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WHEN: September 13, 2000, at 9:00 a.m.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–009–2]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pink bollworm regulations by removing the previously regulated area in Poinsett County, AR, from the list of suppressive areas for pink bollworm and by removing Arkansas from the list of States quarantined because of the pink bollworm. We took that action because trapping surveys showed that the pink bollworm no longer exists in this area, which was the only area in the State regulated because of pink bollworm. The interim rule relieved unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

EFFECTIVE DATE: The interim rule became effective on March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Grefenstette, Assistant Director, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 138, Riverdale, MD 20737–1236; (301) 734–8676.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on March 2, 2000 (65 FR 11203–11204, Docket No. 00–009–1), we amended the pink bollworm regulations in 7 CFR part 301 by removing the previously regulated area in Poinsett County, AR, from the list of suppressive areas for pink bollworm. We also removed Arkansas from the list of States quarantined because of the pink bollworm.

Comments on the interim rule were required to be received on or before May 1, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

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

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by removing the previously regulated area in Poinsett County, AR, from the list of suppressive areas for pink bollworm and by removing Arkansas from the list of States quarantined because of the pink bollworm. We took that action because trapping surveys showed that the pink bollworm no longer exists in this area, which was the only area in the State regulated because of pink bollworm. The interim rule relieved unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

Entities affected by this rule could be cotton and cottonseed farms, cotton harvesting businesses, cotton gins, cottonseed oil mills, and wholesale cotton merchants operating in the previously regulated area. Affected gins and growers no longer need to acquire a certificate or permit to move their cotton or cottonseed from the area. Other items that no longer require certificates or permits before movement include bags, harvesting equipment, cotton refuse, trucks, and trailers.

In 1997, when the area of Poinsett County affected by this rulemaking was listed as a suppressive area for pink bollworm, we determined that there were 4 cotton growers in the area who produced about 1,880 bales of cotton and 750 tons of cottonseed in 1995. Additionally, one cotton gin, two equipment companies, two transport companies, and one oil mill were identified as potentially affected small entities in the regulated area. In all cases, the economic effect of regulating the area was expected to be minimal because of the availability of treatments.

Affected entities are likely to receive some small benefit from our removing restrictions related to pink bollworm. From 1997 to 1999, the average price of cotton was about $296 per bale. The treatment cost for pink bollworm in 1997 ranged from $.64 to $2.47 per bale of cotton. Even if the average treatment price of $2.06 per bale had increased by 40 percent in the last 3 years, it would still represent less than 1 percent of the price of cotton. Similarly, for cottonseed, if the average 1997 treatment price of $.135 per bushel had increased by 20 percent in the last 3 years, it would still represent only about 1 percent of the price of cottonseed. The 10 affected entities in Poinsett County do not represent a substantial number of small entities given the tens of thousands of cotton producers and related businesses operating in the United States. Further, any economic effect of the rule on these entities is expected to be insignificant, given that the treatment costs are less than 1 percent of the value of the cotton and the cottonseed, and positive.

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 11203–11204 on March 2, 2000.

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 31st day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–22965 Filed 9–6–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–53–AD; Amendment 39–11887; AD 2000–18–02]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models A65, A65–8200, 65–B80, 70, 95–A55, 95–B55, 95–C55, D55, E55, 56TC, A56TC, 58, 58P, 58TC, and 95–B55B (T42A) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models A65, A65–8200, 65–B80, 70, 95–A55, 95–B55, 95–C55, D55, E55, 56TC, A56TC, 58, 58P, 58TC, 95–B55B (T42A) airplanes. This AD requires replacement of certain elevator skin assemblies that Raytheon shipped from January 1, 1999, through December 31, 1999, and prevents the future installation of these elevator skin assemblies. This AD authorizes the pilot to check the logbooks to determine whether one of these elevator skin assemblies is installed. This AD is the result of reports that certain elevator skin assemblies did not receive a 250-degree Fahrenheit bake operation after corrosion treatment, thus making the skin susceptible to separation from the elevator assembly. The actions specified by this AD are intended to detect and correct potential elevator skin separation, which would lead to a reduction in static strength capability with continued operation. This could then result in potential airplane flutter with consequent loss of control of the airplane.

DATES: This AD becomes effective on September 22, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of September 22, 2000.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before October 27, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–53–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–53–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (314) 946–4123; facsimile: (314) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received a report that certain Raytheon elevator assemblies did not receive a 250-degree Fahrenheit bake operation after corrosion treatment as defined in the manufacturing specification. The elevator assemblies in question were manufactured between January 1, 1999, and December 31, 1999, and could be installed on the following Raytheon Model Beech airplanes:

Model	Serial Nos.
A65	LC–265 through LC–272 and LC–325 through LC–335.
A65–8200	LC–273 through LC–324.
65–B80	LD–349 through LD–511.
70	LB–1 through LB–35.
95–A55	TC–191 through TC–349, TC–351 through TC–370, and TC–372 through TC–501.
95–B55	TC–371 and TC–502 through TC–2406.
95–C55	TC–350, TE–1 through TE–49, and TE–51 through TE–451.
D55	TE–452 through TE–767.
E55	TE–768 through TE–1201.
56TC	TG–2 through TG–83.
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58	TH–1 through TH–1930.
58P	TJ–3 through TJ–435 and TJ–437. through TJ–443.
58TC	TK–1 through TK–150.
95–B55B (T42–A)	TF–1 through TF–70.

The omission of this bake operation affects the strength of the adhesive bond. This could cause the skin to separate from the elevator assembly.

What are the consequences if the condition is not corrected? Continued airplane operation after elevator skin separation would result in reduced static strength capability. This could then result in potential airplane flutter with consequent loss of control of the airplane.

Relevant Service Information

Is there service information that applies to this subject? Raytheon has issued Mandatory Service Bulletin SB 27–3396, Rev. 1, Revised: June, 2000.

What are the provisions of this service bulletin? This service bulletin includes procedures for:

- Determining whether one of the affected elevator assemblies is installed;
- Accomplishing a tap test to determine the elevator skin bond integrity; and
- Replacing any elevator assembly that Raytheon delivered between January 1, 1999, and December 31, 1999.

The FAA's Determination and an Explanation of the Provisions of the AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, FAA has determined that:

• An unsafe condition exists or could develop on certain Raytheon Models A65, A65–8200, 65–B80, 70, 95–A55, 95–B55, 95–C55, D55, E55, 56TC, A56TC, 58, 58P, 58TC, and 95–B55B (T42A) airplanes of the same type design;

• The actions and procedures in the previously referenced service bulletin should be incorporated on these airplanes; and

• AD action should be taken in order to detect and correct potential elevator skin separation, which would lead to a reduction in static strength capability with continued operation. This could then result in potential airplane flutter with consequent loss of control of the airplane.

What does this AD require? This AD requires replacement of certain elevator skin assemblies that Raytheon shipped from January 1, 1999, through December 31, 1999, and prevents the future installation of these elevator skin assemblies. This AD authorizes the pilot to check the logbooks to determine whether one of these elevator skin assemblies is installed.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in airplane flutter with consequent loss of control of the airplane, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, we invite your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of the AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

The FAA is reviewing the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–53–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does this AD impact relations between Federal and State governments? These regulations 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, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–18–02 Raytheon Aircraft Company: Amendment 39–11887; Docket No. 2000–CE–53–AD.

(a) *What airplanes are affected by this AD?* The following model airplanes and serial numbers, certificated in any category:

Model	Serial Nos.
A65	LC–265 through LC–272 and LC–325 through LC–335.
A65–8200	LC–273 through LC–324.
65–B80	LD–349 through LD–511.
70	LB–1 through LB–35.
95–A55	TC–191 through TC–349, TC–351 through TC–370, and TC–372 through TC–501.
95–B55	TC–371 and TC–502 through TC–2406.
95–C55	TC–350, TE–1 through TE–49, and TE–51 through TE–451.
D55	TE–452 through TE–767.
E55	TE–768 through TE–1201.
56TC	TG–2 through TG–83.
A56TC	TG–84 through TG–94.

Model	Serial Nos.
58	TH–1 through TH–1930.
58P	TJ–3 through TJ–435 and TJ–437 through TJ–443.
58TC	TK–1 through TK–150.
95–B55B (T42–A)	TF–1 through TF–70.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions required by this AD are intended to detect and correct potential elevator skin separation, which would lead to a reduction in static strength capability with continued operation. This could then result in potential airplane flutter with consequent loss of control of the airplane.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Action	Compliance time	Procedures
(1) Maintenance Records Check:		
(i) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether one of the affected elevator skin assemblies (particular part numbers referenced in the applicable service information) was installed after December 31, 1998.	Required within 1 month after September 22, 2000 (the effective date of this AD).	No special procedures required to check the logbook. Raytheon Mandatory Service Bulletin SB 27–3396, Rev. 1, Issued: May, 2000; Revised: June, 2000, references this maintenance records check.
(ii) If, by checking the maintenance records, the pilot can positively show that one of the elevator skin assemblies (particular part numbers referenced in the applicable service information), is not installed or was installed prior to January 1, 1999, then the replacement requirement of paragraph (d)(2) of this AD does not apply. You must make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).		
(2) Replacement: Replace any elevator skin assembly (particular part numbers referenced in the applicable service information) that Raytheon shipped anytime from January 1, 1999, through December 31, 1999. Paragraphs (d)(1)(i) and (d)(1)(ii) of this AD provide procedures for checking the maintenance records to determine if one of the affected elevator skin assemblies is installed.	Within 1 month after September 22, 2000 (the effective date of this AD).	Accomplish this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 27–3396, Rev. 1, Issued: May, 2000; Revised: June, 2000.
(3) Installation Prohibition: You may not install any elevator skin assembly (particular part numbers, referenced in the applicable service information) that Raytheon shipped anytime from January 1, 1999, through December 31, 1999, in any of the affected airplanes.	As of September 22, 2000 (the effective date of this AD).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (314) 946–4123; facsimile: (314) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD, provided that the following is complied with:

(1) Pass the tap test inspection specified in Raytheon Mandatory Service Bulletin SB 27–3396, Rev. 1, Revised: June, 2000; and

(2) Restrict airspeed to maneuvering speed.

(h) *Are any service bulletins incorporated into this AD by reference?* You must accomplish the replacement required by this AD in accordance with Raytheon Mandatory Service Bulletin SB 27–3396, Rev. 1, Revised: June, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on September 22, 2000.

Issued in Kansas City, Missouri, on August 24, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–22427 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–23–AD; Amendment 39–11888; AD 2000–18–03]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–524D4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc models RB211–524D4–19, –524D4–B–19, –524D4–B–39, –524D4X–19, and 524D4X–B–19 turbofan engines with a cold stream nozzle assembly Part Number (PN) LJ32826 installed. This action requires inspection for cracks and repair of the cold stream nozzle assembly longitudinal flange. This amendment is prompted by a report of the loss of a large section of cold stream nozzle assembly in flight. The actions specified in this AD are intended to detect cracks that could result in failure of the cold stream nozzle assembly, possible release of cold stream nozzle debris from the engine, and possible damage to airplane control surfaces.

DATES: Effective September 22, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 22, 2000.

Comments for inclusion in the Rules Docket must be received on or before November 6, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–23–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781)–238–7176, fax: (781)–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (RR) models RB211–524D4–19, –524D4–B–19, –524D4–B–39, –524D4X–19, and –524D4X–B–19 turbofan engines with cold stream nozzle assembly PN LJ32826 installed. The CAA received a report of a cold stream nozzle assembly release from an engine that struck wing fairings prior to falling away from the airplane. A subsequent investigation of the active fleet conducted by RR revealed 15 more instances of cracked cold stream nozzle assemblies at their longitudinal flange. The actions specified in this AD are intended to detect cracks that could result in failure of the cold stream nozzle assembly, possible release of cold stream nozzle debris from the engine, and possible damage to airplane control surfaces.

Service Information

RR has issued Service Bulletin (SB No. RB.211–78–C955 Revision 1, dated June 20, 2000, which specifies procedures for inspection of cold stream nozzle assembly longitudinal flanges. The CAA classified these SB's as mandatory and issued AD 005–01–2000 in response to the original SB to assure the airworthiness of these engines in the UK. Revision 1 adds repeat inspection requirements to the original SB. These SB's also reference a Technical Variance Document that provides for repair of cold stream nozzle assemblies PN LJ32826 as optional terminating action for the inspections.

Bilateral Airworthiness Agreement

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

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, this AD is being issued to require initial and repetitive inspections to detect cracks in the cold stream nozzle assembly and to provide instructions to repair those cracks if they are within acceptable limits. The actions would be required to be accomplished in accordance with the SB's described previously.

Immediate Adoption

There are currently no domestic operators of this engine model. Accordingly, a situation exists that allows the immediate adoption of this regulation. Notice and opportunity for prior public comment hereon are unnecessary, and good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an 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 should identify the Rules Docket number and be submitted 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. 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–23–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This action does not have federalism implications, as defined in Executive Order 13132, because it 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 responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–18–03 Rolls-Royce plc: Amendment 39–11888. Docket 2000–NE–23–AD.

Applicability: This airworthiness directive (AD) applies to Rolls-Royce plc (RR) models RB211–524D4–19, –524D4B–19, –524D4–B–39, –524D4X–19, and –524D4X–B–19 turbofan engines with cold stream nozzle assembly Part Number (PN) LJ32826 installed. These engines are installed on, but not limited to, Boeing 747–200 and –300 series airplanes.

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

Compliance: Compliance with this AD is required as indicated, unless already done. To detect cracks that could result in the failure of the cold stream nozzle assembly, which could result in possible release of cold stream nozzle debris from the engine and possible impact damage to airplane control surfaces, perform the following inspections:

Initial Inspection

(a) Inspect cold stream nozzle assemblies for cracks within 60 days or 100 cycles-in-service (CIS) after the effective date of this AD, whichever is sooner, in accordance with the Accomplishment Instructions, Sections 3.A through 3.C.(3) of RR Service Bulletin (SB) RB.211–78–C955, Revision 1, dated June 20, 2000.

Repetitive Inspections

(b) Thereafter, inspect each nozzle assembly for cracks within 1400 CIS since last inspection in accordance with Accomplishment Instructions, Sections 3.A. through 3.C.(3) of RR SB RB.211–78–C955, Revision 1.

Optional Terminating Action

(c) Repair of cold stream nozzle assemblies PN LJ32826 on both left and right sides in accordance with RR SB RB.211–78–C955, Revision 1, dated June 20, 2000, is considered terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) The actions required by this AD shall be performed in accordance with the following RR SB:

Document No.	Pages	Revision	Date
RB.211–78–C955 ..... Total pages: 5	1–5	1	June 20, 2000

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax: International Access Code 011, Country Code 44, 1332–249223. Copies may be

inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on September 22, 2000.

Issued in Burlington, Massachusetts, August 24, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–22610 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–33–AD; Amendment 39–11891; AD 2000–18–06]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company AE 3007A and 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Allison Engine Company AE 3007A and AE 3007C series turbofan engines with certain full authority digital electronic controls (FADEC's), listed by hardware serial number (SN), installed. This action requires inspections of installed FADEC's before further flight to be sure that no more than one engine with suspect FADEC's is installed on the same airplane, and eventual replacement of all of the suspect FADEC's with serviceable FADEC's. This amendment is prompted by reports of uncommanded in-flight shutdowns of engines. The actions specified in this AD are intended to prevent an uncommanded in-flight engine shutdown and the potential for an in-flight dual-engine shutdown caused by a potential hardware failure mode in some AE 3007 series FADEC's.

DATES: Effective September 22, 2000.

Comments for inclusion in the Rules Docket must be received on or before November 6, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. The docket may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7836, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The Allison Engine Company has notified the FAA that there is a quality problem with FADEC's that have certain hardware SN's installed on AE 3007 series engines. This can lead to an uncommanded engine shutdown in flight, the inability of the FADECs to switch from one channel to another channel (channel A to B), or the inability to shutdown an engine. Three uncommanded in-flight engine shutdowns, eight events in which the FADEC channels could not be changed, and three events in which the engine could not be shut down prompted these actions. Allison Engine Company has determined that these events resulted from a quality problem with the internal power supply transistor TR1 in FADEC's with certain hardware SN's. This condition, if not corrected, could also result in an uncommanded in-flight engine shutdown and the potential for an in-flight dual-engine shutdown caused by a potential hardware failure mode in some AE 3007 series FADEC's.

The compliance times of this AD were chosen based on the risk analysis of a dual-engine shutdown. These compliance times assure the desired level of fleet safety of this action as a function of airplane utilization variations throughout the fleet.

Determination of an Unsafe Condition

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to require inspection of FADEC's for suspect hardware SN's and, if necessary, removal of that FADEC before further flight. This is to be sure that no more than one engine with FADEC's that have suspect hardware SN's is installed on each airplane. This AD will also require the replacement of all FADEC's that have suspect hardware SN's with serviceable FADEC's within 3 months after the effective date of this AD.

Immediate Adoption

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an 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 should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–33–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order No. 13132, because it 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.

Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

Federalism Assessment

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39–13 is amended by adding a new airworthiness directive, Amendment 39–11891, to read as follows:

2000–18–06 Allison Engine Company: Amendment 39–11891. Docket 2000–NE–33–AD.

Applicability: This AD is applicable to Allison Engine Company Models AE 3007A, AE 3007A1/1, AE 3007A1/2, AE 3007A1, AE 3007A1/3, AE 3007A1P, AE 3007A3, and AE 3007C turbofan engines with full authority digital electronic controls (FADEC's) that have the following hardware serial numbers (SN's) installed:

Engine model	FADEC hardware SN
AE 3007C	BX55758, BX55760, BX55761, BX55763 through BX55765, BX55767, and BX61001 through BX61069, unless the FADEC has been repaired and marked as provided in paragraphs (f) and (g) of this AD.
AE 3007A, AE 3007A1/1, AE 3007A1/2, AE3007A1/3, AE 3007A1, AE 3007A1P, AE 3007A3.	BX56348, BX56361 through BX56364, BX56374, BX56376, BX56392 through BX56395, BX59006, BX59007, BX59013, BX59014, BX59041, BX59050, BX59062, BX59064 through BX59066, BX59075 through BX59078, BX60000 through BX60145, BX60172 through BX60239, BX60265 through BX60287, BX60301, BX60303, BX60311, BX60381 through BX60384, unless the FADEC has been repaired and marked as provided in paragraphs (f) and (g) of this AD.

These engines are installed on, but not limited to Embraer Model EMB–145, EMB–145ER, EMB–145MR, EMB–145LR, EMB–135ER, EMB–135LR, and Cessna 750 airplanes.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 (h) 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: Compliance with this AD is required as indicated below, unless already done.

To prevent an uncommanded in-flight engine shutdown and the potential for an in-flight dual-engine shutdown, do the following:

Inspection for FADEC Serial Number and Removal of FADEC's

(a) Before further flight, inspect the FADEC for a SN that is listed in ''Applicability'' of this AD to be sure that no airplane has more than one engine with FADEC's that have suspect hardware SN's. The engine may have two FADEC's that have suspect hardware SN's.

(b) If more than one engine per airplane is found with a FADEC that has a suspect hardware SN, remove the FADEC so there is only one engine per airplane with a FADEC that has a suspect hardware SN.

(c) Removed suspect FADEC's may be returned to local stock.

(d) The suspect FADEC's may be installed on another airplane as long as the requirements of paragraphs (a) and (e) of this AD are met.

Replacement of All Suspect FADEC's

(e) Replace all FADEC's that have suspect hardware SN's with serviceable FADEC's within 3 months after the effective date of this AD.

(f) After 3 months from the effective date of this AD, do not install a FADEC that has a hardware SN listed in ''Applicability'' of this AD on any engine unless the FADEC hardware has been repaired and the modification tag on the FADEC is marked with TR1 day/month. For example, a repair that was accomplished on September 25, 2000, will show as TR1 25/09.

Definition of a Serviceable FADEC

(g) For the purpose of this AD, a serviceable FADEC is a FADEC that does not have a hardware SN listed in ''Applicability'' of this AD, unless the FADEC with the suspect hardware SN has been modified using Rolls-Royce (RR) service bulletin (SB) AE 3007A–73–042, Revision 1, dated August 23, 2000; or RR SB AE 3007C–73–024, Revision 1, dated August 23, 2000.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of any approved AMOC with this airworthiness directive, may be obtained from the Chicago Aircraft Certification Office.

Special Flight Permit

(i) Special flight permits may be issued in accordance with §§ 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.

Effective Date

(j) This amendment becomes effective on September 22, 2000.

Issued in Burlington, Massachusetts, on August 31, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–22906 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is updating the animal drug regulations to add Triple ''F'', Inc., to the list of sponsors of approved animal drug applications, and to add the drug labeler code (DLC) number for ADM Animal Health & Nutrition Division (ADM) to the list of approvals for bambermycins. These corrections amend the animal drug regulations to reflect currently approved new animal drug applications (NADA's).

DATES: This rule is effective September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Judith M. O'Haro, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–3664.

SUPPLEMENTARY INFORMATION: FDA has found that the April 1, 2000, edition of Title 21, Parts 500 to 599 of the *Code of Federal Regulations* (CFR) does not fully reflect several approved NADA's. Triple ''F'', Inc., is the holder of approved new animal drug applications (NADA's). The former DLC number for Triple ''F'', Inc., 011490, is listed in the regulation for bambermycins in § 558.95 (21 CFR 558.95) and for pyrantel tartrate in 21 CFR 558.485, but the sponsor and DLC are not listed under sponsors of approved applications in § 510.600(c) (21 CFR 510.600(c)). In a document published in the **Federal Register** of April 1, 1999 (64 FR 15683), the listing for Triple ''F,'' Inc., was inadvertently deleted from § 510.600(c). ADM is a holder of approved NADA 132–448 for the use of bambermycins, but is not listed in the bambermycins regulations (§ 558.95) by its current DLC. ADM is listed in § 558.95(a)(4) by its former DLC, 012286. This DLC was changed to 017519 in the **Federal Register** of May 21, 1997 (62 FR 27691), but the change was not reflected in § 558.95. At this time, FDA is amending the regulations to correct these errors in §§ 510.600(c) and 558.95(a).

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by adding alphabetically an entry for ''Triple 'F','' Inc.'' and in the table in paragraph (c)(2) by adding numerically an entry for ''011490'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Triple ''F'', Inc., 10104 Douglas Ave., Des Moines, IA 50322	011490
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
011490	Triple ''F'', Inc., 10104 Douglas Ave., Des Moines, IA 50322
* * * * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.95 [Amended]

4. Section 558.95 *Bambermycins* is amended in paragraph (a)(4) by removing ''012286'' and by numerically adding ''017519,''.

Dated: August 23, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–22949 Filed 9–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 3407]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Schedule of Fees for Consular Services. Specifically, it establishes a fee for the review of the Affidavit of Support (Form I–864), when submitted in support of an application for immigration to the United States.

DATES: The effective date for the new AOS fee is October 1, 2000. I–864 forms sent to petitioners by the National Visa Center (NVC) or by posts overseas after October 1, 2000, will be subject to the new AOS fee as stated below.

ADDRESSES: Office of the Executive Director, Bureau of Consular Affairs, Department of State, SA–1, 10th Floor, 2401 E Street, NW., Washington, DC 20522–0111; telefax (202) 663–2499.

FOR FURTHER INFORMATION CONTACT: Alcy Frelick, Office of the Executive Director, Bureau of Consular Affairs, Department of State, SA–1, 10th Floor, 2401 E Street, NW., Washington, DC 20522–0111; telefax (202) 663–2499; email address frelickar@state.gov.

SUPPLEMENTARY INFORMATION: The amendment to the Schedule of Fees was published as a proposed rule on March 13, 2000 (65 FR 13253–13254). During the 30-day public comment period, three written comments were received from the general public. Those comments are addressed below. For the reasons explained, the Department is setting the Affidavit of Support fee (AOS fee) at $50.00 as originally proposed, but will be making a change to the effective date of the rule to address concerns raised by the commenters.

The public comments received by the Department focused on two aspects of the proposed new AOS fee: (1) That only one AOS fee should be charged per immigrant visa case (*i.e.* for all I–864 forms submitted in connection with an immigrant visa case comprised of a principal applicant and his/her eligible dependents) and (2) that the new AOS fee should not be charged until service to potential immigrants and their sponsors improves. The Department's response to the comments received is described below.

Only a single fee per family should be charged: The Department received comments from two sources expressing concern about the proposal to charge the AOS fee for each I–864 form submitted in support of an immigration case. The commenters argue that in cases where multiple I–864 forms are required in order to overcome the public charge provision, only one AOS fee should be charged.

Because the revenue from this fee is to be used to recover the costs of providing assistance to sponsors, co-sponsors and joint sponsors completing the I–864 form in support of an application for immigration to the United States, the Department cannot concur in this recommendation. One AOS fee will be charged for each I–864 form filed by the sponsor/petitioner, but no additional fee will be charged for an I–864a form filed by a co-sponsor. However, an additional AOS fee will be assessed for each I–864 form filed by any joint sponsor, as each individual submitting the I–864 form could potentially require assistance in completing the form. The services will be available to any party requiring assistance regardless of whether the person is a primary or a joint sponsor. It should also be noted that no additional AOS fee will be assessed when essentially duplicative I–864 forms are submitted on behalf of beneficiaries of separate petitions (for example, for parents of a US citizen for whom separate petitions must be filed).

The Department initially proposed imposing a separate AOS fee for the primary and each joint I–864 form submitted on behalf of an immigrant visa applicant because each I–864 form must be reviewed separately for technical completeness and assessed separately when evaluating the applicant's eligibility vis-a-vis the public charge provision. The Department has reviewed this proposal in light of comments received and decided that averaging the costs of evaluating all I–864 forms into a single, uniform AOS fee per immigrant visa case would not be equitable for all applicants. Establishing a single AOS fee for an immigrant visa case would necessitate setting a higher fee to recover all the costs of the services provided and hence would result in all primary sponsors subsidizing a limited number of joint sponsors. Requiring payment of the AOS fee for each I–864 form submitted will also simplify the Department's fee collection procedures, thus reducing administrative costs.

The fee should be assessed only after service improves: One commenter took the view that the proposed fee would simply present another impediment in the process and would not result in improved service to potential applicants. However, the Department has already undertaken to improve service to applicants, and the revenue from the AOS fee will enable the Department to expand those services and to add additional ones.

In December 1998, the National Visa Center (NVC) established a pilot program (the AOS review program) to review the I–864 forms submitted for applicants applying at three posts—Ciudad Juarez, Manila and Santo Domingo. The Department undertook this review process to ensure that all I–864 forms sent to the pilot posts would be technically correct (the signatures properly notarized, the form completed, and all relevant supporting documentation attached). While the start-up period involved some delays, the process is now in place and functioning smoothly. The results of the pilot project have been positive with reduced refusal rates for the pilot posts. The I–864 forms submitted in support of immigrant visa applications at those posts are now technically more complete than previously, resulting in a reduced number of repeat interviews.

The AOS review program at NVC has recently been expanded to review I–864 forms submitted for immigrants processed at 10 posts. These ten posts (Manila, Ciudad Juarez, Santo Domingo, Guangzhou, Bogota, Port au Prince, Georgetown, Freetown, Tirana and Montreal) represent approximately 40% of the worldwide immigrant visa caseload. The I–864 forms for these posts are now being reviewed for technical completeness at NVC before the files go overseas. It is anticipated that the AOS review program at NVC will continue to expand until all I–864 forms submitted to posts overseas are reviewed for technical completeness prior to being sent to posts.

The Department is also in the process of contracting for a call center that will be available to assist sponsors in the United States in answering questions arising during the completion of the I–864 form. Another part of the Department's efforts to improve service is the development of a website that will provide line-by-line information to clarify the I–864 form. Both the website and call center should be operational in early FY01.

Effective Date

The new Affidavit of Support Fee will take effect October 1, 2000. When the proposed rule was published, it was anticipated that the fee would become effective June 1, 2000. That date has been pushed back to provide additional time to initiate new services for sponsors in the US.

Background Authority To Assess Fees

Public Law 106–113, enacted November 29, 1999, authorizes the Secretary of State to charge and retain a fee for the processing of a sponsor's Affidavit of Support (Form I–864). The Secretary of State is also authorized under Executive Order 10718 of June 27, 1957, to exercise the President's authority under 22 U.S.C. 4219 to prescribe the fees to be charged for official services performed by the Department of State. This authority has been delegated to the Under Secretary for Management. The Schedule of Fees for Consular Services is set forth in 22 CFR 22.1, as amended on December 1, 1999 [64 FR 66769]. After an initial review of the costs, the AOS fee has been set initially at $50 per sponsor or joint sponsor filing an I–864 form.

The Affidavit of Support Processing Fee

This rule amends the Schedule of Fees for Consular Services by adding a new item: ''61. Affidavit of Support Processing Fee.'' It establishes a fee to cover the costs of providing assistance to any sponsor or joint sponsor who provides an I–864 form) under section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) for an immigrant visa applicant. The purpose of the assistance will be to help a sponsor or joint sponsor to complete such affidavit properly before it is forwarded to a consular post for adjudication by a consular officer in connection with an application for an immigrant visa. The AOS fee will be in addition to, and separate from, any fee imposed for immigrant visa application processing and issuance. The costs to be recovered by the AOS fee are not recovered by the immigrant visa application processing and issuance fees.

This new AOS fee will be charged only once for essentially duplicative I–864 forms filed in support of additional members of one family, made up of spouse, parents and minor unmarried children; even if each member of the family is being processed individually for immigration to the United States or if the family member may have had a separate immigrant visa petition filed on his/her behalf.

The Department will assess one AOS fee for each distinct I–864 form submitted, whether it is filed by the primary sponsor or by a joint sponsor. No AOS fee will be charged for co-sponsors filing I–864a forms. If more than one I–864 form is needed to fulfill the requirements of the law, the Department will assess one fee for each separate affidavit. A new AOS fee will be assessed if a new I–864 form is required in support of any application for immigration (for example, when a joint sponsor is needed for an application that has been rejected due to section 212(a)(4), inability to qualify under the public charge provision of the Immigration Act). The AOS fee is non-refundable as it is a processing fee.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as a final rule pursuant to 5 U.S.C. 553(a)(2) and the ''good cause'' provisions of 5 U.S.C. 553(b)(B); notice and comment are not necessary in light of the fact that this rule relates to agency management and merely establishes or removes visa symbols used internally by the Department. The rule makes no substantive regulatory changes.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $1 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $1 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Final Rule

List of Subjects in 22 CFR Part 22

Passports and visas, Schedule of consular fees.

Accordingly, this rule amends 22 CFR part 22 as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. In § 22.1, add item 61 as the last item under ''Visa Services'' to read as follows:

§ 22.1 Schedule of fees.

Item No.	Fee
* * * * * * *	
61. Affidavit of Support Processing Fee:	$50.00
* * * * * * *	

Dated: August 2, 2000.

Bonnie R. Cohen,

Under Secretary for Management, U.S. Department of State.

[FR Doc. 00–22833 Filed 9–6–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–00–039]

Special Local Regulations for Marine Events; Hampton Bay Days Festival, Hampton River, Hampton, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.508 for the Hampton Bay Days Festival to be held September 8–10, 2000 on the Hampton River at Hampton, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the festival events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.508 is effective from 12 p.m. on September 8, 2000 to 6 p.m. on September 10, 2000.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer A. Walther, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199, (757) 483–8567.

SUPPLEMENTARY INFORMATION: Hampton Bay Days, Inc. will sponsor the Hampton Bay Days Festival on September 8–10, 2000 on the Hampton River, Hampton, Virginia. The festival will include water ski demonstrations, personal watercraft and wake board competitions, paddle boat races, classic boat displays, fireworks displays and a helicopter rescue demonstration. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.508 will be in effect for the duration of the festival activities. Under provisions of 33 CFR 100.508, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander, except that vessels may enter and anchor in the special spectator anchorage areas if they proceed at slow, no wake speed. The Coast Guard Patrol Commander will allow vessels to transit the regulated area between festival events. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: August 21, 2000.

T.C. Paar,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–22847 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–038]

Special Local Regulations for Marine Events; Patapsco River, Baltimore, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations found at 33 CFR 100.515 during the United States Power Squadrons Governing Board fireworks display to be held September 7, 2000, on the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.515 is effective from 8:45 p.m. to 9:35 p.m. on September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R. L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The United States Power Squadrons Governing Board will sponsor a fireworks display on September 7, 2000 on the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: August 21, 2000.

T.C. Paar,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–22845 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–00–041]

RIN 2115–AE46

Special Local Regulations for Marine Events; Michelob Championship at Kingsmill Fireworks Display, James River, Williamsburg, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations during the Michelob Championship at Kingsmill fireworks display, to be held October 3, 2000, over the waters of the James River, Williamsburg, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event.

This action is intended to restrict vessel traffic in portions of the James River during the event.

DATES: This rule is effective from 8:45 p.m. to 9:45 p.m. on October 3, 2000.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–041 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer A. Walther, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199, (757) 483–8567.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The Coast Guard received confirmation of the request for special local regulations on August 8, 2000. We were notified of the event with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. We had insufficient time to prepare and publish this rule in the **Federal Register** 30 days in advance of the event. To delay the effective date of the rule would be contrary to the public interest since a timely rule is necessary to protect mariners from the hazards associated with the fireworks display.

Background and Purpose

The Michelob Championship at Kingsmill is sponsoring a fireworks display, to be held October 3, 2000, over the waters of the James River, Williamsburg, Virginia. The event will consist of pyrotechnic displays fired from a barge positioned near the Kingsmill Conference Center. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the James River. The temporary special local regulations will be in enforced from 8:45 p.m. to 9:45 p.m. on October 3, 2000 and will restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the fireworks display to enhance the safety of spectators and transiting vessels.

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).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the James River during the event, the effect of this regulation will not be significant due to the limited duration of the regulation and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), 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 will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the James River during the event.

Although this regulation prevents traffic from transiting or anchoring in a portion of the James River during the event, the effect of this regulation will not be significant because of its limited duration and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

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.

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 rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 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 rule and concluded that,

under figure 2–1, paragraphs (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**. By controlling vessel traffic during these events, this rule is intended to minimize environmental impacts of increased vessel traffic during the event.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35–T05–041 is added to read as follows:

§ 100.35–T05–041 Special Local Regulations for Marine Events; Michelob Championship at Kingsmill Fireworks Display, James River, Williamsburg, Virginia

(a) *Definitions.*

(1) *Regulated Area.* The waters of the James River enclosed within the arc of a circle with a radius of 400 yards and with its center located at latitude 37°07′48″ N, longitude 076°24′00″ W. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Hampton Roads with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(b) *Special Local Regulations.*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates.* This section will be effective from 8:45 p.m. to 9:45 p.m. on October 3, 2000.

Dated: August 21, 2000.

T.C. Paar,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–22978 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 00–011]

RIN 2115–AA97

Safety Zone; Northstar Dock, Seal Island, Prudhoe Bay, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 200-yard radius safety zone in the navigable waters around the Northstar dock, Seal Island, Prudhoe Bay, Alaska. The Crowley Marine Services' *Barge 400* will be offloading modules that are part of the buildings to be set on Seal Island. This safety zone is implemented to ensure the safe and timely arrival, and offloading of the *Barge 400.*

DATES: This temporary final rule is effective from 12:01 am August 1, 2000, until 11:59 pm September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Rodriguez, Chief of Port Operations, USCG Marine Safety Office, Anchorage, at (907) 271–6724.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) for this regulation was not published. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public. Due to the unpredictable edge of the ice cap in the Arctic Ocean, it was difficult to predict when vessel traffic would be able to transit safely, and therefore publishing the NPRM in a timely manner was not feasible. The *Barge 400* will be offloading a large module and other equipment onto Seal Island, Prudhoe Bay, Alaska. Vessels or personnel not engaged in the offloading operation and operating within the 200-yard radius may place themselves at risk of injury. The event is scheduled for August 1, 2000 and the permit request was only recently received.

Background and Purpose

The Coast Guard is establishing a temporary 200-yard radius safety zone on the navigable waters of the United States around the Northstar Dock, Seal Island, Prudhoe Bay, Alaska. The Crowley Barge *Barge 400* will moor at the dock and offload the module and associated equipment. The safety zone is designed to permit the safe and timely offloading of this vessel in the timeframe in which this can be safely done. The safety zone's 200-yard standoff also aids the safety of these evolutions by minimizing conflicts and hazards that might otherwise occur with other transiting vessels. The limited size of the zone is designed to minimize impact on other mariners transiting through the area.

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 cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have significant economic impacts on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Because this safety zone is very small, will only be in effect for two months, and does not impede access to other maritime facilities in the area, the Coast Guard believes there will be no impact to small entities. Therefore, 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.

Assistance for Small Entities

In accordance with Sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so

that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

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 because it establishes a safety zone.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and Executive Order 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern 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 rule will not impose an unfunded mandate.

List of Subjects in 33 CFR Part 165

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

Temporary Final Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 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.

2. Section 165.T17–00–011 is temporarily added to read as follows:

§ 165.T17–00–011 Safety Zone; Northstar, Seal Island, Prudhoe Bay, Alaska.

(a) *Description.* The following area is a Safety Zone: All navigable waters within a 200-yard radius of the Northstar Dock, Seal Island, Prudhoe Bay, Alaska.

(b) *Effective dates.* This section is effective from 12:01 a.m. August 1, 2000, until 11:59 p.m. September 30, 2000.

(c) *Regulations.*

(1) The Captain of the Port means the Captain of the Port, Western Alaska. The Captain of the Port may authorize or designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf as his representative.

(2) The general regulations governing safety zones contained in 33 CFR, Part 165.23 apply. No person or vessel may enter, transit through, anchor or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, Western Alaska, or his representative.

The Captain of the Port or his representative may be contacted in the vicinity of the BARGE 400 via marine VHF channel 16. The Captain of the Port's representative can also be contacted by telephone at (907) 271–6700.

Dated: July 31, 2000.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 00–22846 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 00–003]

RIN 2115–AA97

Safety Zone; Middle Harbor-San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of San Pedro Bay, California. The event requiring establishment of this safety zone is the dredging and landfill activities associated with the Port of Long Beach Pier T project. Entry into, transit through or anchoring within the safety zone by vessels other than those engaged in the construction of Pier T is prohibited by the Captain of the Port.

DATES: This rule will be in effect from 12:01 a.m. (PST) on August 1, 2000 until 11:59 p.m. on December 31, 2002. Comments must be received on or before November 6, 2000.

ADDRESSES: This docket for this regulation is maintained, and is available for inspection and copying between the hours of 9 a.m. and 4 p.m., Monday through Friday except federal holidays, at U.S. Coast Guard Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802. Comments may be mailed or hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Ken O'Connor, Waterways Management Division, Marine Safety Office/Group Los Angeles-Long Beach, CA at (562) 980–4425/26.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, there is good cause why a notice of proposed rule making (NPRM) was not published for this regulation and good cause exists for making it effective less than 30 days after, **Federal Register** publication. Following normal rulemaking procedures could not be done in a timely fashion in that the Coast Guard was not approached concerning the necessity for implementation of a safety zone until late in the Pier T planning process. The actual stipulations of the safety zone were not finalized until a date fewer than 30 days prior to the start of the event.

Although this rule is being published as an interim rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed in **ADDRESSES** in this preamble. Comments must be received on or before November 6, 2000. Those providing comments should identify the docket number for the regulation (COTP Los Angeles-Long Beach 00–003) and also include their name, address, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing the Marine Safety Office Los Angeles-Long Beach at the address listed in **ADDRESSES** in this preamble.

Discussion of Regulation

The construction of the Pier T project is scheduled to begin on May 5, 2000.

A safety zone is necessary to safeguard recreational and commercial craft from the dangers of dredging and landfill activities in the area and to prevent interference with other vessels engaged in the dredging operations. This safety zone is necessary to safeguard all personnel and property during the dredging and construction of Pier T. The activities surrounding the dredging and construction pose a direct threat to the safety of surrounding vessels, persons, and property, and create an imminent navigational hazard. This safety zone is necessary to prevent spectators, recreational and commercial craft from the hazards associated with the reconstruction. Persons and vessels, other than those engaged in the construction of Pier T, are prohibited from entering into, transiting through or anchoring within the safety zone unless authorized by the Captain of the Port or a designated representative.

Regulatory Evaluation

This temporary regulation 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 location of the dredging and landfill operation is northwest of the old Navy mole in the vicinity of Long Beach Pier ''T'' which does not currently have much commerical or recreational vessel traffic. It is anticipated that once construction is completed vessel traffic in this area will increase. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under Paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Collection of Information

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are not dominant in their respective fields and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Ken O'Connor, Waterways Management Division, Marine Safety Office/Group Los Angeles-Long Beach, CA at (562) 980–4425/26.

Federalism

The Coast Guard has analyzed this regulation under Executive Order 13132, and has determined that this rule does not have implications for federalism under that Order.

Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis checklist is available for inspection and copying and the docket is to be maintained at the address listed in **ADDRESSES** in the preamble.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 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 safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for 33 CFR 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.

A new § 165.1113 is added to read as follows:

§ 165.1113 Safety Zone: Middle Harbor-San Pedro Channel, CA.

(a) *Location.* The safety zone is located northwest of the old Navy Mole in the vicinity of Long Beach Pier ''T'' as defined by the lines connecting the following coordinates: latitude 33°45′21.6″ N, longitude 118°13′38.5″ W, thence to latitude, 33°45′04.1″ N, longitude 118°13′31.2″ W, thence to latitude 33°44′46″ N, longitude 118°14′10.7″ W, thence to latitude 33°44′34.1″ N, longitude 118°14′13″ W, following north-easterly along the shoreline to 33°45′02.4″ N, longitude

118°14′44.7″ W, thence returning to the point of origin.

(b) *Effective date.* This section is effective from 12:01 a.m. (PST) on August 1, 2000 until 11:59 on December 31, 2002.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this Part, entry into, transit through, or anchoring within this safety zone by persons or vessels, other than those engaged in the construction of Pier T, is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Dated: August 1, 2000.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 00–22844 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024–AC72

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Technical corrections.

SUMMARY: This action makes technical corrections to regulations concerning the determination of a preferred offeror to correct a typographical error and to delete confusing and unnecessary provisions.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 C Street, NW., Washington, DC 20240 (202/565–1219).

SUPPLEMENTARY INFORMATION: The National Park Service published in final in the **Federal Register** on April 17, 2000 (65 FR 20630), an amendment to 36 CFR part 51 to reflect the changes in policies and procedures applicable to National Park Service concession contracts resulting from the passage of Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

Section 51.40(c) has been determined by the National Park Service to be confusing and unnecessary in light of the entirety of § 51.40. Specifically, § 51.40(c) has been misunderstood to suggest that in order for a portion of a park area to be determined ''backcountry'' for purposes of 36 CFR part 51, the area must be inaccessible by motorized vehicle.

This is not the meaning of § 51.40. Rather, the section is intended to mean that the accessibility of a portion of a park area to motorized vehicles is only one consideration that may be taken into account in determining the existence of ''backcountry'' for purposes of determining which concession contracts are outfitter and guide contracts under 36 CFR part 51. As stated in § 51.40, determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area are made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Accessibility of an area by motorized vehicles is only a possible consideration in this determination.

In order to correct the confusion caused by § 51.40(c), the National Park Service has determined to delete 36 CFR 51.40(c) as confusing and unnecessary. The overall intentions of § 51.40 remain the same with the deletion of § 51.40(c), as § 51.40(a) continues to provide that remoteness from roads and developed areas is a possible factor in determining ''backcountry'' for purposes of 36 CFR part 51.

In addition, § 51.46 of the final regulation contains a typographical error, the inadvertent inclusion of the date ''May 17, 2000,'' in its text.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

Accordingly, 36 CFR part 51 is corrected by making the following correcting amendments:

PART 51—CONCESSION CONTRACTS

1. The authority citation for part 51 continues to read as follows:

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.,* particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

§ 51.40 [Amended]

2. In § 51.40, paragraph (c) is removed.

3. In § 51.40, paragraphs (d) and (e) are redesignated as paragraphs (c) and (d).

4. In § 51.46, the last sentence is corrected by removing the date ''May 17, 2000''.

Dated: August 30, 2000.

Cynthia Orlando,

Acting Associate Director, Park Operations and Education.

[FR Doc. 00–22859 Filed 9–6–00; 8:45 am]

BILLING CODE 4310–70–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 25, 74, 78 and 101

[IB Docket No. 98–172; FCC–00–212]

Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document permits the efficient use of spectrum for existing and future users, and will facilitate the deployment of new services in the 18 GHz band. These designations will significantly reduce sharing in the 18 GHz band, and thereby eliminate the need for many existing coordination procedures, leading to lower transaction costs and more efficient use of the band. The relocation process will take significant effort and commitment on the part of both the space and terrestrial communities. This plan has the potential to provide consumers, both business and residential, with exciting new services in the years to come. The Office of Management and Budget has approved the information collection requirements of 47 CFR 25.145(g), which should have been effective on January 20, 1998. This document establishes that effective date.

DATES: 47 CFR 25.145(g) published at 62 FR 61448 was effective on January 20, 1998, following OMB approval of the information collection. This final rule is effective October 10, 2000. Written comments by the public on the new information collections are due November 6, 2000.

ADDRESSES: Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steven Selwyn, Planning & Negotiations Division, International Bureau, (202) 418–2160 or via electronic mail: *sselwyn@fcc.gov.* In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket No. 98–172, FCC 00–212, adopted June 8, 2000 and

released June 22, 2000. This R&O contains new information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due November 6, 2000. Comments should address: (a) Whether the new or modified 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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–XXXX (new collection).

Title: Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Estimated Time per Response: 1 to 4 hours.

Frequency of Response: On occasion.

Total Annual Burden: 553 hours.

Total Annual Costs: $0.

