions of the benefits and costs of the 44 major rules issued by Federal agencies for which OMB concluded review during the 12-month period between April 1, 1998 and March 31, 1999. This ''regulatory year'' is the same period OMB used for the first two reports. Chapter III presents OMB's estimates of the costs and benefits of major Federal regulations for which we concluded review during the period April 1, 1995 to March 31, 1999. We included only the regulations for which OMB had quantitative information on both costs and benefits. For these regulations, we applied a uniform format and standardized measures of costs and benefits to produce estimates that could be more readily compared to each other. This information is used in our aggregate and by-agency estimates of the total annual costs and benefits of Federal regulation in Chapter I. Chapter IV presents ten recommendations for reform of specific Federal regulations.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 00–574 Filed 1–6–00; 12:15 pm]

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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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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.