Needs and Uses: Information collection requirements contained in this collection will serve to enable the efficient use of spectrum for existing and future users. The information collection requirements will also help facilitate the negotiations process among entities for transition of the 18.58–19.3 GHz band from the terrestrial fixed services to fixed-satellite service.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Services (ITS), Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Summary of the Report and Order

1. The *Report and Order* adopts rules that will permit the efficient use of spectrum for existing and future users, and facilitate the deployment of new services in the 17.7–20.2 GHz band (''18 GHz band''). In particular, we adopt a band plan that designates how terrestrial fixed services, the Geostationary Satellite Orbit Fixed Satellite Service (''GSO/FSS''), the Non-Geostationary Satellite Orbit Fixed-Satellite Service (''NGSO/FSS''), and Mobile-Satellite Service feeder links (''MSS/FL'') are to share this band. As a consequence of this designation, the *Report and Order* modifies the Table of Frequency Allocations found in § 2.106 of the Commission's Rules. The *Report and Order* also modifies service rules in the 18 GHz band and authorizes the blanket licensing of satellite earth stations in the bands where the Fixed Satellite Service (''FSS'') is the sole primary designation. Finally, the *Report and Order* allocates the band 17.3–17.7 GHz to the Broadcasting-Satellite Service (''BSS''), and the band 24.75–25.25 GHz to the FSS for BSS feeder links.

2. The 18 GHz band currently serves a variety of communications needs and has the potential to provide consumers, both business and residential, with exciting new services in the years to come. Our actions in this proceeding will allow for more efficient use of this spectrum. Previously, the entire 18 GHz band was allocated for shared use among various terrestrial fixed and mobile services, the FSS, and the mobile satellite service (''MSS''). We conclude that, in general, separating terrestrial fixed service operations from ubiquitously deployed FSS earth stations in dedicated sub-bands would serve the public interest. We also conclude, however, that limited frequency sharing between satellite and terrestrial services is feasible and should continue to be permitted where it serves the requirements of these services. We have attempted to protect the existing fixed terrestrial operations in this band to the maximum extent possible, while at the same time providing for the growth of both satellite and terrestrial services. The *Report and Order* should assist both the satellite and terrestrial services in the analysis of future growth possibilities by providing certainty as to how these services may share the 18 GHz band, and thereby enabling the affected industries to make informed business decisions.

3. The band plan that we adopt is a result of an examination of the record developed in response to our *18 GHz NPRM* (or *''NPRM''*). We have considered the concerns expressed in the parties' comments, and have fashioned our decisions to resolve those concerns in as equitable a manner as possible.

4. In the band plan that we adopt, we designate the following spectrum for terrestrial fixed service use: (1) 17.7–18.3 GHz band on a primary basis; (2) 18.3–18.58 GHz band on a co-primary basis (with GSO/FSS); and (3) 19.3–19.7 GHz band on a co-primary basis (with MSS/FL). We designate the following spectrum for GSO/FSS service use: (1) 18.58–18.8 GHz band on a primary basis; and (2) 18.3–18.58 GHz band on a co-primary basis(with terrestrial fixed service), noting that the 19.7–20.2 GHz band is also allocated on a primary basis to the GSO/FSS. Furthermore, we designate the 18.8–19.3 GHz band to NGSO/FSS service use on a primary basis, and retain co-primary status for MSS/FL (with terrestrial fixed service) in the 19.3–19.7 GHz band. These designations will significantly reduce sharing in the 18 GHz band, and thereby eliminate the need for many existing coordination procedures, leading to lower transaction costs and more efficient use of the band. We note that United States Government systems are authorized to operate in the 17.8–20.2 GHz band in accordance with footnote US334 in the United States Table of Frequency Allocations and that coordination between non-Government operations, both terrestrial and satellite, and these Government operations will continue to remain in effect. Nothing in this Report and Order purports to change the relationship between Government and non-Government systems.

5. Recognizing the importance of existing terrestrial fixed service systems in the 18 GHz band, we will permit terrestrial fixed stations currently operating in spectrum designated in this *Report and Order* for exclusive satellite use, to continue to operate on a co-primary basis for a period of ten years, subject to the overriding right of satellite providers to require terrestrial fixed stations to relocate. During this ten-year period, existing terrestrial fixed stations can be compelled to relocate in accordance with relocation procedures adopted herein. If a terrestrial fixed station is required to relocate within ten years of the effective date of this *Report and Order*, the satellite provider must pay to relocate the terrestrial fixed station to comparable facilities. At the end of the ten-year period, existing terrestrial fixed stations may continue to operate on a non-interference basis. In the case of 19.26–19.30 GHz, the co-primary status of existing terrestrial fixed stations, as well as their entitlement to relocation costs, is permanent.

6. This *Report and Order* also authorizes a blanket licensing regime for

satellite earth stations for segments of the 17.7–20.2 GHz and 27.5–30.0 GHz frequency bands—which are not subject to sharing with other services. Specifically, we will accept such applications for blanket licensing in the 18.58–18.8 GHz, 18.8–19.3 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, 28.6–29.1 GHz, and 29.5–30.0 GHz frequency bands. In all those bands designated as primary to the GSO/FSS, we adopt the specific technical conditions concerning space station and earth station performance recommended by the Blanket Licensing Industry Working Group, to ensure that intra-system interference stays within acceptable levels. With respect to the blanket licensing of NGSO/FSS systems, we adopt an equation to determine the power flux-density (pfd) of space stations that, for low elevation angles, includes a consideration of the number of satellites in the NGSO system constellation, which was recommended by technical study groups of the Radiocommunications Sector of the International Telecommunication Union (ITU–R) for inclusion in the ITU's Radio Regulations. The blanket licensing regime adopted in this *Report and Order* describes the parameters within which earth stations may be operated under a blanket license, as well as the solutions for minimizing potential interference on both an intra- and inter-service basis.

7. This *Report and Order* also allocates 400 MHz of spectrum at 17.3–17.7 GHz for primary BSS uses, effective April 1, 2007, as specified in the ITU Radio Regulations. We allocate the 24.75–25.05 GHz band for primary GSO/FSS (Earth-to-space) use, limited to feeder links for the BSS in the 17.3–17.7 GHz band, and the GSO/FSS 25.05–25.25 GHz band for co-primary use between the FSS (Earth-to-space), limited to BSS feeder links, and the fixed service, comprised of the 24 GHz Service.

8. A review of the record leads us to conclude that this redesignated band plan results in an equitable and balanced approach to meeting the needs of the various existing and future operations in the 18 GHz band. We recognize that the adopted band plan does not provide a full 1000 Megahertz of unshared Ka-band downlink spectrum for GSO/FSS operations as requested by many GSO/FSS licensees. Nevertheless, we believe that the 720 MHz of unshared downlink spectrum at 18.58–18.8 GHz and 19.7–20.2, in addition to the flexible rules that permit sharing of 280 megahertz at 18.3–18.58 GHz, should provide a reasonable basis for GSO/FSS operations to be undertaken. While we realize that some GSO/FSS systems have already been designed, we expect that the current system designs of the GSO/FSS systems can proceed with some modification or that sharing agreements can be reached to permit the use of these designs. Moreover, we note that the same total capacity for GSO/FSS services is still available in locations where coordination can be achieved. We conclude that this plan will, through the judicious choice of band segments subject to co-primary sharing, significantly lower any consequential administrative costs of coordination. Furthermore, this plan goes a long way toward facilitating the deployment of new services by designating different dedicated sub-bands for ubiquitously deployed FSS earth stations, and nearly ubiquitous terrestrial fixed services in the 18 GHz band, thereby serving the public interest.

9. *17.7–18.3 GHz Frequency Band.* We designate the 17.7–18.3 GHz frequency band to terrestrial fixed service for primary use. Prior to this rulemaking proceeding, this segment of the 18 GHz band was designated for shared co-primary use between GSO/FSS and terrestrial fixed service operations. Currently, the 17.7–18.3 GHz band is used for a wide variety of common carrier, mass media, and private fixed terrestrial point-to-point or point-to-multipoint services, as described in parts 74, 78 and 101 of the Commission's Rules. In designating the 17.7–18.3 GHz band for primary use by terrestrial fixed service operators, we recognize that this is an important segment of the 18 GHz band for existing and future terrestrial fixed service operations. We achieve our stated goal of ensuring the continued viability of the terrestrial fixed service by avoiding any future interference from space stations, and the need to relocate stations to protect future earth stations. The redesignation of this band to primary status will also generally facilitate the relocation of terrestrial fixed service operations from other parts of the 17.7–19.7 MHz or other frequency bands, by eliminating the need for coordination with satellite earth stations. It will also facilitate the deployment of new terrestrial fixed stations, by eliminating coordination requirements between the fixed and fixed satellite services, thereby lowering transaction costs for terrestrial fixed operators.

10. Regarding secondary fixed operations in primary satellite designations, we conclude that terrestrial fixed services generally should not be designated for secondary use in either primary GSO/FSS or primary NGSO/FSS bands subject to blanket licensing. We find that the continued licensing of these fixed stations, with the exception of indoor low power operations, is incompatible with the ubiquitous placement of earth stations in the primary satellite service because if located close enough to such stations they may interfere with FSS reception. If we found otherwise we would be encouraging the extension of a condition that we have determined to be incompatible with the ubiquitous distribution of primary satellite services. Regarding the low power fixed systems mentioned in the *NPRM, 63 FR 54100 (October 8, 1998)*, in the 18.82–18.87 and 19.16–19.21 GHz bands, we find that such stations have been licensed on a primary basis and will continue to be so licensed. They will not be subject to the same transition rules as the full power stations in their band. In addition, they will not be subject to the same relocation requirement, since they will be co-primary with the FSS. They will be permitted to continue to operate, and new stations will be licensed subject only to the limitation that they operate indoors. The restriction to indoor use will, of necessity, place some signal attenuating barrier between low power fixed stations and FSS earth stations, which are always located outdoors. While interference could still be possible, the probability of interference is significantly, and acceptably, reduced as the interfering signal is so diminished. Several commenters urged us to eliminate secondary terrestrial fixed service designations in primary FSS bands. With the anticipated deployment of millions of satellite earth stations, we believe that it would be virtually impossible to implement an effective dispute-resolution process to discover terrestrial causes of interference to primary FSS earth stations. The difficulty in identifying the source of interference could have a substantial practical impact on FSS licensees, an impact that they are only responsible to evaluate when they are sharing the band with a primary designated fixed service. Among other things, attempting to identify the cause of interference and then fixing the problem may take time, causing a significant interruption in service. Such delays would raise operating costs for FSS users, and degrade the reliability of the company's service. We believe such circumstances are avoidable by rejecting our proposal to allow terrestrial fixed service operations to use primary FSS spectrum for secondary use services.

11. We believe the band plan adopted herein generally meets the spectrum needs of the respective services designated to operate in the 18 GHz band. We note that, like our NPRM proposal, the band plan we adopt herein provides GSO/FSS with 1000 MHz of spectrum, 720 MHz of which is primary and 280 MHz of which is co-primary. Several satellite commenters desire to obtain a minimum of 1000 MHz of unshared downlink spectrum in the Ka-band. These commenters seem to base their arguments, in part, on the fact that we designated 1000 MHz of uplink spectrum to GSO/FSS in the *28 GHz First Report and Order*. The *28 GHz First Report and Order*, however, designated 750 MHz of primary uplink spectrum for GSO/FSS systems, and 250 MHz of co-primary uplink spectrum shared with NGSO/FSS systems. We are adopting a similar approach in the downlink band. We generally designate equal amounts of spectrum to GSO/FSS, taking into account systems for uplink and downlink use; and when considering both primary and co-primary spectrum this *Report and Order* provides just that.

12. We are extending the ''cut-off'' date for the 18.58–18.8 GHz band because the *18 GHz NPRM* stated that the cut-off date would apply in ''any *band that is proposed to be designated* for fixed satellite use on a primary basis.'' We note that none of the proposed band plans put forth in the *18 GHz NPRM* discussed redesignating the 18.58–18.8 GHz band for primary use by GSO/FSS. Therefore, we believe it is appropriate to move the ''cut-off'' date forward to coincide with the adoption of the *Report and Order*, recognizing that applications for terrestrial fixed stations in the 18.58–18.8 GHz band may have been filed since the adoption of the *NPRM* without specific indication that this band would no longer be available for such use. We note that pursuant to the band plan adopted today, any extension of the ''cut-off'' date in the 18.3–18.58 GHz band is moot, because the 18.3–18.58 GHz band is designated for terrestrial fixed service and GSO/FSS on a co-primary basis.

13. The *Report and Order* grants co-primary status to existing terrestrial fixed stations in the 18.58–19.3 GHz band. As a general rule, we agree that the co-primary status should be limited by a sunset period. However, we have found it necessary to permanently grant co-primary status to existing terrestrial fixed stations in the 19.26–19.3 GHz band because the channels in this band are paired with channels that are being retained for primary terrestrial fixed use at 17.7–17.74 GHz, thus magnifying the impact of this redesignation on the fixed service. If we were to impose a ten year sunset period, users of these pairings would likely be required, because of equipment availability, to relocate not only their transmissions in the 19.26–19.30 GHz band, but also their paired transmissions in the 17.7–17.74 GHz. This would be required even though the 17.7–17.74 GHz transmissions are not in a band that would be shared with FSS operations. Because of the significant impact on terrestrial fixed licensees, and since there are few existing fixed stations in this band, we do not believe it is appropriate to sunset the co-primary status, and associated relocation reimbursement rights, of existing terrestrial stations in this band.

14. We believe that a sunset period of ten (10) years for continued co-primary status of existing terrestrial fixed stations in the 18.58–18.8 GHz and 18.8–19.26 GHz frequency band is an appropriate compromise that will allow these systems to continue to operate in these bands, while giving FSS interests the option to pay the cost of relocating such systems if FSS interests want to deploy operations in those areas. We stress that the significance of the ten-year period is limited to identifying the entity that would pay for the relocation of existing terrestrial fixed stations when it is found that such entity, due to the interference it presents, would preclude the establishment of FSS stations. In the absence of an FSS earth station in the vicinity, such an entity could continue to operate beyond the ten-year period. Recognizing this, the fundamental issue here is how long constitutes an adequate period during which the FSS station should pay.

15. Accordingly, we are not requiring a voluntary negotiating period as we previously established for the PCS transition in § 101.69(c). Under our 18 GHz transition rules, FSS licensees may enter into negotiations with co-primary terrestrial fixed services in the 18.58–19.3 GHz band, for the purpose of agreeing to terms under which the terrestrial licensees would either relocate or accept a sharing arrangement. If no agreement is reached within two years for non-public safety incumbents, and three years for public safety incumbents, an FSS licensee may initiate involuntary relocation pursuant to § 101.91 of the rules we are adopting today. We believe these time periods provide a reasonable balance between the needs of new FSS operators to gain access to spectrum, and the needs of existing FS operators to ensure that relocated facilities are provided that meet their needs. We are providing additional mandatory negotiations time for public safety operations, noting comments about the special need of public safety systems to be able to continue to operate reliably during any transition period.

16. In the event that agreement is not reached in any negotiation period, the FSS licensee will have the option of invoking involuntary relocation. In such a case, an FSS licensee would be obligated to relocate only the specific links that cause the interference problem. Under involuntary relocation, a terrestrial fixed station must relocate provided that the FSS licensee guarantees payment of relocation costs, completes all activities necessary for implementing the replacement facilities, and builds and tests the replacement system for comparability. Terrestrial fixed service operators are not required to relocate until the alternative facilities are available for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff. It would not be in the public interest to allow a right of return to relocated incumbents, as was provided in the Emerging Technologies proceeding. The potential disruption to national, regional or world-wide satellite systems for the benefit of relatively few terrestrial fixed incumbents is infeasible. We will therefore allow an involuntary relocated terrestrial fixed incumbent to petition the Commission for additional modification to, or replacement of its equipment in any case where the incumbent believes it has not received comparable performance from its retuned or replaced equipment. Upon proof shown, we will order the FSS licensee in question to further modify or replace the incumbent terrestrial fixed licensee's equipment. We believe that these safeguards are needed for ensuring comparable terrestrial facilities obviate the need for more lengthy negotiating periods. We note that pursuant to the sunset provisions adopted, an FSS operator generally will no longer be responsible for relocation costs incurred by a terrestrial incumbent after June 8, 2010. By adopting these relocation rules, we put into place a proven system that should lead to efficient relocation and ultimately to the band segmentation that we conclude serves the public interest. We also believe that the relocation rules provide reasonable flexibility to an FSS licensee to establish its operations in a timely and economic manner.

17. Within our negotiation rules, we are also adopting criteria for comparable facilities. Both the existing 2 GHz rules and the rules we proposed in this proceeding include general criteria that

must be met for facilities that are provided under involuntary relocation procedures to be considered comparable. In a separate proceeding on the allocation of spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 95–18, ICO Services Limited (ICO) suggested that these criteria be included in the section of the rules that governs mandatory negotiations. We believe that this change is appropriate for the negotiation rules we are adopting at 18 GHz, as it would be useful to define the target of negotiations. For this reason, we are including these criteria in § 101.89 of the rules we are adopting.

18. We declined, however, to propose to implement blanket licensing in shared bands. We also proposed requirements to ensure that Ka-band GSO/FSS systems did not cause harmful interference to GSO/FSS systems in adjacent orbital slots. However, due to a lack of information, we did not propose specific blanket licensing criteria. We now note that an industry technical group has reached a consensus on appropriate technical criteria for GSO blanket licensing and has submitted a report detailing that consensus. We have reviewed this report and generally adopt the group's recommendations, as specified in the attached rules. Pursuant to the rules we are adopting in this *Report and Order*, all applications for the blanket licensing of GSO/FSS earth stations that meet the requirements of § 25.138 will be processed on a routine basis.

19. With respect to NGSO/FSS systems, we note that the technical study of ITU–R Working Party 4–9S on NGSO/FSS interference to fixed stations has been completed, and an equation has been adopted that can be used to specify the space station pfd that provides interference protection to fixed stations. Therefore we adopt this equation for determining the maximum allowed pfd of NGSO/FSS space stations as a function of the number of satellites in the NGSO system constellation, as recommended by technical study groups of the ITU–R for inclusion in the International Radio Regulations. However, while a decision on the space station pfd is required for the proper design of earth stations, we have not been able to develop a consensus on the criteria to be used for the blanket licensing of NGSO/FSS earth stations; therefore, we defer decisions on the conditions for the blanket licensing of earth stations pending further evaluation.

20. Blanket *Licensing in Unshared Bands.* We adopt a blanket licensing procedure for GSO/FSS earth stations in the unshared 18.58–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.5–30.0 GHz bands. Applicants in these bands may apply for a blanket authorization under which each licensee can construct and operate specified numbers and types of qualified earth stations. At this time, we do not place a limit on the number or the type of earth stations that may be blanket authorized. Applicants, however, must specify such a number and the type of earth station at the time of filing. The license term for a blanket authorization will coincide with the underlying space station operating license.

21. In the 18 GHz NPRM, we proposed that blanket license applicants would be required to designate a point of contact where records on location and frequency use of satellite earth stations will be maintained, in order to ensure that secondary users in these bands have the information necessary to avoid causing harmful interference to GSO/FSS earth stations. As a result of our decision to prohibit secondary use throughout the 18 GHz band, we decline to require satellite operators to designate a point of contact. Moreover, in an environment where there will be no secondary use in the band, requiring satellite operators to monitor the specific location and frequency usage of ubiquitously deployed earth stations could prove expensive and difficult. We also proposed that satellite operators obtaining a blanket license would be subject to an annual reporting requirement. Under this proposal, licensees would be required to include the number of earth stations actually brought into service in a yearly report to the Commission, so that we can monitor the development of this service. This policy is consistent with the requirements initially placed on Very Small Aperture Terminal (''VSAT'') blanket licensed earth station licensees in the 12/14 GHz frequency bands (Ku-band).

22. In the 18 GHz NPRM, we proposed to implement a blanket licensing regime for NGSO/FSS systems in the 18.8–19.3 and the 28.6–29.1 GHz band. However, we stated that we lacked sufficient information to propose specific blanket licensing criteria for NGSO systems, and requested comment on what type of technical criteria should be used. Commenters generally supported this proposal. Therefore, we will adopt our proposal made in the 18 GHz NPRM and will authorize earth station blanket licensing for NGSO/FSS systems in the bands in which NGSO/FSS has primary status, specifically the 18.8–19.3 GHz and 28.6–29.1 GHz frequency bands. The pfd limits for this band are specified in the rules. We recognize that we are not adopting specific blanket licensing rules at this time, and instead will address specific blanket licensing requirements in these bands in a future proceeding.

23. In recognition of the fact that the international allocation is not effective for approximately seven years, we adopt the following allocation and designation decisions, to take effect April 1, 2007: in the downlink band, we allocate 400 MHz of spectrum at 17.3–17.7 GHz for primary BSS use. In the uplink band, we allocate 300 MHz of spectrum at 24.75–25.05 GHz for primary FSS Earth-to-space use, limited to feeder links for the BSS allocation in the 17.3–17.7 GHz band. We allocate 200 MHz of spectrum at 25.05–25.25 GHz for co-primary sharing between FSS and the 24 GHz Service, requiring coordination between these services. Given our experience in the other bands shared between satellite and terrestrial services, we believe that the requirement for coordination in the uplink band will accomplish, with minimal regulation, our objective of providing maximum flexibility of use while ensuring a workable sharing environment. While we note that there is a difference of 100 megahertz of spectrum between the BSS downlinks and the feeder links, we are reluctant to reduce the amount of spectrum available for the feeder links at this time. The flexibility that this additional spectrum provides might prove quite useful to BSS system operators as they tackle the issues of local-into-local and regional programming, as well as any occasional difficulties that might be encountered during coordination.

24. In making these allocation and designation decisions, we strive to attain a balance that best serves the public interest. Our objective is to provide for new satellite services without compromising on our intentions to provide adequate, albeit reduced, continuing spectrum for the FS. We note that BSS is a rapidly growing service, and that additional spectrum will be needed for BSS within the next decade. We also recognize: (1) The importance of preserving terrestrial fixed service spectrum to continue supporting important existing terrestrial fixed service operations in the 17.7–17.8 GHz band; (2) the need to provide spectrum for the migration of terrestrial fixed services into that band; and (3) the need to provide for the growth of the 24 GHz Service.

25. In order to provide for maximum availability of all these services to the public, we conclude that a band segmentation approach will ensure that the BSS will be able to provide downlink service to the general public

in an exclusive allocation, and the fixed service will similarly be able to maintain existing services in the 17.7–17.8 GHz band. We recognize that the ubiquitous nature of BSS services (which are defined as links from the satellite to the general public) preclude successful coordination with a terrestrial service that is similarly widespread. We also note that the U.S. government plans to eventually remove its radiolocation systems that currently operate in the 17.3–17.7 GHz band. In the event that all of these stations are not relocated prior to the implementation of the BSS service, the Commission will work with the NTIA to ensure an orderly transition. See letter from ''Hatch to Hatfield In this Report and Order, we also adopt a co-primary allocation to the GSO/FSS at 25.05–25.25 GHz, limited to BSS feeder links, in order to give full accommodation of spectrum needs to all services. We note that the successful implementation of this allocation will require the development of sharing criteria that will be considered in a future rulemaking proceeding.

26. While we do not believe that implementing the allocation immediately would be prudent, we agree to make the decision now to make an allocation that will be effective April 2007, so as to provide all parties with sufficient notice and time to design their systems to use this spectrum in the most efficient manner. Therefore, within this context, we decide now to make the downlink BSS and GSO/FSS allocations effective April 1, 2007. We are, however, stopping the allocation for the BSS at 17.7 GHz. This will provide 400 MHz of spectrum to the BSS at 17.3–17.7 GHz. Considering the amount of spectrum being lost by the fixed service as a result of this proceeding, we believe it is important to keep as much spectrum available to the terrestrial fixed service as possible, for as long as possible, to help in the relocation of displaced facilities. We proceed with the terrestrial fixed service relocation efforts at 18 GHz and begin the process of developing service rules for the 17 GHz BSS. If we determine that terrestrial fixed relocation spectrum requirements are not as demanding as predicted, we may re-examine the availability of all or a part of the 17.7–17.8 GHz band for BSS applications. Given the record of this proceeding, however, we must at this time ensure that this spectrum is available for terrestrial fixed service operations.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities was incorporated in the 18 GHz NPRM. The Commission sought written public comments on the proposals in the NPRM including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

In this Report and Order, the Commission provides a band plan that should go a long way in facilitating the deployment of new services by designating different dedicated sub-bands for ubiquitously deployed FSS earth stations and near-ubiquitous terrestrial fixed services in the 18 GHz band. Additionally, through the judicious choice of band segments subject to co-primary sharing, this plan will significantly lower any consequential administrative costs of coordination.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were submitted in direct response to the IRFA. However VisionStar made a specific proposal for the treatment of FSS licensees that are small businesses and several commenters provided licensee data for sub-bands of the spectrum concerned, incorporated for the specific services involved. We were unable to act on VisionStar's proposal for the provision of an ''Early Service'' for FSS licensees that are small businesses. This is because we do not collect annual revenue information from space station or earth station licensees, which would be necessary to determine if they are small businesses (see paragraph C), and because of the potential interference impact of such ''temporary secondary'' operations on other FSS licensees.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the adopted rules.

1. Cable Services. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau, there were 1,788 total cable and other pay television service operators and 1,423 had less than $11 million in revenue. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's Rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with

any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

International Services

The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census Report does not provide more precise data.

2. Fixed Satellite Transmit/Receive Earth Stations. Currently there are no operational fixed satellite transmit/receive earth stations authorized for use in the 17.7–20.2 GHz and 27.5–30 GHz band. However, with 12 GSO/FSS licensees, 1 NGSO/FSS licensee, and our decision to adopt blanket licensing, we expect applications for FSS earth station licenses to be filed in the near future. We do not request or collect annual revenue information, and thus are unable to estimate the number of earth stations that would constitute small businesses under the SBA definition.

3. Mobile Satellite Earth Station Feeder Links. We have granted one license for MSS earth station feeder links. We do not request or collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute small businesses under the SBA definition.

4. Space Stations (Geostationary). Commission records reveal that there are 12 space station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute small businesses under the SBA definition, or apply any rules providing special consideration for Space Station (Geostationary) licensees that are small businesses.

5. Space Stations (Non-Geostationary). There is one Non-Geostationary Space Station licensee, and that licensee is operational. We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute small businesses under the SBA definition.

6. Direct Broadcast Satellites. Because DBS provides subscription services, DBS falls within the SBA definition of Cable and Other Pay Television Services (SIC 4841). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated more than $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

7. Auxiliary, Special Broadcast and other program distribution services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). At the frequencies under consideration in this proceeding, there are no transmissions of this type directly to the public. The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations (SIC 4832) and television broadcasting stations (SIC 4833). These definitions provide, respectively, that a small entity is one with either $5.0 million or less in annual receipts or $10.5 million in annual receipts. 13 CFR 121.201, SIC CODES 4832 and 4833. The numbers of these stations are very small. The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most of these types of services are owned by parent stations which, in some cases, would be covered by the revenue definition of a small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as small businesses (as noted, either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not individually meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

8. Microwave Services. Microwave services includes common carrier, private operational fixed, and broadcast auxiliary radio services. At present, there are 22,015 common carrier licensees, approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. Inasmuch as the Commission has not yet defined a small business with respect to microwave services, we will utilize the SBA's definition applicable to radiotelephone companies—i.e., an entity with no more than 1,500 persons. 13 CFR 121.201, SIC CODE 4812. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

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

The Commission's existing rules in part 25 on FSS operations contain reporting requirements for FSS systems, and we modify these reporting requirements to eliminate duplicative costs of filing multiple applications. In addition, we add an annual reporting requirement to indicate the number of satellite earth stations actually brought into service. The proposed blanket licensing procedures do not affect small entities disproportionately, and it is likely that no additional outside professional skills are required to complete the annual report indicating the number of small antenna earth stations actually brought into service.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The 18 GHz NPRM solicited comment on several alternatives for spectrum sharing, blanket licensing, and band segmentation. This Report and Order considered comments offering alternatives, and has acted in response to stated concerns and suggestions, particularly those representing significant agreement or consensus by commenters. The decisions of this Report and Order should positively impact both large and small businesses by providing a faster, more efficient, and less economically burdensome coordination and licensing procedure, as well as providing an alternative band plan that better meets these concerns. The blanket licensing service rules provide for consolidation of licensing for small antenna earth stations, and a new balanced requirement designed to ensure that new satellite services will not cause interference to existing terrestrial services. These rules substitute a single requirement to annually report the number of satellite earth stations brought into service in the last year, compared to the current requirement for individual licensing of such stations. This change, discussed further above, should minimize the impact on Small entities.

F. Report to Congress

The Commission will send a copy of this Report and Order including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1966, see 5 U.S.C. 801 (a)(1)(A). In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

Ordering Clauses

Pursuant to Sections 1, 4(i), 4(j), 301, 302, 303(c), 303(e), 303(f), 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154 (i), 154(j), 301, 302, 303(c), 303(e), 303(f), 303 (r), and 403, this Report and Order IS ADOPTED and that parts 2, 21, 25, 74, 78, and 101 of the Commission's Rules ARE AMENDED, as specified in the rules, *Effective* October 10, 2000.

The Regulatory Flexibility Analysis, as required by Section 604 of the Regulatory Flexibility Act and as set forth *is adopted.*

The Commission's Consumer Information Bureau *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

This proceeding is terminated pursuant to Sections 4i and 4j of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), and 154 (j).

List of Subjects

47 CFR Part 2

Radio, Telecommunications.

47 CFR Part 21

Communications common carriers, Communications equipment, Radio.

47 CFR Part 25

Communications common carriers, communications equipment, Radio, Satellites, Telecommunications.

47 CFR Part 74

Communications equipment, Radio, Television.

47 CFR Part 78

Cable television, Communications equipment, Radio.

47 CFR Part 101

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons set forth in the preamble, parts 2, 21, 25, 74, 78, and 101 of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336 unless otherwise noted.

2. Amend § 2.106 as follows:

a. Revise pages 67, 68, 69, 70, 71, and 72 of the Table.

b. In the list of United States footnotes, revise footnotes US255 and US334.

c. In the list of non-Federal government footnotes, revise footnote NG144 and add footnotes NG163, NG164, NG165, NG166, and NG167.

The additions and revisions read as follows:

§ 2.106 Table of Frequency Allocations.

14.5-18.3 GHz (SHF) Page 67

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
14.5-14.8 FIXED FIXED-SATELLITE (Earth-to-space) S5.510 MOBILE Space research			14.5-14.7145 FIXED Mobile Space research	14.5-15.1365	
			14.7145-15.1365 MOBILE Fixed Space research	14.7145-15.1365	
14.8-15.35 FIXED MOBILE Space research			US310	US310	
			15.1365-15.35 FIXED Mobile Space research	15.1365-15.35	
S5.339			S5.339 US211	S5.339 US211	
15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive)			15.35-15.4 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive)		
S5.340 S5.511			US246		
15.4-15.43 AERONAUTICAL RADIONAVIGATION			15.4-15.7 AERONAUTICAL RADIONAVIGATION US260		Aviation (87)
S5.511D					
15.43-15.63 FIXED SATELLITE (space-to-Earth) (Earth-to-space) S5.511A AERONAUTICAL RADIONAVIGATION					
S5.511C					
15.63-15.7 AERONAUTICAL RADIONAVIGATION					
S5.511D			733 797 US211		
15.7-16.6 RADIOLOCATION			15.7-16.6 RADIOLOCATION US110 G59	15.7-17.2 Radiolocation US110	Private Land Mobile (90)
S5.512 S5.513					

16.6-17.1 RADIOLOCATION Space research (deep space) (Earth-to-space) S5.512 S5.513			16.6-17.1 RADIOLOCATION US110 G59 Space research (deep space) (Earth-to-space)		
17.1-17.2 RADIOLOCATION S5.512 S5.513			17.1-17.2 RADIOLOCATION US110 G59		
17.2-17.3 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) S5.512 S5.513 S5.513A			17.2-17.3 RADIOLOCATION US110 G59 Earth exploration-satellite (active) Space research (active)	17.2-17.3 Radiolocation US110 Earth exploration-satellite (active) Space research (active)	
17.3-17.7 FIXED-SATELLITE (Earth-to-space) S5.516 Radiolocation S5.514	17.3-17.7 FIXED-SATELLITE (Earth-to-space) S5.516 BROADCASTING-SATELLITE Radiolocation S5.514 S5.515 S5.517	17.3-17.7 FIXED-SATELLITE (Earth-to-space) S5.516 Radiolocation S5.514	17.3-17.7 Radiolocation US259 G59	17.3-17.7 FIXED-SATELLITE (Earth-to-space) US271 BROADCASTING-SATELLITE NG163 US259	Satellite Communications (25) Direct Broadcast Satellite (100)
17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space) S5.516 MOBILE	17.7-17.8 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-to-space) S5.516 BROADCASTING-SATELLITE Mobile S5.518 S5.515 S5.517	17.7-18.1 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space) S5.516 MOBILE	17.7-17.8	17.7-17.8 FIXED FIXED-SATELLITE (Earth-to-space) US271 NG144	Satellite Communications (25) Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
	17.8-18.1 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space) S5.516 MOBILE		17.8-18.3 FIXED-SATELLITE (space-to-Earth) G117 S5.519 US334	17.8-18.3 FIXED S5.519 US334 NG144	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)
18.1-18.4 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A (Earth-to-space) S5.520 MOBILE S5.519 S5.521			See next page for 18.3-18.6 GHz	See next page for 18.3-18.58 GHz	See next page for 18.3-18.58 GHz

18.3-22.5 GHz (SHF) Page 69

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 18.1-18.4 GHz			18.3-18.6 FIXED-SATELLITE (space-to-Earth) G117	18.3-18.58 FIXED FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25) Auxiliary Broadcast. (74) Cable TV Relay (78) Fixed Microwave (101)
18.4-18.6 FIXED FIXED-SATELLITE (space-to-Earth) S5.484A MOBILE				18.58-18.6 FIXED-SATELLITE (space-to-Earth) NG164 US334 NG144	Satellite Communications (25)
18.6-18.8 FIXED FIXED-SATELLITE (space-to-Earth) S5.523 MOBILE except aeronautical mobile Earth exploration-satellite (passive) Space research (passive) S5.522	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED FIXED-SATELLITE (space-to-Earth) S5.523 MOBILE except aeronautical mobile SPACE RESEARCH (passive) S5.222	18.6-18.8 FIXED FIXED-SATELLITE (space-to-Earth) S5.523 MOBILE except aeronautical mobile Space research (passive) S5.522	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 G117 SPACE RESEARCH (passive) US254 US334	18.6-18.8 EARTH EXPLORATION-SATELLITE (passive) FIXED-SATELLITE (space-to-Earth) US255 NG164 SPACE RESEARCH (passive) US254 US334 NG144	
18.8-19.3 FIXED FIXED-SATELLITE (space-to-Earth) S5.523A MOBILE			18.8-20.2 FIXED-SATELLITE (space-to-Earth) G117	18.8-19.3 FIXED-SATELLITE (space-to-Earth) NG165 US334 NG144	
19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) (Earth-space) S5.523B S5.523C S5.523D S5.523E MOBILE				19.3-19.7 FIXED FIXED-SATELLITE (space-to-Earth) NG166 US334 NG144	Satellite Communications (25) Auxiliary Broadcast. (74) Cable TV Relay (78) Fixed Microwave (101)
19.7-20.1 FIXED-SATELLITE (space-to-Earth) S5.484A Mobile-satellite (space-to-Earth) S5.524	19.7-20.1 FIXED-SATELLITE (space-to-Earth) S5.484A MOBILE-SATELLITE (space-to-Earth) S5.524 S5.525 S5.526 S5.527 S5.528 S5.529	19.7-20.1 FIXED-SATELLITE (space-to-Earth) S5.484A Mobile-satellite (space-to-Earth) S5.524		19.7-20.1 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.525 S5.526 S5.527 S5.528 S5.529 US334	Satellite Communications (25)

20.1-20.2 FIXED-SATELLITE (space-to-Earth) S5.484A MOBILE-SATELLITE (space-to-Earth) S5.524 S5.525 S5.526 S5.527 S5.528				20.1-20.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) S5.525 S5.526 S5.527 S5.528 US334	
20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) S5.524				20.2-21.2 FIXED-SATELLITE (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) Standard frequency and time signal-satellite (space-to-Earth) G117	20.2-21.2 Standard frequency and time signal-satellite (space-to-Earth)	
21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive)				21.2-21.4 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE SPACE RESEARCH (passive) US263		Fixed Microwave (101)
21.4-22 FIXED MOBILE BROADCASTING-SATELLITE S5.530	21.4-22 FIXED MOBILE	21.4-22 FIXED MOBILE BROADCASTING-SATELLITE S5.530 S5.531		21.4-22 FIXED MOBILE		
22-22.21 FIXED MOBILE except aeronautical mobile S5.149				22-22.21 FIXED MOBILE except aeronautical mobile S5.149		
22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) S5.149 S5.532				22.21-22.5 EARTH EXPLORATION-SATELLITE (passive) FIXED MOBILE except aeronautical mobile RADIO ASTRONOMY SPACE RESEARCH (passive) S5.149 US263		

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
22.5-22.55 FIXED MOBILE			22.5-22.55 FIXED MOBILE US211		Fixed Microwave (101)
22.55-23.55 FIXED INTER-SATELLITE MOBILE S5.149			22.55-23.55 FIXED INTER-SATELLITE MOBILE S5.149 US278		Satellite Communications (25) Fixed Microwave (101)
23.55-23.6 FIXED MOBILE			23.55-23.6 FIXED MOBILE		Fixed Microwave (101)
23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY SPACE RESEARCH (passive) S5.340			23.6-24 EARTH EXPLORATION-SATELLITE (passive) RADIO ASTRONOMY US74 SPACE RESEARCH (passive) US246		
24-24.05 AMATEUR AMATEUR-SATELLITE S5.150			24-24.05 S5.150 US211	24-24.05 AMATEUR AMATEUR-SATELLITE S5.150 US211	ISM Equipment (18) Amateur (97)
24.05-24.25 RADIOLOCATION Amateur Earth exploration-satellite (active) S5.150			24.05-24.25 RADIOLOCATION US110 G59 Earth exploration-satellite (active) S5.150	24.05-24.25 Radiolocation US110 Amateur Earth exploration-satellite (active) S5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
24.25-24.45 FIXED	24.25-24.45 RADIONAVIGATION	24.25-24.45 RADIONAVIGATION FIXED MOBILE	24.25-24.45	24.25-24.45 RADIONAVIGATION FIXED	Aviation (87) Fixed Microwave (101)

<table>
<tr><td>24.45-24.75
FIXED
INTER-SATELLITE</td><td>24.45-24.65
INTER-SATELLITE
RADIONAVIGATION

S5.533</td><td>24.45-24.65
FIXED
INTER-SATELLITE
MOBILE
RADIONAVIGATION

S5.533</td><td colspan="2">24.45-24.65
INTER-SATELLITE
RADIONAVIGATION

S5.533</td><td>Satellite Communications (25)</td></tr>
<tr><td></td><td>24.65-24.75
INTER-SATELLITE
RADIOLOCATION-SATELLITE (Earth-to-space)</td><td>24.65-24.75
FIXED
INTER-SATELLITE
MOBILE

S5.533 S5.534</td><td colspan="2">24.65-24.75
INTER-SATELLITE
RADIOLOCATION-SATELLITE (Earth-to-space)</td><td></td></tr>
<tr><td>24.75-25.25
FIXED</td><td rowspan="2">24.75-25.25
FIXED-SATELLITE (Earth-to-space) S5.535</td><td rowspan="2">24.75-25.25
FIXED
FIXED-SATELLITE (Earth-to-space) S5.535
MOBILE

S5.534</td><td>24.75-25.05
RADIONAVIGATION</td><td>24.75-25.05
FIXED-SATELLITE (Earth-to-space) NG167
RADIONAVIGATION</td><td>Satellite Communications (25)
Aviation (87)</td></tr>
<tr><td></td><td>25.05-25.25</td><td>25.05-25.25
FIXED-SATELLITE (Earth-to-space) NG167
FIXED
RADIONAVIGATION</td><td>Satellite Communications (25)
Aviation (87)
Fixed Microwave (101)</td></tr>
<tr><td colspan="3">25.25-25.5
FIXED
INTER-SATELLITE S5.536
MOBILE
Standard frequency and time signal-satellite (Earth-to-space)</td><td>25.25-25.5
FIXED
MOBILE
Standard frequency and time signal-satellite (Earth-to-space)</td><td rowspan="2">25.25-27
Standard frequency and time signal-satellite (Earth-to-space)
Earth exploration-satellite (space-to-space)</td><td rowspan="3">Note: In its Manual, NTIA has added a primary inter-satellite service allocation to the band 25.25-27.5 GHz, limited the use of this allocation by adopting footnote S5.536, and has changed the directional indicator for the Earth exploration-satellite service allocation in the band 25.5-27 GHz from space-to-space to space-to-Earth.</td></tr>
<tr><td colspan="3">25.5-27
EARTH EXPLORATION-SATELLITE (space-to-Earth) S5.536A S5.536B
FIXED
INTER-SATELLITE S5.536
MOBILE
Standard frequency and time signal-satellite (Earth-to-space)</td><td>25.5-27
FIXED
MOBILE
Standard frequency and time signal-satellite (Earth-to-space)
Earth exploration-satellite (space-to-space)</td></tr>
<tr><td>27-27.5
FIXED
INTER-SATELLITE S5.536
MOBILE</td><td colspan="2">27-27.5
FIXED
FIXED-SATELLITE (Earth-to-space)
INTER-SATELLITE S5.536 S5.537
MOBILE</td><td>27-27.5
FIXED
MOBILE</td><td>27-27.5
Earth exploration-satellite (space-to-space)</td></tr>
</table>

* * * * *

United States (US) Footnotes

* * * * *

US255 In addition to any other applicable limits, the power flux-density across the 200 MHz band 18.6–18.8 GHz produced at the surface of the Earth by emissions from a space station under assumed free-space propagation conditions shall not exceed −95 dB(W/m^2) for all angles of arrival. This limit may be exceeded by up to 3 dB for no more than 5% of the time.

* * * * *

US334 In the band 17.8–20.2 GHz, Government space stations in both geostationary (GSO) and non-geostationary satellite orbits (NGSO) and associated earth stations in the fixed-satellite service (space-to-Earth) may be authorized on a primary basis. For a Government geostationary satellite network to operate on a primary basis, the space station shall be located outside the arc, measured from east to west, 70 West Longitude to 120 West Longitude. Coordination between Government fixed-satellite systems and non-Government space and terrestrial systems operating in accordance with the United States Table of Frequency Allocations is required.

(a) In the sub-band 17.8–19.7 GHz, the power flux-density at the surface of the Earth produced by emissions from a Government GSO space station or from a Government space station in a NGSO constellation of 50 or fewer satellites, for all conditions and for all methods of modulation, shall not exceed the following values in any 1 MHz band:

(1) −115 dB(W/m^2) for angles of arrival above the horizontal plane (δ) between 0° and 5°,

(2) −115 + 0.5 (δ − 5) dB(W/m^2) for δ between 5° and 25°, and

(3) −105 dB(W/m^2) for δ between 25° and 90°.

(b) In the sub-band 17.8–19.3 GHz, the power flux-density at the surface of the Earth produced by emissions from a Government space station in an NGSO constellation of 51 or more satellites, for all conditions and for all methods of modulation, shall not exceed the following values in any 1 MHz band:

(1) −115 −X dB(W/m^2) for δ between 0° and 5°,

(2) −115 −X + ((10 + X)/20) (δ − 5) dB(W/m^2) for δ between 5° and 25°, and

(3) −105 dB(W/m^2) for δ between 25° and 90°; where X is defined as a function of the number of satellites, n, in an NGSO constellation as follows:

For n ≤ 288, X = (5/119) (n − 50) dB; and

For n > 288, X = (1/69) (n+ 402) dB.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG144 Stations authorized as of September 9, 1983 to use frequencies in the bands 17.7–18.58 GHz and 19.3–19.7 GHz may, upon proper application, continue operations. Fixed stations authorized in the band 18.58–19.3 GHz that remain co-primary under the provisions of §§ 21.901(e), 74.502(c), 74.602(g), 78.18(a)(4), and 101.174(r) of this chapter may continue operations consistent with the provisions of those sections.

* * * * *

NG163 The allocation to the broadcasting-satellite service in the band 17.3–17.7 GHz shall come into effect on 1 April 2007.

NG164 The use of the band 18.3–18.8 GHz by the fixed-satellite service (space-to-Earth) is limited to systems in the geostationary-satellite orbit.

NG165 The use of the band 18.8–19.3 GHz by the fixed-satellite service (space-to-Earth) is limited to systems in non-geostationary-satellite orbits.

NG166 The use of the band 19.3–19.7 GHz by the fixed-satellite service (space-to-Earth) is limited to feeder links for the mobile-satellite service.

NG167 The use of the fixed-satellite service (Earth-to-space) in the band 24.75–25.25 GHz is limited to feeder links for the broadcasting-satellite service operating in the band 17.3–17.7 GHz. The allocation to the fixed-satellite service (Earth-to-space) in the band 24.75–25.25 shall come into effect on 1 April 2007.

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080,1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

4. Section 21.901 is amended by revising paragraph (e) to read as follows:

§ 21.901 Frequencies.

* * * * *

(e) Frequencies in the band segments 18,580–18,820 MHz and 18,920–19,160 MHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations for point-to-point return links from a subscriber's location on a shared co-primary basis with other services under parts 25, 74, 78 and 101 of this chapter until June 8, 2010. Prior to June 8, 2010, such stations are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. After June 8, 2010, such operations are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No new licenses will be granted in these bands after June 8, 2000.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

5. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

6. Section 25.115 is amended by adding paragraph (e) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(e) Earth stations operating in the 20/30 GHz Fixed-Satellite Service with U.S.-licensed or non-U.S. licensed satellites: Applications to license individual earth stations operating in the 20/30 GHz band shall be filed on FCC Form 312, Main Form and Schedule B, and shall also include the information described in § 25.138. Earth stations belonging to a network operating in the 18.58–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz or 29.5–30.0 GHz bands may be licensed on a blanket basis. Applications for such blanket authorization may be filed using FCC Form 312, Main Form and Schedule B, and specifying the number of terminals to be covered by the blanket license. Each application for a blanket license under this section shall include the information described in § 25.138.

7. Section 25.138 is added under the undesignated centerheading ''Earth Stations'' to read as follows:

§ 25.138 Blanket licensing provisions of GSO FSS Earth Stations in the 18.58–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space) and 29.5–30.0 GHz (Earth-to-space) bands.

(a) All applications for a blanket earth station license in the GSO FSS in the 18.58–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz and 29.5–30.0 GHz bands that meet the following requirements shall be routinely processed:

(1) GSO FSS earth station antenna off-axis EIRP spectral density for co-polarized signals shall not exceed the following values, within ±3° of the GSO arc, under clear sky conditions:

18.5–25log(θ)–10log(N)	dBW/40kHz	for 2.0° ≤ θ ≤ 7°
−2.63–10log(N)	dBW/40kHz	for 7° ≤ θ ≤ 9.23°
21.5–25log(θ)–10log(N)	dBW/40kHz	for 9.23° ≤ θ ≤ 48°
−10.5–10log(N)	dBW/40kHz	for 48° < θ ≤ 180°

Where:

θ is the angle in degrees from the axis of the main lobe; for systems where more than one earth station is expected to transmit simultaneously in the same bandwidth, *e.g.,* CDMA systems,

N is the likely maximum number of simultaneously transmitting co-frequency earth stations in the receive beam of the satellite; N=1 for TDMA and FDMA systems.

(2) GSO FSS earth station antenna off-axis EIRP spectral density for co-polarized signals shall not exceed the following values, for all directions other than within ±3° of the GSO arc, under clear sky conditions:

21.5–25log(θ)–10log(N)	dBW/40kHz	for 3.5° ≤ θ ≤ 7°
0.37–10log(N)	dBW/40kHz	for 7° < θ ≤ 9.23°
24.5–25log(θ)–10log(N)	dBW/40kHz	for 9.23° < θ ≤ 48°
−7.5–10log(N)	dBW/40kHz	for 48° < θ ≤ 180°

Where:

θ: is the angle in degrees from the axis of the main lobe; for systems where more than one earth station is expected to transmit simultaneously in the same bandwidth, *e.g.,* CDMA systems.

N: is the likely maximum number of simultaneously transmitting co-frequency earth stations in the receive beam of the satellite; N=1 for TDMA and FDMA systems.

(3) The values given in paragraphs (a) (1) and (2) of this section may be exceeded by 3 dB, for values of θ >10°, provided that the total angular range over which this occurs does not exceed 20° when measured along both sides of the GSO arc.

(4) GSO FSS earth station antenna off-axis EIRP spectral density for cross-polarized signals shall not exceed the following values, in all directions relative to the GSO arc, under clear sky conditions:

8.5–25log(θ)–10log(N)	dBW/40kHz	for 2.0° ≤ θ ≤ 7°
12.63–10log(N)	dBW/40kHz	for 7° < θ ≤ 9.23°

Where:

θ: is the angle in degrees from the axis of the main lobe; for systems where more than one earth station is expected to transmit simultaneously in the same bandwidth, *e.g.,* CDMA systems.

N: is the likely maximum number of simultaneously transmitting co-frequency earth stations in the receive beam of the satellite; N=1 for TDMA and FDMA systems.

(5) For earth stations employing uplink power control, the values in paragraphs (a) (1), (2), and (4) of this section may be exceeded by up to 20 dB under conditions of uplink fading due to precipitation. The amount of such increase in excess of the actual amount of monitored excess attenuation over clear sky propagation conditions shall not exceed 1.5 dB or 15 % of the actual amount of monitored excess attenuation in dB, whichever is larger, with a confidence level of 90 percent except over transient periods accounting for no more than 0.5% of the time during which the excess is no more than 4.0 dB.

(6) Power flux-density (PFD) at the Earth's surface produced by emissions from a space station for all conditions, including clear sky, and for all methods of modulation shall not exceed a level of −118 dBW/m^2/MHz for the band 19.7–20.2 GHz.

(b) Each applicant for earth station license(s) that proposes levels in excess of those defined in paragraph (a) of this section shall submit link budget analyses of the operations proposed along with a detailed written explanation of how each uplink and each transmitted satellite carrier density figure is derived. Applicants shall also submit a narrative summary which must indicate whether there are margin shortfalls in any of the current baseline services as a result of the addition of the applicant's higher power service, and if so, how the applicant intends to resolve those margin short falls. Applicants shall certify that all potentially affected parties (i.e., those GSO FSS satellite networks that are 2, 4, and 6 degrees apart) acknowledge and do not object to the use of the applicant's higher power densities.

(c) Licensees authorized pursuant to paragraph (b) of this section shall bear the burden of coordinating with any future applicants or licensees whose proposed compliant operations at 6 degrees or smaller orbital spacing, as defined by paragraph (a) of this section, is potentially or actually adversely affected by the operation of the non-compliant licensee. If no good faith agreement can be reached, however, the non-compliant licensee shall reduce its earth station and space station power density levels to be compliant with those specified in paragraph (a) of this section.

(d) The applicant shall provide for each earth station antenna type, a series of radiation patterns measured on a production antenna performed on a calibrated antenna range and, as a minimum, shall be made at the bottom, middle, and top frequencies of the 30 GHz band. The radiation patterns are:

(1) Co-polarized patterns for each of two orthogonal senses of polarizations in two orthogonal planes of the antenna.

(i) In the azimuth plane, plus and minus 10 degrees and plus and minus 180 degrees.

(ii) In the elevation plane, zero to 30 degrees.

(2) Cross-polarization patterns in the E- and H-planes, plus and minus 10 degrees.

(3) Main beam gain.

(e) Protection of receive earth stations from adjacent satellite interference is based on either the antenna performance specified in § 25.209 (a) and (b), or the actual receiving earth station antenna performance, if actual performance provides greater isolation from adjacent satellite interference. For purposes of insuring the correct level of protection, the applicant shall provide, for each earth station antenna type, the antenna performance plots for the 20 GHz band, including the format specified in paragraph (d) of this section.

(f) The earth station licensee shall not transmit towards a GSO FSS satellite unless it has prior authorization from the satellite operator or a space segment vendor authorized by the satellite operator. The specific transmission shall be conducted in accordance with the operating protocol specified by the satellite operator.

(g) A licensee applying to renew its license must include on FCC Form 405 the number of constructed earth stations.

8. Section 25.145 is amended by redesignating paragraphs (g) introductory text, (g)(1), (g)(2), and (g)(3) as paragraphs (g)(1) introductory text, (g)(1)(i), (g)(1)(ii), and (g)(1)(iii), respectively, and by adding paragraphs (g)(2), (h), and (i) to read as follows:

§ 25.145 Licensing conditions for the Fixed-Satellite Service in the 20/30 GHz bands.

* * * * *

(g) * * * (1) * * *

(2) Licensees shall submit to the Commission a yearly report indicating the number of earth stations actually brought into service under its blanket licensing authority. The annual report is due to the Commission no later than the first day of April of each year and shall indicate the deployment figures for the preceding calendar year.

(h) *Policy governing the relocation of terrestrial services from the 18.58 to 19.3 GHz band.* Frequencies in the 18.58–19.3 GHz band listed in parts 21, 74, 78, and 101 of this chapter have been reallocated for primary use by the Fixed-Satellite Service, subject to various provisions for the existing terrestrial licenses. In accordance with procedures specified in §§ 101.85 through 101.97 of this chapter, Fixed-Satellite Service licensees are required to relocate the existing co-primary terrestrial licensees in these bands if interference to those operations would occur during the period that the terrestrial stations remain co-primary and the terrestrial antenna is pointing within 2 degrees of the GSO satellite. Additionally, Fixed-Satellite Service operations are not entitled to protection from the co-primary operations until after that period has expired. (see §§ 21.901(e), 74.502(c), 74.602(g), 78.18(a)(4), and 101.147(r) of this chapter.

(i) *Protection of fixed services receivers in the 18.3–19.3 GHz band.* For purposes of this section, FSS space stations operating in accordance with the power flux-density limits of § 25.208 are considered not to cause unacceptable interference to fixed service receivers that are pointed more than 2 degrees from the FSS space station.

(1) *18.3–18.58 GHz.* FSS space stations transmitting in the 18.3–18.58 GHz band may not cause unacceptable interference to fixed service receive stations that were licensed or for which an application was pending prior to June 8, 2000.

(2) *18.58–18.8 GHz.* FSS space stations transmitting in the 18.58–18.8 GHz band may not cause unacceptable interference to fixed service receive stations that were licensed or for which an application was pending prior to September 18, 1998. After June 8, 2010, such fixed station receivers are no longer afforded protection from FSS space stations operating in accordance with § 25.208 and the fixed station transmitters shall not cause harmful interference to the GSO FSS receiving earth stations.

(3) *18.8–19.3 GHz.* FSS space stations transmitting in the 18.8–19.3 GHz band may not cause unacceptable interference to fixed service receive stations that were licensed or for which an application was pending prior to June 8, 2000. After June 8, 2010, such fixed station receivers (except those operating in 19.26–19.3 GHz) are no longer afforded protection from FSS space stations operating in accordance with § 25.208.

9. Section 25.202(a)(1) is revised to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) *Frequency bands.* The following frequencies are available for use by the fixed-satellite service. Precise frequencies and bandwidths of emission shall be assigned on a case-by-case basis.

Space-to-earth	Earth-to-space
3.7–4.2 [1]	[1] 5.925–6.425
10.95–11.2 [1]	[4] 13.75–14.0
11.45–11.7 [2]	[5] 14.0–14.2
11.7–12.2 [3]	14.2–14.5
18.3–18.58 [1] [10]	[9] 17.3–17.8
18.58–18.8 [6] [10] [11]	
18.8–19.3 [7] [10]	
19.3–19.7 [8] [10]	[1] 27.5–29.5
19.7–20.2 [10]	29.5–30.0

[1] This band is shared coequally with terrestrial radiocommunication services.

[2] Use of this band by the fixed-satellite service is limited to international systems, i.e., other than domestic systems.

[3] Use of this band by the fixed-satellite service in Region 2 is limited to national and subregional systems. Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

[4] This band is shared on an equal basis with the Government radiolocation service, grandfathered space stations in the Tracking and Data Relay Satellite System, and until January 1, 2000, spaceborne sensors.

[5] In this band, stations in the radionavigation service shall operate on a secondary basis to the fixed-satellite service.

[6] The band 18.58–18.8 GHz is shared coequally with existing terrestrial radiocommunications systems until June 8, 2010.

[7] The band 18.8–19.3 GHz is shared coequally with terrestrial radiocommunications services, until June 8, 2010. After this date, the sub-band 19.26–19.3 GHz is shared coequally with existing terrestrial radiocommunications systems.

[8] The use of the band 19.3–19.7 GHz by the Fixed-Satellite Service (space-to-Earth) is limited to feeder links for the Mobile-Satellite Service.

[9] The use of the band 17.3–17.8 GHz by the Fixed-Satellite Service (Earth-to-space) is limited to feeder links for broadcasting-satellite service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

[10] This band is shared co-equally with the Federal Government Fixed-Satellite Service.

[11] The band 18.6–18.8 GHz is shared coequally with the non-Federal Government and Federal Government Earth Exploration-Satellite (passive) and Space Research (passive) Services.

* * * * *

10. Section 25.208 is amended by revising paragraph (c) and adding paragraphs (d), (e) and (f) to read as follows:

§ 25.208 Power flux-density limits.

* * * * *

(c) In the 19.3–19.7 GHz, 22.55–23.00 GHz, 23.00–23.55 GHz, and 24.45–24.75 GHz frequency bands, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

(1) -115 dB (W/m^2) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane.

(2) $-115+0.5\,(d-5)$ dB (W/m^2) in any 1 MHz band for angles of arrival d (in

degrees) between 5 and 25 degrees above the horizontal plane.

(3) −105 dB (W/m²) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(d) In the 18.3–18.8 GHz frequency bands, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

(1) −118 dB (W/m²) in any 1 MHz band for angles of arrival between 0 and 5 degrees above the horizontal plane.

(2) −118+0.65 (d − 5) dB (W/m²) in any 1 MHz band for angles of arrival d (in degrees) between 5 and 25 degrees above the horizontal plane.

(3) −105 dB (W/m²) in any 1 MHz band for angles of arrival between 25 and 90 degrees above the horizontal plane.

(e) In addition to the limits specified in paragraph (d) of this section, the power flux-density across the 200 MHz band 18.6–18.8 GHz produced at the Earth's surface by emissions from a space station under assumed free-space propagation conditions shall not exceed −95 dB(W/m²) for all angles of arrival. This limit may be exceeded by up to 3 dB for no more than 5% of the time.

(f) In the 18.8–19.3 GHz frequency band, the power flux-density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

$-115 - X$ dB(W/m²÷MHz)	for $0° \le \delta < 5°$
$-115 - X + ((10+X)/20)(\delta - 5)$ dB(W/m²÷MHz)	for $5° \le \delta < 25°$
−105 dB(W/m²÷MHz)	for $25° \le \delta < 90°$

Where:

δ: is the angle of arrival above the horizontal plane; and

X is defined as a function of the number of satellites in the non-GSO FSS constellation, n, as follows:

for n ≤ 50	X = 0 (dB)
for 50 < n ≤ 288	X = (5/119) (n − 50) (dB)
for n > 288	X = (1/69) (n + 402) (dB)

11. Section 25.251(a) is revised to read as follows:

§ 25.251 Special requirements for coordination.

(a) The administrative aspects of the coordination process are set forth in §§ 101.103(d) of this chapter in the case of coordination of terrestrial stations with earth stations and in § 25.203 in the case of coordination of earth stations with terrestrial stations.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

12. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f) and 554.

13. Section 74.502(c) is revised to read as follows:

§ 74.502 Frequency assignment.

* * * * *

(c) Aural broadcast STL and intercity relay stations that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations in the band 18,760–18,820 and 19,100–19,160 MHz on a shared co-primary basis with other services under parts 21, 25, and 101 of this chapter until June 8, 2010. Prior to June 8, 2010, such stations are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. After June 8, 2010, such operations are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No new licenses will be granted in these bands.

(1)(i) 5 MHz maximum authorized bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
340 MHz Separation	
18762.5	19102.5
18767.5	19107.5
18772.5	19112.5
18777.5	19117.5
18782.5	19122.5
18787.5	19127.5
18792.5	19132.5
18797.5	19137.5
18802.5	19142.5
18807.5	19147.5
18812.5	19152.5
18817.5	19157.5

(ii) Licensees may use either a two-way link or one frequency of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to the procedures required in § 101.103(d) of this chapter.

* * * * *

(2) [Reserved]

* * * * *

14. Section 74.551 is amended by adding paragraph (d) to read as follows:

§ 74.551 Equipment changes.

* * * * *

(d) Permissible changes in equipment operating in the bands 18.76–18.82 GHz and 19.1–19.16 GHz. Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 74.502(c) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

15. Section 74.602(g) introductory text is revised to read as follows:

§ 74.602 Frequency assignment.

* * * * *

(g) The following frequencies are available for assignment to television STL, television relay stations and television translator relay stations. Stations operating on frequencies in the sub-band 19.26–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, 78, and 101 of this chapter. Such stations, however, are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. No new licenses will be granted in the 19.26–19.3 GHz band after June 8, 2000. The provisions of § 74.604 do not apply to the use of these frequencies. Licensees may use either a two-way link or one or both frequencies of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 101.103(d) of this chapter.

* * * * *

16. Section 74.638(b) is revised to read as follows:

§ 74.638 Frequency coordination.

* * * * *

(b) Coordination of assignments in the 6425–6525 MHz and 17.7–19.7 GHz bands will be in accordance with the procedure established in § 101.103(d) of this chapter except that the prior

coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

17. Section 74.651 is revised by adding paragraph (e) to read as follows:

§ 74.651 Equipment changes.

* * * * *

(e) Permissible changes in equipment operating in the band 19.26–19.3 GHz. Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 74.602(g) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

PART 78—CABLE TELEVISION RELAY SERVICE

18. The authority citation for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

19. Section 78.18(a)(4) introductory text is revised to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(4) The Cable Television Relay Service is also assigned the following frequencies in the 17,700–19,700 MHz band. These frequencies are co-equally shared with stations in other services under parts 25, 74, and 101 of this chapter. Cable Television Relay Service stations operating on frequencies in the sub-band 19.26–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 25, 74, and 101 of this chapter. Such stations, however, are subject to relocation by licensees in the fixed-satellite service. Such relocation is subject to the provisions of §§ 101.85 through 101.97 of this chapter. No new part 78 licenses will be granted in the 19.26–19.3 GHz band after June 8, 2000. Licensees may use either a two-way link or one or both frequencies of a frequency pair for a one-way link and shall coordinate proposed operations pursuant to procedures required in § 101.103 (d) of this chapter. These bands may be used for analog or digital modulation.

* * * * *

20. Section 78.36(b) is revised to read as follows:

§ 78.36 Frequency coordination.

* * * * *

(b) 6425–6525 MHz and 17.7–19.7 GHz. Coordination of fixed and mobile assignments will be in accordance with the procedure established in § 101.103(d) of this chapter, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree.

21. Section 78.109 is amended by adding paragraph (d) to read as follows:

§ 78.109 Equipment changes.

* * * * *

(d) *Permissible changes in equipment operating in the band 19.26–19.3 GHz.* Notwithstanding other provisions of this section, licensees of stations that remain co-primary under the provisions of § 78.18(a)(4) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

PART 101—FIXED MICROWAVE SERVICES

22. The authority citation for part 101 continues to read as follows:

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

23. An undesignated centerheading and §§ 101.83, 101.85, 101.89, 101.91. 101.95, and 101.97 are added to subpart B to read as follows:

Policies Governing Fixed Service Relocation From the 18.58–19.30 GHz Band

101.83 Modification of station license.
101.85 Transition of the 18.58–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).
101.89 Negotiations.
101.91 Involuntary relocation procedures.
101.95 Sunset provisions for licensees in the 18.58–19.26 GHz band.
101.97 Future licensing in the 18.58–19.30 GHz band.

Policies Governing Fixed Service Relocation From the 18.58–19.30 GHz Band

§ 101.83 Modification of station license.

Permissible changes in equipment operating in the band 18.58–19.3 GHz: Notwithstanding other provisions of this section, stations that remain co-primary under the provisions of § 101.147(r) may not make modifications to their systems that increase interference to satellite earth stations, or result in a facility that would be more costly to relocate.

§ 101.85 Transition of the 18.58–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).

Fixed services (FS) frequencies in the 18.58–19.3 GHz bands listed in §§ 21.901(e), 74.502(c), 74.602(g), and 78.18(a)(4) of this chapter, and § 101.147(a) and (r) have been allocated for use by the fixed-satellite service (FSS). The rules in this section provide for a transition period during which FSS licensees may relocate existing FS licensees using these frequencies to other microwave bands.

(a) FSS licensees may negotiate with FS licensees authorized to use frequencies in the 18.58–19.30 GHz band for the purpose of agreeing to terms under which the FS licensees would:

(1) Relocate their operations to other fixed microwave bands or other media; or alternatively

(2) Accept a sharing arrangement with the FSS licensee that may result in an otherwise impermissible level of interference to the FSS operations.

(b) FS operations in the 18.58–19.30 GHz band that remain co-primary under the provisions of §§ 21.901(e), 74.502(c), 74.602(d), and 78.18(a)(4) of this chapter, and § 101.147(r) will continue to be co-primary with the FSS users of this spectrum until June 8, 2010 or until the relocation of the fixed service operations, whichever occurs sooner. After June 8, 2010, only FS operations in the band 19.26–19.3 GHz will continue to be co-primary with the FSS users. Notwithstanding this continued co-primary status, FS users in the 19.26–19.3 GHz band remain subject to the relocation procedures of §§ 101.85 through 101.95. If no agreement is reached during the negotiations, an FSS licensee may initiate relocation procedures. Under the relocation procedures, the incumbent is required to relocate, provided that the FSS licensee meets the conditions of § 101.91.

(c) Negotiation periods are defined as follows:

(1) Non-public safety incumbents will have a two-year negotiation period.

(2) Public safety incumbents will have a three-year negotiation period.

§ 101.89 Negotiations.

(a) The negotiation is triggered by the fixed-satellite service (FSS) licensee, who must contact the fixed services (FS) licensee and request that negotiations begin.

(b) Once negotiations have begun, an FS licensee may not refuse to negotiate and all parties are required to negotiate in good faith. Good faith requires each party to provide information to the other

that is reasonably necessary to facilitate the relocation process. In evaluating claims that a party has not negotiated in good faith, the FCC will consider, inter alia, the following factors:

(1) Whether the FSS licensee has made a bona fide offer to relocate the FS licensee to comparable facilities in accordance with § 101.91(b);

(2) If the FS licensee has demanded a premium, the type of premium requested (e.g., whether the premium is directly related to relocation, such as system-wide relocations and analog-to-digital conversions, versus other types of premiums), and whether the value of the premium as compared to the cost of providing comparable facilities is disproportionate (i.e., whether there is a lack of proportion or relation between the two);

(3) What steps the parties have taken to determine the actual cost of relocation to comparable facilities;

(4) Whether either party has withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process.

(c) Any party alleging a violation of our good faith requirement must attach an independent estimate of the relocation costs in question to any documentation filed with the Commission in support of its claim. An independent cost estimate must include a specification for the comparable facility and a statement of the costs associated with providing that facility to the incumbent licensee.

(d) Negotiations will commence when the FSS licensee informs the FS licensee in writing of its desire to negotiate. Negotiations will be conducted with the goal of providing the FS licensee with comparable facilities, defined as facilities possessing the following characteristics:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, the FSS licensee is required to provide the FS licensee with an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, the FSS licensee must provide the FS licensee with equivalent data loading bits per second (bps). FSS licensees must provide FS licensees with enough throughput to satisfy the FS licensee's system use at the time of relocation, not match the total capacity of the FS system.

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. FSS licensees must provide FS licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmissions, it is measured by the percent of time that audio signal quality meets an established threshold. If an analog voice system is replaced with a digital voice system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

(3) *Operating costs.* Operating costs are the cost to operate and maintain the FS system. FSS licensees must compensate FS licensees for any increased recurring costs associated with the replacement facilities (e.g., additional rental payments, increased utility fees) for five years after relocation. FSS licensees may satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the FS licensee must be equivalent to the 18 GHz system in order for the replacement system to be considered comparable.

§ 101.91 Involuntary relocation procedures.

(a) If no agreement is reached during the negotiations period, an FSS licensee may initiate relocation procedures under the Commission's rules. FSS licensees are obligated to pay to relocate only the specific microwave links from which their systems may receive interference. Under these procedures, the FS licensee is required to relocate, provided that the FSS licensee:

(1) Guarantees payment of relocation costs, including all engineering, equipment, site and FCC fees, as well as any legitimate and prudent transaction expenses incurred by the FS licensee that are directly attributable to the relocation, subject to a cap of two percent of the hard costs involved. Hard costs are defined as the actual costs associated with providing a replacement system, such as equipment and engineering expenses. FSS licensees are not required to pay FS licensees for internal resources devoted to the relocation process. FSS licensees are not required to pay for transaction costs incurred by FS licensees during the negotiations once the negotiation is initiated, or for fees that cannot be legitimately tied to the provision of comparable facilities;

(2) Completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) Builds the replacement system and tests it for comparability with the existing 18 GHz system.

(b) Comparable facilities. The replacement system provided to an incumbent during a relocation must be at least equivalent to the existing FS system with respect to the following three factors:

(1) *Throughput.* Communications throughput is the amount of information transferred within a system in a given amount of time. If analog facilities are being replaced with analog, the FSS licensee is required to provide the FS licensee with an equivalent number of 4 kHz voice channels. If digital facilities are being replaced with digital, the FSS licensee must provide the FS licensee with equivalent data loading bits per second (bps). FSS licensees must provide FS licensees with enough throughput to satisfy the FS licensee's system use at the time of relocation, not match the total capacity of the FS system.

(2) *Reliability.* System reliability is the degree to which information is transferred accurately within a system. FSS licensees must provide FS licensees with reliability equal to the overall reliability of their system. For digital data systems, reliability is measured by the percent of time the bit error rate (BER) exceeds a desired value, and for analog or digital voice transmissions, it is measured by the percent of time that audio signal quality meets an established threshold. If an analog voice system is replaced with a digital voice system, only the resulting frequency response, harmonic distortion, signal-to-noise ratio and its reliability will be considered in determining comparable reliability.

(3) *Operating costs.* Operating costs are the cost to operate and maintain the FS system. FSS licensees must compensate FS licensees for any increased recurring costs associated with the replacement facilities (e.g., additional rental payments, increased utility fees) for five years after relocation. FSS licensees may satisfy this obligation by making a lump-sum payment based on present value using current interest rates. Additionally, the maintenance costs to the FS licensee must be equivalent to the 18 GHz system in order for the replacement system to be considered comparable.

(c) The FS licensee is not required to relocate until the alternative facilities are available to it for a reasonable time

to make adjustments, determine comparability, and ensure a seamless handoff.

(d) If the FS licensee demonstrates to the Commission that the new facilities are not comparable to the former facilities, the Commission may require the FSS licensee to further modify or replace the FS licensee's equipment.

§ 101.95 Sunset provisions for licensees in the 18.58–19.26 GHz band.

(a) FSS licensees are not required to pay relocation costs after the relocation rules sunset (see §§ 74.502(c), 74.602(g), and 78.18(a)(4) of this chapter, and § 101.147 (a) and (r)). Once the relocation rules sunset, an FSS licensee may require the incumbent to cease operations, provided that the FSS licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10–F or any standard successor. FSS licensee notification to the affected FS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FS licensee to continue to operate on a mutually agreed upon basis.

(b) If the parties cannot agree on a schedule or an alternative arrangement, requests for extension will be accepted and reviewed on a case-by-case basis. The Commission will grant such extensions only if the incumbent can demonstrate that:

(1) It cannot relocate within the six-month period (e.g., because no alternative spectrum or other reasonable option is available); and

(2) The public interest would be harmed if the incumbent is forced to terminate operations (e.g., if public safety communications services would be disrupted).

§ 101.97 Future licensing in the 18.58–19.30 GHz band.

(a) After June 8, 2000, all major modifications and extensions to existing FS systems in the 18.58–19.30 band (with the exception of certain low power operations authorized under § 101.147(r)(10)) will be authorized on a secondary basis to FSS systems. All other modifications will render the modified FS license secondary to FSS operations, unless the incumbent affirmatively justifies primary status and the incumbent FS licensee establishes that the modification would not add to the relocation costs for FSS licensees. Incumbent FS licensees will maintain primary status for the following technical changes:

(1) Decreases in power;

(2) Minor changes (increases or decreases) in antenna height;

(3) Minor location changes (up to two seconds);

(4) Any data correction which does not involve a change in the location of an existing facility;

(5) Reductions in authorized bandwidth;

(6) Minor changes (increases or decreases) in structure height;

(7) Changes (increases or decreases) in ground elevation that do not affect centerline height;

(8) Minor equipment changes.

(b) The provisions of § 101.83 are applicable, notwithstanding any other provisions of this section.

24. Section 101.101 is amended by removing the entry for the 17,700–18,580 MHz band and adding two entries in numerical order to read as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service				
	Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 22, 24, 25, 74, 78 & 100)	Notes
* * *	*	*	*		*
17,700–18,300	CC	OFS	TV BAS	CARS	
18,300–18,580	CC	OFS	TV BAS	CARS SAT	
* * *	*	*	*		*

* * * * *

25. In § 101.147, paragraph (a) is amended by removing the entries 17,700–18,820 MHz, 18,820–18,920 MHz, 18,920–19,160 MHz, 19,160–19,260 MHz and 19,260–19,700 MHz and by adding four new entries and note 30 in numerical order, paragraph (r) introductory text is revised and paragraph (r)(10)(iv) is added to read as follows:

§ 101.147 Frequency assignments.

(a) * * *

17,700–18,300 MHz (10) (15)
18,300–18,580 MHz (5) (10) (15)
18,580–19,300 MHz (22) (30)
19,300–19,700 MHz (5) (10) (15)

* * * * *

Notes

* * * * *

(30) The frequency band 18,580–19,300 GHz is not available for new licensees after June 8, 2000, except for low power indoor stations in the band 18,820–18,870 MHz and 19,160–19,210 MHz.

* * * * *

(r) *17,700 to 19,700 and 24,250 to 25,250 MHz.* Stations operating on the following frequencies in the band 18.58–18.8 GHz that were licensed or had applications pending before the Commission as of June 8, 2000 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter until June 8, 2010. Those stations operating on the following frequencies in the band 18.8–19.3 GHz that were licensed or had applications pending before the Commission as of September 18, 1998 may continue those operations on a shared co-primary basis with other services under parts 21, 25, and 74 of this chapter until June 8, 2010. After June 8, 2010, operations in the 18.58–19.26 GHz band are not entitled to protection from fixed-satellite service operations and must not cause unacceptable interference to fixed-satellite service station operations. No new part 101 licenses will be granted in the 18.58–19.3 GHz band

after June 8, 2000, except for certain low power operations authorized under paragraph (r)(10) of this section, which may continue to operate on a co-primary basis. Licensees may use either a two-way link or one frequency of a frequency pair for a one-way link and must coordinate proposed operations pursuant to the procedures required in § 101.103. (Note, however, that stations authorized as of September 9, 1983, to use frequencies in the band 17.7–19.7 GHz may, upon proper application, continue to be authorized for such operations, consistent with the conditions related to the 18.58–19.30 GHz band.)

* * * * *

(10) * * *

(iv) Low power stations authorized in the band 18.8–19.3 GHz after June 8, 2000 are restricted to indoor use only.

* * * * *

[FR Doc. 00–22238 Filed 9–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1960; MM Docket No. 98–34; RM–9233 and RM–9607]

Radio Broadcasting Services; Buckhannon and Burnsville, West Virginia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 63 FR 13818 (March 23, 1998), this document allots Channel 238A to Burnsville, West Virginia, as its first local aural transmission service. The coordinates for Channel 238A are 38–52–00 and 80–38–30. This document also grants the request of J&K Broadcasting, Inc. to withdraw its request to add Channel 238A at Buckhannon, West Virginia.

DATES: Effective October 10, 2000. A filing window for Channel 238A at Burnsville will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–34, adopted August 16, 2000, and released August 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Burnsville, Channel 238A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–22919 Filed 9–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1962; MM Docket No. 99–78; RM–9487 and RM–9646]

Radio Broadcasting Services; Blackduck and Kelliher, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channels 221A and Channel 283A at Blackduck, Minnesota, in response to a petition filed by Community Religious Broadcasters. *See* 64 FR 14420, March 25, 1999. Channels 221A and 283A can be allotted to Blackduck at center city reference coordinates, 47–43–48 and 94–32–54. In response to a counterproposal filed by De La Hunt Broadcasting, we shall also allot Channel 273A to Killiher, Minnesota, as a first local service at coordinates 47–56–30 and 94–26–53. Canadian concurrence has been received for the allotments at Blackduck and Kelliher. The issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective October 10, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–78, adopted August 16, 2000, and released August 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 221A and Channel 283A at Blackduck and by adding Kelliher, Channel 273A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–22921 Filed 9–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MM Docket No. 95–176; FCC 00–136]

Implementation of Section 305 of the Telecommunications Act of 1996, Closed Captioning and Video Description of Video Programming: Accessibility of Emergency Programming

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: The Commission's rule, 47 CFR 79.2 which contains information collection requirements, became effective August 29, 2000. This rule, which was published in the **Federal Register** on May 9, 2000, requires emergency information that is provided to viewers be made accessible to persons with hearing disabilities. This action is necessary in order to comply with section 305 of the Telecommunications Act of 1996.

EFFECTIVE DATE: The rule, 47 CFR 79.2, published at 65 FR 26757, May 9, 2000, became effective on August 29, 2000.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman (202) 418–7200, TTY (202) 418–7172, or via Internet at *mglauber@fcc.gov*.

SUPPLEMENTARY INFORMATION:

1. On April 13, 2000, the Commission adopted a *Second Report and Order* adding a rule to require that emergency information be made accessible to persons with hearing disabilities through closed captioning or by using a method of visual presentation. A summary of the rule was published in the **Federal Register**. See 65 FR 26757, May 9, 2000. Because the rule imposed new or modified information collection requirements, it could not become effective until approved by the Office of Management and Budget (''OMB''). OMB approved the rule on August 29, 2000.

2. The **Federal Register** summary stated that the Commission would publish a document establishing the effective date of the rule. The rule became effective on August 29, 2000. This publication satisfies the statement that the Commission would publish a document establishing the effective date of the rule.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–22922 Filed 9–6–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AN58

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for One Steelhead Evolutionarily Significant Unit (ESU) in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are adding the northern California Evolutionarily Significant Unit (ESU) of steelhead (*Oncorhynchus mykiss*) to the List of Endangered and Threatened Wildlife as threatened. This amendment to the list, authorized by the Endangered Species Act of 1973 (Act), is based on a determination by the National Marine Fisheries Service (NMFS), which has jurisdiction for this species.

DATES: Effective August 7, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Office of Conservation and Classification, U.S. Fish and Wildlife Service, (703/358–2171).

SUPPLEMENTARY INFORMATION: In accordance with Reorganization Plan No. 4 of 1970, the NMFS, National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for decisions under the Act regarding the northern California ESU of steelhead. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened, and the Service is responsible for the actual addition of these species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The NMFS published its determination of threatened status for the northern California ESU, of steelhead on June 7, 2000 (65 FR 36075). Accordingly, we are now adding the northern California steelhead ESU to the List of Endangered and Threatened Wildlife, as a threatened species. Only naturally spawned populations of steelhead (and their progeny) residing below naturally occurring and man-made impassible barriers (*e.g.*, impassable waterfalls and dams) are added to the list by this action. This addition is effective as of August 7, 2000, as indicated in the NMFS determination. Because this action is nondiscretionary, and in view of the public comment period provided by NMFS on the February 11, 2000, proposed listing (65 FR 6960), we find that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements that require Office of Management and Budget approval under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under FISHES:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	* *		*		*
Steelhead	*Oncorhynchus* (=*Salmo*) *mykiss*.	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	All naturally spawned populations (and their progeny) in river basins from Redwood Creek in Humboldt County, CA, to the Gualala River, in Mendocino County, CA (inclusive).	T	701	NA	NA

Dated: August 30, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–22861 Filed 9–6–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 991223347-9347-01; I.D. 082800C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Fixed Gear Sablefish Mop-Up

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

ACTION: Announcement of fixed gear sablefish mop-up fishery; fishing restrictions, request for comments.

SUMMARY: NMFS announces adjustments to the management measures for the Pacific coast groundfish fishery off Washington, Oregon, and California. This action establishes beginning and ending dates and the cumulative period landings limit for the mop-up portion of the limited entry, fixed gear sablefish fishery. These actions are intended to provide for harvest of the remainder of the sablefish available to the 2000 limited entry, fixed gear primary sablefish fishery. This action applies only in waters north of 36° N. lat.

DATES: The fixed gear sablefish mop-up fishery will begin at 1201 hours local time (l.t.), September 5, 2000, and will end at 1200 hours l.t., September 19, 2000, at which time the limited entry daily trip limit fishery resumes. The daily trip limits for the fixed gear sablefish fishery will remain in effect, unless modified, superseded or rescinded, until the effective date of the 2001 annual specifications and management measures for the Pacific coast groundfish fishery, which will be published in the **Federal Register.** Comments will be accepted until September 22, 2000.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle WA 98115-0070; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, Northwest Region, NMFS, 206-526-6129.

SUPPLEMENTARY INFORMATION: The limited entry, fixed gear sablefish fishery consists of a ''primary'' fishery, composed of the ''regular'' fishery described here, during which most of the fixed gear sablefish allocation is taken, and then a ''mop-up'' fishery, during which the remainder of the amount available to the primary fishery is taken.

The regulations at 50 CFR 660.323(a)(2) provide a season structure for the limited entry, fixed gear primary (regular + mop-up) sablefish fishery. During the regular season, each vessel with a limited entry permit with a sablefish endorsement registered for use with that vessel may land up to the cumulative trip limit for the tier to which the permit is assigned. For the August 6-15, 2000, regular season, participants fished under the following tier limits: Tier 1, 81,000 lb (36,741 kg); Tier 2, 37,000 lb (16,783 kg); Tier 3, 21,000 lb (9,525 kg). Other than the large, tiered cumulative limits, the only trip limit in this fishery was for sablefish smaller than 22 inches (56 cm). The 2000 regular season started at noon on August 6, 2000, and lasted for 9 days to noon on August 15, 2000.

Preseason estimates of the likely total harvest in the regular season fishery were conservative in order to minimize the risk of the fishery exceeding its total allocation. Because of the conservative projections, the regular fishery was not expected to harvest all of the limited entry, fixed gear allocation for north of 36° N. lat. The Northwest Regional Administrator is authorized to announce a mop-up fishery for any allocation in excess of that required for the daily trip limit fishery, if such allocation is large enough, about 3 weeks after the end of the regular season and consisting of one cumulative trip limit for each vessel (50 CFR 660.323(a)(2)(v)). Approximately 3 weeks are needed for the Pacific Fishery Management Council (Council) Groundfish Management Team to compile all of the landings receipts from the regular season and to calculate the amount available for the mop-up season, if any. This action establishes the 2000 mop-up fishery for limited entry, fixed gear permit holders with sablefish endorsements.

The 2000 limited entry nontrawl sablefish allocation is 2,430 mt, of which 2,072 mt is available to the primary (regular + mop-up) season. The best available information on August 23, 2000, indicated that approximately 1,952 mt of sablefish were landed during the regular season. Therefore, 121 mt remains available to the mop-up fishery. The Regional Administrator, after consulting with Council representatives via telephone on August 23, 2000, has determined that the mop-up fishery will occur, and that a cumulative trip limit of 3,000 lb (1,361 kg) (round weight) in a 14-day period (September 5–September 19, 2000) would give limited entry permit holders with sablefish endorsements the opportunity to harvest the remainder of the sablefish available to the primary fishery without exceeding the amount of sablefish set aside for that fishery. To protect juvenile sablefish, the same minimum size limit, 22 inches (56 cm) total length or 15.5 inches (39 cm) for sablefish that are headed, that was in

effect during the regular season is in effect during the mop-up season.

Only limited entry permit holders with sablefish endorsements may participate in the mop-up fishery. No vessel may land more than one cumulative limit. There is no limited entry, daily trip limit fishery during the mop-up fishery period. Therefore, holders of limited entry permits without sablefish endorsements may not land any sablefish during the mop-up period. Similarly, once a vessel with a sablefish endorsed limited entry permit has been used to land its 3,000 lb (1,361 kg) cumulative trip limit in the mop-up fishery, it may not be used to land more sablefish until the daily trip limits resume at 1201 hours on September 19, 2000. Also, acquiring additional limited entry permits does not entitle a vessel to more than one cumulative limit.

Following the mop-up fishery, daily trip limits are reimposed until the end of the year, or until modified. The next opportunity for the Council to recommend modifications to the daily trip limit fishery will be at its September 11-15, 2000, meeting. The sablefish daily trip limit for the limited entry fishery north of 36° N. lat. after the mop-up season is 300 lb (136 kg) per day, with no more than 2,400 lb (1,089 kg) cumulative per calendar month. Since the daily trip limits apply to a 24-hour day starting at 0001 hours, but the mop-up fishery begins and ends at 1200 hours, it will be legal for a vessel in the limited entry fishery to land a daily trip limit between 0001 hours and 1200 hours on September 5, 2000, just before the start of the mop-up season, and between 1201 hours and 2400 hours on September 19, 2000, following the mop-up season.

A daily trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period. Daily trip limits may not be accumulated. If a trip lasts more than 1 day, only one daily trip limit is allowed. Daily trip limits were in effect until the closed period before the regular season, and went back into effect after the post-season closure ended on August 16, 2000. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

NMFS Actions

NMFS announces the dates of the fixed gear sablefish limited entry mop-up fishery. All other provisions remain in effect. In the 2000 (65 FR 221, January 4, 2000) annual management measures, paragraph IV.B.(2)(b)(i) is revised to read as follows:

IV. * * *

*B. * * **

(2) * * *

(b) * * *

(i) *Mop-Up Season.* The mop-up season will begin at 12 noon l.t. on September 5, 2000, and end at noon on September 19, 2000. The cumulative trip limit for the mop-up fishery is 3,000 lb (1,361 kg). No vessel may be used to take more than one mop-up cumulative trip limit. (Note: The States of Washington, Oregon, and California use a conversion factor of 1.6 to convert dressed sablefish to its round-weight equivalent. Therefore, 3,000 lb (1,361 kg) round weight corresponds to 1,875 lb (851 kg) for dressed sablefish.)

* * * * *

Classification

These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. The determination to take these actions is based on data that only recently became available. Because of the need for immediate action to start the mop-up fishery for sablefish, NMFS has determined that providing an opportunity for prior notice and comment would be impractical and contrary to public interest. Delay of this rule could push the mop-up season into inclement autumn weather. Similarly, the agency believes that the risk of pushing the season into inclement weather constitutes good cause to waive the 30-day delay in effectiveness. These actions are taken under the authority of 50 CFR 660.323(a)(2), and are exempt from review under Executive Order 12866.

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

Dated: September 1, 2000.

Richard W. Surdi,

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

[FR Doc. 00–22960 Filed 9–1–00; 4:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039-0039-01; I.D. 083000H]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries by Vessels Using Hook-and-Line Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the 2000 Pacific halibut bycatch mortality allowance specified for hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1 , 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000) established a 290 metric ton Pacific halibut bycatch mortality allowance for groundfish included in the other hook-and-line fishery, which is defined at § 679.21(d)(4)(iii)(C). The other hook-and-line fishery includes all groundfish, except sablefish and demersal shelf rockfish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2000 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is

closing directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the 2000 Pacific halibut bycatch mortality allowance specified for the groundfish fisheries other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The 2000 Pacific halibut bycatch mortality allowance specified for hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 1, 2000.

Richard W. Surdi,

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

[FR Doc. 00–22963 Filed 9–1–00; 4:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040-0040-01; I.D. 090100A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2000 total allowable catch (TAC) of Atka mackerel allocated to these areas.

DATES: Effective 1200 hrs, Alaska local time, September 5, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP at subpart H of 50 CFR part 600 and CFR part 679.

The amount of the 2000 TAC of Atka mackerel for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI was established as 15,018 metric tons (mt) by the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for non-jig gear Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 14,518 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 2000 TAC of Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 1, 2000.

Richard W. Surdi,

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

[FR Doc. 00–22962 Filed 9–1–00; 4:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040-0040-01; I.D. 082900D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Catcher Vessels using Trawl Gear in the Bering Sea and Aleutian Islands

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

ACTION: Rescission of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in portions of the Bering Sea and Aleutian Islands management area (BSAI) in which such fishing is authorized. This action is necessary to fully utilize the portion of the 2000 total allowable catch (TAC) of Pacific cod allocated to these vessels using trawl gear in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The portion of the TAC of Pacific cod allocated to catcher vessels using trawl

gear in the BSAI was established by the Final 2000 Harvest Specifications of Groundfish for the BSAI (65 FR 8282, February 18, 2000) as 41,953 metric tons (mt). See § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(B).

The fishery for Pacific cod by catcher vessels using trawl gear in the BSAI was closed to directed fishing under § 679.20(d)(1)(iii) on April 24, 2000, (65 FR 24655, April 27, 2000), in order to reserve amounts anticipated to be needed for incidental catch in other fisheries. In that action, the Regional Administrator, Alaska Region, NMFS (Regional Administrator) also established a directed fishing allowance of 37,953 mt, and set aside the remaining 4,000 mt as bycatch to support other anticipated groundfish fisheries.

NMFS has determined that as of August 12, 2000, 1,325 mt remain in the portion of the TAC of Pacific cod allocated to catcher vessels using trawl gear in the BSAI and of that amount, 200 mt will be necessary as bycatch to support other anticipated groundfish fisheries through the end of 2000. Therefore, the Regional Administrator is establishing a revised directed fishing allowance of 41,753, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. NMFS has determined that 1,125 mt remain in the directed fishing allowance. Therefore, pursuant to §679.25(a)(1)(i), NMFS is rescinding the previous closure and is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the portion of the BSAI in which such directed fishing is authorized by law. All fishery closures specified in regulations implementing the FMP remain in full force. In addition, all groundfish trawl fishing within Steller sea lion critical habitat in the exclusive economic zone west of 144° W. long. remains prohibited (65 FR 49766, August 15, 2000).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Pacific cod TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is authorized by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 1, 2000.

Richard W. Surdi,

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

[FR Doc. 00–22961 Filed 9–1–00; 4:34 pm]

BILLING CODE: 3510–22 –S

Proposed Rules

Federal Register
Vol. 65, No. 174
Thursday, September 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–65–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Cessna Model 500 series airplanes. This proposal would require inspection of the piston housing for an ''SB'' impression stamp; a one-time inspection of the brake assembly to detect cracked or broken brake stator disks; and replacement of the brake assembly with a new or serviceable assembly, if necessary. The proposal is prompted by several reports of wheel lockups that appear to be caused by cracked or broken brake stator disks becoming jammed in the brake assembly and preventing rotation. Such jamming of the brake assembly may result in reduced directional control or braking performance during landing.

DATES: Comments must be received by October 23, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232 or sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–65–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for windows or ASCI II text.

The service information referenced in the proposed rule may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; 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.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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 2000–NM–65–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. 2000–NM–65–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of wheel lockups after release of brakes following landing. The lockups adversely affect braking performance and directional control and appear to be associated with cracks in the brake stator disks. If multiple cracks extend completely through the stator, a piece of the disk may break loose and slip down, jamming the wheel/tire assembly. If not corrected, this condition could result in the wheel/tire assembly becoming locked in place and consequent reduced directional control or braking performance during landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Service Bulletin SB500–32–47, dated February 22, 2000, which transmits BFGoodrich Service Bulletin 2–1530–32–2, Revision No. 1, dated February 3, 2000, and Cessna Service Bulletins SB500–32–48 and SB550–32–41, both dated February 22, 2000, which transmit BFGoodrich Service Bulletin 2–1528–32–2, Revision No. 1, dated February 3, 2000.

BFGoodrich Service Bulletin 2–1528–32–2, Revision 1 applies to airplanes equipped with BFGoodrich brake assembly part number P/N 2–1528–6, and Service Bulletin 2–1530–32–2, Revision 1 applies to airplanes equipped with BFGoodrich brake assembly P/N 2–1530–4. These service bulletins describe procedures for inspection for certain letters impression-stamped on the piston housing or the stator disks; inspection of the brake

assembly for cracked or broken stator disks, if no such impression stamps are found; and replacement of the brake assembly with a new or serviceable brake assembly.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 370 airplanes of the affected design in the worldwide fleet. The FAA estimates that 259 airplanes in the U.S. registry would be affected by this proposed AD, that the average labor rate is $60 per work hour, and that it would take up to 1 work hour per airplane to accomplish the proposed inspection if the inspection were done at the time of a tire change and up to 4 work hours per airplane if the inspection were done at a different time. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $15,540, or $60 per airplane, for inspections of the brake assembly done at the time of a tire change and up to $62,160, or $240 per airplane, for inspections done at a different time.

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

The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 adding the following new airworthiness directive:

Cessna Airplane Company: Docket 2000–NM–65–AD.

Applicability: Model 500 and 501 series airplanes, serial numbers 0001 through 0689 inclusive, and Model 550 and 551 series airplanes, serial numbers 0002 through 0733 inclusive; certificated in any category; equipped with BFGoodrich brake assembly part number (P/N) 2–1528–6 or 2–1530–4.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the wheel/tire assembly, which could result in a loss of directional control or braking performance upon landing, accomplish the following:

Inspection

(a) Within the next 50 landings or 90 days after the effective date of this AD, whichever occurs first, inspect the brake assembly for an ''SB'' impression stamped on the piston housing, as shown in Figure 1 of BFGoodrich Service Bulletin 2–1528–32–2, Revision 1 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1528–6) or Service Bulletin 2–1530–32–2, Revision 1 (for airplanes equipped with BFGoodrich brake assembly P/N 2–1530–4), both dated February 3, 2000, as applicable. If an ''SB'' is impression-stamped on the piston housing, no further action is required by this AD.

(b) Within the next 50 landings or 90 days after the effective date of this AD, whichever occurs first, inspect the stator disks for a CHG AI or a CHG B or higher letter impression-stamped on the disk, in accordance with BFGoodrich Service Bulletin 2–1528–32–2, Revision 1 (for airplanes equipped with BFGoodrich bake assembly P/N 2–1528–6) or Service Bulletin 2–1530–32–2, Revision 1 (for airplanes equipped with BF Goodrich brake assembly P/N 2–1530–4), both dated February 3, 2000, as applicable. Unless both stator disks are so marked, perform paragraph (b)(1).

(1) When the brake assembly has accumulated 376 total landings since its installation or within 50 landings on the airplane after the effective date of this AD, whichever occurs later, perform a detailed visual inspection for cracked or broken disks in accordance with the applicable service bulletin.

(i) If no cracked or broken stator disks are found, the brake assembly can be re-assembled and used until a total of 700 landings are accumulated on the brake assembly at which time the brake assembly must be removed and replaced with a new or serviceable brake assembly.

(ii) If any cracked or broken stator disk is found, prior to further flight, the brake assembly must be replaced with a new or serviceable brake assembly.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(2) When the brake assembly has accumulated 700 total landings since its installation or within 50 landings on the airplane after the effective date of this AD, whichever occurs later, replace the brake assembly with a new or serviceable brake assembly, in accordance with the applicable service bulletin.

Alternative Method of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through

an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Issued in Renton, Washington, on August 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–22910 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–42–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Model 58 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Beech Model 58 airplanes. The proposed AD would require you to inspect the rudder bellcrank interconnect tube for damage; replace or refinish the interconnect tube, if necessary; and modify the floorboard. Four reports of damage to the interconnect tube prompted the proposed action. The actions specified by the proposed AD are intended to correct the wrong use of screws and consequent wear in the pilot/copilot pedal interconnect tube, which could result in loss of rudder control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 11, 2000.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–42–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may look at comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/27–3013.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may read this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–42–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA has received four reports of grooves cut in the pilot/copilot rudder interconnect tube. The grooves were discovered during routine inspections.

What are the consequences if the condition is not corrected? This condition could result in jamming or restricting rudder control. Raytheon has issued a mandatory service bulletin affecting these Model 58 Baron airplanes:

—Serial TH–1389; and

—Serials TH–1396 through TH–1885

Relevant Service Information

What service information applies to this subject? Raytheon has issued Mandatory Service Bulletin SB 27–3013, Issued: June 2000.

What are the provisions of this service bulletin? The service bulletin describes procedures for inspecting the rudder bellcrank interconnect tube, modifying the floorboard, and refinishing or replacing the interconnect tube.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Raytheon Beech Model 58 airplanes of the same type design;

—These airplanes should have the actions specified in the above service bulletin incorporated; and

—The FAA should take AD action in order to correct this unsafe condition.

What does this proposed AD require? This proposed AD would require you to:

—Inspect the rudder bellcrank interconnect tube for damage;

—If necessary, replace or refinish the rudder bellcrank interconnect tube; and

—Plug the floorboard screw hole.

What are the differences between the service bulletin and the proposed AD? Raytheon requires you to inspect and, if necessary, replace or refinish the rudder

bellcrank interconnect tube, and plug the floorboard screw hole, as soon as possible after receipt of the Service Bulletin, but no later than the next scheduled 100 hour or annual inspection. We propose a requirement that you plug the floorboard screw hole, inspect and, if necessary, replace or refinish the rudder bellcrank interconnect tube within the next 6 calendar months after the effective date of the proposed AD. We believe that 6 calendar months will give the owners/operators of the affected airplanes enough time to have the proposed actions done without compromising the safety of the airplanes.

Cost Impact

How many airplanes does this proposed AD impact? We estimate that the proposed AD would affect 491 airplanes in the U.S. registry.

What is the cost impact of the proposed action for the affected airplanes on the U.S. Register? We estimate that it would take approximately 4 workhours per airplane to do the proposed modification of the floorboard and proposed inspection of the rudder bellcrank interconnect tube, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate that the total cost impact of the proposed modification and inspection on U.S. operators is $117,840, or $240 per airplane.

We estimate it would take 1 hour to either replace or refinish the rudder bellcrank interconnect tube. Based on the cost factors presented above, we estimate that the total cost impact of replacing or refinishing the interconnect tube on U.S. operators is $60 per airplane.

The manufacturer will allow warranty credit for labor and parts to the extent noted in the service bulletin.

These figures only take into account the costs of the proposed initial inspection and do not take into account the cost of replacement parts that you might require because of the initial inspection.

Regulatory Impact

Does this AD impact relations between Federal and State governments? The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? 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 Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, 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. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it 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, under 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. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 2000–CE–42–AD.

(a) *What airplanes are affected by this AD?* Beech Model 58 airplanes, serial numbers TH–1389, and TH–1396 through TH–1885, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the wrong use of screws and consequent wear in the pilot/copilot pedal interconnect tube, which could result in loss of rudder control.

(d) *What must I do to address this problem?* To address this problem, you must do the following actions:

Actions	Compliance times	Procedures
(1) Inspect the rudder bellcrank interconnect tube for damage and ensure the floorboard panel screws are ¾ inch or less in length. Screws that are longer than ¾ inch in length can damage parts installed immediately below the floorboards.	Inspect within the next 6 calendar months after the effective date of this AD.	Do this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3013, Issued: June 2000, and the Baron Model 58 Shop Manual.
(2) If you find no damage to the rudder bellcrank interconnect tube, if longer than ¾ inch, discard the screw from the center screw hole position.	Do all follow-on actions, such as replacement or repair, before further flight after the inspection..	Do these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3013, Issued: June 2000, and the Baron 58 Shop Manual
(3) If you find damage to the rudder bellcrank interconnect tube, and the damage has not worn into the aluminum interconnect tube, refinish the interconnect tube.		
(4) If you find damage to the rudder bellcrank interconnect tube, and the damage has worn into the aluminum interconnect tube, you must replace the interconnect tube.		
(5) Plug the floorboard screw hole.		

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, 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 (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can do the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get the service information referenced in the AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; or on the Internet at <http://www.raytheon.com/rac/servinfo/27-3013.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may read this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 31, 2000.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–22909 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 313

Privacy of Customer Financial Information—Security

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking and request for comment.

SUMMARY: In this document, the Federal Trade Commission (the ''Commission'' or ''FTC'') requests comment on developing the administrative, technical, and physical information Safeguards Rule that the Commission is required to establish pursuant to section 501(b) of the Gramm-Leach-Bliley Act (the ''G–L–B Act'' or ''Act'') for the financial institutions under its jurisdiction, as set forth in section 505(a)(7). After reviewing the comments received in response to this document and request for comment, the Commission will issue a notice of proposed rulemaking.

DATES: Comments must be received on or before October 10, 2000.

ADDRESSES: Written comments should be addressed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. Comments should also be submitted, if possible, in electronic form, on either a 5¼ or 3½ inch computer disk, with a disk label stating the name of the commenter and the name version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII format.) Alternatively, the Commission will accept comments submitted to the following e-mail address: *GLB501Rule@ftc.gov.* Those commenters submitting comments by e-mail are advised to confirm receipt by consulting the postings on the Commission's website at www.ftc.gov. In addition, commenters submitting comments by e-mail are requested to indicate whether they are also providing their comments in other formats. Individual members of the public filing comments need not submit multiple copies or comments in electronic form. All submissions should be captioned ''Gramm-Leach-Bliley Act Privacy Safeguards Rule, 16 CFR Part 313–Comment.''

FOR FURTHER INFORMATION CONTACT: Laura Berger, Attorney, Division of Financial Practices, Federal Trade Commission, Washington, DC 20580, 202–326–3224.

SUPPLEMENTARY INFORMATION

Section A. Background

On November 12, 1999, President Clinton signed the G–L–B Act (Pub. L. 106–102) into law. Subtitle A of Title V of the Act, captioned Disclosure of Nonpublic Personal Information, limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. Title V also requires the Commission to establish by rule appropriate standards for the financial institutions subject to its jurisdiction relating to administrative, technical, and physical safeguards (hereinafter ''Safeguards Rule'') to insure the security and confidentiality of customer records and information, to protect against any anticipated threats or hazards to the security or integrity of such records, and to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

On May 12, 2000, the Commission issued a final rule implementing the requirements of Subtitle A that relate to the disclosure of nonpublic personal information about a consumer to nonaffiliated third parties and the disclosure to all customers of the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties (hereinafter ''Privacy Rule'').[1] As required by section 504 of Subtitle A, the Commission worked with other federal government agencies and authorities (hereinafter ''the agencies'') [2] to ensure that the Privacy Rule was consistent and comparable with the regulations prescribed by the agencies. The Privacy Rule will take effect on November 13, 2000, and full compliance is required on or before July 1, 2001.

The Act does not require the Commission (or other agencies) to coordinate in developing a Safeguards Rule, and permits the agencies, with the exception of the SEC and the Commission, to develop their safeguards standards by issuing guidelines.

[1] The rule was published in the **Federal Register** at 65 FR 33646 (May 24, 2000).

[2] The Office of the Comptroller of the Currency (''OCC''); the Board of Governors of the Federal Reserve System (''Board''); the Federal Deposit Insurance Corporation (''FDIC''); the Office of Thrift Supervision (''OTS''); the National Credit Union Administration (''NCUA''); the Secretary of the Treasury (''Treasury''); and the Securities and Exchange Commission (''SEC''). Section 504 required these agencies to prescribe, within six months of the Act's date of enactment (by May 12, 2000), ''such regulations as may be necessary to carry out the purposes of [Subtitle A] with respect to financial institutions subject to their jurisdiction under section 505.''

On June 26, 2000, the OCC, Board, OTC, and FDIC published a joint **Federal Register** notice containing proposed Guidelines establishing standards for safeguarding customer information (hereinafter ''proposed Interagency Guidelines''), but requested comment as to whether a rule would be preferable to guidelines. 65 FR 39,471 (June 26, 2000). As proposed, the Interagency Guidelines will appear as an appendix to each Agency's Standards for Safety and Soundness. The NCUA published a **Federal Register** notice containing proposed safeguards guidelines on June 14, 2000. 65 FR 37,302. The NCUA's guidelines, as proposed, will be issued as an amendment to the NCUA's existing regulation governing security programs in federally-insured credit unions. As with the Privacy Rule, Treasury will not be issuing a separate rule. On June 22, 2000, the SEC adopted a final safeguards rule as part of its Privacy of Consumer Financial Information Final rule. See *www.sec.gov/rules/final34–42974.htm.*

The SEC's safeguards rule restates the objectives of section 501(b), and passes along to financial institutions the requirement to develop policies and procedures that are ''reasonably designed'' to meet these goals.

Prior to issuing a proposed Safeguards Rule, the Commission seeks public comment on the following questions concerning the scope and potential requirements of such a rule. In formulating a proposed rule, the Commission will consider the costs and benefits of the proposed rule's requirements.

Section B. Questions as to Scope of the Commission's Safeguards Rule

In order to develop the Safeguards Rule the Commission is required to implement, the Commission seeks comment on several issues relevant to the proper scope of the rule.

1. Range of Information Subject to the Safeguards Rule

The Commission requests comment on the range of information that should be subject to the Safeguards Rule. The privacy provisions of Subtitle A of Title V of the Act require that financial institutions provide certain notices of their privacy policies to individuals, but vary these requirements according to whether the individual is a ''customer'' or a ''consumer'' of the financial institution. Section 502 (a) & (b) (consumers); Section 503 (customers). Respecting consumers, the G–L–B Act generally prohibits a financial institution from disclosing nonpublic personal information about a consumer to a nonaffiliated third party without first notifying the consumer and providing an opportunity to opt out of the disclosure. Section 502 (a) & (b). Customers, however, are entitled to notice of a financial institution's privacy policies at the time that a customer relationship is established, and annually thereafter during the continuation of the relationship, regardless of whether nonpublic personal information will be shared with nonaffiliated third parties. Section 503.

In contrast to the privacy provisions, section 501 of the G–L–B Act refers solely to customers' nonpublic personal information and customer records and information. Section 501(a) sets forth the ''policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information,'' while section 501(b), ''in furtherance of the policy in subsection (a)'', requires the Commission to establish standards: ''(1) To insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.'' Sections 501(a), 501(b)(1)–(3) (emphases added). The Commission requests comment on what constitutes ''customer records and information'' under subsection (b), particularly in light of the reference to ''customers' nonpublic personal information'' in subsection (a). Also, should the definition of ''customer records and information'' under the Safeguards Rule be similar to the definition of ''nonpublic personal information'' for customers under the Commission's Privacy Rule? Should the Safeguards Rule ever apply to ''consumer'' information maintained by a financial institution? Where, for example, a financial institution cannot accurately separate its customer records and information from its consumer records, should the Safeguards Rule require the financial institution to safeguard both types of records?

2. Range of Financial Institution Subject to the Safeguards Rule

The Commission also requests comment on the range of financial institutions to which the Safeguards Rule should apply. With certain exceptions, a financial institution is defined in the Act as any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). Under the Commission's Privacy Rule, any institution that is significantly engaged in such financial activities is a financial institution. 16 CFR 313.3(k)(1). However, only those financial institutions that have ''consumers'' or establish ''customer relationships'' have an obligation to disclose their privacy policies under the Act. §§ 502 & 503; 16 CFR 313.4 & 313.5. Financial institutions that have no customer relationships or consumers, but obtain nonpublic personal information from another financial institution (*see, e.g.,* 16 CFR 313.13) are subject to the Privacy Rule's limitations on redisclosure and reuse of nonpublic personal information. 16 CFR 313.11. How should the Safeguard Rule apply when a financial institution discloses customer records and information to a financial institution that has no customer relationships or consumers? Should the Safeguards Rule require the originating financial institution to disclose its ''customer records and information'' subject to the agreement of the party (*i.e.,* a different financial institution) receiving the information to comply with the Safeguards Rule in its handling of the information?

Section C. Questions as to Other Aspects of the Commission's Safeguards Rule

The Safeguards Rule must establish appropriate standards for financial institutions subject to its jurisdiction relating to the administrative, technical, and physical safeguards against the harms contemplated by the Act, in order to protect customer records and information from anticipated threats and hazards, and provide them with security and confidentiality, including protection against unauthorized access or use. At the same time, the Commission recognizes that financial institutions may deem different safeguards appropriate according to the size and complexity of the financial institution, the nature and scope of its activities, and the nature of its records. In what ways, if any, should the Safeguards Rule take into account the need for financial institutions to keep pace with changing technology and other changes to their operational environment? Should the Safeguards Rule set forth minimum procedures a financial institution must follow, a minimum level of effectiveness financial institutions must maintain through their safeguards, or a combination of both? Do any current private standards, association rules, or

guides provide useful guidance to the Commission in its formulation of safeguards standards for financial institutions subject to the Commission's jurisdiction? Should the Safeguards Rule delineate mechanisms for financial institutions to demonstrate compliance with the Rule? For example, should the Safeguards Rule require financial institutions to use a particular audit process to measure their own compliance?

1. Small Financial Institutions

The Commission seeks comment on how the Safeguards Rule will achieve the results contemplated by the Act without unduly burdening the ability of small financial institutions to serve consumers. Further, to the extent commenters recommend that the Safeguards Rule require specific administrative, technical and physical safeguards, the Commission requests comment on whether the requirements are appropriate for small financial institutions.

2. Specificity of the Safeguards Rule

What specific steps, if any, should the Safeguards Rule require financial institutions to take to provide administrative, technical, and physical safeguards for their customer records and information? Is a different level of specificity appropriate according to whether the Safeguards Rule is prescribing administrative, technical, or physical measures? For example, should the Safeguards Rule prescribe specific minimum measures, such as shedding of discarded paper records, that a financial institution must take to provide for the physical security of its customer records and information? Similarly, to provide for administrative security, should the Safeguards Rule require that financial institutions take particular minimum steps, such as designating an employee who is responsible for monitoring internal access to customer records and information? Alternatively, when dealing with technical safeguards, should the Safeguards Rule set forth a more general standard for adequate safeguards, such as ''effective controls or programs'' or ''reasonable policies and procedures''? If the Safeguards Rule provides a more general standard for administrative, technical, or physical safeguards, what examples or other clarification of adequate safeguards should be included? For example, should the Safeguards Rule set forth categories or areas of administrative, technical and physical safeguards (''safeguards categories'') for financial institutions to address in designing and implementing safeguards appropriate to their operations? Would safeguards categories that require a financial institution to focus on particular areas of operations, such as ''Personnel Training and Management,'' ''Information Storage and Transmission,'' and ''Records Disposal,'' assist financial institutions to develop and maintain safeguards in a thorough and consistent manner? Would a common standard, such as ''effective controls or programs'' or ''reasonable policies and procedures'' suggested above, apply to every safeguards category, or would some safeguards categories, such as ''Records Disposal,'' be subject to more objective requirements?

3. Statutory Objectives

The Commission seeks comment on how the Safeguards Rule should reflect the three objectives for information safeguards that are set forth in section 501(b)(1)–(3) of the Act.

a. Anticipation of Threats or Hazards to Security or Integrity

Section 501(b) requires the Commission to establish standards for administrative, technical and physical safeguards to ''protect against anticipated threats or hazards to the security or integrity'' of customer records and information obtained by financial institutions. Section 501(b)(2). Should ''anticipated threats and hazards'' be defined, and if so, how? Should the Safeguards Rule require financial institutions to anticipate threats and hazards according to particular procedures? If so, what threats and hazards should be assessed, and by what procedures? Should the Safeguards Rule require financial institutions to assess threats and hazards according to particular categories (''risk categories''), such as ''Risks to Physical Security,'' ''Risks to Integrity,'' or ''Risks in Records Disposal''? When assessing threats and hazards, should a financial institution be required to classify the value and sensitivity of the records to be protected and/or the gravity of any threats? Under what circumstances, if any, should financial institutions be required to conduct these assessments in writing?

Should the Safeguards Rule require that financial institutions reassess the threats or hazards to their information security systems, and, if so, at what intervals? Should the Safeguards Rule define technical or other changes to an institution's information security environment that warrant reevaluation of existing safeguards? Among other times, should a financial institution be required to assess threats and hazards within a reasonable time after it knows or should know of a new or emerging threat or hazard to the security or integrity of its records? Similarly, should the Safeguards Rule require that the effectiveness of existing safeguards be evaluated through appropriate tests? If so, how specifically should the standards define these tests?

Finally, how should the Safeguards Rule protect against anticipated threats and hazards to the integrity of customer records and information? Should protecting integrity of customer records and information include requiring a financial institution to notify a customer when his or her records and information are subject to loss, damage, or unauthorized access? Does insuring integrity of customer records and information require that customers be granted periodic access to their records, in order to monitor the accuracy of this information?

b. Preventing Unwarranted Access and Use

In addition to requiring protection against anticipated threats and hazards, section 501(b) requires that the safeguards standards ''protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.'' Section 501(b)(3). Should ''unauthorized access'' and ''unauthorized use'' be defined, and if so, how? Should the Safeguards Rule require financial institutions to follow certain minimum procedures to ''protect against unauthorized access to'' customer records and information? Are there any circumstances under which financial institutions should be required to maintain written records of their procedures for preventing unauthorized access and use?

If the Safeguards Rule should require financial institutions to follow certain minimum steps to prevent unauthorized access and use, what procedures are most appropriate for the diverse range of financial institutions subject to the Commission's jurisdiction? For example, should the Safeguards Rule require that financial institutions designate a person within the institution who is responsible for preventing and detecting unauthorized access to and use of customer records and information? Similarly, should the Safeguards Rule require that financial institutions enter into confidentiality agreements with their employees or train their employees in procedures for preventing unauthorized access to and

use of customer records and information?

c. Insuring Security and Confidentiality

In addition to requiring protection against anticipated threats and hazards and against unauthorized access and use, section 501(b) requires that the safeguards standards ''insure the security and confidentiality of customer records and information'' Section 501(b)(1). Does this requirement mean something more than protecting against anticipated threats and hazards and unauthorized access and use? In particular, what should insuring ''confidentiality'' of information mean? What measures should the Safeguards Rule require a financial institution to take to maintain the confidentiality and security of customer records and information that it discloses? Where applicable, should the Safeguards Rule require a financial institution that discloses customer records and information to notify the recipients of the limitations on reuse and redisclosure of the information imposed by the Privacy Rule?

d. Consideration of Other Agencies' Safeguards Standards

The proposed Interagency Guidelines and the NCUA's proposed Guidelines (collectively, ''the proposed Guidelines'') both require regulated financial institutions to implement an ''Information Security Program'' that is developed by following certain procedures outlined by the respective proposed Guidelines. In their respective section III.A., the proposed Guidelines require each financial institution to involve its board of directors and management in various aspects of developing, implementing, and assessing an information security program. Under both proposals, a financial institution must take four basic steps to develop an information security program: (1) Identify and assess the risks that may threaten protected information; (2) develop a written plan containing policies and procedures to manage and control these risks; (3) implement and test the plan; and (4) adjust the plan on a continuing basis to account for changes in technology, the sensitivity of the protected information, and internal or external threats to information security. Similarly, in their respective sections III.C., both proposals provide a list of factors that a financial institution should consider in developing its information security program. The factors include specific potential elements of a security plan that should be considered, such as ''contract provisions and oversight mechanisms'' to protect the security of information handled by service providers (respective III.C.(g)), as well as broader issues that the security plan should address, such as ''[a]ccess rights to [covered] information,'' (respective III.C.(a)). Using the procedures provided by the proposed Guidelines, each covered financial institution is to develop a comprehensive information security program, the adequacy of which will be reviewed by the relevant agency through established oversight procedures, such as safety and soundness reviews. Finally, in their respective sections III.D., the proposed Guidelines require financial institutions to exercise due diligence in managing and monitoring outsourcing arrangements, in order to make sure that its service providers have implemented an effective information security program.

The proposed guidelines focus on the procedures that should be followed to develop a written information security program, and do not specify particular security measures that must be adopted. They do provide, however, that the Board of Directors must oversee efforts to develop, implement, and maintain an ''effective'' information security program. Should the Commission's Safeguards Rule be similar to the proposed Guidelines, and if so, how? Does the Act's requirement that the Commission issue a rule, rather than guidelines, warrant a different approach? Does the fact that the Commission does not conduct regular examination of financial institutions warrant more specific security measures? What, if any, features of the more general approach to safeguards taken by the SEC in its Privacy of Consumer Financial Information Final Rule (described in Section A, *supra*) are suitable for the Commission's Safeguards Rule?

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 00–22945 Filed 9–6–00; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210 and 240

[Release No. 33–7883, 34–43219; File No. S7–13–00]

Revision of the Commission's Auditor Independence Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of time period to submit materials for public hearing on September 20, 2000; location of hearings.

SUMMARY: The Securities and Exchange Commission is extending the time period by which participants must submit written materials for the public hearing on September 20, 2000, on the proposed rule Revision of the Commission's Auditor Independence Requirements (65 FR 43148 July 12, 2000). On August 10, 2000, the Commission issued a Notice announcing public hearings on September 13, 2000 in New York and September 20, 2000 in Washington, DC (65 FR 49954 8/16/2000). The original submission date for materials was September 5, 2000. The new submission date for those testifying on September 20, 2000 is September 12, 2000.

DATES: Written submissions for the September 20, 2000 hearing are due on September 12, 2000.

ADDRESSES: Oral statements or summaries of testimony, and other written testimony or comments, should be mailed to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459–0609 or filed electronically at the following e-mail address: rule-comments@sec.gov. All oral statements or summaries of testimony, and other written testimony or comments, should refer to Comment File No. S7–13–00. Electronic submissions should include ''Comment File No. S7–13–00'' and ''Testimony'' in the subject line. Copies of all requests and other submissions and transcripts of the hearings will be available for public inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted requests and other materials will be posted on the Commission's internet web site (www.sec.gov) following the hearings.

The hearing on September 13 will be held at Pace Downtown Theatre at Pace University, Spruce Street between Park Row and Gold Street, New York, New York (across from City Hall Park). The hearing on September 20 will be held in the William O. Douglas Room at the Commission's headquarters at 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: John M. Morrissey, Deputy Chief Accountant, Office of the Chief Accountant, at (202) 942–4400.

Dated: August 29, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–22716 Filed 9–6–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 293

Wilderness—Primitive Areas; Fixed Anchors in Wilderness

AGENCY: Forest Service, USDA.

ACTION: Negotiated rulemaking committee meeting.

SUMMARY: The Secretary of Agriculture has established a negotiated rulemaking committee to develop recommendations for a proposed rule addressing the placement, use, and removal of fixed anchors used for recreational rock climbing purposes in congressionally designated wilderness areas administered by the Forest Service. The Fixed Anchors in Wilderness Negotiated Rulemaking Advisory Committee is composed of individuals representing a cross section of interests with a definable stake in the outcome of the proposed rule. The Committee has been established in accordance with the provisions of the Federal Advisory Committee Act and is engaged in the process of rulemaking pursuant to the provisions of the Negotiated Rulemaking Act. The Committee has held meetings in June, July, and August and will hold a fourth meeting in September. All meetings of the committee are open to public attendance.

DATES: The next meeting of the advisory committee will be held in Golden, Colorado, on September 19–20. The meeting is scheduled from 8 a.m. to 5:30 p.m. on the first day and from 8 a.m. to 3:30 p.m. on the second day.

ADDRESSES: The advisory committee meeting will be held in the auditorium of the Rocky Mountain Regional Office, Forest Service, USDA, 740 Simms St., Golden, Colorado on September 19 and next door to the Regional Office at the Best Western—Denver West Motel conference room, located at 11595 W. 6th Avenue, Lakewood, CO, on September 20.

FOR FURTHER INFORMATION CONTACT: Jerry Stokes, Wilderness Program Manager, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–0925.

Dated: August 25, 2000.

Sally D. Collins,

Deputy Chief, National Forest System.

[FR Doc. 00–22911 Filed 9–6–00; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6865–3]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the White Farm Equipment Site (Site) from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region VII announces the intent to delete the White Farm Equipment site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the state of Iowa have determined that the site poses no significant threat to public health or the environment, as defined by CERCLA. Five-year review reports will continue to be conducted.

DATES: Comments concerning the proposed deletion of this site from the NPL may be submitted on or before October 10, 2000.

ADDRESSES: Comments may be mailed to Catherine Barrett, Remedial Project Manager, Superfund Division, Missouri/Kansas Remedial Branch, U.S. Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, KS 66101. Comprehensive information on this site is available through the public docket which is available for viewing at the U.S. EPA Region VII, Superfund Records Center, 901 North 5th Street, Kansas City, KS 66101.

FOR FURTHER INFORMATION CONTACT: Catherine Barrett, Remedial Project Manager, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, KS 66101, phone (913) 551–7704, fax (913) 551–7063.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The EPA Region VII announces the intent to delete the White Farm Equipment site, Charles City, Iowa, from the NPL, and requests public comments on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. The EPA and the Iowa Department of Natural Resources (IDNR) have determined that the remedial action for the site has been successfully executed.

The EPA will accept comments on the proposal to delete this site thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the White Farm Equipment site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

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

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

(ii) All appropriate Fund-financed 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 of hazardous substances poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even when a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for

unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of human health and the environment. A five-year review was conducted for the White Farm Equipment site in 1999. Based on that review, EPA in consultation with the state, determined that conditions at the site remain 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 site shall be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site: (1) Responsible parties or other persons have implemented all appropriate response actions required; (2) The state of Iowa has concurred with the proposed deletion decision; (3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day comment period on EPA's Notice of Intent to Delete; and (4) All relevant documents have been made available in the site information repository.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this notice, section 300.425 (e) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions. For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. The NPL will reflect deletions in the final update following the notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL.

Site Background and History

The White Farm Equipment site is located in Floyd County, Iowa, and is a 20-acre site, near the north border of Charles City, Iowa, and is owned by H.E. Construction, Inc. The site lies within the 100-year flood plain of the Cedar River in the former location of a sand and gravel quarry. The site borders farmlands to the west, north, and east. Residential areas lie to the south of the site. White Farm Equipment Company disposed of approximately 650,000 cubic yards of wet scrubber sludge, foundry sands, baghouse dusts, and other industrial wastes at the site on an intermittent basis beginning in 1971. Allied Products Corporation presently owns White Farm Equipment Company.

In 1984, the IDNR required White Farm Equipment Company, which was leasing the site, to install four groundwater monitoring wells at the site to determine whether adverse environmental impacts had occurred from the dumping activities. In 1985, the EPA performed a Preliminary Assessment (PA) of the site which suggested that lead, cadmium, and phenols may be among the contaminants of concern at the site. The EPA found wastes in contact with groundwater at a depth of five to ten feet. In 1986, EPA conducted sampling which documented lead and cadmium in the shallow alluvial aquifer in close proximity to the Charles City municipal wells.

The site was placed on the NPL on August 30, 1990. In 1990, a Remedial Investigation/Feasibility Study (RI/FS) was completed by Allied Products Corporation in accordance with the Consent Order issued by EPA pursuant to section 104 and 122 of CERCLA. Evaluation of information gathered in the RI/FS resulted in the selection of a remedy in the Record of Decision (ROD) in 1990.

Response Actions

The remedy in the ROD included upgrading of the landfill, installation of additional groundwater monitoring wells, placement of extraction wells, an air stripper and discharge conveyance to Hyers Creek, extraction, and treatment of contaminated groundwater until the concentration of benzene in groundwater is reduced and maintained below one part per billion (ppb), inspection and maintenance of perimeter fencing, cover, and groundwater treatment facility, and long-term groundwater monitoring.

A Consent Decree between EPA and Allied Products Corporation and H.E. Construction, Inc. was finalized in 1991 and provided for the implementation by the responsible parties of the design and construction of the remedy.

In February 1993, Allied Products Corporation sampled six existing monitoring wells which had been designated for re-sampling by the Consent Decree for benzene, lead, cadmium, and chromium. The wells are located to assess the groundwater quality at or within the point of compliance. A second round of samples was collected in March 1993. Both sampling events confirmed that no groundwater contamination existed in these wells. An Explanation of Significant Differences (ESD) was written by EPA which explained that the groundwater treatment included in the remedy would not be required because the groundwater sampling had not shown any contamination. The groundwater monitoring schedule was curtailed and changed to include a round of groundwater sampling five years after the start of final cover construction and thereafter at five-year intervals. Certain monitoring wells not needed for the long-term monitoring were abandoned and plugged. Upgrading of the landfill cover was completed during 1994, and a final inspection was conducted in June 1995.

Clean-Up Goals

The five-year review was completed in September 1999 and indicated that the remedial objectives have been achieved. The remedial objectives included upgrading the existing landfill cover to comply with state and federal standards, well closure, installation of monitoring wells, and monitoring of groundwater to ensure that contaminants within the landfill do not migrate off site. The remedial action clean-up activities are consistent with the objectives of the NCP and will provide protection to human health and the environment as specified in the ROD. The responsible parties are required to monitor the groundwater at five-year intervals in accordance with the Consent Decree, and the sampling results have shown that no contamination has migrated off site.

Operation and Maintenance

Long-term maintenance and groundwater monitoring is being conducted by Allied Products Corporation. The operation and maintenance activities being conducted include groundwater monitoring at five-

year intervals, periodic inspections, maintenance of the landfill cover, and activities necessary to ensure the continued protection of public health and the environment. The groundwater sampling will continue to be conducted at five-year intervals for 30 years by Allied Products Corporation in accordance with the Consent Decree.

Five-Year Review

The CERCLA requires a five-year review of all sites with hazardous substances remaining above health-based levels for unrestricted use of the site. The clean up of this site has included containment of contaminants within the landfill which will require that the five-year reviews continue in order to ensure the maintenance of the integrity of the cap. The five-year review which was conducted in September 1999 indicated that the landfill cap is performing as designed and sampling results show that there has not been any migration of contaminants off site.

Community Involvement

A Community Relations Plan was completed for the site. The Proposed Plan and the Administrative Record were available for public review during the public comment period. A public meeting was held to present the Proposed Plan for the remedy and to answer questions and receive any written comments. A Record of Decision explaining the remedy for the site was signed by EPA on September 28, 1990.

Applicable Deletion Criteria/State Concurrence

Responsible parties or other persons have implemented all appropriate response actions required, as required in 40 CFR 300.425(e)(1)(i) for deletion of a site. All completion requirements for this site have been described in the Final Close-Out Report (COR). The Final COR documents the effectiveness of the post-remedial environmental monitoring and that the remedy remains protective. Site operation and maintenance activities will be performed by Allied Products Corporation as required by the Consent Decree. The state of Iowa has indicated their concurrence with the deletion of this site from the NPL. Therefore, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available in the deletion docket.

Dated: August 15, 2000.

Karen A. Flournoy,

Acting Regional Administrator, Region VII.

[FR Doc. 00–22814 Filed 9–6–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1961, MM Docket No. 00–155, RM–9924]

Radio Broadcasting Services; Las Vegas and Rowe, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Meadows Media, LLC, permittee of Station KTRL, Las Vegas, NM, seeking the substitution of Channel 275C3 for Channel 275C2 at Las Vegas, the reallotment of Channel 275C3 to Rowe, NM, as its first local aural service, and the modification of Station KTRL's construction permit accordingly. Channel 275C3 can be allotted to Rowe in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.8 kilometers northeast, at coordinates 35–40–15 North Latitude; 105–33–06 West Longitude, to avoid short-spacings to Stations KIOT, Channel 273C, Los Lunas, NM, KAZX, Channel 275C, Kirtland, NM, and KTBL, Channel 277C, Albuquerque, NM. Petitioner is requested to provide further information concerning the status of Rowe as a community for allotment purposes and the areas and populations which will gain and lose service if the reallotment is granted.

DATES: Comments must be filed on or before October 16, 2000, and reply comments on or before October 31, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–155, adopted August 16, 2000, and released August 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–22920 Filed 9–6–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 65, No. 174
Thursday, September 7, 2000

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

Office of the Under Secretary, Marketing and Regulatory Programs, USDA Public Forum on Captive Supplies in the Livestock Industry

ACTION: Notice of meeting.

Name: USDA Public Forum on Captive Supplies in the Livestock Industry.

Date: September 21, 2000.

Place: Holiday Inn Denver International Airport, 15550 East 40th Avenue, Denver, Colorado.

Time: 8 a.m.—5:30 p.m.

Purpose: To solicit information and evidence on issues pertaining to captive supplies in the livestock industries, including packer use of forward contracting and packer feeding.

The forum will provide the opportunity for the public to submit written comments on key issues related to captive supplies, for farm groups to offer evidence on the problems or benefits of captive supplies, and for two invited groups of panelists to debate and discuss questions related to captive supplies issues.

One panel will discuss concerns about packer ownership and control of livestock. A second panel will debate whether and how captive supplies affect competition. In addition, the second panel will synthesize the economic literature available on captive supplies.

The meeting will be open to the public. Public participation will be comprised of attendance at the meeting and participation in open question and answer sessions for panelists, as well as the submission of written statements addressing captive supply issues.

Written statements may be submitted at the forum or sent to: Shannon Hamm, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, D.C. 20250–3601, telephone (202) 720–5759 or FAX (202) 205–9237, e-mail *pspwashingtondc.gipsa@usda.gov* (Note: the e-mail subject line must read ''Captive Supply forum''). All mailed comments must be postmarked on or before September 28, 2000. All statements received will be made part of the public record.

The meeting will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Terri Henry, USDA, 202–720–0219, at least 5 days prior to the meeting date.

Dated: August 29, 2000.

Enrique E. Figueroa,

Deputy Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 00–22715 Filed 9–6–00; 8:45 am]

BILLING CODE 3410–FN–M

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44987, August, 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from people that receive food assistance from emergency kitchens and food pantries.

DATES: Comments on this notice must be received by November 13, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Linda Kantor, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW, Room N–3069, Washington, DC 20036–5831, 202–694–5456.

SUPPLEMENTARY INFORMATION:

Title: Application for ERS collection of information from people who receive food assistance from emergency kitchens and food pantries.

Type of Request: Approval to collect information from people who receive food assistance from emergency kitchens and food pantries.

Abstract: USDA's Economic Research Service (ERS) has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including food security status of the poor; domestic food assistance programs; low-income assistance programs; economic food consumption determinations and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; and food safety regulation. In carrying out this overall mission, ERS seeks approval of information gathering activities that will provide key information about the use of the Emergency Food Assistance System (EFAS) by low-income households and individuals.

USDA, through the Food and Nutrition Service, administers several food assistance programs that help low-income households obtain adequate and nutritious diets. The largest USDA food assistance program, the Food Stamp Program, is designed to provide food assistance through normal channels of trade by providing low-income consumers with purchasing power to buy food at market prices from food retailers authorized to participate in the program. Other programs such as the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and the Temporary Emergency Feeding Assistance Program (TEFAP) provide food assistance outside regular marketing channels. The NSLP and SBP provide cash subsidies and commodity assistance to schools to help provide low-cost or free lunches and breakfasts to schoolchildren. The TEFAP distributes commodity foods to State and local agencies for distribution to low-income households for home consumption, or to charitable organizations that provide meals for needy people.

The EFAS interacts closely with USDA food assistance programs by serving as a distribution outlet for TEFAP commodities and by providing temporary or supplemental food assistance to many of the same needy populations served by USDA programs. Through its Community Food Security Initiative, USDA is coordinating public and private efforts to increase the amount of surplus food channeled through EFAS providers.

EFAS providers are primarily private, nonprofit organizations that distribute groceries (unprepared foods) and meals (prepared foods) on a short-term or emergency basis to needy individuals and households who lack the resources to meet their own food needs. EFAS recipients include the homeless, the elderly, the unemployed, the working poor, and victims of natural disasters. Food pantries and emergency kitchens are important components of the EFAS. Food pantries are distribution centers that provide groceries and other basic supplies for use by recipients in their homes or at other locations away from the distribution sites. Emergency kitchens supply food for on-site consumption to people who do not live at the site. Both emergency kitchens and food pantries focus on providing assistance to needy households and individuals in their neighborhoods.

In order to fully assess the role of the emergency food assistance system and its interaction with USDA food assistance programs in meeting clients' nutrition needs, ERS is conducting an Emergency Food Assistance Study of providers and clients. The Provider Survey will provide important information on providers' characteristics, operations, service areas, and demand for assistance. The new data collection activity, the Client Survey, will complement the Provider Survey by collecting information from a national sample of people that visit emergency kitchens and/or food pantries sampled in the Provider Survey. The results from the entire study will be used to inform public policy about the emergency food assistance system and its interaction with USDA food assistance programs. For example, does the Emergency Food Assistance System substitute for or serve as a complement to existing USDA food assistance programs, like the Food Stamp Program. The study findings from EFAS providers and clients will be used by USDA to assess current food assistance programs and to plan future programs. The Client Survey has five primary objectives: (1) To characterize EFAS clients; (2) to determine the precipitating events that led clients to seek emergency food assistance; (3) to determine EFAS clients' participation in, knowledge of and experience and satisfaction with USDA food assistance and other Federal benefits programs; (4) to assess the food security status of EFAS clients; and (5) to determine the content and size of food baskets and meals received by EFAS clients.

Previous research on EFAS clients has been conducted, but has been limited by several factors: (1) Reduced scope or focus on one program[1] or population group, such as the homeless[2], (2) lack of national representativeness, and (3) lack of comparability in populations or survey methodologies across studies.[3] Previous studies of TEFAP and the Prepared Meals Provision were conducted by USDA in the 1980s. There is a need to update this information with more complete and current information about the entire emergency food assistance program, and to better understand potential changes in emergency feeding since the 1996 Personal Work Responsibility and Reconciliation Act.

To fill these information gaps, ERS, working with Mathematica Policy Research, Inc., will survey clients of emergency kitchens and food pantries. The Provider Survey includes a national sample of EFAS providers. The Client Survey will survey individuals and families who are EFAS clients. The overall sampling process for the EFAS study uses a multi-stage design. In the Provider Survey, a random sample of 360 sampling areas were drawn from the 48 continental United States and the District of Columbia. The sample design for the Client Survey builds upon the design and sample frame developed and used for the Provider Survey. For the Client Survey, a representative sample of 60 Primary Sampling Units (PSUs) will be drawn from the 360 sampling areas to select emergency kitchens and food pantries. Contacts with providers will be made to inform them that their site has been selected for surveying clients, to verify current operations, and to enlist their cooperation. Clients that visit selected kitchens and pantries will be selected based on an interval sampling plan implemented at the EFAS site. To collect the Client Survey data, interviews will be conducted with a representative sample of clients using cell phones and computer-assisted telephone interviews (CATI).

Respondent burden will be minimized by using CATI methods to streamline the interviewing process and by carefully training and monitoring interview staff on survey procedures. Careful attention to instrument development to include only topics that are important to the agency's objectives will also minimize respondent burden. Responses will be confidential and voluntary. Data will only be reported in tabular form and analysis cells large enough to prevent identification of individuals. In addition, identifying information will be kept only by the contractor and will be released only to the contractor's internal staff who need it directly for the survey operations and data analysis.

Estimate of Burden: To notify EFAS providers and make arrangements for on-site data collection, an average of 30 minutes of telephone contact with providers will be required. CATI interviews with clients at emergency kitchens and food pantries will average 20 minutes.

Respondents: Respondents are directors of emergency kitchens and food pantries, and individuals who visit those EFAS providers to receive food assistance. To make arrangements for on-site data collection, directors at 600 providers will be contacted. Data will be collected from 2,135 clients at emergency kitchens and 2,135 clients at food pantries, for a total of 4,270 completed interviews.

Estimated Total Annual Burden on Respondents: The estimated burden on the EFAS providers to be informed about the survey and make arrangements for on-site data collection is 300 hours for telephone contacts. The estimated burden of the CATI interviews with clients is 1,409 hours. Thus, total burden is 1,709 hours for all providers and clients.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technology. Comments may be sent to: Linda Kantor, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW, Room N–3069, Washington, DC 20036–5831.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

[1] USDA. A Study of the Temporary Emergency Food Assistance Program (TEFAP). Washington, DC: Food and Nutrition Service, April 1987.

[2] Martha Burt and Barbara Cohen. Feeding the Homeless: Does the Prepared Meals Provision Help? Vol. 1. U.S. House of Representatives, Committee on Agriculture, October 31, 1988.

[3] Second Harvest. Hunger 1997: The Faces & Facts. Chicago: The Amburg Group, 1997.

Dated: August 2, 2000.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 00–22866 Filed 9–6–00; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

National Sheep Industry Improvement Center; Solicitation of Nominations of Board Members

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice: Invitation to submit nominations.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces that it is accepting nominations for the Board of Directors of the National Sheep Industry Improvement Center for two directors' positions whose terms are expiring on February 13, 2001. Both positions are for voting members; one is for an active producer of sheep or goats and the other position is for a person with expertise in lamb, wool, goat, or goat product marketing. Board members manage and oversee the Center's activities. Nominations may only be submitted by National organizations that consist primarily of active sheep or goat producers in the United States and who have as their primary interest the production of sheep or goats in the United States. Nominating organizations should submit:

(1) Substantiation that the nominating organization is national in scope,

(2) The number and percent of members that are active sheep or goat producers,

(3) Substantiation of the primary interests of the organization, and

(4) An Advisory Committee Membership Background Information form (Form AD–755) for each nominee.

This action is taken to carry out section 759 of the Federal Agriculture Improvement and Reform Act of 1996, as amended, for the establishment of a National Sheep Industry Improvement Center.

DATES: The closing date for acceptance of nominations is November 6, 2000. Nominations must be received by, or postmarked, on or before, this date.

ADDRESSES: Submit nominations and statements on qualifications to Cooperative Services, RBS, USDA, 1400 Independence Ave., SW, Stop 3252, Room 4204, Washington, DC 20250–3252, Attn.: National Sheep Improvement Center, Nominations.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, 1400 Independence Ave, SW, Stop 3252, Washington, DC 20250–3252, telephone (202) 690–0369, (This is not a toll free number.) FAX 202–690–2723, or e-mail thomas.stafford@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Agriculture Improvement and Reform Act of 1996, known as the 1996 Farm Bill, established a National Sheep Industry Improvement Center. The Center shall (1) promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States; (2) optimize the use of available human capital and resources within the sheep or goat industries; (3) provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research; (4) advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to special needs of the sheep or goat industries on both a regional and national basis; and (5) adopt flexible and innovative approaches to solving the long-term needs of the United States sheep or goat industry. The Center has a Revolving Fund established in the Treasury to carry out the purposes of the Center. Management of the Center is vested in a Board of Directors, which has hired an Executive Director and other staff to operate the Center.

The Board of Directors is composed of seven voting members of whom four are active producers of sheep or goats in the United States, two have expertise in finance and management, and one has expertise in lamb, wool, goat or goat product marketing. Both of the open positions are for voting members; one is for an active producer of sheep or goats in the United States and the other position is for a person with expertise in lamb, wool, goat, or goat product marketing. The Board also includes two non-voting members, the Under Secretary of Agriculture for Rural Development and the Under Secretary of Agriculture for Research, Education, and Economics. Board members will not receive compensation for serving on the Board of Directors, but shall be reimbursed for travel, subsistence, and other necessary expenses.

The Secretary of Agriculture shall appoint the voting members from the submitted nominations. Member's term of office shall be three years. Voting members are limited to two terms. The two positions for which nominees are sought are currently held by members serving their second term, thus they are not eligible to be re-nominated. The Board shall meet not less than once each fiscal year, but are likely to meet at least quarterly.

The statement of qualifications of the individual nominees is being obtained by using Form AD–755, ''Advisory Committee Membership Background Information.'' The requirements of this form are incorporated under OMB number 0505–0001.

Dated: August 30, 2000.

Wilbur T. Peer,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 00–22966 Filed 9–6–00; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on October 26, 2000, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Election of Chairman.

2. Presentation of papers or comments by the public.

3. Discussion on List Review (materials processing).

Closed Session

4. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any

time before or after the meeting. However, to facilitate distribution of public presentation materials, the Committee suggests that presenters forward the materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 11, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For more information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 30, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–22843 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1104]

Grant of Authority; Establishment of a Foreign-Trade Zone Riverside County, California Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the March Joint Powers Authority, a public corporation (the Grantee), has made application to the Board (FTZ Docket 64–99, filed 12/6/99), requesting the establishment of a foreign-trade zone at the March Inland Port, Riverside County, California, area, adjacent to Los Angeles-Long Beach Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (64 FR 69988, 12/15/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 244, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit.

Signed at Washington, DC, this 21st day of August, 2000.

Foreign-Trade Zones Board.

Norman Y. Mineta,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–23001 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1117]

Grant of Authority for Subzone Status; RP Scherer Corporation Manufacturing Facilities (Gelatin Capsules/ Pharmaceutical Products); Pinellas County, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for '' * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Pinellas County Board of County Commissioners, grantee of Foreign-Trade Zone 193, has made application to the Board for authority to establish special-purpose subzone status at the gelatin capsule/pharmaceutical product manufacturing facilities of RP Scherer Corporation, located in Pinellas County, Florida (FTZ Docket 2–2000, filed 1/20/00, amended 5/17/00);

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 5308, 2/3/00; amended 65 FR 33802, 5/25/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the gelatin capsule/pharmaceutical product manufacturing facility of RP Scherer Corporation, located in Pinellas County, Florida, (Subzone 193A), at the locations described in the application, as amended, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 24th day of August 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–23003 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2000]

Proposed Foreign-Trade Zone—City of Erie (County of Erie), PA; Amendment of Application

Notice is hereby given that the application of the Erie-Western Pennsylvania Port Authority, to establish a general-purpose foreign-trade zone in the City of Erie (County of Erie), Pennsylvania (Doc. 6–2000, 65 FR 12970, 3/10/00; amended 7/14/00, 65 FR 43736), has been amended further to include an additional non-contiguous site (20 acres) at the Hardinger

Transportation Company's warehousing and distribution site, 1314 W. 18th Street, Erie. The facility provides logistics/transportation services (truck and rail). The site is within the Erie Customs port of entry (within the Cleveland Customs Service port area).

As amended, the zone proposal will consist of a total of three sites (496 acres) in the City of Erie. The application otherwise remains unchanged.

The comment period is reopened until October 6, 2000. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

A copy of the application and the amendment and accompanying exhibits are available for public inspection at the following locations:

Erie County Public Library, Raymond M. Blasco, MD, Memorial Library, 160 East Front Street, Erie, PA 16507

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 22, 2000.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–23000 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1115]

Expansion of Foreign-Trade Zone 84 Houston, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Port of Houston Authority, grantee of Foreign-Trade Zone 84 (Houston, Texas), submitted an application to the Board for authority to expand FTZ 84 to include the jet fuel storage and distribution system at Houston's George Bush Intercontinental Airport (22 acres) in Houston, Texas (Site 14), within the Houston Customs port of entry (FTZ Docket 58–99; filed 11/17/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 66879, 11/30/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 84 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 24th day of August 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 00–23002 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Alex Amdur or Howard Smith at (202) 482-5346 and (202) 482–5193, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (''the Department'') to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On February 28, 2000, the Department published a notice of initiation of administrative review of the antidumping duty order on brass sheet and strip from Canada, covering the period January 1, 1999 through December 31, 1999 (65 FR 10466). The preliminary results are currently due no later than October 2, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than January 30, 2001. *See* Decision Memorandum from Thomas Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 31, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–22995 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent not to revoke antidumping duty order in part.

SUMMARY: In response to requests from three respondents and from the petitioners in the original investigation, the Department of Commerce (''the Department'') is conducting (the sixth) administrative reviews of the antidumping duty orders on certain

cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers and exporters of the subject merchandise. The period of review (''POR'') is August 1, 1998, through July 31, 1999.

We preliminarily determine that sales have been made below normal value (''NV''). If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs to assess antidumping duties equal to the difference between export price (''EP'') or constructed export price (''CEP'') and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Marlene Hewitt ((Dongbu Steel Co., Ltd. (Dongbu) and Union Steel Manufacturing Co., Ltd. (Union)), Michael Panfeld ((Pohang Iron and Steel Co., (POSCO), Pohang Coated Steel Co., Ltd. (POCOS), and Pohang Steel Industries Co., Ltd. (PSI)—(the POSCO Group)), or James Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, D.C. 20230; telephone (202) 482–1385 (Hewitt), –0172 (Panfeld), or –0159 (Doyle).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (April 1999).

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty orders for the 1998/99 review period on August 11, 1999 (64 FR 43649). On August 31, 1999, respondent POSCO and Dongbu requested that the Department conduct an administrative review of the antidumping duty orders on corrosion-resistant and cold-rolled carbon steel flat products from Korea. On August 31, 1999, petitioners in the original less-than-fair-value (LTFV) investigations (AK Steel Corporation; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company; National Steel Corporation; and U.S. Steel Group A Unit of USX Corporation) requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea with respect to all three of the aforementioned respondents. We initiated these reviews on September 24,1999 (64 FR 53318) October 1, 1999.

Under section 751(a)(3) of the Act the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. The Department extended the time limits for the preliminary results in these cases. *See Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Antidumping Duty Administrative Reviews: Extension of Time Limit,* 65 FR 20135 (April 14, 2000).

The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Scope of the Reviews

The review of ''certain cold-rolled carbon steel flat products'' covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.,* aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of ''certain corrosion-resistant carbon steel flat products'' covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560,

7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded from this review are: Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating; clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness; and certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

The POR is August 1, 1998 through July 31, 1999. These reviews cover entries associated with sales of certain cold-rolled and corrosion-resistant carbon steel flat products by Dongbu, Union, and the POSCO Group (*see* ''Affiliated Parties'' section below).

Verification

We verified information provided by the POSCO Group with respect to sales, including on-site inspection of facilities of the manufacturer, the examination of relevant accounting and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the sales, and cost verification reports. *See* the August 9, 2000, *Sales Verification Report* (''*Sales Report*'') from Michael Panfeld and Stephen Shin through Jim Doyle to Edward Yang to the File, and the August 14, 2000, Cost Verification Report (''*Cost Report*'') from Theresa L. Caherty to Neal M. Halper, respectively.

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.

The POSCO Group

We have applied partial adverse facts available with regard to two home market expense fields reported by the POSCO Group. First, POSCO did not report imputed credit expenses on a transaction-specific basis, despite having the ability to do so. Additionally, POSCO did not report certain rebate expenses on a transaction-specific basis, despite having the ability to do so. For both of these expenses, we asked POSCO to report the expense on a transaction-specific basis. *See* for example, the Department's October 4, 1999 questionnaire at B–25 and B–29. POSCO stated that it was not able to report transaction-specific imputed credit costs because it ''maintains an open account system.'' *See* POSCO's December 6, 1999 response at 43 and 68. With respect to rebates, POSCO stated that it ''has no means to tie a rebate to a specific sale because rebates can relate to numerous transactions.'' *See ibid* at 55. However, at verification, the Department determined that POSCO was able to tie specific rebates and could calculate transaction-specific imputed credit costs. For a further discussion of these issues, *see* the August 30, 2000, *Preliminary Results Analysis Memorandum* (''*Prelim Memo*'') from Michael Panfeld through James Doyle to the File and the *Sales Report* at p. 10, 12.

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. Additionally, Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, Vol. 1, 103d Cong., 2d Sess. 870 at 868–870 (1994) (SAA). For these two home market expense fields, we have applied an adverse assumption, because the POSCO Group did not act to the best of its ability in responding to the Department's questionnaire nor did the POSCO Group report the data in the manner requested. As a result, the POSCO Group's reported imputed credit and certain rebate expenses cannot serve as a reliable basis for reaching a preliminary determination (see section 782(e)(3) of the Act). We have instead relied on partial facts available for those figures for the purpose of calculating a dumping margin to the POSCO Group for this preliminary determination. For a detailed proprietary discussion of our treatment of these two fields, *see Preliminary Analysis Memo* at page 6 and at Appendix I.

Transactions Reviewed

Consistent with prior reviews, we excluded reported overrun sales in the home market from our sales comparisons because such sales were outside the ordinary course of trade.

The POSCO Group

According to section 351.403(d) of the Department's regulations, downstream sales to home market affiliates accounting for less than five (5) percent of total sales are normally excluded from the normal value calculation. Since the POSCO Group's sales to affiliated resellers exceeded the Department's 5 percent threshold, the Department has required the POSCO Group to report the home market downstream sales of the four affiliated service centers with the largest volume of sales of subject merchandise in each case. If the sales to the affiliated service centers did not pass the arm's length test, we used the resales made by these affiliated service centers. To test whether the POSCO Group's sales were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated parties were on average 99.5 percent or more of the price to the unaffiliated party, we determined that sales made to the related party were at arm's length. Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made

at arm's length and, therefore, excluded them from our analysis. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model.

Dongbu

In determining NV, based on our review of the submissions by Dongbu, the Department determined that Dongbu need not report ''downstream'' sales by affiliated resellers in the home market because such sales were less than the 5% threshold.

Affiliated Parties

For purposes of these reviews, we are treating POSCO, POCOS, and PSI as affiliated parties and have ''collapsed'' them, *i.e.*, treated them as a single producer of certain cold-rolled carbon steel flat products (POSCO and PSI) and certain corrosion-resistant carbon steel flat products (POSCO, POCOS, and PSI). We refer to the collapsed respondent as the POSCO Group. POSCO, POCOS, and PSI were treated as collapsed in a previous segment of these proceedings. *See, e.g. Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 61 FR 51882, 51884 (October 4, 1996). The POSCO Group has submitted no new information which would cause us to reconsider that determination.

As we have determined in past administrative reviews, we are treating Union and Dongkuk Industries Co., Ltd. (''DKI'') as a single producer of certain cold-rolled carbon steel flat products. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Reviews*, 60 FR 65284 (December 19, 1995). Additionally, we are treating Union and DKI as a single producer of certain corrosion-resistant carbon steel flat products. *See* the August 31, 1999 *Collapsing Memorandum* from Marlene Hewitt through James Doyle to Edward Yang. We have found no indication on the record that the underlining facts have substantively changed.

Dongbu and Union

On March 24, 2000, Petitioners alleged that Dongbu and Union are affiliated with POSCO based on Dongbu and Union's dependence on POSCO as their primary supplier of hot-rolled coil (HRC), the primary input in the production of subject merchandise. Petitioners indicated that these purchases are substantial and the Department should determine whether, under its recently articulated ''greater-than-fifty-percent-dependence-for-five-years'' test, Dongbu and Union are affiliated with POSCO. *See Mitsubishi Heavy Industries* v. *United States*, Slip Op. 99–46 (Ct. Int'l Trade May 26, 1999). Petitioners propose that POSCO is in a position to exercise restraint or direction over the purchasers, Dongbu and Union, because Dongbu and Union are dependent upon POSCO to continue their production of hot-rolled coil.

We preliminarily determine that the record evidence does not show a close supplier relationship between POSCO, Dongbu and Union. Specifically, the record evidence shows that both Union and Dongbu source a significant supply of hot-rolled coil from other companies. Thus, the Department finds no affiliation between Union, Dongbu and POSCO. This is consistent with a previous review in which petitioners also alleged affiliation based on a close supplier relationship. In that case we determined that there was no affiliation. *See e.g. Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18412 (April 15, 1997).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all cold-rolled carbon steel flat products produced by the respondents, covered by the descriptions in the ''Scope of the Reviews'' section of this notice, *supra*, and sold in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of cold-rolled carbon steel flat products. Likewise, we considered all corrosion-resistant carbon steel flat products produced by the respondents and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to corrosion-resistant carbon steel flat products sold in the United States.

For certain product characteristics (*i.e.*, quality and surface finish) Dongbu reported an additional sub-code. The Department has included the additional codes that Dongbu reported in the aforementioned category in the Department's product matching methodology. *See* the March 6, 2000 *Final Results Analysis Memorandum* from Juanita Chen through James Doyle to the File.

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 in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent. Where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight), we converted all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair-value comparisons.

Fair-Value Comparisons

To determine whether sales of certain cold-rolled and corrosion-resistant carbon steel flat products by the respondents to the United States were made at less than normal value, we compared the export price (''EP'') or constructed export price (''CEP'') to the normal value (''NV''), as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Particular Market Situation in the Home Market

On November 12, 1999, the petitioners alleged that the Korean home market should not be used to determine NV because there were economic distortions constituting a ''particular market situation'' in Korea during the period of review. Petitioners allege that economic distortions make it impossible to obtain reliable measures of normal value in Korea, or to make proper comparisons of normal value with U.S. sales. This economic distortion, according to petitioners, is: The Government of Korea (''GOK'') controls home market prices of cold-rolled and corrosion-resistant steel. Petitioners propose that the Department instead rely upon third country sales as the basis for normal value.

We preliminarily determine that the information submitted by petitioners and the questionnaire responses by the respondents do not show that there is a particular market situation in Korea that warrants disregarding the home market in this case. Although updated, petitioners provided the same type of evidence we previously considered to

be insufficient for determining a particular market situation exists (*e.g.* price lists, market reports, and news articles). Furthermore, the direct analysis and narrative provided by the petitioners either address POSCO as a whole or cut-to-length carbon steel plate (which was the proceeding for which they filed the original direct analysis) and not cold-rolled or corrosion-resistant carbon steel flat products from Korea specifically. This is consistent with previous reviews in which petitioners also alleged a particular market situation in Korea's home market based on alleged government control of pricing. In those cases, we determined that the Korean home market was viable and appropriate as a basis for NV. *See e.g., Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews*, 62 FR 47422, 47425 (September 9, 1997). This issue was not discussed in the final results of the review in question.

Request for Revocation

The POSCO Group

On August 31, 1999, POSCO submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the order covering cold-rolled carbon steel flat products from Korea with respect to its sales of this merchandise. In accordance with 19 CFR 351.222(e), these requests were accompanied by certifications from POSCO that it had not sold the subject merchandise at less than NV for a three-year period and in commercial quantities, including this review period, and would not do so in the future. POSCO also agreed to immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, POSCO sold the subject merchandise at less than NV.

The Department conducted verifications of POSCO's responses for this period of review. In the two prior reviews of this order we determined that POSCO sold cold-rolled carbon steel flat products from Korea at not less than NV or at *de minimis* margins. We have preliminarily determined that POSCO sold cold-rolled carbon steel flat products at not less than NV during the instant review period.

However, in determining whether a requesting party is entitled to a revocation inquiry, the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Pure Magnesium from Canada*, 63 FR 26147 (May 12, 1998). This practice has been codified by § 351.222(e) where a party requesting a revocation review is required to certify that they have sold the subject merchandise in commercial quantities. *See also* § 351.222(d)(1) of the Department's regulations, which state that, ''before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States *in commercial quantities* of the subject merchandise to which a revocation or termination will apply.'' (emphasis added); *See also*, the preamble of the Department's latest revision of the revocation regulation stating: ''The threshold requirement for revocation continues to be that respondent not sell at less than normal value for at least three consecutive years and that, during those years, respondent exported subject merchandise to the United States in *commercial quantities*'' (emphasis added) *Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 64 FR 51236, 51237 (September 22, 1999).

For purposes of revocation, the Department must be able to determine that past margins reflect a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping. As the Department has previously stated, the commercial quantities requirement is a threshold matter. *See e.g., Pure Magnesium from Canada*, 64 FR 50489, 50490 (September 17, 1999). Thus, a party must have meaningfully participated in the marketplace in order to substantiate the need for further inquiry regarding whether continued imposition of the order is warranted.

Based on the current record, we find that POSCO did not sell merchandise in the United States in commercial quantities during the fourth administrative review (one of the three consecutive reviews cited by POSCO to support its request for revocation). During the POR covered by that review (August 1996 though July 1997), POSCO appeared to have made only one sale in the United States. Moreover, the total tonnage of this sale was small. *See Prelim Memo* August 30, 2000 at Appendix II. By contrast, during the period covered by the antidumping investigation, which was only six months long (January 1992 through June 1992), POSCO made several thousand sales whose total quantity is 400 times greater than the quantity for the fourth administrative. In other words, POSCO's sales for the entire year covered by the fourth review period were only 0.27% of its sales volume during the six-months covered by the investigation. Similarly, during the current POR, POSCO sold approximately 400 times more subject merchandise in the United States than during the fourth administrative review.

Consequently, although POSCO received a *de minimis* margin during the fourth administrative review, this margin was not based on commercial quantities within the meaning of the revocation regulation. The number of sales and total sales volume is so small, both in absolute terms, and in comparison with the period of investigation and other review periods (*see* Analysis memo), that it does not provide any meaningful information of POSCO's normal commercial experience. Therefore, we find that POSCO did not meaningfully participate in the marketplace for purposes of qualifying for a revocation inquiry and thus, because it has not sold the subject merchandise for three years in commercial quantities within the meaning of 351.222(e) does not qualify for a revocation inquiry.

Date of Sale

It is the Department's current practice normally to use the invoice date as the date of sale, although we may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i). We have preliminarily determined that there is no reason to depart from the Department's treatment of date of sale for these respondents. Consistent with prior reviews, for home market sales, we used the reported date of the invoice from the Korean manufacturer; for U.S. sales we have followed the Department's methodology from the prior reviews, and have based date of sale on invoice date from the U.S. affiliate, unless that date was subsequent to the date of shipment from Korea, in which case that shipment date is the date of sale. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 65 FR 13359, 13362 (March 13, 2000) and accompanying Decision Memo at comment 6.

Export Price/Constructed Export Price

We calculated the price of U.S. sales based on CEP, in accordance with section 772(b) of the Act, except for U.S. sales made by the POSCO Group to one customer, which we have classified as ''export price'' sales. The Act defines the term ''constructed export price'' as ''the price at which the subject merchandise is first sold (or agreed to be sold) *in the United States* before or after the date of importation *by or for the account of* the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).'' In contrast, ''export price'' is defined as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation *by the producer or exporter* of the subject merchandise *outside of the United States*.'' Sections 772(a)–(b) of the Act (emphasis added).

In determining whether to classify sales as either EP or CEP, the Department must examine the totality of the circumstances surrounding the U.S. sales process, and assess whether the reviewed sales were made ''in the United States'' for purposes of section 772(b) of the Act. In the instant case, the record establishes that Dongbu, the POSCO Group, and Union's affiliates in the United States (1) took title to the subject merchandise; and (2) invoiced and received payment from the unaffiliated U.S. customers. Thus, as the record stands, because these functions are more than ancillary the Department has determined that these sales should be classified as CEP transactions.

For Dongbu, Union, and the POSCO Group, we calculated CEP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, U.S. Customs duties, commissions, credit expenses, warranty expenses, inventory carrying costs incurred in the United States, and other indirect selling expenses. Pursuant to section 772(d)(3) we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price.

Consistent with the Department's normal practice, we added the reported duty drawback to the gross unit price. We did so in accordance with the Department's long-standing test, which requires: (1) That the import duty and rebate be directly linked to, and dependent upon, one another; and (2) that the company claiming the adjustment demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on the exports of the manufactured product.

For POSCO, we calculated EP for one customer located outside the United States based on packed prices to unaffiliated purchasers in the United States. We made deductions for foreign inland freight, brokerage and handling, ocean freight, marine insurance, U.S. inland freight (where applicable), and U.S. Customs duties in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback. Pursuant to section 772(c)(1)(B) of the Act.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, we deducted rebates, discounts, inland freight (offset, where applicable, by freight revenue), inland insurance, and packing. We made adjustments to NV, where appropriate, for differences in credit expenses (offset, where applicable, by interest income), warranty expenses, post-sale warehousing, and differences in weight basis. We also made adjustments, where appropriate, for home market indirect selling expenses to offset U.S. commissions in CEP comparisons.

We also increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. We made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with the Department's practice, where all contemporaneous matches to a U.S sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on constructed value (''CV'').

Differences in Levels of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action (''SAA'') at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales (either EP or CEP). When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade, and adjust NV if appropriate. The NV level of trade is that of the starting-price sales in the home market. As the Department explained in *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 17148, 17156, April 9, 1997, for both EP and CEP, the relevant transaction for the level-of-trade analysis is the sale from the exporter to the importer.

To determine whether comparison market NV sales are at a different Level of Trade (LOT) than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(&)(A) of the Act.

When NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731, 61732, November 19, 1997, and *Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review,* 63 FR 25826, 25827, May 11, 1998.

A. Dongbu

In its questionnaire responses, Dongbu states that there were no significant differences in its selling activities by customer categories within or between each market. Therefore, Dongbu states that it is not distinguishing between LOT for these reviews and that it is not claiming a

level of trade adjustment nor claiming a CEP offset. Our analysis of the questionnaire responses detailing the selling functions provided by Dongbu in the United States and home market leads us to conclude that sales within or between each market are not made at different levels of trade. We also note that the selling functions described by Dongbu in these reviews are consistent with the selling functions described for the previous reviews of these orders, in which we determined no distinct levels of trade. *See Notice of Preliminary Results: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 64 FR 48767, 48772 (September 9, 1999). Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all price comparisons are at the same level of trade and any adjustment pursuant to section 773(a)(7) of the Act is unwarranted.

B. Union

Union argues that, with the Department's classification of Union's U.S. sales as CEP sales, and its view of Dongkuk International Inc.'s (''DKA's'') role in the sales process as more than ancillary for the U.S. sales, it is incumbent on the Department to recognize that U.S. sales and home market sales are at different levels of trade. Furthermore, Union notes that because the difference in the level of trade cannot be quantified, Union is eligible for a CEP offset. Union states that home market sales are at a different level of trade from CEP sales, a level representing a more advanced stage of distribution. Union asserts that the Department's practice in a CEP situation is to compare the level of trade of the U.S. sale after the deduction of the selling expenses with the level of trade of the home market product with no deduction; therefore, the indirect selling expenses incurred for the selling functions associated with the U.S. sale, *i.e.,* the contact, and other ancillary functions (in particular the arranging of credit terms) have been deducted from the U.S. sales price, but remain in the home market price.

In identifying the level of trade for home market sales, we consider the selling functions reflected in the starting price of home market sales before any adjustments, pursuant to section 773(a)(1)(B)(i) of the Act. Union's description of selling functions in the home market makes no distinction with regard to customer categories or channels of trade, and there is no evidence on the record indicating that such functions vary within the home market. Thus, we conclude that all of Union's home market sales are at a single level of trade. In identifying the level of trade for CEP sales, we considered only the selling activities reflected in the U.S. price after deduction of expenses and profit under section 772(d) of the Act. Based upon our review of the activities, we also conclude that all of the U.S. sales are at a single level of trade.

We find that Union performed similar functions for its U.S. sales to DKA as it did for its sales to home market customers. Although the expenses related to DKA's activities have been deducted from CEP, the expenses incurred by Union in selling to DKA are still reflected in CEP. Because we find there are no substantive differences in selling functions provided by Union for its home market customers as compared to DKA, there is no difference in level of trade and, therefore, no basis for granting a level of trade adjustment or a CEP offset. This is consistent with our treatment of level of trade for Union in prior administrative reviews. *See Notice of Preliminary Results: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea,* 64 FR 48767, 48772 (September 9, 1999).

C. The POSCO Group

In its questionnaire responses, the POSCO Group stated that its home-market sales by affiliated service centers were at a different level of trade than its other home-market sales and its U.S. sales (regardless of the customer category). The respondent indicated that the service centers provide certain selling functions to all of their customers, while POSCO, POCOS and PSI provide a different set of selling functions to all of their customers (including the service centers).

In order to confirm the presence of separate levels of trade within or between the U.S. and home markets, we examined the respondent's questionnaire responses for indications of substantive differences in selling and marketing functions. *See* the *preamble* to section 351.412 of the Department's new regulations (62 FR 27296, at 27371 May 19, 1997).

In its November 3, 1999 and its January 28, 2000 section A responses, the POSCO Group claimed that there are two channels of distribution in the home market: one channel of distribution consists of sales made by POSCO, POCOS, and PSI, while they claim that a second channel of distribution consists of the sales made by the affiliated service centers. Our analysis of the questionnaire responses and review of the sales functions at the service center leads us to conclude that the cumulative functions of the POSCO Group and the service centers for sales made by the service centers are essentially the same as the cumulative functions of the POSCO Group for sales made by the POSCO Group (*e.g.*, the only substantive additional function that the affiliated service centers perform is the slitting and shearing of coils, which is not a sales function, but rather a manufacturing operation). Thus, we conclude that all sales in the home market are at a single level of trade. Similarly, although the POSCO group has both CEP and EP sales in the U.S. market, the selling functions performed on sales to affiliated and unaffiliated U.S. customers are the same. Thus, we conclude that all U.S. sales are at a single level of trade. Finally, the Department also finds that POSCO, POCOS, and PSI all provide comparable services to their customers in each market. Thus, our review of the record evidence leads us to conclude that sales within or between each market are not made at different levels of trade. Accordingly, we find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7) is unwarranted.

Cost of Production/Constructed Value

At the time the questionnaires were issued in these reviews, the fifth annual administrative reviews were the most recently completed segments of these proceedings in which each of the three respondents had participated. In accordance with section 773(b)(2)(A)(ii) of the Act, and consistent with the Department's practice, because we disregarded certain below-cost sales by each of the three respondents in the fifth reviews, we found reasonable grounds in these reviews to believe or suspect that those respondents made sales in the home market at prices below the cost of producing the merchandise. We therefore initiated cost investigations with regard to Dongbu, Union, and the POSCO Group, in order to determine whether the respondents made home market sales during the POR at prices below their cost of production (COP) within the meaning of section 773(b)(2)(A)(ii) of the Act.

Before making concordance matches, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP for Dongbu, Union, and the POSCO Group based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling expenses, general, and administrative expenses (''SG&A''), and packing costs in accordance with section 773(b)(3) of the Act.

We relied on Dongbu, Union, and POSCO's information as submitted with the exception of POSCO, where we adjusted the cost of manufacturing to account for product-specific variances which POSCO calculated on an overall basis.

B. Test of Home-Market Prices

We used the respondents' weighted-average COP, as adjusted (see above), for the period July 1998 to June 1999. We compared the weighted-average COP figures to home-market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, as required under section 773(b)(1)2(A)&(B)of the Act, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices (not including VAT), less any applicable movement charges, discounts, and rebates.

C. Results of 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 POR were at prices less than the COP, we found that sales of that model were made in ''substantial quantities'' within a reasonable period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act, and were not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated constructed value (CV) for Dongbu, Union, and the POSCO Group based on the sum of respondents' cost of materials, fabrication, SG&A, including interest expenses, U.S. packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, 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 foreign country. For selling expenses, we used the weighted-average home-market selling expenses. As noted in the ''Calculation of COP'' section of this notice, we made adjustments to the reported COMs of the POSCO Group. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as published by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined, as a general matter, that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See, e.g., Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915, 8918 (March 6, 1996) and Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, (March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Preliminary Results of the Reviews

As a result of these reviews, we preliminarily determine that the following weighted-average dumping margins exist:

Producer/Manufacturer/ Exporter	Weighted-average margin
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	1.84
the POSCO Group	0.05
Union	6.27
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	0.19
the POSCO Group	1.36
Union	0.17

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 days after the publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results. The Department will publish the final results of this administrative review, including the results of 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 these preliminary results.

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Exporter/importer-specific assessment rates shall be calculated in accordance with 19 CFR 351.212(b). This is done by dividing the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. The U.S. Customs Service shall be directed, at the issuance of the final results of this review, to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's

entries under the relevant order during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for each respondent will be the rate established in the final results of these administrative reviews (except that no deposit will be required for firms with zero or *de minimis* margins, i.e., margins lower than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any prior reviews, the cash deposit rate will be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), the ''all others'' rate established in the LTFV investigations *See Final Determination: Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products From Korea* 58 FR 44159, August 19, 1993. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during 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.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22992 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–816]

Certain Cut-to-Length Carbon Steel Plate From Germany: Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results in the antidumping duty administrative reviews of certain cut-to-length carbon steel plate from Germany.

SUMMARY: In response to requests from Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation (collectively, ''Petitioners'') and Novosteel SA (''Novosteel''), the U.S. Department of Commerce (''Department'') is conducting administrative reviews of the antidumping duty orders on certain cut-to-length carbon steel plate (''CTL plate'') from Germany for the periods August 1, 1997 through July 31, 1998 and August 1, 1998 through July 31, 1999. The Department preliminarily determines that a 36.00 dumping margin exists for Reiner Brach GmbH & Co. KG's (''Reiner Brach'') sales of CTL plate in the United States for the period August 1, 1997 through July 31, 1998, and that a 36.00 dumping margin exists for Reiner Brach's sales of CTL plate in the United States for the period August 1, 1998 through July 31, 1999. The preliminary results are listed in the section titled ''Preliminary Results of the Reviews,'' *infra*. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the arguments.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Robert A. Bolling, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–3434, fax 202–482–1388.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''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 codified at 19 CFR Part 351 (1999).

Background

On August 19, 1993, the Department published the antidumping duty order on certain cut-to-length carbon steel plate from Germany. *See* Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Germany, 58 FR 44170 (August 19, 1993) (''Antidumping Duty Order''). On August 11, 1998, the Department published a notice of opportunity to request administrative review of this order for the period August 1, 1997 through July 31, 1998. *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 63 FR 42821 (August 11, 1998). Novosteel, a Swiss exporter of subject merchandise, timely requested that the Department conduct an administrative review of Novosteel's sales for this period (''97–98 Review''). On September 24, 1998, Novosteel requested that the Department defer the 97–98 Review for a one year period, in accordance with 19 CFR 351.213(c); the Department agreed to this request. *See* Initiation of Antidumping and Countervailing Duty Administrative Review, Requests for Revocation in Part and Deferral of Administrative Reviews, 63 FR 58009 (October 29, 1998). On August 11, 1999, the Department published a notice of opportunity to request administrative review of this order for the period August 1, 1998 through July 31, 1999. *See* Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 63 FR 42821 (August 11, 1998). On August 13, 1999, Novosteel timely requested that the Department conduct an administrative review of Novosteel's U.S. entries for this period (''98–99 Review''). On August 31, 1999, Petitioners also timely requested that the Department conduct an administrative review of Novosteel's

U.S. entries for the 98–99 period of review (''POR''). In accordance with section 751(a) of the Act, the Department published in the **Federal Register** notices of initiation of the 97–98 Review and the 98–99 Review. *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 64 FR 60161 (November 4, 1999)(97–98); Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 64 FR 53318 (October 1, 1999) (98–99).

On October 4, 1999, the Department issued Novosteel its questionnaire for the 97–98 Review and the 98–99 Review. On December 9, 1999, Novosteel responded to Section A of the Department's questionnaires. In the Section A response, sales documentation demonstrated that the producer of the subject merchandise, Reiner Brach had knowledge that the subject merchandise was being exported to the United States. *See* Exhibits 3 and 4 of the December 9, 1999 response. Also, on January 7, 2000, Novosteel responded to Sections B and C of the Department's questionnaires. On January 18, 2000, Petitioners submitted a request that the Department terminate the administrative reviews with respect to Novosteel, arguing that a review of Novosteel, a non-producing exporter, would only be appropriate where the supplier did not have knowledge that the merchandise would be exported to the United States. Petitioners argued that Novosteel's supplier, producer Reiner Brach, had knowledge that the merchandise would be sold to the United States and that, thus, the appropriate sales to be reviewed were those made by Reiner Brach to Novosteel. On February 2, 2000, Reiner Brach submitted a letter opposing termination of the administrative review of Novosteel and agreed to become a respondent for these administrative reviews.

Based on the Novosteel's questionnaire responses, the Department determined that Reiner Brach not only was the producer of the subject merchandise, but also had knowledge that the products were destined for the United States, and that, thus, the sale between Reiner Brach and Novosteel was the appropriate link in the sales chain upon which the Department should be conducting its antidumping analysis regarding these sales of the subject merchandise in the United States during the aforementioned PORs. While the result of this change in focus is that the margin calculated in these reviews will be that of Reiner Brach, rather than of Novosteel, *per se*, Novosteel affirmatively accepted the change of analytical focus to Reiner Brach, and petitioners have not disagreed with this approach. Therefore, bearing these factors in mind, and in consideration of the small size and lack of experience of Reiner Brach, in addition to noting that two PORs are at issue, the Department determined that it was proper use of its discretion to conduct administrative reviews for the 97–98 and 98–99 PORs of Reiner Brach's sales.

On February 15, 2000, the Department issued Reiner Brach questionnaires for the 97–98 and the 98–99 Reviews. On March 15, 2000, the Department received Reiner Brach's response to Section A of the Department's questionnaire, and on April 6, 2000 the Department received Reiner Brach's response to Sections B and C of the Department's questionnaire.

On April 7, 2000, the Department determined that it was not practicable to complete these reviews within the normal time frame. Therefore, the Department extended the time limits for these administrative reviews to August 30, 2000. *See* Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Reviews: Certain Cut-to-Length Carbon Steel Plate from Germany, 65 FR 18294 (April 7, 2000).

On April 26, 2000, we requested Reiner Brach to provide the Department with its missing variable cost of manufacturing (''VCOM'') and total cost of manufacturing (''TCOM'') data. On May 8, 2000, Reiner Brach provided the Department with its VCOM and TCOM data. On May 17, 2000, the petitioners alleged that Reiner Brach was selling the subject merchandise in the home market below its cost of production. On May 25, 2000, the Department issued a supplemental questionnaire on Sections A, B, and C to Reiner Brach. On June 5, 2000, the Department initiated a cost of production inquiry in this case, for both review periods, and requested that Reiner Brach respond to Section D of the questionnaire. On June 15, 2000, Reiner Brach responded to the Department's supplemental questionnaire of May 25, 2000. On June 29, 2000, the Department received Reiner Brach's response to Section D of the Department's questionnaire. On July 11 and 17, 2000, the Department issued a supplemental questionnaire on Section D, and additional questions on Sections A–C. On July 24, 2000, Reiner Brach responded to the Department's supplemental questionnaires of July 11 and July 17, 2000.

Scope of the Reviews

The products covered by these administrative reviews constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (''HTS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Periods of Review

The periods of review (''POR'') for these administrative reviews are August 1, 1997 through July 31, 1998 and August 1, 1998 through July 31, 1999.

Verification

In accordance with section 782(i) of the Act, the Department conducted verification of Reiner Brach's data for the 97–98 and 98–99 PORs using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information.

Verification was conducted at Reiner Brach's headquarters in Mulheim, Germany from August 2, 2000 through August 5, 2000. *See* Home Market Verification Report of Reiner Brach GmbH & Co. KG, from Rick Johnson and Robert A. Bolling to the File (August 21, 2000).

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

At the verification of Reiner Brach, the Department discovered that Reiner Brach provided data on only a minimal portion of its home market sales of the foreign like product for each period of review. Reiner Brach stated at verification that it had only reported a minimal portion of its home market sales because it interpreted the Department of Commerce's questionnaire to mean that Reiner Brach only had to report identical sales in the home market that matched its U.S. sales. *See* Home Market Verification of Reiner Brach GmbH & Co. KG (''Verification Report'') dated August 21, 2000 at pages 2, 6, and 7.

The Department also discovered at verification that Reiner Brach had failed to provide accurate and complete cost of production information. Reiner Brach stated at verification that it had reported costs for both PORs based on the same cost data. Although, according to a company official, Reiner Brach had the ability to provide its costs for each POR, it nevertheless did not do so. *See* Verification Report at page 11. Moreover, at verification Reiner Brach stated that cost data were available for both PORs, but Reiner Brach did not provide this data to the Department for several reasons. First, cost data for 1999 were available, but the company did not have the personnel available to gather the data and allocate the costs to each cost center. Second, cost data for 1997 were available, but Reiner Brach did not review its records because the data was ''not of interest to Reiner Brach.'' Third, Reiner Brach did not use July 1999 costs becasue many of its employees were on vacation and July's costs would not have been representative of a normal production month. *See* Verification Report at page 11.

Accordingly, Reiner Brach failed to provide the Department with information which the Department had requested and needed to calculate a dumping margin. Therefore, we determine that Reiner Brach withheld information requested by the Department. Therefore, the Department finds it necessary to use the facts otherwise available for Reiner Brach, in accordance with section 776(a)(2)(A) of the Act. Because the Department lacks both a useable home market sales database and a reliable cost database, the information provided cannot serve as a reliable basis for calculating a margin for Reiner Brach. Consequently, section 782(e) of the Act is inapplicable. Therefore, the Department is basing the results of both reviews on total facts available.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See* also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, Vol. I, at 870 (1994) (''SAA''). In this case, Reiner Brach acknowledged that it had the requested data in its records and was capable of providing it to the Department, but nevertheless failed to provide a complete response to the Department's questionnaire. Thus, we find that Reiner Brach failed to cooperate by not acting to the best of its ability with respect to its home market sales and cost data. Accordingly, when selecting among the facts available, we find that the use of an adverse inference is warranted in accordance with section 776(b) of the Act.

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829–831. As adverse facts available, the Department is assigning to Reiner Brach, for both review periods, a dumping margin of 36.00 percent, which represents the highest rate determined for any company in any segment of the proceeding. This rate was calculated during the less-than-fair-value investigation. *See* Antidumping Duty Order. Further, the Department determines that use of this margin accomplishes the statute's aim of encouraging participation. As the SAA provides, where a party has not cooperated in a proceeding:

> Commerce * * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation. SAA at 870.

In this case, the calculated margin information from the less-than-fair-value investigation represents appropriate information for determining a dumping margin. The Department has determined that using this rate from the less-than-fair-value investigation as an adverse inference is proper because it is the highest calculated rate in this proceeding for certain cut-to-length plate from Germany and, as the ''all others'' rate in this case, is the rate currently applicable to exports by Reiner Brach and Novosteel. Therefore, use of this information will ensure that the respondent does not obtain a more favorable result by failing to cooperate in these administrative reviews.

Section 776(c) of the Act provides that, when the Department relies on secondary information (which, as explained in the SAA at 870, includes information from the petition or the investigation, or any previous reviews) as facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

The selected margin was a calculated rate based on information provided by one company, AG der Dillinger Huttenwerke (''Dillinger''). *See* Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Germany, 58 FR 37136 (July 9, 1993) (''*LTFV Final Determination*''); and *Amendment to Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Germany,* 61 FR 26159 (May 24, 1996); *Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Germany,* 62 FR 18390 (April 15, 1997). Therefore, the Department has determined that the selected rate is a usable rate.

Additionally, the United States Court of International Trade (''CIT'') has upheld the Department's use of an ''all others'' rate from the investigation as facts available in a subsequent review. *See Kompass Food Trading International, et al. The United States,* Slip Op. 00–90 (July 31, 2000), at 14. Further, we have determined that no record evidence indicates that the business practices of Reiner Brach differ significantly of those of other members of the German steel industry. Accordingly, we find, for purposes of this preliminary results, that the ''all others'' margin from the LTFV Final Determination, which is the rate currently applicable to Reiner Brach, is corroborated to the extent practicable.

Preliminary Results of the Reviews

We preliminarily determine that the following percentage weighted-average margins exist for the periods August 1, 1997 through July 31, 1998 and August 1, 1998 through July 31, 1999:

Producer/Manufacturer/ Exporter	Weighted-average margin (percent)
Certain Welded Stainless Steel Pipe	
Reiner Brach (97–98 Review)	36.00
Reiner Brach (98–99 Review)	36.00

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon issuance of the final results of the review, the Department will determine, and Customs will assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review will be the basis for the assessment of antidumping duties on entries of merchandise covered by the results and for future deposits of estimated duties.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for Reiner Brach, the only reviewed company, will be that established in the final results of the 98–99 Review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the ''all others'' rate established in the LTFV investigation, which was 36.00 percent. *See* LTFV Final Determination.

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 has occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22991 Filed 9–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Certain Cut-to-Length Carbon Steel Plate From Romania: Preliminary Results of Antidumping Duty Administrative Review and Final Partial Recision of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and final partial recision of review.

SUMMARY: In response to requests from two respondents and the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania. This review covers one manufacturer/exporter of the subject merchandise. The period of review (POR) is August 1, 1998 through July 31, 1999.

We preliminarily determine that Metalexportimport S.A. made no sales of subject merchandise below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to liquidate all of Metalexportimport's entries at an antidumping rate of zero percent. We also determine that Windmill International had no shipments during the POR. Accordingly, as of the publication of this notice, we are making the final rescission of the review with respect to this company.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone (202) 482–2924 (Baker), (202) 482–0649 (James).

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to part 351 of 19 CFR (1999).

Background

The Department published an antidumping duty order on certain cut-to-length carbon steel plate from Romania on August 19, 1993 (58 FR 44167). The Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order for the period August 1, 1998 through July 31, 1999 on August 11, 1999 (64 FR 43649). On August 30, 1999, respondents Metalexportimport, S.A. (MEI) and Sidex S.A. (Sidex) requested that the Department conduct an administrative review. On August 31, 1999, Bethlehem Steel Corporation and U.S. Steel Group, a Unit of USX Corporation (petitioners) requested an administrative review of Windmill International PTE Ltd. of Singapore, Windmill International Romania Branch, and Windmill International Ltd. (USA) (collectively Windmill). We initiated the review with respect to MEI and Sidex on October 1, 1999 (64 FR 53318). We initiated the review with respect to Windmill on November 4, 1999 (64 FR 60161).

In response to our request for information, Windmill reported that it had no sales or shipments during the POR. *See* Windmill's submission of November 1, 1999. Our review of Customs import data indicated that there were no entries by Windmill during the POR. We gave parties to the proceeding the opportunity to present contrary information. We received no such information. Accordingly, we are making the final rescission of the review with respect to Windmill.

Under the Tariff Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On April 13, 2000, the Department extended the time limit for the preliminary results in this case. *See Cut-to-Length Carbon Steel Plate from Romania; Time Limits,* 65 FR 19872.

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act.

Scope of the Review

The products covered in this review include hot-rolled carbon steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this review is grade X–70 plate.

These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The POR is August 1, 1998 through July 31, 1999. This review covers sales of certain cut-to-length carbon steel plate by MEI produced by Sidex.

Separate Rates Determination

As discussed in the ''Normal Value'' section, below, we have determined that Romania is a non-market economy (NME). It is the Department's policy to assign all exporters of the merchandise subject to review in 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 *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers from China*), as amplified 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 from China*). 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.

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 from China* at 22585, 22487; *see also Sparklers from China* at 20588 and 20589.

MEI and Sidex both 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 MEI's and Sidex's exports, in accordance with the criteria identified in *Sparklers from China* and *Silicon Carbide from China.* For further information, *see* the memorandum, ''Separate Rates in the 1998/1999 Administrative Review of Cut-to-Length Carbon Steel Plate from Romania,'' dated the same date as 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, MEI/Sidex is entitled to a separate rate.

Export Price

We calculated the price of United States sales based on EP, in accordance with section 772(a) of the Tariff Act. We based EP on the price from MEI to its unaffiliated U.S. customer.

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price

for foreign inland freight and domestic brokerage.

MEI reported the invoice date (as kept in the ordinary course of business) as the date of sale. However, that invoice date was after the date of shipment, and under the Department's practice the date of sale cannot be after the date of shipment. *See* the October 15, 1999 questionnaire at I–2. Moreover, we found no evidence suggesting that the terms of sale changed after the contract date. Thus, the material terms of sale appear to have been established on the contract date. Consequently, we used the contract date as the date of sale as accordance with § 331.401(i) of the Department's regulations.

Normal Value

For merchandise exported from an NME country, section 773(c)(1) of the Tariff Act provides that the Department shall determine normal value (NV) using a factors of production method if (1) the merchandise is exported from an NME and (2) available information does not permit the calculation of NV using home market or third-country prices under section 773(a) of the Tariff Act. The Department has treated Romania as an NME country in all previous antidumping cases. *See e.g., Tapered Roller Bearings and Parts Thereof from Romania: Final Results of Antidumping Administrative Review*, 63 FR 36390 (July 6, 1998). In accordance with section 771(18)(C)(i) of the Tariff Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the Romanian steel industry is a market-oriented industry. Consequently, we have no basis to determine that the available information would permit the calculation of NV using Romanian prices or costs. Therefore, with the exception of raw material purchases from market-economy suppliers, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Tariff Act and § 351.408(c) of our regulations.

Under the factors of production method, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We determined that Indonesia is at a level of economic development comparable to that of Romania. We also found that Indonesia is a significant producer of cut-to-length carbon steel plate. Therefore, for this review, we have used Indonesian prices to value the factors of production except where the factor was purchased from a market economy supplier and paid for in a market economy currency. For a further discussion of the Department's selection of a surrogate country, see the memorandum from Jeff May to Richard O. Weible: ''Cut-to-Length Carbon Steel Plate (''CLCSP'') from Romania: Nonmarket Economy Status and Surrogate Country Selection,'' dated April 7, 2000.

We selected, where possible, publicly available values from Indonesia which were: (1) Average non-export values; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product specific; and (4) tax-exclusive. We valued the factors of production as follows:

- *Raw Materials:* We valued purchases of coal, iron ore fines, iron ore lumps, manganese ore, ferromanganese, and ferrovanadium using Sidex's purchase prices from market-economy suppliers. We included in our calculations Sidex's barter transactions from market-economy countries because Sidex was able to associate each shipment of finished product with a particular barter purchase of raw material input. We valued all other raw materials using U.N. Commodity Trade Statistics.
- *Labor:* Section 351.408(c)(3) of our regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate on Import Administration's internet website at www.ia.ita.doc.gov/wages. The source for the wage rate is *Yearbook of Labour Statistics 1999*, International Labor Organization, (Geneva: 1999), Chapter 5B: Wages in Manufacturing.
- *Energy:* We valued electricity using the International Energy Agency's (IEA) *Asia Electric Study* (1997), and natural gas using the IEA's *Asia Gas Study* (1995). We valued injected coal powder using Sidex's purchase prices from market-economy suppliers. We valued all other energy inputs using U.N. Commodity Trade Statistics.
- *Selling, General and Administrative Expenses (SG&A), Overhead, and Profit:* We calculated SG&A, overhead, and profit based on information obtained from the 1997 annual report of PT Krakatau Steel, the largest integrated steel producer in Indonesia. From this statement we were able to calculate factory overhead as a percentage of the total cost of manufacturing (COM), SG&A as a percentage of the total COM, and the profit rate as a percentage of the COM plus SG&A. We made this financial statement part of the record in the preliminary results analysis memorandum dated the same date as this notice, a public version of which is available in the public file. We used this statement because it allowed us to calculate a more accurate ratio for overhead costs than we could if we used an alternate source suggested by petitioners, the financial statement of Jaya Pari PT (*see* the petitioner's May 12, 2000 submission, attachment 7).

Where any of the factor values were from years other than 1999, we applied an inflator or deflator, as appropriate, based on the consumer price index so that all factor values would approximate 1999 costs. For a complete description of the factor values used, see the preliminary results analysis memorandum.

We also made an offset, where appropriate, for byproducts sold. We valued all byproducts using U.N. Commodity Trade Statistics.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a margin of zero percent exists for sales of subject merchandise by MEI for the period August 1, 1998 through July 31, 1999. We are making the final rescission in this review with respect to Windmill International because we have determined from our review of Customs import data that it had no entries during the POR, and no parties presented contrary information.

Within five days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. 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, not to exceed five pages in length. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results.

Cash Deposit

The Department shall determine, and the U.S. Customs Service shall assess,

antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries covered by this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.5 percent) (see 19 CFR 351.106(c)(2)). For assessment purposes, if applicable, we intend to calculate an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing by the total quantity sold.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act: (1) The cash deposit rate for shipments by the reviewed firms will be the rates established in the final results of this administrative review; (2) for any previously reviewed Romanian firm and non-Romanian exporter with a separate rate, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other Romanian exporters, the cash deposit rate will be 75.04 percent, the Romania-wide rate made effective by the final determination in the less-than-fair-value investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Romania*, 58 FR 37209 (July 9, 1993)); (4) for all other non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a 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 and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–23004 Filed 9–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Notice of Preliminary Results of New Shipper Antidumping Administrative Review: Glycine From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5811, 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).

SUMMARY: The Department of Commerce (''the Department'') is conducting a new shipper review of the antidumping duty order on glycine from the People's Republic of China (''PRC'') in response to a request by a PRC exporter of subject merchandise, Nantong Dongchang Chemical Industry Corp. (''Nantong''). This review covers shipments of merchandise to the United States during the period of March 1, 1999 through August 31, 1999. We have preliminarily determined that sales have been made below normal value (''NV''). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties on entries subject to this review.

Background

The Department published in the **Federal Register** an antidumping duty order on glycine from the PRC on March 29, 1995 (60 FR 131201). On September 30, 1999, the Department received a request from Nantong for a new shipper review pursuant to section 751(a)(2)(B) of the Act and section 351.214(b) of the Department's regulations. These provisions state that, if the Department receives a request for review from an exporter or producer of the subject merchandise which states that it did not export the merchandise to the United States during the period covered by the original less-than-fair-value (''LTFV'') investigation (''the POI'') and that such exporter or producer is not affiliated with any exporter or producer who exported the subject merchandise during that period, the Department shall conduct a new shipper review to establish an individual weighted-average dumping margin for such exporter or producer who exported, if the Department has not previously established such a margin for the exporter or producer. The regulations require that the exporter or producer shall include in its request, with appropriate certifications: (1) The date on which the merchandise was first entered, or withdrawn from the warehouse, for consumption, or, if it cannot certify as to the date of the first entry, the date on which it first shipped the merchandise for export to the United States, or if the merchandise has not yet been shipped or entered, the date of sale; (2) a list of the firms with which it is affiliated; (3) a statement from such exporter or producer, and from each affiliated firm, that it did not, under its current or a former name, export the merchandise during the POI, and (4) in an antidumping proceeding involving inputs from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government. See 19 CFR 351.214(b)(2)(ii), (iii), and (iv).

Nantong's request was accompanied by information and certifications establishing the date on which it first shipped the subject merchandise. Nantong also claimed it had no affiliated companies which exported glycine from the PRC during the POI. In addition, Nantong certified that its export activities are not controlled by the central government. Based on the above information, the Department initiated a new shipper review covering Nantong (*see* Glycine from the People's Republic of China: Initiation of New Shipper Administrative Review (64 FR 61834, November 15, 1999)). Due to extraordinarily complicated issues in this case, the Department extended the

deadline for completion of the new shipper review, first on April 17, 2000 (*see* Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review: Glycine from the People's Republic of China, 65 FR 20431), and then on May 26, 2000 (*see* Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Review: Glycine from the People's Republic of China, 65 FR 34147).

Scope of Review

The product covered by this review is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This proceeding includes glycine of all purity levels. Although the HTSUS subheading is provided for convenience and Customs purposes only, the written description of the scope of this review is dispositive. This review covers the period March 1, 1999 through August 31, 1999.

Verification

As provided in section 782(i) of the Act, we verified information provided by Nantong, which is both the producer and exporter of the subject merchandise, using standard procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public version of the verification report, which is on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Separate Rates

Nantong has requested a separate, company-specific rate. In its questionnaire response, Nantong states that it is an independent legal entity. To establish whether a company operating in a nonmarket economy country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as amplified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994). Under this policy, exporters in nonmarket economies (''NMEs'') are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (''*de jure*'') and in fact (''*de facto*''), with respect to export activities. 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. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over its export activities, evidence on the record indicates that Nantong is not controlled by the government. Effective during the period of review, Nantong's business license indicates that the company was recognized as a ''company owned by the people.'' However, this type of company form is not an indication that the company is controlled by the government of the PRC. We found no evidence of *de jure* government control restricting Nantong from the exportation of glycine (*see* Section A Response, pages 2 through 7, and exhibits A–1 and A–2, February 10, 2000). No export quotas apply to glycine; in addition, a specialized export license (beyond the general export license required for any direct export) is not required for exports of the subject merchandise to the United States (*see* Section A Response, page 4, February 10, 2000). We confirmed at verification that there are no export licenses required and no applicable quotas (*see* Verification of the Response of Nantong Dongchang Chemical Industy Corp. (''Nantong'') with Regard to the Sales and Factors of Production of Glycine (''Verification Report''), dated August 18, 2000, page 8). The PRC's Enterprise Legal Person Registration Administrative Regulations, issued on June 13, 1988, by the State's Industrial and Commercial Bureau, and placed on the record of this review, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses (*see* Nantong's Section A response, dated February 10, 2000). The Department has recognized in other cases that these regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses (*see* Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China, 60 FR 56046 (November 6, 1995)). Nantong also submitted the Foreign Trade Law of the People's Republic of China, adopted by the government of the PRC in 1994, which grants autonomy to businesses involved in the importation and exportation of merchandise in their management decisions and establishes accountability for their own profits and losses (*see* Section A Response, dated February 10, 2000, Appendix A–1). Nantong's business license allows the company to enter into contracts and conduct business activities without the direction of a government ministry or agency (*see* Section A Response, February 10, 2000, Appendix A–2). We found no evidence at verification that contradicted the information submitted on the record with respect to *de jure* control (*see* Verification Report, page 7). Therefore, with respect to the existence or absence of *de jure* control over export activity, we preliminarily determine that Nantong is an independent legal entity.

De Facto Control

With respect to the existence or absence of de facto control over export activities, Nantong indicates that the company's management is responsible for all decisions regarding the determination of export prices, profit distribution, marketing strategy, and contract negotiations. We found no evidence at verification that contradicted the information submitted on the record with regard to *de facto* control. Our analysis of the information on the record and our findings at verification indicates that there is no government involvement in the daily operations or selection of management for Nantong (*see* Section A Response, pages 2–7 and exhibit A–1; see Verification Report, page 8; see also Memorandum to Edward Yang; Re: Separate Rate Analysis in the New Shipper Review of Nantong Dongchang Chemical Industry Corp.; Glycine from the People's Republic of China

(''Separate Rates Memorandum''), dated August 28, 2000, which is on file in the Central Records Unit (room B–099 of the Main Commerce Building). Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Nantong's export activities, we preliminarily determine that this exporter is entitled to a separate rate. For further discussion of the Department's preliminary determination that this exporter is entitled to a separate rate, see Separate Rates Memorandum.

Normal Value Comparisons

To determine whether respondent's sales of the subject merchandise to the United States were made at NV, we compared its United States price to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

We based United States price on export price (''EP'') in accordance with section 772(a) of the Act, because the sale made to the unaffiliated purchaser was made prior to importation, and a constructed export price (''CEP'') classification was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. We deducted domestic inland freight expenses in the home market from the starting price (gross unit price) in accordance with 772(c) of the Act. Consistent with recent determinations by the Department in other reviews and investigations involving the PRC (see Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 65 FR 18968, April 10, 2000; and Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 116, January 3, 2000), we have chosen India as a surrogate country for valuing all expenses, as we have determined that India is (1) is comparable with the PRC in terms of the level of economic development, and (2) is a significant producer of comparable merchandise (see Memorandum to Edward Yang, Office Director, Re: Selection of Surrogate Country with Significant Producer of Comparable Merchandise in the New Shipper Review of Glycine from the People's Republic of China (''Surrogate Country Memorandum''), dated August 28, 2000).

We valued movement expenses as follows: to value inland truck freight, we used the average of trucking rates obtained by the Department from Indian truck companies in November 1999, as used in the Department's 1998–1999 administrative review of Sebacic Acid from the PRC (see Memorandum to the File; Re: Final Results Factors Valuation Memorandum, dated August 7, 2000). As we were unable to identify a surrogate value for inland water transportation, we valued boat and barge transportation using the surrogate value for truck freight. We adjusted the rates to reflect inflation through the POR using wholesale price indices (''WPI'') for India in International Financial Statistics, published by the International Monetary Fund (''IMF'').

Normal Value

For companies located in NME countries, section 773(c)(1) of Act provides that the Department shall determine NV using a factors-of-production methodology if: (1) the merchandise is exported from an NME country; and (2) 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. In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to 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. Nantong has not contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with other recent determinations by the Department, we determined that India: (1) Is comparable with the PRC in terms of the level of economic development, and (2) is a significant producer of comparable merchandise (see Surrogate Country Memorandum). We valued the factors of production using publicly available information from India (see Memorandum to Edward Yang, Re: New Shipper Review of Antidumping Administrative Review of Glycine from the People's Republic of China: Factor Values and Preliminary Margin Calculations, dated August 28, 2000 (''Factors Valuation Memorandum'')). We used import prices to value many factors. As appropriate, we adjusted import prices by adding freight expenses to make them delivered prices. For a complete analysis of surrogate values, see Factors Valuation Memorandum. We valued the factors of production as follows: to value chloroacetic acid (also known as monochloroacetic acid), we used prices reported in Chemical Weekly, which publishes chemical prices in India, during the period April through August 1999. To value liquid ammonia, we used the weighted-average unit import value derived from the Monthly Trade Statistics of Foreign Trade of India—Volume II—Imports (''Indian Import Statistics'') for the period April 1996 through December 1997, adjusted for inflation through the POR. To value hexamine, we used prices reported in Chemical Weekly during the months March through August 1999, coinciding with the POR. To value methanol (also known as methyl alcohol), we used prices reported in Chemical Weekly, under the ''General Market Information'' section, which represents India-wide prices, during the period coinciding with the POR.

In accordance with the decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401 (CAFC 1997), when using an import surrogate value, we have added a surrogate freight cost to CIF surrogate values from India, using the shorter of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory.

Nantong both purchased water and pumped water from its own wells and an adjoining canal during the POR. In its calculation of the usage factor for water, Nantong only included the water it purchased, and did not account for water it pumped itself (*see* Verification Report, pages 18–19). We adjusted the usage factor for water as reported by Nantong to account for water usage that Nantong did not report. For a further discussion on the recalculation of the usage factor for water, see Memorandum to the File; Re: Analysis for the Preliminary Results of New Shipper Review of Glycine from the People's Republic of China (''Analysis Memo''), dated August 28, 2000, page 3–4). To value water, we used an average of water tariff rates reported in the Second Water Utilities Data Book: Asian and Pacific Region, published by the Asian Development Bank in 1997, which was adjusted for inflation, as used recently by the Department in Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value (65 FR 25706 (May 3, 2000) (''Synthetic Indigo''). To value electricity, we used data reported as the average Indian domestic prices within the category ''Electricity for Industry,'' published in the International Energy Agency's publication, Energy Prices and Taxes, Fourth Quarter, 1999.

To value coal, we used the weighted average unit import price for steam coal derived from Indian Import Statistics for the period April 1997 through March 1998, also used by the Department in Synthetic Indigo. We adjusted the cost of coal to include an amount for transportation. As we were unable to identify a surrogate value for inland water transportation, we valued boat and barge transportation using the surrogate value for truck freight, consistent with our practice in past proceedings (*see* Synthetic Indigo, and 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)). To achieve comparability of the energy and water prices to the usage factors reported for the POR, we adjusted these factor values using the WPI for India, as published in International Financial Statistics, to reflect inflation through the applicable periods.

Nantong reported using a ''paper'' pallet in preparing the glycine for shipment to the United States, as indicated on the commercial invoice (*see* Verification Report, page 20). However, Nantong did not report the pallet as a packing material in its factors of production. We have been unable to identify a surrogate value for paper pallets, and therefore, for the purposes of the preliminary determination, we will use a surrogate value for the most comparable product, wooden pallets, as the facts available. To value wooden pallets, and inner and outer plastic bags, we relied upon Indian import data from the April 1996 through February 1997 (for wooden pallets) and April 1997 through March 1998 (for inner and outer bags) issues of Monthly Statistics of the Foreign Trade of India. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory, where applicable.

To value factory overhead, selling, general and administrative expenses (''SG&A''), and profit, we calculated simple average rates based on information used by the Department in Synthetic Indigo from an Indian chemical producer, Duarala Organics Ltd. (for a further discussion of the surrogate values for overhead, SG&A and profit, see Factor Valuation Memorandum, page 7). For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2000 (*see http:// ia.ita.doc.gov/wages*). 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 requires the use of a regression-based wage rate. The source of the wage rate data on the Import Administration's Web site can be found in the 1999 Year Book of Labour Statistics, International Labor Office (Geneva: 1999), Chapter 5B: Wages in Manufacturing.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/producer/exporter	Weighted average margin percentage
Nantong Dongchang Chemical Industry Corp.	23.90

The Department will disclose calculations performed within 10 days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filled not later than 35 days after the date of publication. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from issuance of these preliminary results, unless this time limit is extended. Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs Service (''Customs'') shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. For assessment purposes, we intend to calculate importer-specific assessment rates for glycine from the PRC. We will divide the total dumping margins (calculated as the difference between NV and EP) for each importer by the entered value of the merchandise.

Upon the completion of this review, we will direct Customs to assess the resulting ad valorem rates against the entered value of each entry of the subject merchandise by the importer during the POR. Furthermore, the following deposit rate will be effective upon publication of the final results of this new shipper review for all shipments of glycine from the PRC entered, or withdrawn from the warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed firm will be the rate indicated above; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established in the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is 155.89 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the

relevant entries during 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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 28, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22998 Filed 9–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–811]

Grain-Oriented Electrical Steel From Italy; Notice of Preliminary Results of Antidumping 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 grain-oriented electrical steel from Italy in response to a request by the respondent, Acciai Speciali Terni S.p.A. (AST). This review covers one manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1998 through July 31, 1999.

We have preliminarily determined that sales of subject merchandise have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment a statement of the issue and a brief summary of the comment.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Samantha Denenberg or Maureen McPhillips, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–0196, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are 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 19 CFR part 351 (1999).

Background

The Department published in the **Federal Register** an antidumping duty order on grain-oriented electrical steel from Italy on August 12, 1994 (59 FR 41431). On August 11, 1999, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping order on grain-oriented electrical steel from Italy, covering the period August 1, 1998 through July 31, 1999. On August 31, 1999, AST requested that the Department conduct an administrative review of its exports of grain-oriented electrical steel. The Department initiated this administrative review on October 1, 1999 (64 FR 53318).

On January 5, 2000, the petitioner submitted a timely allegation, pursuant to section 773(b) of the Act, that AST had made sales in the home market at less than the cost of production (COP). Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that AST sold grain-oriented electrical steel in the home market at prices that were less than the COP. Accordingly, we initiated a COP investigation with respect to AST. *See* ''Memorandum to Richard Weible from Linda Ludwig—Initiation of Sales Below Cost of Production in the Antidumping Duty Administrative Review of Grain-Oriented Steel from Italy,'' February 7, 2000.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for the preliminary results of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 245 days. On March 17, 2000, the Department published a notice of extension of the time limit for the preliminary results of review to August 30, 2000 (65 FR 14535).

The Department sent its initial questionnaire to the respondent on October 8, 1999. AST responded to section A on November 11, 1999 and sections B and C on November 24, 1999. AST responded to our February 4, 2000 supplemental section A questionnaire on February 10, 2000. We released our supplemental questions for sections B and C on February 22, 2000, and received AST's response on March 22, 2000. On May 3, 2000, we issued a second supplemental questionnaire on sections A, B, and C. We received AST's response on May 17, 2000. On May 26, 2000, the Department requested additional information on AST's ''temporary in bond'' (TIB) U.S. transactions. AST responded to this request on June 1, 2000.

The petitioners, Allegheny Ludlum Corp., AK Steel, the Butler Armco Independent Union, the United Steelworkers of America, and the Zanesville Armco Independent Union, responded to AST's response to sections A through C on December 7, 1999. On March 3 and April 6, 2000, the petitioners submitted comments on AST's supplemental responses to sections A and C. In addition, the petitioners addressed the issues in this case in subsequent submissions on April 26, May 25, and July 14, 2000.

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of Review

The product covered by this review is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7225.30.7000, 7225.40.7000, 7225.50.8085, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.91.7000, 7226.91.8000, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0000, 7228.30.8050, and 7229.90.1000. Although the HTS subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Verification

As provided in section 782(i) of the Act, we verified AST's sales information from June 5, 2000 through June 9, 2000,

in Terni, Italy, using standard verification procedures, including on-site inspection of AST's manufacturing facilities. On June 27–28, 2000, we verified AST's submitted U.S. sales data at its AST–USA facilities. We also verified AST's submitted cost information from July 10 through July 16, 2000, in Terni, Italy.

Date of Sale

The Department considers the date of sale to be the date on which all substantive terms of sale are agreed upon by the parties. This normally includes the price, quantity, delivery terms and payment terms. In accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In some instances, it may not be appropriate to rely on the date of invoice as the date of sale because the evidence may indicate that the material terms of sale were established on some date other than the invoice date. *See Preamble to the Department's Antidumping Duties; Countervailing Duties; Final Rule* 62 FR 27296, 27349–50 (May 19, 1997); *Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan,* 61 FR 14064 (Comment 1)(March 29, 1996).

For these preliminary results, we have determined that the record evidence indicates that the invoice date is the date on which AST established the material terms of sale in the home market. In the U.S. market, the shipment date is the date in which the terms of sale are set because the shipment date precedes the invoice date. While AST stated in its November 2, 1999 response that for both the U.S. market and the home market, the terms of sale, such as price and quantity, are established at the time of order confirmation and rarely change from the order confirmation date to the date of invoice, we have found evidence that the terms of sale are not always set at the time of order confirmation. The sales traces reviewed at verification did not provide evidence that the material terms of sale are always set at the time of order confirmation. *See* ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Acciai Speciali Terni S.p.A.; Acciai Speciali Terni USA, Inc.,'' August 30, 2000; and ''AST USA Sales Verification Report,'' August 30, 2000.

Affiliated Parties/Downstream Sales

AST contends that it is affiliated with Electroterni, but denies any affiliation with Nuova Eletrofer (''NE''). Under section 771(33)(E) of the Act, the Department will determine that companies are affiliated where a company directly or indirectly owns, controls, or holds power to vote, five percent or more of the outstanding voting stock or shares of any organization. Regarding ownership, AST owns 24% of Electroterni and NE owns the remaining shares. AST does not directly own shares in NE, but rather, NE is wholly owned by another party.

There is considerable cross-representation between NE and Electroterni. The owner of NE serves on the board of Eletroterni. Additionally, NE and Electroterni jointly own another company which also purchases subject material from Electroterni. This joint company's board of directors includes the owner of NE and the managing director of Electroterni. Moreover, NE and Electroterni's internal operations seem to be inextricably linked. The owner of NE is responsible for establishing the internal price lists for both NE and Electroterni.

AST considers NE and Electroterni to be a ''group'' of companies. AST makes most of its business decisions with regard to this ''group,'' rather than with NE and Electroterni individually. For example, AST negotiates a common framework sales agreement and a common rebate agreement jointly with Electroterni and NE. Both Electroterni and NE have a longstanding relationship with AST, and AST serves as the major supplier of both companies. It is the Department's contention that by virtue of the linked operations of NE and Electroterni, as well as AST's own treatment of NE and Electroterni as a group for sales and rebate purposes, it is inappropriate for AST to consider itself only affiliated with one party and not the other. Consequently, for purposes of this preliminary determination, we have decided to treat AST as affiliated with both Electroterni and NE, based on the totality of the circumstances.

We requested AST to report Electroterni's and NE's sales to the first unaffiliated customer during the POR. Although AST contended that it did not have the power to oblige NE to report its downstream sales, both Electroterni and NE complied with our request in a timely manner and reported their home market sales to the first unaffiliated customer. Additionally, both NE and Electroterni made staff available to answer the Department's questions during the sales verification.

Petitioners maintain that of those sales AST made to its affiliates, AST should identify which sales were subsequently resold by the affiliates, and which sales were further processed by the affiliates into non-subject merchandise, in order to avoid ''double-counting'' of sales in the margin calculation. *See Letter to the Secretary from Collier Shannon Rill & Scott,* April 25, 2000, at 8. AST maintains that it is not able to determine this information, nor can AST provide a link between the AST home market sales data set and the downstream data set. AST also maintains that it is not necessary for them to do so.

At verification, we confirmed that the records AST keeps in the normal course of business do not indicate whether sales to Electroterni and/or NE would result in resales or be consumed in the manufacture of non-subject merchandise. We also noted that neither of the affiliates maintained computer systems that allow them to link their inventory back to the AST invoices. *See* ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA, Inc.,'' August 30, 2000.

Rather than ''double-counting'' the downstream sales by using AST's sales to Electroterni and NE, we have excluded from our analysis the sales made by AST to these two companies and used Electroterni's and NE's sales to the first unaffiliated customer in our analysis. *See Notice of Final Determination of Sales At Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from the United Kingdom,* 64 FR 30688 (June 8, 1999).

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. The NV LOT is that of the starting price of sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the 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 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 sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this administrative review, AST requested a LOT adjustment for its home market sales, maintaining that a different level of trade exists between AST sales to the United States and the affiliated reseller's sales in the home market. AST maintains that it has two channels of distribution in the Italian market for sales by AST (direct factory and warehouse sales) and one channel of distribution in the U.S. market (direct factory). To determine if a LOT adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Italian markets, including the selling functions, classes of customer, and selling expenses. We, therefore, compared the difference in the selling functions performed by AST and its affiliated entities, Electroterni and NE, in the home market, and compared them to those performed by AST and AST USA in the U.S. market.

For AST's direct factory sales in the home market, customers place their orders in advance of delivery; AST then plans its production schedule to allow delivery according to the customer's requirements. After production, the product is immediately shipped to the customer. AST also makes home market sales of the foreign like product from inventory. In contrast with direct sales, AST, rather than the customer, typically initiates these sales by alerting potential customers of the immediate availability of specific products.

In its March 22, 2000 supplemental questionnaire response, AST stated that it coded all of its reported home market sales as the same LOT because its invoicing system could not distinguish between direct factory and inventory sales. On May 17, 2000, in its supplemental response to sections A–C, AST stated that virtually all GOES is sold to one class of customers (i.e., transformer manufacturers), indicating that there is a single LOT in the home market. Subsequently, in a revised home market sales listing, AST added a code to designate sales of GOES by service centers/end-users (*i.e.,* Electroterni and NE).

In determining whether separate LOTs actually existed in the home market, we examined whether AST's home market sales involved different selling functions along the chain of distribution between AST and its unaffiliated customers. AST maintained that it provided technical advice, freight and delivery services, warranty services, and credit terms on a moderate level for both direct factory sales and warehouse sales. There was no inventorying associated with direct factory sales, while there was a moderate degree of inventory expense for warehouse sales. For its sales from the warehouse, AST provided technical advice, freight and delivery, warranty, and credit terms.

AST's affiliates NE and Electroterni follow a similar sales process to that of AST. NE and Electroterni's customers initiate requests for merchandise, and these companies sell mainly from inventory. NE and Electroterni may at times service the same customers as AST. However, most of the customers are smaller end-users than those serviced by AST. NE and Electroterni offer similar selling functions with regard to sales of GOES material. For a complete description of the selling functions offered by AST, NE, and Electroterni, see the LOT section of the verification report, ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA, Inc.,'' (August 30, 2000).

Based on the evidence on the record, we have determined that one level of trade exists in the home market. As late as May 17, 2000, in its supplementary response to sections A–C, AST stated that virtually all GOES was sold to one class of customers (*i.e.,* transformer manufacturers). Subsequently, in a revised home market sales listing, AST added a code of ''2'' to designate sales of GOES by service centers/end-users. Although AST claimed that such sales were at a different LOT, it did not provide any narrative explanation or matrix which would serve to distinguish those coded ''1'' from those coded ''2.'' Moreover, AST indicates that it provided technical advice, freight and delivery services, warranty services, and credit terms on a moderate level to customers of both direct factory sales and warehouse sales. The additional inventorying done for warehouse customers is not sufficient to warrant a LOT adjustment.

We also examined information regarding the distribution system in the United States, including the selling functions, classes of customer, and selling expenses, and noted no evidence that more than one level of trade exists in the U.S. market. AST stated that its U.S. sales of the merchandise under review were all direct factory sales. For U.S. direct factory sales, the U.S. customer places an order with AST USA, which in turn places the order with AST. These sales are produced to order and shipped directly to the customer. For sales in the U.S. market, AST stated that it provided AST USA with freight and delivery services and some aid in extending credit. AST characterizes its level of involvement in these selling activities as low level. AST states that it provides no assistance to AST USA in the areas of technical advice, inventory carrying costs, and warranty services. For direct factory sales between AST USA and the first unrelated customer, AST USA provides technical advice, freight and delivery service, and credit terms on a moderate level. Services for inventory carrying and warranty are not offered.

While AST claims differences in selling functions in connection with each channel of distribution in both the home market and U.S. market, we find that the actual differences in selling functions between channels are relatively minor (*see* Exhibit SA–6 of AST's ''Response to the Department's Supplementary Questionnaire,'' February 18, 2000). Therefore, we find that the LOT in the U.S. market is similar to the LOT in the home market, and therefore, no level of trade adjustment is required.

Given the evidence on the record, we conclude that AST did not adequately support its claim that there are two levels of trade in the home market and that it should be granted a CEP offset because its CEP sales are at a less remote LOT than AST's home market sales. Therefore, we preliminarily determine that only one LOT exists in the home market, only one level of trade exists in the U.S. market, that there is not a substantial difference in the levels of trade between the U.S. market and the home market, and that a CEP offset is not warranted.

''In-Bond'' Transactions

AST and its U.S. affiliate, AST USA, sold subject merchandise to U.S. customers during the POR which AST stated was entered into the U.S.

Customs territory under temporary import bond (TIB), with a final destination of Mexico. AST did not report these sales in its initial section C response to the Department's October 8, 1999 questionnaire. AST reported these transactions (*see* ''Letter from AST to the Secretary,'' June 1, 2000) in response to the Department's request in its supplemental questionnaire of May 26, 2000. AST maintained, however, that to its knowledge, none of the merchandise was entered for consumption into the United States and consequently, these transactions should not be properly included in any calculation of antidumping duties or deposit rates. AST reported transaction-specific information on product characteristics, delivery terms, payment date, quantity, and price. AST states that, due to the short time provided for its response, it was not able to determine whether all such transactions were TIBs as opposed to other types of Customs' bonded transactions. Moreover, AST contended that time constraints prevented AST from reporting the adjustments associated with these sales.

There is insufficient record evidence supporting AST's claim that those ''TIB'' entries should not be included in the antidumping calculations because AST has not provided transaction-specific information covering these sales. Accordingly, for these preliminary results, the Department has included those ''in bond'' transactions billed to a U.S. customer in the calculation of the preliminary dumping margin. However, the Department invites all interested parties to this proceeding to comment on the transactions in question.

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 Italy during the POR, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on six characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: core loss, thickness/gauge, permeability, slitting, coating, and form.

Comparisons to Normal Value

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the CEP to NV, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average home market prices for NV and compared these to individual U.S. transaction prices.

Constructed Export Price

In its initial submission, AST reported its U.S. sales as EP sales. For sales in the United States, section 772(a) of the Act states that EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States. Section 772(b) of the Act states that CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

Although AST originally reported its U.S. sales as EP sales, it reclassified its U.S. sales as CEP sales, citing the recent decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *AK Steel Corp., et al.* v. *United States, et al.* No. 99–1296 (Fed. Cir. February 23, 2000)(AK Steel Corp.). *See also* ''AST's Supplemental Response to the Secretary,'' March 22, 2000.

The Department agrees with AST's reclassification of these sales as CEP sales because the subject merchandise was first sold to an unaffiliated purchaser by AST's affiliate, AST USA. The U.S. customer places an order with AST USA who in turn places the order with AST. AST USA typically places an order months in advance of delivery, allowing AST to plan its production schedule so that delivery can be made directly from the factory to the U.S. customer. Although the subject merchandise is sent directly from the factory to the unaffiliated customer, it is AST USA that invoices the unaffiliated U.S. customer and receives payment. Therefore, upon its analysis, the Department has treated AST's U.S. sales as CEP sales, as defined in section 772(b) of the Act.

The Department calculated CEP for AST based on a packed CIF-delivered, duty paid basis. In accordance with section 772(c) of the Act, we reduced CEP by movement expenses (international freight, inland freight, U.S. brokerage fees, and duties). We deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs), and indirect selling expenses in accordance with section 772(d)(1) of the Act. We changed the denominator of AST's reported home market indirect selling expenses in order to reflect more accurately the foreign indirect selling expenses incurred. Other minor changes were made to other adjustments as a result of the verification. *See* ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA, Inc.,'' and ''Analysis Memorandum of the Preliminary Results on Grain-Oriented Electrical Steel,'' (August 30, 2000). Since these sales were CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Cost of Production Analysis (COP)

Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales made by AST in the home market.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by control number, based on the sum of the cost of materials and fabrication, G&A expenses, and packing costs. We relied on the submitted COP data except in the following instances (see COP and CV Calculation Memorandum from Garri Gzirian and Taija Slaughter to Neal Halper, August 30, 2000):

1. We found a clerical error in the Company's calculations of the adjustments intended to correct the understatement of total standard material and processing costs resulting from non-slit and thickness adjustments. Specifically, AST should have treated certain items in its calculations as negative and not positive values. We corrected this error for the purposes of preliminary determination.

2. We found that AST did not include in the reported costs the cost of outside processing, which under the Company's cost accounting system is accounted for as a variance. Likewise, AST did not include the ''Other Variance'' amount, which captures all remaining differences between actual and standard costs. For the purposes of preliminary determination, we included the cost of outside processing and the ''Other Variance'' amount in the reported costs.

3. AST adjusted its standard processing cost for cost center-specific variances. These cost centers are used to process more then just grain-oriented electrical steel products.

However, the Company weight-averaged these variances without regard to the percentage each cost center contributed to production of the merchandise under consideration.

Instead, the variances were weight-averaged based on the total standard costs associated with each cost center. For the purposes of preliminary determination, we adjusted this calculation to reflect the percentage of time each cost center was processing the merchandise under consideration.

4. AST adjusted its standard material cost by a weighted-average raw material variance. The specific raw materials generating the variances (*e.g.*, carbon steel scrap) are used to produce more then just grain-oriented electrical steel. However, the Company weight-averaged these variances without regard to the percentage of each raw material that went into production of a unit of merchandise under consideration. Instead, the variances were weight-averaged based on the standard costs of the total company-wide consumption of each raw material. For the purposes of preliminary determination, we adjusted this calculation to factor in the share of each raw material in a unit of the merchandise under consideration.

5. AST included in calculations of the interest expense factor certain income and expense items that are either not interest related, or do not qualify for a short-term interest income offset. For the purposes of preliminary determination, we adjusted the Company's interest expense factor calculations for those items.

B. Test of Home Market Prices

We compared the adjusted weighted-average COP to the comparison-market sales prices of the foreign like product, as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and at prices which permitted the recovery of all costs within a reasonable period of time. On a connum-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts, rebates and direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were made at prices below 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 twenty percent or more of the respondent's home market sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and because the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Based on this test, we excluded from our analysis certain comparison-market sales of AST's grain-oriented electrical steel that were made at below-COP prices within the POR. (*See* ''Analysis Memorandum of the Preliminary Results from the Team to the File,'' August 30, 2000).

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.,* the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the respondents volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with 19 CFR 351.404(b). We determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States because AST made sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on home market sales in Italy.

We calculated NV based on packed, delivered prices in the home market. Since AST reported its sales net of any discounts, we made adjustments to the starting price for rebates, where appropriate. We also made deductions, where appropriate, for inland freight, warehousing, and inland insurance pursuant to section 773(a)(6)(B) of the Act. For all comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, warranty, technical service expenses, and royalties, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c).

We changed the denominator of AST's reported home market indirect selling expenses in order to reflect more accurately the expenses incurred. Other minor changes were made to other adjustments as a result of the verification. *See* ''Sales Verification of Sections A–C Questionnaire Responses Submitted by Acciai Speciali Terni S.p.A. and Acciai Speciali Terni USA, Inc.,'' and ''Analysis Memorandum of the Preliminary Results on Grain-Oriented Electrical Steel,'' (August 30, 2000). We made adjustments to NV for differences in packing expenses, in accordance with section 773(a)(6) of the Act. We also made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

We preliminarily determine that the following dumping margin exists for the period August 1, 1998 through July 31, 1999:

Preliminary Results of Review

Manufacturer/exporter	Weighted-average margin (percent)
Acciai Speciali Terni, S.p.A.	10.79

Within 5 days of the date of publication of this notice, in accordance with 19 CFR 351.224(b), the Department will disclose its calculations. Any interested party may request a hearing within 30 days of publication of these preliminary results in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Parties who submit briefs are requested to submit with the brief (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will publish, within 120 days of publication of these preliminary results, a notice of the final results of this administrative review, which will include the results of its analysis of issues raised by the parties in any such comments.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review.

Duty Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate

entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated an importer-specific ad valorem duty assessment rate based on the ratio of the total amount of the dumping margin calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted movement expenses incurred on U.S. transactions from the gross sales value. This rate will be assessed uniformly on all entries of that specific importer made during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis, i.e.,* less than 0.5 percent.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of grain-oriented electrical steel, from Italy, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) The cash deposit rate for AST will be the rate established in the final results; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 60.79 percent, the ''all others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. The Department will issue appraisement instructions directly to the Customs Service.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under section 19 CFR 351.402(f)(2) of the Department's regulations 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 and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22989 Filed 9–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 1998, through July 31, 1999, and one firm, CEMEX, S.A. de C.V., and its affiliate, Cementos de Chihuahua, S.A. de C.V. We have preliminarily determined that, during the period of review, sales were made below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: David Dirstine or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4033, (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

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 are to 19 CFR Part 351 (April 1999).

Background

On August 11, 1999, the Department published in the **Federal Register** a Notice of Opportunity to Request Administrative Review concerning the antidumping duty order on gray portland cement and clinker from Mexico (64 FR 43649). In accordance with 19 CFR 351.213, the petitioner, the Southern Tier Cement Committee (STCC), requested a review of CEMEX, S.A. de C.V., (CEMEX), CEMEX's affiliate, Cementos de Chihuahua, S.A. de C.V. (CDC), and Apasco, S.A. de C.V. (Apasco). In addition, CEMEX and CDC requested reviews of their own entries. On October 1, 1999, we published a Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews (64 FR 53318) initiating this review. The period of review is August 1, 1998, through July 31, 1999. Apasco reported, and we confirmed with the Customs Service, that Apasco did not have any sales or shipments to the United States during the period of review. We are now conducting a review of CEMEX and CDC pursuant to section 751 of the Act.

We also received information sufficient to warrant initiation of a changed-circumstances administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. Based on the information on the record, we preliminarily determined that GCC Cemento, S.A. de C.V. (GCCC), is the successor-in-interest to CDC for purposes of determining antidumping liability. See *Gray Portland Cement and Clinker From Mexico: Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review,* 65 FR 50180 (August 17, 2000). However, since this change occurred on December 1, 1999, which is after the close of the review period, we refer to this entity as CDC and not GCCC for purposes of this review.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also

been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by CEMEX and CDC using standard verification procedures, including an examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in public versions of the verification reports.

Collapsing

Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. Moreover, 19 CFR 351.401(f) describes when we will treat two or more affiliated producers as a single entity (*i.e.,* ''collapse'' the firms) for purposes of calculating a dumping margin. In the four previous administrative reviews of this order, we analyzed whether we should collapse CEMEX and CDC in accordance with our regulations. See, *e.g., Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review,* 65 FR 13943 (March 15, 2000).

The regulations state that we will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and we conclude that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors we may consider include the following: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

A North American Free Trade Agreement Binational Panel upheld our decision in the 1994/95 administrative review to collapse CEMEX and CDC. See Opinion of the Panel, *Article 1904 Binational Panel Review Pursuant To The North American Free Trade Agreement,* Secretariat File No. USA–97–1904–01 (June 18, 1999). We found that, in each of the subsequent administrative reviews, the factual information underlying our original decision to collapse these two entities had not changed and, accordingly, we continued to treat these two entities as a single entity.

Having reviewed the current record, we find, once again, that the factual information underlying our original decision to collapse these two entities has not changed during the 1998/99 review period. CEMEX's indirect ownership of CDC exceeds five percent, such that these two companies are affiliated pursuant to section 771(33)(E) of the Act. In addition to their affiliation, we find that CEMEX and CDC have similar production processes. Finally, interlocking boards of directors and significant transactions between the companies give rise to a significant potential for the manipulation of price or production. Accordingly, we preliminarily conclude that these affiliated producers should be treated as a single entity and that we should calculate a single, weighted-average margin for these companies. Therefore, throughout this notice, references to ''respondent'' should be read to mean the collapsed entity. See Memorandum from Analyst to Joseph A. Spetrini, *1996/1997 Administrative Review of Gray Portland Cement and Clinker from Mexico* (August 31, 1998), and Memorandum from Analyst to File, *Collapsing CEMEX, S.A. and Cementos de Chihuahua for the Current Administrative Review* (July 28, 2000).

Export Price and Constructed Export Price

We used export price (EP), in accordance with section 772(a) of the Act, where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation. We used constructed export price (CEP) in accordance with section 772(b) of the Act for those sales to the first unaffiliated purchaser that took place after importation into the United States. CEMEX made CEP sales during the period of review, while CDC made both CEP and EP sales during the period of review.

We calculated EP based on delivered prices to unaffiliated customers in the United States. Where appropriate, we made adjustments from the starting price for early-payment discounts, foreign inland freight, U.S. inland freight, U.S. brokerage and handling, and U.S. duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments to the starting price for discounts and billing adjustments to the invoice price. In accordance with section 772(d) of the Act, we deducted those selling expenses, including inventory carrying costs, that were related to economic activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, U.S. inland freight and insurance, U.S. brokerage and handling, and U.S. duties. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*i.e.,* cement that was imported and further-processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation is applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. Section 351.402(c)(2) of the regulations provides that normally we will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if we estimate the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Normally we will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. We will base this determination normally on averages of the prices and the value added to the subject merchandise. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

During the course of this administrative review, the respondent submitted, and we verified, information which allowed us to determine whether, in accordance with section 772(e) of the Act, the value added in the United States by its U.S. affiliates is likely to exceed substantially the value of the subject merchandise. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliated person. Based on this analysis, we estimate that the value added was at least 65 percent of the price the respondent charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, the record indicates that there is a sufficient quantity of subject merchandise to provide a reasonable and appropriate basis for comparison. Accordingly, for purposes of determining dumping margins for the further-manufactured sales, we have assigned the weighted-average margin of 41.28 percent, the rate calculated for sales of identical or other subject merchandise sold to unaffiliated purchasers.

No other adjustments to EP or CEP were claimed or allowed.

Normal Value

A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home-market sales.

During the period of review, the respondent sold the following types of cement in the United States—Type V, Type V LA, Type II, and Type II LA. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. The respondent sold Type I, Type II LA, Type V, and Type V LA in the home market. In situations where identical product types cannot be matched, the statute expresses a preference for basing NV on sales of similar merchandise (sections 773(a)(1)(B) and 771(16) of the Act). Because we have preliminarily determined that sales of Type V and Type V LA by the respondent in the home market are outside the ordinary course of trade (see the ''Ordinary Course of Trade'' section in the decision memorandum from Laurie Parkhill, Office Director, to Richard W. Moreland, Deputy Assistant Secretary, Import Administration) and that there were no sales to unaffiliated customers of Type II LA in the home market, we did not find identical matches in the home market to which we could match sales of the subject merchandise. Accordingly, we based NV on sales of similar merchandise.

During the period of review, the respondent sold two other basic types of gray portland cement in Mexico—Type I and pozzolanic. The history of this order demonstrates that, of the various types of cement which may reasonably be compared to imports of cement from Mexico, Type I cement is most similar to the types of cement sold in the United States.

On June 18, 1999, the North American Free Trade Agreement Binational Panel reviewing the final results of the 1994/95 administrative review found that the respondent's Type I bagged cement should not have been compared with sales of Type I cement sold in bulk to the United States in the calculation of normal value and remanded the results of the 1994/95 review to the Department for a recalculation of the margin. This proceeding has not yet been completed. In this review, the record supports our continued practice of finding the respondent's sales of Type I bagged cement in the home market as sales that are comparable, within the meaning of section 771(16)(B) of the Act, to U.S. sales. Specifically, in accordance with section 771(16)(B) of the Act, we find that both bulk and bagged Type I cement are produced in the same country and by the same producer as the types sold in the United States, both bulk and bagged Type I cement are like the types sold in the United States in component materials and in the purposes for which used, and both bulk and bagged Type I cement are approximately equal in commercial value to the types sold in the United States. The questionnaire responses submitted by the respondent indicate that, with the exception of packaging, Type I cement sold in bulk and Type I cement sold in bags are physically identical and both are used in the production of concrete. Also, since there is no difference in the cost of production between cement sold in bulk or in bagged form (again with the exception of packaging), both are approximately equal in commercial value. See CEMEX response to Section A of the Department's Questionnaire, Volume 1, December 6, 1999, at A–34–36, Section B, December 23, 1999, at B–47–48, and CDC response to Section A, at A–44–47, December 6, 1999, and Section B, December 21, 1999, at B–30.

B. Ordinary Course of Trade

Section 773(a)(1)(B) of the Act requires the Department to base NV on ''the price at which the foreign like product is first sold (or in the absence of sales, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.'' Ordinary course of trade is defined as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' See section 771(15) of the Act.

In the instant review, we analyzed home-market sales of cement produced as Type V LA and Type V cement. Pursuant to section 773(a)(1)(B) of the Act, we based our examination on the totality of circumstances surrounding the respondent's sales in Mexico that are produced as Type V LA cement and Type V using the following criteria: number of transactions, the quantity of tonnage sold, shipping distances, and profit. Based on our analysis of the above-mentioned information on the record, we found that the respondent's home-market sales of Type V LA cement and Type V cement made during the instant review period are outside the ordinary course of trade. For a detailed discussion, see the ''Ordinary Course of Trade'' section in the decision memorandum from Laurie Parkhill, Office Director, to Richard W. Moreland, Deputy Assistant Secretary, Import Administration (August 30, 2000).

C. Arm's-Length Sales

To test whether sales to affiliated customers were made at arm's length, where we could test the prices, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we

determined that the sales made to the affiliated party were at arm's length. With respect to the respondent's home-market sales of Type II cement to its affiliated customer, we were unable to test whether the prices for those sales in question were at arm's length because the respondent did not provide information on the prices for sales of the same cement type to unaffiliated customers. Consistent with 19 CFR 351.403, we excluded these sales from our analysis.

D. Cost of Production

The petitioner alleged on January 5, 2000, that the respondent sold gray portland cement and clinker in the home market at prices below the cost of production (COP). After examining the allegation, we determined that there were reasonable grounds to believe or suspect that the respondent had sold the subject merchandise in the home market at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation in order to determine whether the respondent made home-market sales during the period of review at below-cost prices. See Memorandum from Robin Gray to Laurie Parkhill, *Gray Portland Cement and Clinker from Mexico: Request to Initiate Cost Investigation* (March 29, 2000).

E. Adjustments to Normal Value

Where appropriate, we adjusted home-market sales of Type I cement for discounts, rebates, packing, handling, interest revenue, and billing adjustments to the invoice price. In addition, we adjusted the starting price for inland freight, inland insurance, and pre-sale warehousing expenses. For comparisons to EP transactions, we made adjustments to the home-market starting price for differences in direct selling expenses in the two markets. For comparisons to CEP sales, we deducted home-market direct selling expenses from the home-market price. We also deducted home-market indirect selling expenses as a CEP-offset adjustment (see *Level of Trade/CEP Offset* section below). In addition, in accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Section 773(a)(6)(C)(ii) of the Act directs us to make an adjustment to NV to account for differences in the physical characteristics of merchandise where similar products are compared. Section 351.411(b) of the regulations directs us to consider differences in variable costs associated with the physical differences in the merchandise.

A discussion of our preliminary conclusions on differences in merchandise is contained in a memorandum in the official file for this case. See the ''Difference in Merchandise'' section of the Decision Memorandum from Laurie Parkhill, Office Director, to Richard W. Moreland, Deputy Assistant Secretary, *Gray Portland Cement and Clinker from Mexico* (August 30, 2000).

F. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the home market or, when NV is based on constructed value (CV), that of sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. level of trade 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 level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61971 (November 19, 1997).

Based on our analysis, we conclude that the respondent's home-market sales to various classes of customers which purchase both bulk and bagged cement constitute one level of trade. We based our conclusion on our analysis of the respondent's reported selling functions and sales channels. We found that, with some minor exceptions, CEMEX and CDC performed the same selling functions to varying degrees in similar channels of distribution. We also concluded that the variations in selling functions were not substantial when all selling expenses were considered as a whole. See the memorandum on level of trade from analyst to Laurie Parkhill, Office Director (August 21, 2000).

With respect to U.S. sales, we conclude that the respondent's sales to various classes of customers which purchase both bulk and bagged cement constituted three separate levels of trade. We based our conclusion on our analysis of the respondent's reported selling functions and sales channels after making deductions for selling expenses under section 772(d) of the Act. CEMEX and CDC performed different sales functions for sales to their respective U.S. affiliates and CDC performed different sales functions for EP sales. Furthermore, the respondent's home-market sales occur at a different and more advanced stage of distribution than its sales to the United States. We have also determined that the data available do not permit us to calculate a level-of-trade adjustment and, therefore, we could not make a level-of-trade adjustment to normal value in our analysis of the respondent's EP sales. However, we have granted a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act for the respondent's CEP sales. See the analysis memorandum on level of trade referenced above.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for the collapsed parties, CEMEX and CDC, for the period August 1, 1998, through July 31, 1999, to be 41.28 percent.

We will disclose calculations performed in connection with these preliminary results to parties within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of publication of this notice. We will notify interested parties of the date of any requested hearing and the briefing schedule.

Upon completion of this review, we will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of

antidumping duties on entries of merchandise covered by this determination and for future deposits of estimated duties. We have calculated importer-specific assessment rates based on the entered value for subject merchandise sold during the period of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the respondent will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will be 61.35 percent, the all-others rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a 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 dumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22993 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Review: Petroleum Wax Candles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Review

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Martin Odenyo or Robert M. James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone: (202) 482–5254, or (202) 482–0649, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the 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 (April 1, 2000).

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1999, the Department published in the **Federal Register** at 64 FR 43649 a ''Notice of Opportunity to Request an Administrative Review'' of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) covering the period August 1, 1998, through July 31, 1999.

On August 13, 1999, in accordance with 19 CFR 351.213(b), counsel for three PRC companies requested that we conduct an administrative review. These three companies are Shanghai Gift and Travel Products Import and Export Corporation (Shanghai), Liaoning Native Product Import and Export Corporation (Liaoning), and Tianjin Native Produce Import and Export Group Corporation, Ltd. (Tianjin). On August 31, 1999, the National Candle Association (petitioner) requested that we conduct an administrative review of twenty-two specific producers/exporters: CNACC (Zhejiang Imports & Export Co., Ltd., Shanghai Ornate Candle Art Co., Ltd., China Overseas Trading Dalian Corp., Jilin Province Arts and Crafts, China Hebei Boye Great Nation Candle Co., Ltd., Taizhou Sungod Gifts Co., Ltd., Zhejiang Native Produce & Animal By-Products, Import & Export Corp., Cnart China Gifts Import & Export Corp., Liaoning Light Industrial Products Import & Export Corp., Jintan Foreign Trade Corp., Jiangsu Yixing Foreign Trade Corp., Tonglu Tiandi, Zhongnam Candle, China Packaging Import & Export Liaoning Co., Kwung's International Trade Co., Ltd., Shanghai Gift & Travel Products Imp. & Exp. Corp., Liaoning Native Product Import & Export Corporation, Tianjin Native Produce Imp. & Exp. Group Corp. Ltd., Candle World Industrial Co., Fu Kit, Shanghai Zhen Hua, and Universal Candle Company, Ltd. We published a notice of initiation of this antidumping duty administrative review for these companies (respondents) on October 1, 1999, at 64 FR 53318.

On October 15, 1999, we issued questionnaires to the each of the twenty-two respondents. In response to our request for information, Jilin Province Arts and Crafts (Jilin) reported that it had no sales or shipments during the POR. Our review of Customs import data indicated that there were no entries by Jilin during the POR. *See* Memorandum to the File, July 31, 2000. Accordingly, we are rescinding the review with respect to Jilin.

Only five respondents responded to section A of the antidumping questionnaire. Liaoning, Tianjin, and Shanghai submitted responses to section A on November 29, 1999, Universal Candle Company, Ltd. (Universal) submitted its response on December 20, 1999, and Rich Talent Trading, Ltd. (Rich Talent) submitted its response on December 21, 1999. Liaoning, Tianjin, and Universal responded to sections C and D of the questionnaire in March 2000. Tianjin submitted a corrected version of these documents on April 24, 2000. Rich Talent did not submit a response to sections C and D of the questionnaire, nor has the company responded to any further requests for information by the Department. On February 28, 2000, Shanghai formally notified the Department that it would no longer participate in this review. Accordingly, the Department considers Rich Talent, Shanghai, and the remaining sixteen named companies that failed to respond to our antidumping questionnaires to be uncooperative respondents, as discussed further below.

The Department issued supplemental section A questionnaires to Rich Talent, Liaoning, Tianjin, and Universal on March 21, 2000. We received responses from Liaoning, Tianjin, and Universal in April, 2000. The Department issued supplemental sections C and D questionnaires and a second supplemental section A questionnaire to the respondents in May, 2000. Liaoning, Tianjin and Universal submitted responses to these supplemental questionnaires in June, 2000. As discussed above, Rich Talent did not respond to any of the Department's supplemental questionnaires.

On April 18, 2000, the Department published in the **Federal Register** a notice of extension of the time limit for the preliminary determination in this review (65 FR 20800). This notice extended the preliminary determination until August 30, 2000, and listed the four respondents which to date had responded to the Department's questionnaire.

On March 21, 2000, the Department invited interested parties to provide publicly available information (PAI) for valuing the factors of production and for surrogate country selection. We received a joint response from Liaoning and Tianjin on April 24, 2000. Petitioner submitted a rebuttal to the respondents' submission on May 8, 2000. On June 16, 2000, we selected India as the surrogate country for the PRC in this review.

Scope of Review

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule (HTS) item 3406.00.00. Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Use of Facts Otherwise Available

The Department preliminarily determines that the twenty-one respondents in this review should be assigned a dumping margin based upon the facts otherwise 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; (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 shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' The Department has determined that the use of facts available is appropriate for the eighteen respondents that failed wholly to respond to our questionnaires since they withheld information necessary to complete this review and did not act to the best of their ability. *See, e.g.,* Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 65 FR 13366, 13367 (March 13, 2000). Similarly, based on the facts in this review, described as follows, the Department has preliminarily determined that the use of facts available is warranted for Liaoning, Tianjin, and Universal. These three respondents withheld information necessary to complete this review, failed to provide such information by the deadlines in the form and manner requested, and submitted unverifiable information. Therefore, pursuant to section 776(a)(2) (A), (B), and (D) of the Tariff Act, the Department will use the facts otherwise available to determine the appropriate antidumping margins for these companies in this review.

We determine that the questionnaire responses submitted by Liaoning, Tianjin, and Universal are deficient and contain unreliable and unverifiable data which cannot be used as the basis of a calculated dumping margin. These three respondents did not respond adequately to the original and supplemental questionnaires which instructed the respondents to explain and provide sample calculations of the methodologies used to construct the response to section D of the questionnaire. Where such information was submitted, it was often either incomplete or contradictory to the point that serious concerns remain regarding the basic reliability of the data.

Throughout the majority of this administrative review leading up to our preliminary results, Universal insisted that all of its POR shipments were not subject to the antidumping order, and stated that all in-scope candles were produced and shipped from Hong Kong, as opposed to mainland China. During the period that Universal maintained this position, the company did not submit any sales data pertaining to sales of subject merchandise from mainland China. Furthermore, although the Department requested information relating to Universal's worldwide legal and operational affiliations, Universal's initial responses were minimal. Finally, after the Department repeatedly requested such information, Universal began submitting basic information pertaining to affiliations and sales of what it referred to as ''potentially subject merchandise.'' Universal's supplemental responses included numerous new and often contradictory sales data and information on affiliations which did not reconcile with previous submissions (*e.g.* local subcontracting, overseas business relationships). The contradictory information on the record suggests that Universal may have had sales of subject merchandise during the POR. However, the wholly incomplete and contradictory information submitted by Universal provides the Department with no basis for determining an accurate margin, and as such, is unverifiable.

With respect to reported costs of production, Universal initially stated that it keeps production records for its facilities in mainland China. However, contrary to the company's earlier statements, Universal subsequently claimed that it does not maintain PRC production records, since the maintenance of such records is not required by law in the PRC. Accordingly, Universal's reported raw material input and labor amounts are based upon estimates, using samples of those candles still available to the company, rather than based upon actual company records. *See* April 13, 2000 supplemental section A response at 10; June 14, 2000, second supplemental section A response at 2 and 19; and May 31, 2000 supplemental section D response at 10. In many instances the estimated quantity of the primary raw material input, paraffin wax, was inconsistent with the net weight of the product as reported in the response to section C of the questionnaire. Thus, Universal failed to provide verifiable factors of production data, and the information it did submit was often contradictory.

With respect to Liaoning and Tianjin, two of the three factories which supplied Liaoning with its subject merchandise did not respond to the Department's request for information. We noted in our May 3, 2000 supplemental section C questionnaire that the Department may rely on facts otherwise available as a substitute for the missing information. In addition, in response to many basic supplemental

questions, Liaoning and Tianjin both failed to provide the information requested, stating that such factor of production information was unknown or was not available at the time. Specifically, in response to numerous fundamental questions from the Department, Liaoning and Tianjin responded either ''unknown'', ''not available at this time'', or ''as soon as it becomes available, the information will be submitted.'' However, the type of information the Department requested was standard business information typically maintained by most businesses, and representative of the type of information the Department has asked of Chinese companies in previous administrative reviews (*e.g.* methodologies used to allocate the reported factors data). Moreover, as stated previously, Liaoning and Tianjin, through counsel, requested that the Department initiate this antidumping review. The antidumping order for this case was issued in 1986, and Liaoning, Tianjin, and Universal should have anticipated that the Department would require verifiable production and sales information to complete its analysis in any subsequent reviews. (For more detailed information on these three companies' questionnaire responses, see petitioner comments filed on June 16, 2000).

As previously described, the Department granted numerous requests for extensions of time to the respondents in order for the companies to supply the Department with the necessary information for a calculation of a reliable antidumping margin. Despite these extensions, the responses from Liaoning, Tianjin, and Universal were wholly inadequate and contained much unsubstantiated, and unverifiable information. This information is too incomplete to serve as a reliable basis for reaching a determination in this review within the meaning of section 782(e) of the Tariff Act. Therefore, we preliminarily determine that these three respondents failed to cooperate by not acting to the best of their ability. As previously noted, we similarly find that the eighteen uncooperative respondents failed to act to the best of their ability. 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.'' The uncooperative respondents that failed to respond to our requests for information did not comply with this provision of the statute. Therefore, we determine that all twenty-one respondents, both those which initially responded to our questionnaires, and those which did not, failed to cooperate by not acting to the best of their ability.

Additionally, section 776(b) of the Tariff Act provides that, if the Department finds 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.'' Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994). It is reasonable to assume that if the eighteen respondents that did not respond at all could have demonstrated that their actual dumping margins were lower than the PRC-wide rate established in the less-than-fair value (LTFV) investigation, they would have participated in this review and attempted to do so. Furthermore, the Department, in assigning adverse facts available to Liaoning, Tianjin, and Universal, is aware that ''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).

Section 776(b) of the Tariff Act authorizes the Department to use as adverse facts available ''secondary information,'' including information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Section 776(b) of the Tariff Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. Thus, to corroborate secondary information, the Department will examine the reliability and relevance of the information used.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value, 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review, 62 FR 60472, 60477 (November 10, 1997).

In accordance with Department practice, as adverse facts available we have preliminarily assigned these exporters the highest dumping margin determined in any segment of this proceeding (54.21 percent), which is the PRC-wide rate established in the LTFV investigation, and is the only rate available for use as facts available. See Antidumping Duty Order: Petroleum Wax Candles From the People's Republic of China, 51 FR 30686 (August 28, 1986). With respect to corroboration of this margin we note that, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. See Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Accordingly, we have used the highest calculated margin from any prior segment of the proceeding as the margin for these preliminary results because there is no evidence on the record indicating that such a calculated margin is not appropriate as adverse facts available. This rate is currently applicable to all exports of subject merchandise. Thus, if any respondent could demonstrate that its margin is lower, we presume that it would have cooperated in attempting to do so.

Separate Rates

The Department presumes that a single dumping margin is appropriate for all exporters in a non-market economy (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). The Department may, however, consider requests for a separate rate

from individual exporters. Liaoning, Tianjin, and Universal responded to the separate rates section of the antidumping questionnaire.

We preliminarily determine that Liaoning, Tianjin, Universal and the remaining eighteen respondents are not eligible for a separate rate due to our preliminary determination that the most appropriate antidumping margin is based upon total adverse facts available. Although Liaoning, Tianjin, and Universal initially responded to the separate rates section of the questionnaire, their responses were so wholly inadequate and unreliable that they did not establish that separate rates were warranted.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exists for the period August 1, 1998, through July 30, 1999:

Manufacturer/exporter	Margin (percent)
People's Republic of China-Wide Rate	54.21

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. This rate will be assessed uniformly on all entries of subject merchandise made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this 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 Tariff Act: (1) For previously reviewed or investigated companies that have a separate rate and for which no review was requested, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) for all other PRC exporters, the cash deposit rate will be the rate established in the final results of this administrative review; and (3) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of the exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22990 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Stolz at (202) 482–4474 or Howard Smith at (202) 482–5193, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On February 28, 2000, the Department published a notice of initiation of administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China, covering the period January 1, 1999 through December 31, 1999 (65 FR 10466). The preliminary results are currently due no later than October 2, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than January 30, 2001. See Decision Memorandum from Thomas F. Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 31, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–22994 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–860, A–455–803]

Preliminary Determinations of Critical Circumstances: Steel Concrete Reinforcing Bars From the People's Republic of China and Poland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Magd Zalok at (202) 482–3936 and (202) 482–4162, respectively; AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Preliminary Determinations of Critical Circumstances

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2000).

Background

In the petition filed on June 28, 2000, the petitioner alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of steel concrete reinforcing bars (rebar) from the People's Republic of China (PRC) and Poland.[1] On July 18, 2000, the Department of Commerce (the Department) initiated investigations to determine whether imports of rebar from the PRC and Poland, among others, are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV) (65 FR 45754, July 25, 2000). At that time we also initiated investigations to determine whether critical circumstances exist with respect to imports of rebar from the PRC and Poland.[2]

On August 14, 2000, the International Trade Commission (ITC) determined that there is a reasonable indication of material injury to the domestic industry from imports of rebar from the PRC and Poland, among others.

In accordance with 19 CFR 351.206(c)(2)(i), because the petitioner submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determinations, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determinations. In a policy bulletin issued on October 8, 1998, the Department stated that it may issue preliminary critical circumstances determinations prior to the date of the preliminary determinations of dumping, assuming sufficient evidence of critical circumstances is available (see Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations, 63 FR 55364). In accordance with this policy, at this time we are issuing preliminary critical circumstances decisions in the investigations of imports of rebar from the PRC and Poland, for the reasons discussed below and in the August 30, 2000, Memorandum from Tom Futtner and Gary Taverman to Holly A. Kuga regarding: Antidumping Duty Investigations of Steel Concrete Reinforcing Bar from the People's Republic of China and Poland—Preliminary Determinations of Critical Circumstances (Critical Circumstances Preliminary Determinations Memorandum).

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.''

Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.,* the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the above criteria have been satisfied, we examined: (1) The evidence presented in the petition; (2) recent import statistics released by the Census Bureau after the initiation of the LTFV investigations; and (3) the ITC preliminary injury determinations.

History of Dumping and Importer Knowledge

Because we are not aware of any existing antidumping order in any country on rebar from the PRC or Poland, we do not find a history of dumping from the PRC or Poland pursuant to section 733(e)(1)(A)(i). However, the Department may look to the second criterion for determining knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling rebar at LTFV, pursuant to section 733(e)(1)(A)(ii) of the Act, the Department's normal practice is to consider margins of 25 percent or more sufficient to impute knowledge of dumping. See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 31972, 31978 (June 11, 1997). In the instant cases, given that we have not yet made a preliminary finding of dumping, the most reasonable source of information concerning knowledge of dumping is the petition itself. In the petition, the petitioner calculated estimated dumping margins of 59.98 percent for the PRC and 53.54 percent for Poland. Since these estimated dumping margins exceed the 25 percent threshold, we have preliminarily imputed knowledge of dumping to

[1] The petitioner also alleged that there is a reason to believe or suspect that critical circumstances exist with respect to imports of rebar from Latvia and the Republic of Korea. However, we are not making a determination with respect to these two countries at this time.

[2] The Department also initiated investigations to determine whether critical circumstances exist with respect to imports of rebar from Latvia and the Republic of Korea.

importer, exporters, or producers of subject merchandise from the PRC and Poland. *See* the Critical Circumstances Preliminary Determinations Memorandum.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, under section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determinations of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. 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 61964 (November 20, 1997). In the instant cases, the ITC has found that a reasonable indication of present material injury due to dumping exists for all imports of rebar from the PRC and Poland. *See* ITC's Preliminary Determinations, August 14, 2000. Therefore, we preliminarily find that there is a reasonable basis to believe or suspect that importers knew or should have known that dumped imports of rebar from the PRC and Poland were likely to cause material injury.

Massive Imports

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period''), and at least three months following the filing of the petition (*i.e.*, the ''comparison period''). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

In this case, the petitioner argues that importers, exporters, or producers of rebar from the PRC and Poland had reason to believe that an antidumping proceeding was likely before the filing of the petition. Based upon information contained in the petition, we found that press reports and published statements were sufficient to establish that, by December 1999, importers, exporters, and foreign producers knew or should have known that a proceeding was likely concerning rebar from the PRC and Poland. Accordingly, we examined the increase in import volumes from July 1999 through December 1999, as compared to the import volume during January 2000 through June 2000, and found that imports of rebar from the PRC increased by 182.76 percent and that imports from Poland increased from zero to over 58,000 metric tons, an unquantifiable percent. *See* the Critical Circumstances Preliminary Determinations Memorandum. Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily determine that there have been massive imports of rebar from the PRC and Poland over a relatively short time.

Conclusion

Given the above-referenced reasons, we preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of rebar from the PRC and Poland.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, upon issuance of affirmative preliminary determinations of sales at LTFV in the investigations with respect to the PRC and Poland, the Department will direct the U.S. Customs Service to suspend liquidation of all such entries of rebar from the PRC and Poland that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determinations of sales at LTFV. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations of sales at LTFV published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

Final Critical Circumstances Determinations

We will make final determinations concerning critical circumstances for the PRC and Poland when we make our final determinations regarding sales at LTFV in those investigations, which will be 75 days (unless extended) after the preliminary LTFV determinations.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22996 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–401]

Certain Carbon Steel Products from Sweden: Preliminary Results of Countervailing Duty Administrative Review and Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain carbon steel products from Sweden. The period covered by this administrative review is January 1, 1998 through December 31, 1998. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the ''Preliminary Results of Review'' section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. (*See* ''Public Comment'' section of this notice.)

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Gayle Longest, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1767 and (202) 482–3338, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1985, the Department published in the **Federal Register** (50 FR 48517) the countervailing duty order on certain carbon steel products from Sweden. On October 22, 1999, the Department published a notice of ''Opportunity to Request Administrative Review'' (64 FR 56485) of this countervailing duty order. We received a timely request for review from SSAB Svenskt Stal AB (SSAB), the respondent company to this proceeding. On December 3, 1999, we initiated a review covering the period January 1, 1998, through December 31, 1998 (64 FR 67846).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The producer/exporter of the subject merchandise for which the review was requested is SSAB. This review covers six programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. In addition, unless indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1999) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348) (CVD Regulations).

Scope of the Review

Imports covered by this review are shipments of certain carbon steel products from Sweden. These products include cold-rolled carbon steel, flat-rolled products, whether or not corrugated, or crimped: whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or pleated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7209.11.0000, 7209.12.0000, 7209.13.0000, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7211.30.5000, 7211.41.7000 and 7211.49.5000. The written description remains dispositive.

Extension of Final Results

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period for the final results to 180 days. Due to the complex nature of the issues in this case, we have determined that it is not practicable to complete the final results for this review within the original time limit. Therefore, the Department is extending the time limit for the final results to 180 days from the date of publication of these preliminary results.

Subsidies Valuation Information

Allocation Methodology

In the current review, there are no new non-recurring subsidies. All of the non-recurring grants under review were provided prior to the period of review (POR) and allocation periods for these grants were established during prior segments of this proceeding. Therefore, for the purposes of these results, the Department is using the original allocation period assigned to each grant. *See Certain Carbon Steel Products from Sweden; Finals Results of Administrative Review,* 62 FR 16549–50 (April 7, 1997) (*1994 Final Results*).

Change in Ownership

A. Background

SSAB is the only Swedish company that produces and exports the subject merchandise. SSAB has sold several productive units and the company was partially privatized in 1987 and in 1989. In 1994, SSAB was completely privatized.

The Department is aware that on June 20, 2000, the Court of Appeals for the Federal Circuit (CAFC) denied the Department's petition for rehearing and suggestion for rehearing *en banc* in *Delverde, SRL* v. *United States,* 202 F.3d 1360 (Fed. Cir. 2000) (*Delverde*). Although this decision addressed a purely private change in ownership, it appears that it may impact the Department's privatization methodology. However, due to the complexity of the issue, the Department has not yet completed its analysis of how *Delverde* may affect this proceeding. Accordingly, for purposes of these preliminary results, we will continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company, as set forth below.

The Department invites interested parties to comment in their case briefs on the implications of the *Delverde* decision on this proceeding.

B. Change in Ownership Calculation Methodology

We followed the Change in Ownership methodology described in the General Issues Appendix (*GIA*) that is attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria,* 58 FR 37217, 37226 (July 9, 1993) and which was used in the last administrative review of this order. *See Certain Steel Products From Sweden: Final Results of Countervailing Duty Administrative Review,* 64 FR 57038 (October 22, 1999) (*1999 Final Results*).

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies

A. Structural Loans

Under three separate pieces of legislation, SSAB received structural loans from the Government of Sweden (GOS) for investment in plant and equipment. The loans were disbursed in installments between 1978 and 1983. Two loans were outstanding during the POR.

According to the terms of the loans, both structural loans were interest-free for three years from the date of disbursement. After that time, the loans incurred interest at a fixed rate of five percent per annum. *See* SSAB's February 18, 2000 Questionnaire Response at page 11–13 (Public Version on file in Room B–099 of the main Commerce Building). After a five-year grace period, the principal is repaid in 20 equal installments at the end of each calendar year.

In the final determinations of the two original investigations of the subject merchandise, *Final Affirmative Countervailing Duty Determination; Certain Carbon Steel Products from Sweden,* 50 FR 33377 (August 19, 1985) (*1985 Final Determination*) and *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Sweden,* 58 FR 37385 (July 9, 1993) (*1993 Certain Steel Products*), we determined that these types of loans were provided only to SSAB and were received at an interest rate lower than what the recipient would have paid on a comparable commercial loan. We therefore, determined that the loans are countervailable. There has been no new information or evidence of changed

circumstances in this review to warrant reconsideration of this determination.

To calculate the benefit from the fixed-rate structural loans, we employed the long-term loan methodology described in the 1994 administrative review of this order. *See 1994 Final Results.* To calculate the benefits of the variable-rate loan, we used the variable-rate long-term loan methodology described in the *1994 Final Results.* As the benchmark, we used SSAB's company-specific long-term interest rates, previously established in *1993 Certain Steel Products.*

We reduced the benefit attributable to the POR from the fixed-rate structural loans according to the methodology outlined in the ''Change in Ownership'' section above. We then aggregated the benefits for the fixed interest rate loans and divided the results by SSAB's total sales for 1998. On this basis, we preliminarily determine the net subsidy from the two structural loans to be 0.11 percent *ad valorem.*

B. Forgiven Reconstruction Loans

The GOS provided reconstruction loans to SSAB between 1979 and 1985 to cover operating losses, investment in certain plant and equipment, and for employment promotion purposes. The loans were interest-free for three years, after which a fixed interest rate was charged. According to the terms of the loans, up to half of the outstanding amount of the loan could be written-off after the second calendar year following the disbursement. The remainder of the loan could be written off entirely at the end of the ninth calendar year after disbursement. Pursuant to the terms of the reconstruction loans, the GOS wrote off large portions of principal and accrued interest on these loans between 1980 and 1990.

In the *1985 Final Determination* and in *1993 Certain Steel Products,* we determined that forgiveness of these loans is countervailable. There has been no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination.

To calculate the benefit, we treated the written-off portions of the reconstruction loans as countervailable grants received in the years the loans were forgiven and attributed the benefit for the POR from this program using the methodology described in the ''Allocation Methodology'' section above. We then reduced the benefits from these grants attributable to the POR according to the methodology outlined in the ''Change in Ownership'' section above. We then divided the results by SSAB's total sales for 1998. On this basis, we preliminarily determine the net subsidy from the three allocable forgiven reconstruction loans to be 0.51 percent *ad valorem.*

II. Other Programs

Research and Development Loans and Grants

The Swedish National Board for Industrial and Technical Development (NUTEK) provides research and development loans and grants to Swedish industries for R&D purposes. One type of R&D loan (industrial development loans) is mostly aimed at ''new'' industries such as the biotechnical, electronic, and medical industries. Another type of R&D loan (energy efficiency loans) is directed towards big energy consumers.

Under this program, SSAB had several R&D loans outstanding during the POR on which it did not make either principal or interest payments. In the last administrative review of this order, we found that the benefit provided from these loans was less than 0.005 percent *ad valorem,* and would have no impact on the countervailing duty rate calculated for this POR; therefore, it was not necessary to determine whether the loans provided under NUTEK were specific. *See, e.g., 1999 Final Results.*

In this administrative review, SSAB reported that it also received a NUTEK R&D grant for the application and further development of Information Technology concerning improved energy utilization and control of industrial processes. Under section 351.524(b)(2) of the CVD Regulations, this grant would be expensed in the year of receipt, which is the POR. The benefit from this grant is 0.01 percent *ad valorem.* Because we have not had to make a specificity determination with respect to this program in the last few administrative reviews of this order, we are attempting to gather more information from the GOS before making a final determination on the specificity of this program.

III. Programs Preliminarily Determined To Be Not Used

A. Transportation Grants
B. Location-of-Industry Loans
C. Regional Development Grants

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 1998, through December 31, 1998, we preliminarily determine the net subsidy for SSAB to be 0.62 percent *ad valorem.*

If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Carbon Steel Products from*

Sweden; Final Results of Countervailing Duty Administrative Review, 64 FR 57038 (October 22, 1999). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1998 through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

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 days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: August 31, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22999 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Countervailing Duty Administrative Review and Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico for the period January 1, 1998, through December 31, 1998. For information on the net subsidy for the reviewed company as well as for non-reviewed companies, please see the ''Preliminary Results of Review'' section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interest parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section of this notice).

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Michael Grossman, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** (58 FR 43755) the countervailing duty order on certain cut-to-length carbon steel plate from Mexico. On August 11, 1999, the Department published a notice of ''Opportunity to Request an Administrative Review'' (64 FR 43649) of this countervailing duty order. We received a timely request for review from Altos Hornos de Mexico, S.A. (AHMSA), the respondent company in this proceeding. On October 1, 1999, we initiated the review covering the period January 1, 1998, through December 31, 1998 (64 FR 53318).

On January 18, 2000, petitioners submitted a new subsidy allegation in the above-referenced administrative review. Specifically, petitioners alleged that AHMSA received a countervailable loan from Banobras, a government development bank. Upon review of the information submitted by petitioners, we have declined to initiate on this allegation. For more information regarding petitioners' new subsidy allegation, see the memorandum, ''New Subsidy Allegations,'' to Melissa G. Skinner, Director of Office of AD/CVD Enforcement VI, from the Team, dated August 25, 2000, a public document on file in the Central Records Unit (CRU), Room B–099 of the Main Department of Commerce Building (New Subsidy Allegations Memorandum).

Petitioners also submitted other comments regarding assumption of AHMSA's debt, ''committed investments,'' and the use of uncreditworthy benchmarks. Our review of these allegations reveals that these are comments on the methodology which petitioners argue should be employed by the Department in this administrative review. Therefore, these comments do not require an initiation of an alleged subsidy. For more information, see the New Subsidy Allegations Memorandum. Thus, because we have determined that these allegations concern methodological issues, we have addressed the debt assumption and ''committed investment'' allegations in the section titled ''Petitioner's Comments Concerning 'Committed Investment' and Assumption of AHMSA's Debt,'' below. We have addressed petitioner's comments regarding the use of uncreditworthy benchmarks in the ''Creditworthiness'' section, below.

On April 11, 2000, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended (the Act). *See* Certain Cut-to-Length Carbon Steel Plate From Mexico: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review (65 FR 19359).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. Accordingly, this review covers AHMSA. This review covers 17 programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR part 351 (1999) and to the substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65345) (CVD Regulations).

Scope of Review

The products covered by this administrative review are certain cut-to-length carbon steel plates. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this administrative review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. Excluded from this administrative review is grade X–70 plate. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Extension of Final Results

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period for the final results to 180 days. Due to the complex nature of the issues in this case, we have determined that it is not practicable to complete the final results for this review within the original time limit. Therefore, the Department is extending the time limit for the final results to 180 days from the date of publication of these preliminary results.

Allocation Period

Section 351.524(d)(2) of the CVD Regulations states that we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation, and the party can establish that the difference between the company-specific or country-wide AUL for the industry under investigation is significant.

In this administrative review, the Department is considering both non-recurring subsidies previously allocated in the initial investigation and non-recurring subsidies received since the original period of investigation (POI). Regarding non-recurring subsidies previously allocated in the initial investigation, the Department is using, for the purposes of the preliminary results, the original allocation period of 15 years. For non-recurring subsidies received since the original investigation, no party to the proceeding claimed that the AUL listed in the IRS tables did not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Therefore, in accordance with section 351.524(d)(2) of the CVD Regulations, we have allocated, where applicable, all of AHMSA's non-recurring subsidies received since the original investigation over 15 years, the AUL listed in the IRS tables for the steel industry.

Petitioner's Comments Concerning ''Committed Investment'' and Assumption of AHMSA's Debt

Petitioners state that, at the time of privatization, in addition to making a cash payment, Grupo Acerero del Norte (GAN) committed to future investments in AHMSA.[1] Petitioners argue that this ''committed investment'' is a countervailable subsidy, either directly or indirectly. As a direct subsidy, petitioners argue that, in effect, Government of Mexico (GOM) funds in the form of revenues foregone by not charging the commercial price for AHMSA were provided to AHMSA. As an indirect subsidy, petitioners argue that the GOM induced GAN to make the investment commitments by accepting a lower sales price and crediting 50 percent of any investment commitment when determining the winning bid for AHMSA. Petitioners allege the equity investment into AHMSA would not have occurred but for the inducement by the GOM.

In Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review, 65 FR 13368 (March 13, 2000) (Steel Products 2000), the Department examined the ''committed investment'' and found it to be not countervailable under the prevailing privatization methodology. Specifically, in Comment 5 to the Decision Memorandum to Steel Products 2000, we stated:

> ''under the * * * current privatization methodology, the Department accounts for the purchase price in the calculation of the amount of subsidies passing through to the privatized entity. Therefore, if, as in this particular case, the amount of cash paid for the privatized company is reduced for committed investment, there is a reduction in the presumed amount of the subsidies that pass through to the new owner. Otherwise stated, a lower cash price increases the amount of the previously bestowed subsidies that pass through.''

Petitioners argue, however, that our gamma calculation does not fully account for subsidies, such as ''committed investment,'' that are provided in the course of privatization.

Petitioners also argue that, in addition to paying $145 million in cash, and committing to make investments in AHMSA, GAN agreed to assume $350 million of AHMSA's debt, as part of the privatization transaction. Petitioners allege that the GOM agreed to a less

[1] GAN purchased AHMSA from the Government of Mexico in 1991.

than market value cash price for AHMSA as an inducement for GAN to assume AHMSA's debt, thereby providing an indirect countervailable subsidy to AHMSA. Petitioners further argue that, absent this inducement, in a normal commercial setting the transaction would not have taken place, since the fair market value of AHMSA was considerably higher than the cash price paid by GAN.

In response to these allegations, AHMSA states that the Department thoroughly investigated and verified the entire privatization transaction in the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico, 58 FR 37352 (July 9, 1993) (Steel Products from Mexico), and did not find any aspect of the transaction countervailable. They further state that with regard to the ''committed investment'' allegation, the Department found it to be not countervailable in Steel Products 2000 and that no new facts have arisen to warrant any further investigation of the allegation at this time.

In light of the United States Court of Appeals for the Federal Circuit (CAFC) recent ruling in *Delverde, SRL* v. *United States,* 202 F.3d 1360 (Fed. Cir. 2000) (*Delverde*), the Department is currently in the process of reexamining its privatization methodology. As part of this reexamination, we are analyzing GAN's committed investment into AHMSA and its assumption of AHMSA's debt.

We welcome any comments interested parties may have with regard to these issues, as well as the appropriate approach the Department should take with respect to privatization in general.

Creditworthiness and Calculation of Discount Rate

We have previously determined AHMSA to be uncreditworthy during the years 1983 through 1986. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings. However, because the request for this administrative review was filed after January 1, 1999, the Department's CVD Regulations now govern this review. As a result, though our determination regarding AHMSA's creditworthiness during the years 1983 through 1986 remains unchanged, we have, in accordance with our CVD Regulations, used a different methodology to calculate AHMSA's uncreditworthy discount rates in those years in which AHMSA was determined to be uncreditworthy. For those years in which AHMSA was determined to be uncreditworthy, we constructed a discount rate for uncreditworthy companies, as described in section 351.505(a)(3)(iii) of the CVD regulations.

In Steel Products 2000, the presence of significant, intermittent inflation in Mexico's economy resulted in the Department utilizing a unique loan-based methodology to calculate the benefit from AHMSA's non-recurring subsidies. We explained in Steel Products 2000, that we treated the subsidy as a series of loans that were rolled over each year at the prevailing nominal interest rate and applied the creditworthy or uncreditworthy interest rates in each year depending on the company's creditworthy status in that year. *See* Comment 3 of the Decision Memorandum to Steel Products 2000. As explained below in the ''Inflation Methodology'' section of these preliminary results, we have again utilized the loan-based methodology in this administrative review.

In Steel Products from Mexico and Steel Products 2000, we did not explicitly address the issue of whether the creditworthy decision for this unique methodology should be made at the point of original bestowal or on a year-by-year basis.[2] However, in Steel Products 2000, we stated that we would consider this issue in any subsequent administrative review. *See* Comment 3 of the Decision Memorandum to Steel Products 2000.

Regarding the discount rate used in the Department's standard grant allocation methodology, section 351.524(d)(3)(i) of the CVD Regulations states that when allocating a benefit over time and determining the annual benefit amount that should be assigned to a particular year, the Secretary will select a discount rate based upon the information available in the year in which the government agreed to provide the subsidy. Regarding the determination of a firm's creditworthy status, section 351.505(a)(4)(i) of the CVD Regulations state that a firm will be considered uncreditworthy if the Secretary determines that, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. Thus, the CVD Regulations make clear that the Department should use the discount rate in effect at the time of receipt, be it creditworthy or uncreditworthy, when using the standard grant allocation methodology to assign an annual benefit amount to a particular year.

As discussed below in the ''Inflation Methodology'' section of these preliminary results, the unique circumstances of this case have led us to use a loan-based methodology to allocate AHMSA's peso-denominated non-recurring benefits over time. A key aspect of this loan-based methodology is the use of the annual discount rate outstanding in each year of the allocation period, as opposed to the Department's standard practice of applying to the entire allocation period the discount rate outstanding at the time the grant was received. Thus, section 351.524(d)(3)(i) of the CVD Regulations does not directly address our methodology of non-recurring benefits over time. Although this loan-based methodology is a departure from the Department's standard grant allocation methodology, for the purposes of these preliminary results, we find that the use of the loan based methodology is not a sufficient reason to alter the Department's long-standing practice of applying a firm's creditworthy status (based on the firm's creditworthiness at the time of receipt) to the entire allocation period. *See e.g.* Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy, 63 FR 40474, 40478 (July 29, 1998). Thus, for purposes of these preliminary results, in those years in which AHMSA received a peso-denominated non-recurring grant and was determined to be uncreditworthy at the time of receipt, we have allocated the benefit over time using the loan-based allocation methodology, and we have constructed an annual discount rate (*i.e.* the discount outstanding in each year of the allocation period) pursuant to the Department's interest rate methodology for uncreditworthy companies, as described in section 351.505(a)(3)(iii) of the CVD regulations. In other words, though we have applied a loan-based methodology that uses an annual discount rate to allocate a non-recurring benefit to a particular year rather than the Department's standard practice of using a fixed discount rate throughout the entire allocation period, we have maintained the Department's practice of applying a firm's creditworthy status at the time of receipt to the entire allocation period.

Change in Ownership

A. Background

In November 1991, the GOM sold all of its ownership interest in AHMSA. Prior to privatization, AHMSA was

[2] We note that no party raised the issue in Steel Products from Mexico. In Steel Products 2000, the issue was not raised until the filing of the case briefs and, thus, was not addressed during that segment of the proceeding.

almost entirely owned by the GOM. Since November 1991, the GOM has held no stock in AHMSA.

The Department is aware that on June 20, 2000, the CAFC denied the Department's petition for rehearing and suggestion for rehearing *en banc* in *Delverde*. Although this decision addressed a purely private change in ownership, it may impact the Department's privatization methodology. However, due to the complexity of the issue, the Department has not yet completed its analysis of how *Delverde* may affect this proceeding. Accordingly, for purposes of these preliminary results, we will continue to determine that a portion of subsidies bestowed on a government-owned company prior to privatization continues to benefit the production of the privatized company, as set forth below.

The Department invites interested parties to comment in their case briefs on the implications of the Delverde decision on this proceeding.

B. Change in Ownership Calculation Methodology

Under the Change in Ownership methodology described in the *General Issues Appendix* concerning the treatment of subsidies received prior to the sale of a company or the spinning-off of a productive unit, we estimated the portion of the purchase price attributable to prior subsidies. *See* the General Issues Appendix (GIA) that is attached to the Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria, 58 FR 37217, 37226 (July 9, 1993). We computed this by first dividing the privatized company's prior subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI and ending one year prior to the change in ownership.

We then took the simple average of the ratios of subsidies to net worth. This simple average of the ratios serves as a reasonable surrogate for the portion that subsidies constitute of the overall value of the company. Next, we multiplied the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduced the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

Inflation Methodology

In Steel Products from Mexico, we determined, based on information from the GOM, that Mexico experienced significant inflation from 1983 through 1988. *See* Steel Products from Mexico, 58 FR 37352, 37355. In accordance with past practice, because we found significant inflation in Mexico and because AHMSA adjusted for inflation in its financial statements, we made adjustments, where necessary, to account for inflation in the benefit calculations.

Because Mexico experienced significant inflation during only a portion of the 15-year allocation period, indexing for the entire period or converting the non-recurring benefits into U.S. dollars at the time of receipt (*i.e.,* dollarization) for use in our calculations would have inflated the benefit from these infusions by adjusting for inflationary as well as non-inflationary periods. Thus, in Steel Products from Mexico, 58 FR 37352, 37355, we used a loan-based methodology to reflect the effects of intermittent high inflation. The methodology we used in Steel Products from Mexico assumed that, in lieu of a government equity infusion/grant, a company would have had to take out a 15-year loan that was rolled over each year at the prevailing nominal interest rates, which for purposes of our calculations were the CPP-based interest rates discussed in the ''Discount Rates'' section of this notice. The benefit in each year of the 15-year period equaled the principal plus interest payments associated with the loan at the nominal interest rate prevailing in that year.

Since we assumed that an infusion/grant given was equivalent to a 15-year loan at the current rate in the first year, a 14-year loan at current rates in the second year and so on, the benefit after the 15-year period would be zero, just as with the Department's grant amortization methodology. Because nominal interest rates were used, the effects of inflation were already incorporated into the benefit. This methodology was upheld in *British Steel plc* v. *United States,* 127 F.3d 1471 (Fed. Cir. 1997) (British Steel III).

In Steel Products 2000, we analyzed information provided by the GOM and found that Mexico, again, experienced significant, intermittent inflation during the period 1991 through 1997. *See* page 5 of the Decision Memorandum to Steel Products 2000. In addition, in Steel Products 2000, we learned at verification that AHMSA continued its practice of accounting for inflation in its financial statements. *See* page 5 of the Decision Memorandum to Steel Products 2000. Thus, in Steel Products 2000, we used the benefit calculation methodology from Steel Products from Mexico, described above, for all non-recurring, peso-denominated grants received since the POI. *See* page 4 of the Decision Memorandum to Steel Products 2000.

No new information or evidence of changed circumstances has been presented thus far in this review to warrant any reconsideration of these findings. Thus, for the purposes of these preliminary results, we have continued to use the benefit calculation methodology from Steel Products from Mexico for all non-recurring, peso-denominated grants received prior to and since the POI.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Subsidies

A. GOM Equity Infusions

In Steel Products from Mexico, 58 FR 37352, 37356, we determined that the GOM made equity infusions into AHMSA in 1977, each year from 1979 through 1987, 1990 and 1991. Shares of common stock were issued for all of these infusions. The GOM made these equity infusions annually as part of its budgetary process as per the Federal Law on State Companies. At the time of these infusions, AHMSA was almost entirely a government-owned company.

In Steel Products from Mexico, 58 FR 37352, 37356, we found AHMSA to be unequityworthy in each year from 1979 through 1987, and in 1990 and 1991. Accordingly, we determined that the equity infusions by the GOM into AHMSA in these years were countervailable. In Steel Products 2000, we continued to find this program countervailable. *See* Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Countervailing Duty Administrative Review, 64 FR 48796, 48799 (September 8, 1999) (Preliminary Results of Steel Products 2000).[3] No new information or evidence of changed circumstances has been presented thus far in this review to warrant any reconsideration of these findings. As a result, for the purposes of these preliminary results, we continue to find this program countervailable.

To calculate the countervailable benefit in the POR, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above,

[3] This decision was affirmed in the final results of Steel Products 2000, but the complete discussion is published in the Preliminary Results of Steel Products 2000. Throughout this notice there are several instances where we cite the preliminary results for our discussion.

by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 1.55 percent *ad valorem* for AHMSA.

B. 1986 Assumption of AHMSA's Debt

In 1986, the GOM negotiated an agreement with AHMSA through which the GOM assumed a portion of AHMSA's debt. One part of this debt assumption was recorded as a reduction in the company's accumulated past losses. For a second part, shares of stock were issued; a third part was held for future capital increases for which new stock was issued to the GOM in 1987. In Steel Products from Mexico, 58 FR 37352, 37356, we treated the full amount of debt assumed by the GOM in 1986 as a countervailable, non-recurring grant. We used the same approach in Steel Products 2000. *See* Preliminary Results of Steel Products 2000, 64 FR 48796, 48799. No new information or evidence of changed circumstances has been presented thus far in this review to warrant any reconsideration of these findings. Thus, for purposes of these preliminary results, we continue to find that the full amount of debt assumed by the GOM in 1986 is a countervailable, non-recurring grant.

To calculate the countervailable benefit in the POR, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 2.21 percent *ad valorem* for AHMSA.

C. 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructured Debt Owed to the GOM

In 1987, the GOM negotiated an agreement with foreign creditors to restructure the debt of AHMSA. The GOM again negotiated on behalf of AHMSA debt restructuring agreements in 1988 and 1990. Under these agreements, the GOM purchased AHMSA's debts, which were denominated in several foreign currencies, from AHMSA's foreign creditors in exchange for GOM debt. The GOM thereby became the creditor for loans included in these agreements.

During the investigation of Steel Products from Mexico, the GOM claimed that AHMSA's principal repayment obligations remained the same after the debt restructuring. However, in Steel Products from Mexico, we could not verify that none of AHMSA's principal obligations on its debt was forgiven in the 1988 and 1990 debt restructuring agreements. Thus, based upon the facts available to the Department at the time of the investigation, we assumed that the principal had been forgiven in the amount of the discount the GOM had received when purchasing the debt from AHMSA's foreign creditors. Accordingly, we treated the forgiven principal as a non-recurring grant.

In Steel Products 2000, AHMSA claimed that, in June 1996, it repaid its restructured debt in the form of a discounted prepayment to the GOM, thereby extinguishing its financial obligations to the GOM. During verification of the questionnaire response submitted during the administrative review, we learned that, in order to determine the amount of the discounted prepayment that AHMSA was to make in June of 1996, the company and the GOM created amortization tables for each of the foreign currency loans. Next, they converted these payment streams into U.S. dollars and calculated the net present value for each of them. Then, they summed the U.S. dollar denominated net present values to derive the amount of the discounted prepayment to be made in U.S. dollars.

In Steel Products 2000, we determined that AHMSA's discounted prepayment of its 1988 and 1990 restructured debts constituted a countervailable benefit because AHMSA's discounted prepayment resulted in a reduction of the principal owed by AHMSA on this debt. *See* Preliminary Results of Steel Products 2000, 64 FR 48796, 48799. On this basis, we determined in Steel Products 2000 that the difference between the principal outstanding on AHMSA's restructured debt and the amount of its discounted prepayment constituted debt forgiveness on the part of the GOM. In addition, we determined that the benefit was conferred in 1996, the year in which the debt forgiveness took place. *See Id.* Because the debt forgiveness was made to a single enterprise, we determined in Steel Products 2000 that it was specific within the meaning of section 771(5A)(D) of the Act. No new information or evidence of changed circumstances has been presented thus far in this review to warrant any reconsideration of these findings. Thus, for purposes of these preliminary results, we continue to find that the debt forgiveness under this program is a countervailable, non-recurring grant.

Because the principal forgiven was denominated in U.S. dollars and, thus, was unaffected by Mexico's intermittent significant inflation, we used the Department's standard non-recurring grant methodology to allocate the benefit to the POR. We used as our discount rate the weighted-average of AHMSA's fixed-rate, U.S. dollar loans that were received during the year of receipt. We then converted the U.S. dollar denominated benefit into pesos using the average annual peso/U.S. dollar exchange rate for the POR. We then divided the benefit attributable to the POR by AHMSA's total sales during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.56 percent *ad valorem* for AHMSA.

D. IMIS Research and Development Grants

The Instituto Mexicano de Investigaciones Siderurgicas (IMIS), or the Mexican Institute of Steel Research, was a government-owned research and development organization that performed independent and joint venture research with the iron and steel industry.

In Steel Products from Mexico, 58 FR 37352, 37359, the Department found that IMIS's activities with AHMSA fell into two categories: joint venture activities and non-joint venture activities. We determined that IMIS's non-joint venture activities with AHMSA were not countervailable. However, the Department determined that joint venture activities were countervailable, and we treated IMIS's contributions to joint venture activities as non-recurring grants.

During verification in Steel Products from Mexico, AHMSA submitted new information indicating that the company utilized services and generated purchase orders related to its activities with IMIS. In Steel Products from Mexico, we found that AHMSA's use of IMIS services was related to its joint venture activities and, therefore, was countervailable. In addition, because the Department was unable to determine whether the purchase orders were related to AHMSA's joint venture activities, we determined, as facts available, that funds linked to these purchase orders provided countervailable benefits. We used the same approach in Steel Products 2000. *See* Preliminary Results of Steel Products 2000, 64 FR 48796, 48800. No new information or evidence of changed circumstances was presented thus far in this review to warrant any reconsideration of these findings.

During Steel Products 2000, the GOM reported that IMIS was terminated by Government decree on November 4, 1991. However, because the allocated benefits of the non-recurring benefits that AHMSA received under this program extend into the POR, this program continues to confer a countervailable benefit.

To calculate the countervailable benefit in the POR, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.05 percent *ad valorem* for AHMSA.

E. Pre-Privatization Lay-Off Financing from the GOM

During the verification of Steel Products from Mexico, the Department discovered that the GOM loaned AHMSA money to cover the cost of personnel lay-offs which the GOM felt were necessary to make AHMSA more attractive to potential purchasers. The Department learned that this loan did not accrue interest after September 30, 1991. Further, the Department learned that the GOM was allowing the privatized AHMSA to repay this loan with the transfer of AHMSA assets back to the GOM. The assets AHMSA was using to repay the loan were assets which GAN, the purchaser of AHMSA, had not wished to purchase but which the GOM included in the sale package. *See* Steel Products from Mexico, 58 FR 37352, 37360. These assets were characterized as ''unnecessary assets'' or assets not necessary to the production of steel.

Since the information about this financing and its repayment came to light only at verification of the questionnaire responses submitted during the investigation, we were unable to determine whether this loan relieved AHMSA of an obligation it would otherwise have borne with respect to the laid-off workers. Thus, in Steel Products from Mexico, 58 FR 37352, 37361, we calculated the benefit by treating the financing as an interest-free loan.

In Steel Products 2000, AHMSA claimed that it extinguished its pre-privatization lay-off financing debt with the transfer of the ''unnecessary assets.'' In Steel Products 2000, we noted that the record of the investigation indicated that these assets were included by the GOM in the sale of AHMSA despite the fact that GAN, the purchaser of AHMSA, indicated that it did not wish to purchase those assets, and GAN's bid for AHMSA did not include any funds for those assets. *See* Preliminary Results of Steel Products 2000, 64 FR 48796, 48801. We further noted that the record from the investigation indicated that the value of those assets was frozen in November 1991, and that, as of that date, the assets were neither depreciated nor revalued for inflation, both of which are standard accounting practices in Mexico. See Id, at 48801.

Although in Steel Products 2000, we noted that a loan that provides countervailable benefits normally ceases to do so once it has been fully repaid, we determined that the benefit to AHMSA was essentially in the form of a grant. Specifically, in Steel Products 2000, we determined that AHMSA repaid the loan with the transfer of assets which AHMSA's purchasers did not wish to purchase and for which they did not pay. See Preliminary Results of Steel Products from Mexico, 64 FR 48796, 48801. Thus, in Steel Products 2000, we determined that AHMSA's use of these ''unnecessary assets,'' assets which were effectively given to AHMSA free of charge, to repay this loan, constituted debt forgiveness of this loan. Accordingly, we determined that the entire amount of the pre-privatization lay-off financing was a non-recurring grant received in 1994, the time the loan was forgiven. No new information or evidence of changed circumstances was presented thus far in this review to warrant any reconsideration of these findings. Thus, for the purposes of these preliminary results, we continue to find that the entire amount of the pre-privatization lay-off financing constituted a non-recurring grant received in 1994, the time the loan was forgiven.

To calculate the countervailable benefit in the POR, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit from the pre-privatization lay-off financing attributable to the POR, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.74 percent *ad valorem* for AHMSA.

F. Bancomext Export Loans

Banco Nacional de Comercio Exterior, S.N.C. (Bancomext), or the National Bank of Foreign Trade, offers a government program through which short-term financing is provided to producers or trading companies engaged in export activities. These U.S. dollar-denominated loans provide financing for working capital (pre-export loans), and export sales (export loans). AHMSA used this program during the current POR.

In Steel Products from Mexico, 58 FR 37352, 37357, we determined that, since these loans are available only to exporters, Bancomext loans are countervailable to the extent that they are provided at preferential rates. We used the same approach in Steel Products 2000. *See* Preliminary Results of Steel Products 2000, 64 FR 48796, 48801. No new information or evidence of changed circumstances was presented in this review thus far to warrant any reconsideration of these findings.

To determine the benefit conferred under the Bancomext export loan program, we compared the interest rate charged on these loans to a benchmark interest rate. AHMSA submitted company-specific interest rate information on short and long-term loans that it received from commercial banks. We used the short-term loans to calculate a company-specific, weighted-average, U.S. dollar-denominated benchmark interest rate. We compared this company-specific benchmark rate to the interest rates charged on AHMSA's Bancomext loans and found that the interest rates charged were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we preliminarily determine that this program conferred a countervailable benefit during the POR because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan. To derive the benefit in U.S. dollars, we subtracted the amount of interest that would have been paid using the benchmark interest rate from the amount of interest that AHMSA paid under the program.

Because eligibility under this program is contingent upon exports, we divided the benefit by AHMSA's total export sales. Because AHMSA's total export sales were denominated in pesos, we converted the benefit AHMSA received under this program to pesos using the peso/U.S. dollar exchange rate that was outstanding on the date of the interest payments. On this basis, we preliminarily determine the net subsidy for this program to be 0.43 percent *ad valorem* for AHMSA.

G. PITEX Duty-Free Imports for Companies That Export

The Programa de Importacion Temporal Para Producir Productos Para Exportar (PITEX), or the Program for Temporary Importation of Products for Export, was established by a decree

published in the Diario Oficial, a GOM publication equivalent to the **Federal Register**, on September 19, 1985, and amended in the Diario Oficial on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development and the Customs Administration. Manufacturers who meet certain export requirements are eligible for the PITEX program. Those who qualify are exempt from paying import duties and the value added tax (VAT) on temporarily imported goods that will be used in the production of exports. Categories of merchandise eligible for PITEX import duty and VAT exemptions are raw materials, packing materials, fuels and lubricants, perishable materials, machinery, and spare parts.

Machinery imported under the PITEX program may only be imported on a temporary basis. When the items' temporary status has run out, companies must either send the machines back or pay the import duties and VAT taxes that were originally exempted. In Steel Products from Mexico, 58 FR 37352, 37359, we found that machinery imported under the PITEX program could stay in Mexico for five years initially and, after five years, a manufacturer could renew the temporary stay each year. During the verification of the questionnaire responses submitted during Steel Products 2000, we learned that the PITEX program was amended such that companies that imported machinery under the program after 1998 cannot apply for an extension of their import duty exempt status. Rather, the period of temporary status is determined as the time that the machinery and spare parts take to depreciate. After the items are fully depreciated, companies must send them back or pay the import duties and VAT that were originally exempted. However, for machinery imported prior to 1998, we learned at the verification of this review that it can remain in Mexico without liability for import duties and VAT, provided that the company maintains its PITEX status.

In Steel Products from Mexico, 58 FR 37352, 37359, we determined that PITEX benefits were countervailable to the extent that they provide duty exemptions on imports of merchandise not consumed in the production of the exported product. We used the same approach in Steel Products 2000. *See* Preliminary Results of Steel Products 2000, 64 FR 48796,48801. In addition, in Steel Products 2000 we determined that the VAT exemptions on imported inputs that received by AHMSA were not countervailable. *See* Comment 6 of the Decision Memorandum to Steel Products 2000. No new information or evidence of changed circumstances was presented in this review thus far to warrant any reconsideration of these findings.

During the POR AHMSA used the PITEX program to import raw materials, containers and packing materials, fuels, perishable items and lubricants, and various machinery and equipment. Pursuant to section 351.519(a)(1)(ii) of the CVD Regulations, we preliminarily determine that AHMSA's import duty exemptions on spare parts, machinery and other items not consumed in the production of the exported products are countervailable.

To calculate the countervailable benefit in the POR, we determined the amount of import duty that AHMSA would have paid absent the program for each duty exemption that the company received on products not consumed in the production of the exported product. An exemption from payment on import duties is normally considered a recurring benefit and, thus, is expensed in the year of receipt. *See* section 351.524(c)(1) of the CVD Regulations. Because eligibility for this program is contingent upon exports, we divided the benefit over AHMSA's total export sales. On this basis, we preliminarily determine the net subsidy to be 3.65 percent *ad valorem* for AHMSA.

H. Immediate Deduction

The immediate deduction program was established in 1987 and was subject to ongoing reforms until it was repealed in 1998. The immediate deduction mechanism was available only for certain fixed assets that had not been previously used in Mexico. The immediate deduction was not available for pre-operation expenses or for deferred expenses and costs. The GOM's stated purpose for the immediate deduction program was to promote investment by allowing the future deduction of the investments, at their present value, at the time of the investment. The immediate deduction option only applied to property used permanently within Mexico but outside the metropolitan areas of Mexico City, Guadalajara, and Monterrey. With respect to small firms (*i.e.*, firms with a gross income of 7 million pesos or less), the location restriction did not apply. The small firm classification does not apply to AHMSA. Immediate deduction could be taken, at the election of the tax-payer, in the tax year in which the investments in qualifying fixed assets were made, in the year in which these assets were first used, or in the following year. No prior approval by the GOM was required to use the immediate deduction option.

In Steel Products 2000, we determined that the immediate deduction program was specific to a region pursuant to section 771(5A)(D)(iv) of the Act. Under the immediate deduction program, the ''designated geographical region'' comprises all of Mexico except Mexico City, Guadalajara, and Monterrey. *See* Preliminary Results of Steel Products 2000, 64 FR 48796, 48802. In Steel Products 2000, we also determined that pursuant to section 771(5)(D)(ii) of the Act, the immediate deduction program provides a financial contribution to the extent that the GOM is not collecting tax revenue that is otherwise due from AHMSA. *See Id* at 48802. We further determined in Steel Products 2000 that pursuant to section 771(5)(E) of the Act, the immediate deduction program relieves certain companies of a tax burden that they would have otherwise incurred absent the program and, thus, confers a benefit equal to the tax savings. *See Id* at 48802. No new information or evidence of changed circumstances was presented in this review thus far to warrant any reconsideration of these findings.

In Steel Products 2000, we learned that the immediate deduction program does not change the taxable income declared by the company. Rather, the program changes the amount of deductions that a company can take on taxable income. The immediate deduction program is not an accelerated depreciation program, which Mexico does not have. Mexican companies eligible to use immediate deduction basically have two choices. Companies can either depreciate according to the normal depreciation schedule in Mexico, or they can take a one-time immediate deduction on the future depreciation of the item discounted back to its present value. If companies take the immediate deduction, they will not be able to claim all of the deductions that they would otherwise be able to take if they had utilized the standard straight line depreciation method. In other words, only a certain percentage of the value of the assets (as prescribed by law) are used in the immediate deduction calculation. Regarding the net present value calculation used to derive the immediate deduction, it is made at market rates as specified in the program legislation. *See Id* at 48802. In Steel Products 2000, we further learned that losses (for tax purposes) can be carried forward for 10 years and that the immediate deduction figure is part of that loss carried forward. Therefore, the

amount of the immediate deduction can be carried forward for up to 10 years. *See Id* at 48802.

To calculate the benefit under this program, we first had to derive the amount of deductions that AHMSA would have been able to apply towards its accruable income using a straight-line method of depreciation for the assets for which AHMSA claimed an immediate deduction and then compare that amount to the deductions that AHMSA had available under the immediate deduction program.

In accordance with the method used in Steel Products 2000, we determined the amount of depreciation that AHMSA would have claimed using the straight-line method in each year that the firm used the immediate deduction program by applying straight-line depreciation rates, as supplied by the GOM, to the same physical assets that AHMSA was eligible to depreciate under the immediate deduction method. *See* page 7 of the Decision Memorandum to Steel Products 2000.

To arrive at the benefit, we calculated the difference between the amount of immediate deduction claimed during the POR and the amount of deduction that would have been available to AHMSA using normal straight-line depreciation and multiplied this difference by Mexico's corporate income tax rate. Because the tax allowances earned under the immediate deduction program and the tax allowances that would have been earned under the straight-line depreciation method were greater than AHMSA's taxable income in 1997, we have determined that the company would not have had to use any tax allowances carried forward from prior years in order to reduce its taxable income in 1997 to zero.

Thus, when calculating the difference between the amount of immediate deduction claimed in the POR and the amount of deduction that would have been available to AHMSA using normal straight-line depreciation, we have not included any of the losses carried forward from prior years that would have been available for use on the tax return that AHMSA filed during the POR. We then divided the benefit over AHMSA's total sales. On this basis, we preliminarily determine the net subsidy to be 1.53 percent *ad valorem* for AHMSA.

II. Programs Preliminarily Determined To Be Not Used

A. Bancomext Short-Term Import Financing
B. FONEI Long-Term Financing
C. Export Financing Restructuring
D. Bancomext Trade Promotion Services and Technical Support
E. Empresas de Comercio Exterior (ECEX) or Foreign Trade Companies Program
F. Article 15 & 94 Loans
G. Nafinsa Long-Term Loans

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 1998, through December 31, 1998, we preliminarily determine the net subsidy for AHMSA to be 10.72 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties for AHMSA at 10.72 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from AHMSA, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States,* 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. See Certain Steel 2000, 65 FR 13368. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1998, through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

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 days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under

administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: August 30, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–22997 Filed 9–6–00; 8:45 am]

BILLING CODE 3510–DS–U

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 8, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–23108 Filed 9–5–00; 2:42 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 15, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–23109 Filed 9–5–00; 2:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:30 a.m., Friday, September 15, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–23110 Filed 9–5–00; 2:42 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND PLACE: 11 a.m., Friday, September 22, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–23111 Filed 9–5–00; 2:42 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Wednesday, September 27, 2000.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–23112 Filed 9–5–00; 2:42 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, September 29, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–23113 Filed 9–5–00; 2:42 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent (NOI) To Prepare a Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Guadalupe Creek Restoration Project, San Jose, CA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Santa Clara Valley Water District (District) is proposing to establish riparian vegetation and shaded riverine aquatic (SRA) cover vegetation and to improve aquatic habitat in the lower reaches of Guadalupe Creek between Almaden Expressway and Masson Dam. The Guadalupe Creek Restoration Project (GCRP) is intended to offset environmental impacts associated with future District projects.

The intent of the Draft EIR/EIS is to describe and evaluate potential effects of these actions on environmental resources in the project area. The integrated EIR/EIS will include sufficient information for compliance with both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), as

well as opportunities for public participation in the planning and decision-making process. The lead agencies are the District and the U.S. Army Corps of Engineers (Corps).

DATES: A public scoping period will begin on September 8, 2000 and end on October 7, 2000. Please submit comments by October 9, 2000.

ADDRESSES: Comments should be submitted to Al Gurevich, Project Manager, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118. Electronic mail: AlGurevi@scvwd.dst.ca.us.

FOR FURTHER INFORMATION CONTACT:

1. Al Gurevich, Project Manager, Santa Clara Valley Water District, (408) 265–2607, or electronic mail: AlGurevi@scvwd.dst.ca.us.

2. Mr. Brad Hubbard, (916) 557–7054, or electronic mail: bhubbard@spk.usace.army.mil.

SUPPLEMENTARY INFORMATION:

Background: The district is proposing to establish approximately 6 acres of riparian vegetation and approximately 13,000 linear feet of SRA cover vegetation in order to improve aquatic habitat in the lower reaches of Guadalupe Creek between Almaden Expressway and Masson Dam. The GCRP in intended to offset environmental impacts associated with future District projects. Approximately 5,915 linear feet of the SRA cover vegetation planted along Guadalupe Creek under the proposed action could serve as offsite mitigation for the Guadalupe River Project in downtown San Jose (Downtown Project), if the Downtown Project is implemented. However, the GCRP is independent of the Downtown Project and will be implemented even if the downtown Project is not realized. This EIR/EIS intends to incorporate the Guadalupe River Project General Re-Evaluation Report/Environmental Impact Report-Environmental Impact Statement (GRR/EIR–SEIS) by reference to reduce duplication and paperwork associated with the GCRP EIR/EIS.

Study Area Location: Guadalupe Creek is located in the southwestern portion of the City of San Jose in San Jose in Santa Clara County. The project site is bordered upstream by Masson Dam, downstream by Almaden Expressway, to the north by residential development and the Los Capitancillos percolation pond system, and to the south by Coleman Road.

Document Scope: The environmental document to support the GCRP was originally scoped as an Initial Study/environmental Assessment (IS/EA), prepared in compliance with NEPA and CEQA. Analyses performed during the development of the draft IS/EA determined that the project may have the potential to result in a significant adverse effect on the environment. Therefore, the lead agencies have decided to prepare an EIR/EIS for the GCRP. The purpose of the integrated EIR/EIS is to develop and assess alternative plans for the GCRP that will avoid adverse effects on environmental resources. The EIR/EIS will address new information pertaining to mercury contamination within the project site, as well as alternative plans for the GCRP, and the potential effects and benefits of the GCRP. Furthermore, the document will explain the decision(s) that must be made, and identify the decision-makers in this combined CEQA/NEPA analysis.

Development and Evaluation of Alternative Plans for Project Modifications: The following primary objectives were developed by the project team, using input from public and agency scoping meetings. These objectives were used to develop the proposed action and alternatives.

1. Meet the measurable mitigation objectives defined in the Mitigation and Monitoring Plan (MMP) for the Guadalupe River Project, downtown San Jose, California, including requirements for instream cover, overhead cover, water temperature, stream stability, and shade.

2. Create riparian habitat, including SRA cover vegetation, that could provide mitigation credit for future District projects.

3. Restore physical processes and ecological functions of Guadalupe Creek along the project reach.

4. Protect existing infrastructure in the project area.

5. Maintain existing flood conveyance capacity.

6. Minimize impacts on existing resources.

In addition to the primary objectives, the project also has secondary objectives that may be achieved as part of the project, if they directly or indirectly support the primary objectives. The GCRP's secondary objectives are:

1. To enhance and restore habitat for special-status fish and wildlife species, as consistent with other project objectives;

2. To improve recharge of groundwater aquifers;

3. To minimize long-term operations and maintenance requirements;

4. To minimize impacts on existing water management operations;

5. To strive to meet regional planning objectives as outlined in relevant regional planning documents; and

6. Not to preclude future recreation uses that are compatible with other project objectives.

Evaluation Criteria and Range of Alternatives: Development of the alternatives was initiated with the goal of considering all feasible measures to achieve the planning objectives. The preliminary alternatives include: (1) Reduce floodplain excavation, (2) raise the bed of the channel, (3) stabilize the channel, and (4) the no-action/no-project alternative. Additional alternatives may be developed as a result of public comments received during the 30-day scoping period and further consultation with federal, state, and local regulatory agencies. Any additional alternatives that are developed will be included for evaluation in the EIR/EIS.

Alternatives Considered:

Proposed Action: The project site has been divided into four reaches. The following paragraphs describe proposed activities within each of the four reaches. In Reach 1, existing bank and terrace surfaces, including instream gravel bars, could be planted. Minimal physical modifications could be made to the channel and floodplain. Portions of the channel could be shifted to historic channel alignments creating surfaces for planting along Coleman Road. Instream structures (boulders and woody material) could be installed. Biotechnical structures could also be added along the north bank of the creek to increase channel complexity, narrow the low-flow channel, and increase hydraulic diversity while maintaining the low sinuosity of the existing channel.

In Reach 2, the existing planform of the creek could generally be maintained. Minor modifications could be made to lower floodplains in most areas, except downstream from the Meridian Avenue Bridge, where more extensive excavation could occur. Instream structures and bank stabilization structures could also be installed in this reach.

In Reach 3, project features could focus on modifying the existing channel and floodplain to reduce entrenchment, providing planting surfaces for riparian vegetation, and increasing hydraulic diversity in the channel. Instream structures could be added to stabilize the bed and banks, and woody material could be placed on bar surfaces to stabilize the bars and provide additional planting sites.

Because of the vegetation and habitat that already exist in the downstream segment of Reach 4, minimal modifications could be made to the channel in this area. However,

downstream from Percolation Pond 1, approximately 350 feet of the existing maintenance road could be shifted to the north to create a wider bench adjacent to the channel. This could increase flood conveyance capacity and protect the road. In the upstream segment of Reach 4 the floodplain could be expanded.

Soil and sediment spoils excavated during project construction could be temporarily stockpiled onsite and analyzed to ensure that potentially contaminated materials (*e.g.,* soils containing elevated mercury concentrations) are handled, transported, and disposed of in accordance with applicable state regulations. Spoils with mercury levels below state hazardous materials thresholds may be reused as fill onsite; guidelines regarding reuse of spoils will be developed in collaboration with state and federal regulatory and resource agencies.

Alternative 1. Reduced Floodplain Excavation: This alternative focuses on modifying the channel and adjacent floodplain surfaces to create SRA cover vegetation and instream cover. The extent of floodplain excavation (*i.e.,* the limit of grading) on the project site would be reduced from the proposed action. Physical modifications would include altering channel and floodplain surfaces (*e.g.,* channel relocation, floodplain development, and bank stabilization). Existing and created channel banks and floodplain surfaces would be planted and instream structures would be installed.

The intent of reducing the extent of excavation from that defined in the proposed action is to address the uncertainty associated with the amount of mercury-contaminated soil and sediment on the project site and the degree of mercury contamination. In addition, reducing the amount of excavation would reduce the extent of mercury-contaminated spoils hauled offsite. Excavation of channel banks and floodplains would still occur to create conditions conducive to plant establishment.

Alternative 2. Raising the Bed of the Channel: This alternative focuses on modifying channel and floodplain surfaces to create SRA cover vegetation and instream cover. Like Alternative 1, this alternative would include relocating portions of the channel, creating floodplain surfaces, stabilizing eroding banks, and installing instream structures. An additional element of Alternative 2 includes raising the bed of the channel to reverse the channel incision that has apparently occurred since the late 1800s. To raise the bed of the channel, existing riparian vegetation, SRA cover vegetation, and instream cover would need to be removed in some areas of Reach 4. This alternative would likely require additional excavation on floodplain surfaces to maintain flood capacity and would likely increase the frequency of flooding on existing lands adjacent to the channel, including the Los Capitancillos site.

The intent of raising the bed of the channel is to reduce the extent of excavation of mercury-contaminated soils, reduce the amount of mercury-contaminated spoils hauled offsite, and reduce the tendency for bank erosion (and consequently reduce the transport of mercury-laden sediments downstream). In addition, this alternative is intended to restore the existing bed elevation to historical conditions.

Alternative 3. Channel Stabilization: This alternative emphasizes stabilizing the channel to support SRA cover vegetation and create instream cover. Elements of this alternative include installing bed and bank biotechnical structures with small amounts of rip-rap. These elements would maintain and control channel form, control bank erosion and bed incision, provide SRA cover planting sites, and create instream cover. Channel modifications would control hydraulic conditions by limiting pool depth, areas of slow-moving water, and channel width. The extent of channel realignments on the project site would be reduced in this alternative relative to those described in Alternatives 1 and 2 and the Proposed Action. The intent of stabilizing the channel is to reduce the tendency for bank and bed erosion and thereby reduce the transport of mercury-laden sediments downstream.

Alternative 4. No-Action/No-Project Alternative: Under the no-action/no-project alternative, existing conditions and operations in the project reach would continue unchanged.

Possible Environmental Effects: Based on the available information collected and analyzed to date, significant effects will be avoided or minimized by the project design and by implementation of mitigation measures that will be proposed for the project. The resources for which potential adverse effects were identified include the following:

1. Air Quality. (1) Construction of the proposed action (or the alternatives) would generate increased air emissions for all criteria pollutants. In addition, sampling and analysis conducted for the proposed action have shown that soil and sediments along Guadalupe Creek contain elevated levels of mercury.

(2) Dust emissions could be generated by excavation and grading of soils along Guadalupe Creek, and by stockpiling and offhauling of excavated soil and sediments.

2. Biology: (1) Construction activities associated with the proposed action (or the alternatives) could result in the removal of approximately 1.1 acres of existing low-quality riparian scrub and forest habitat. (2) Although no state or federally listed wildlife species have been observed within the project area, potential habitat for California red-legged frog and southwestern pond turtle does exist onsite, and construction activities associated with the proposed action may adversely affect these species. Furthermore, construction activities associated with the proposed action may adversely affect all life stages of anadromous fish (steelhead and chinook salmon). (3) The proposed action was designed to avoid impacts on existing mature trees to the extent possible. However, mature trees may be removed or adversely affected by construction activities. (4) The project could result in the temporary loss of less than 1 acre of jurisdictional riverine wetland that is scattered in small patches along the edge of the low-flow channel, on benches, and on the edges of gravel bars.

3. Cultural Resources. All ground-disturbing project activities, such as excavation, planting, installation of instream structures, bank stabilization, channel modification, and floodplain alteration, have the potential to directly affect unknown cultural resources that may be covered by soil deposits or vegetation and thus could not be identified during previous field surveys or test excavations.

4. Hazardous Materials. (1) Construction activities associated with the proposed action (or the alternatives) may result in the exposure of soils with higher mercury concentrations than those found at the pre-excavation surface level. (2) Because historic and existing land use in the project area has been primarily agricultural and/or residential, it is unlikely that hazardous materials other than mercury-contaminated soils, sediments, and water could be found in the project area. However, during construction, subsurface hazards such as abandoned underground storage tanks and piping and contaminated material from undocumented dumping and landfilling may be encountered. (3) The project area is located approximately 0.25–0.3 miles from three schools: Pioneer High School, Vineland School, and Cinnabar School. (4) No hazardous emissions will be generated by the proposed action; however, excavation and the stockpiling, sampling, and disposal of excavated materials could require handling of mercury-contaminated soil and sediments.

5. Hydrology and Water Quality. (1) Site preparation and construction activities, including excavation and grading, could result in substantial soil disturbance and could lead to temporary discharges of soil and sediment directly into stormwater runoff or the stream channel. Construction activities also have the potential to discharge hazardous substances into water, such as fuel, oils, greases, and other petroleum products that may be released from machinery. (2) Implementation of the

proposed action will require that Guadalupe Creek be dewatered during construction. Groundwater levels in the project area are affected by streamflow because the stream is a key recharge point for the aquifer. (3) The proposed action could alter hydraulic conditions in the project reach of the Guadalupe Creek, changing patterns of erosion and sediment deposition. (4) The proposed action could increase the potential for the formation of methyl mercury in the project reach.

6. Socioeconomics. Recent health advisories have indicated that human consumption of fish caught in the Guadalupe River watershed may pose a hazard to human health.

7. Traffic. (1) The proposed action could generate approximately 10 commute trips by construction/restoration workers during both the a.m. and p.m. peak commute hours. Additionally, between 292 and 350 one-way truck trips per day could be required to haul excavated material to and from the site. As much as 10% or 29–35 of the heavy truck trips could occur during the a.m. and p.m. peak commute hours. Implementation of the proposed action could temporarily add between 312 and 370 total daily vehicle and truck trips to local and regional roadways. (2) Restoration site access points involving heavy trucks (Camden Avenue and Almaden Expressway) may create roadway operation safety hazards.

Proposed Scoping Process: 1. This NOI initiates a 30-day period during which the District and the Corps will take comments on the issues to be addressed in the Draft EIR/EIS and the environmental issues related to the proposed action.

2. Public comment is encouraged on the proposal to prepare the Draft EIR/EIS and on the scope of issues to be included. Please provide comments within 30 days of publication of this notice to Mr. Al Gurevich at the Santa Clara Valley Water District (see **ADDRESS** above).

3. The District and the Corps will continue to consult local, state, and federal agencies with regulatory or implementation responsibility for, or expertise with, the resources in the area of investigation. These include, but are not limited to, the California Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and San Francisco Bay Regional Water Quality Control Board.

Previous Scoping Meetings: The District held two public scoping meetings during the IS/EA process to introduce the public and interested organizations to the project and to gather feedback. The meetings were held on February 17 and April 11, 2000. Public comments received at these meetings were recorded in scoping reports by the District.

Availability: 1. The Draft EIR/EIS is expected to be available for a public review and comment period beginning in November 2000.

2. The Final EIR/EIS is expected to be available for public review beginning in January 2001.

John A. Hall,

Army Federal Register Liaison Officer.

[FR Doc. 00–22954 Filed 9–6–00; 8:45 am]

BILLING CODE 3710–EZ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 6, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 31, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Performance Reporting Forms for National Institute on Disability and Rehabilitation Research (NIDRR) Grantees (Rehabilitation Engineering Research Centers (RERCs), Rehabilitation Research Training Centers (RRTCs), Disability and Business Technical Assistance Centers (DBTACs), Disability and Rehabilitation Research Projects (DRRPs), Model Systems, Dissemination & Utilization Projects).

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 193.

Burden Hours: 3,088.

Abstract: This data collection will be conducted annually to obtain program and performance information from NIDRR grantees on their project activities. The information collected will assist federal NIDRR staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an internet form.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–22867 Filed 9–6–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice of computer matching between the U.S. Department of Education and the Administration for Children and Families (ACF) Department of Health and Human Services (HHS) Office of Child Support Enforcement (OCSE).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988 and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, this document gives notice of a computer matching program between the U.S. Department of Education (ED), and the Administration for Children and Families/Department of Health and Human Services/Office of Child Support Enforcement (OCSE).

Background

The Data Integrity Boards of OCSE and ED will approve a new computer matching agreement between the two agencies, effective as indicated in paragraph six of this notice. In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, we provide the following information:

1. *Participating Agencies.*

U.S. Department of Education (ED), recipient agency.

Administration for Children and Families/Department of Health and Human Services/Office of Child Support Enforcement (OCSE), source agency.

2. *Purpose of Match.*

The purpose of the match is to obtain address information on individuals who owe funds to the Federal Government under defaulted student loans or grant overpayments. ED will use this information to initiate independent collection of these debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. For individuals whose annual salary exceeds $16,000, these collection efforts will include requests by ED of the employing entity to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

3. *Authority for Conducting the Match.*

The legal authority for conducting this match is contained in the Social Security Act (42 U.S.C. 653(j)) as amended (Pub.L. 106–113).

4. *Records and Individuals Covered by the Match.*

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

ED: 18–11–07 Student Financial Assistance Collection Files.

OCSE: 09–90–0074 the National Directory of New Hires (NDNH).

5. *Description of computer matching program.*

ED administers student financial assistance programs under the Higher Education Act of 1965 (HEA). OCSE maintains a database that consists of three separate components. The first component, the W4 table, contains all newly hired employees as reported from the State Directory of New Hires (SDNH) and directly from federal agencies. Component two, the QW table, contains quarterly wage information on individual employees, as received from federal agencies and states. The final component, the UI table, contains, unemployment insurance information of individuals who have received, or made application for, unemployment benefits, as reported by State Employment Security Agency or other State agencies responsible for the implementation of the Unemployment Insurance Program.

This matching agreement between ED and OCSE will assist ED in locating and collecting funds from delinquent debtors. The identifying elements that the two agencies will match are as follows:

ED: Names and SSNs of delinquent debtors.

OCSE: Names and SSNs of all newly hired employees and individuals who have received, or made application for, unemployment benefits.

OCSE will perform the computer match using all nine digits of the social security number (SSN) of the ED file against the OCSE computer database. OCSE will produce a file containing the name, SSN, current home address, employer and employer's address for each individual identified, based on the match. The file of matches will be returned to ED.

ED is responsible for verifying and determining that the data on the NDNH reply file is consistent with ED's source file and for resolving any discrepancies or inconsistencies on an individual basis. ED will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts, as a result of the match.

6. *Inclusive Dates of the Matching Program.*

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB (or later if OMB objects to some or all of the agreement), or October 10, 2000, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

7. *Address for Receipt of Comments or Inquiries.*

If you wish to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and OCSE, contact Marian Currie, U.S. Department of Education, 400 Maryland Avenue, SW., room 5614, ROB–3, Washington, DC 20202–5400, telephone: (202) 708–4766; or, as a secondary contact: Adara L. Walton, 400 Maryland Avenue, SW., room 5614, ROB–3, Washington, DC 20202–5420, telephone: (202) 260–1852. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

During and after the comment period, you may inspect all public comments about this matching program in room 5614, Regional Office Building 3, Seventh and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public record for this notice. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

You may also view this document in text or PDF at the following site: http://ifap.ed.gov/csb_html/fedlreg.htm.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: August 31, 2000.

Greg Woods,

Chief Operating Officer, Student Financial Assistance.

[FR Doc. 00–22952 Filed 9–6–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Department of Energy Draft Depleted Uranium Hexafluoride Materials Use Roadmap

AGENCY: Office of Nuclear Energy, Science and Technology, Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) has issued a draft Roadmap that it intends to use to guide any future research and development (R&D) activities for the materials associated with its depleted uranium hexafluoride (DUF_6) inventory and certain other depleted uranium. On August 2, 1999, DOE issued a Record of Decision (ROD) for Long-Term Management and Use of Depleted Uranium Hexafluoride. This ROD indicated that DOE has decided to promptly convert the DUF_6 inventory to a more chemically stable form. DOE is committed to conducting a program to effect this conversion as rapidly as is practical. In addition, DOE plans a parallel effort to conduct appropriate R&D to assure the most effective disposition of the converted depleted uranium product. This activity will include appropriate investments in the exploration of potential beneficial use of the DU and other materials resulting from the conversion of the DUF_6, *i.e.,* fluorine and empty carbon steel storage cylinders, to achieve cost savings to the Government, contrasted to simply disposing of the materials. However, the Government will also carry out research activities necessary to assure the direct disposal of these materials if cost-effective and realistic beneficial uses are not found.

The Roadmap characterizes and analyzes paths for the eventual disposition of these materials, identifies the barriers that exist for those paths, and proposes research, development, and other activities in order to eliminate such barriers. The Roadmap also addresses other surplus depleted uranium, primarily in the form of DU trioxide and DU tetrafluoride.

DOE invites all interested parties to review the draft Roadmap and to submit comments. The draft Depleted Uranium Hexafluoride Materials Use Roadmap is available for downloading via the Internet at *www.nuclear.gov.*

DATES: Comments on the draft Roadmap will be accepted during a public comment period that ends on October 20, 2000. DOE will consider comments received after this date to the extent practicable.

ADDRESSES: Written comments, requests for further information, or requests for copies of the document may be submitted over the Internet by sending them to *DUF6.comments@hq.doe.gov.* Please annotate the message subject as dealing with the DUF_6 Materials Use Roadmap. Anyone without Internet access can request a hard copy of the Roadmap and/or submit comments by sending a fax with name and address to (301) 903–4905 or sending a card or letter to the Depleted Uranium Hexafluoride Management Program (NE–30), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Price, U.S. Department of Energy, Office of Nuclear Energy, Science and Technology, 19901 Germantown Road, Germantown, MD 20874. Telephone 301/903–9527, Facsimile 301/903–4905.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1999, DOE issued the Final Plan for the Conversion of Depleted Uranium Hexafluoride as required by Public Law 105–204. In that final plan, DOE committed to develop a Depleted Uranium Hexafluoride Materials Use Roadmap in order to establish a corporate plan for the application of DUF_6 and DUF_6-derived materials that will focus on potential Governmental uses of DUF_6 but will also incorporate limited analysis of established uses of DUF_6-derived materials in the private sector. This commitment supports the preferred alternative presented in the Final Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride, DOE/EIS–0269, namely, to begin conversion of the DUF_6 inventory as soon as possible, either to uranium oxide, uranium metal, or a combination of both, while allowing for future uses of as much of this inventory as possible.

Issued in Washington, DC, August 31, 2000.

William D. Magwood IV,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 00–22964 Filed 9–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–507–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 2000.

Take notice that on August 25, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, to be effective September 25, 2000.

First Revised Sheet No. 101A

ANR states that this filing is made in compliance with the Commission's Order dated July 26, 2000 in the captioned proceeding.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22932 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–374–000]

Columbia Gas Transmission Corporation; Notice of Technical Conference

August 31, 2000.

In the Commission's order issued on August 23, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, September 14, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22937 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–395–003]

ISO New England Inc.; Notice of Filing

August 31, 2000.

Take notice that on August 3, 2000, ISO New England Inc. filed its quarterly Index of Customers for its Tariff for Transmission Dispatch and Power Administration Services in accordance with the procedure specified in its filing letter in Docket No. ER00–395–000 dated November 1, 1999, and approved by Commission order issued December 30, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22930 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP–505–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 2000.

Take notice that on August 25, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing.

Kern River states that the purpose of this filing is: (1) To conform Kern River's tariff to the Commission's revised regulations pursuant to Order Nos. 637, 637–A and 637–B as those Orders apply to (i) the temporary removal of the rate ceiling for short-term capacity release transactions and (ii) modifications to the regulatory right of first refusal; and; (2) to add language setting forth Kern River's policy pertaining to partial capacity turnbacks resulting from a shipper's election to exercise a right of first refusal for a portion of its capacity, to permanently release a portion of its capacity, or to extend the contract term for a portion of its capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22934 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–492–000]

Mid Louisiana Gas Company; Notice of Tariff Filing

August 31, 2000

Take notice that on August 16, 2000, Mid Louisiana Gas Company filed revised tariff sheets to eliminate tariff provisions that are inconsistent with the Commission's decision in Order Nos. 637 and 637–A to remove the rate ceiling for short term capacity release transactions. As mandated by such orders, the revised tariff sheets are to be effective as of March 26, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

[1] 92 FERC 61,173 (2000).

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22935 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–508–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

August 31, 2000.

Take notice that on August 25, 2000, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 110. Midwestern requests an effective date of September 26, 2000.

Midwestern states that Sheet No. 110 is being filed to comply with the Commission's July 26, 2000 ''Order Authorizing Merger'' in Docket No. EC00–73. El Paso Energy Corporation and The Coastal Corporation, 92 FERC (61,076 (2000) (hereinafter, the July 26th Order). In the July 26th Order, the Commission approved the application of El Paso Energy Corporation and The Coastal Corporation requesting Commission approval of the proposed merger between the two companies. Midwestern further states that Sheet No. 110 effectuates that commitment of the respective companies to file tariff sheets, for ANR Pipeline Company and Midwestern, committing that future pipeline expansion capacity will be offered to all shippers on a non-discriminatory basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22931 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–399–000]

National Fuel Gas Supply Corporation; Notice of Technical Conference

August 31, 2000.

On July 17, 2000, National Fuel Gas Supply Corporation (National Fuel submitted a filing to comply with Order No. 637. Several parties have protested various aspects of National Fuel's filing.

Take notice that a technical conference to discuss the various issues raised by National Fuel's filing will be held on Tuesday, September 26, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Parties protesting aspects of National Fuel's filing should be prepared to discuss alternatives.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22936 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–506–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 31, 2000.

Take notice that on August 25, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective as indicated:

To Be Effective March 27, 2000

Fourteenth Revised Sheet No. 5–A
First Revised Sheet No. 5–B
Tenth Revised Sheet No. 7
Ninth Revised Sheet No. 8.1
Fourth Revised Sheet No. 266
Fourth Revised Sheet No. 267

To Be Effective September 25, 2000

Fifth Revised Sheet No. 23
Eighth Revised Sheet No. 24
Fifth Revised Sheet No. 259
First Revised Sheet No. 259–A
Fifth Revised Sheet No. 268
First Revised Sheet No. 278–B
First Revised Sheet No. 278–C

Northwest states that the purpose of this filing is: (1) To conform Northwest's tariff to the Commission's revised regulations pursuant to Order Nos. 637, 637–A and 637–B as those Orders apply to (i) the temporary removal of the rate ceiling for short-term capacity release transactions and (ii) modifications to the regulatory right of first refusal; and; (2) to add language setting forth Northwest's policy pertaining to partial capacity turnbacks resulting from a shipper's election to exercise a right of first refusal for a portion of its capacity, to permanently release a portion of its capacity, or to extend the contract term for a portion of its capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22933 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–9–000]

PG&E Texas Pipeline L.P.; Notice of Settlement Conference

August 31, 2000.

Take notice that a settlement conference will be held on Thursday, September 7, 2000, at 10 a.m., in a room

to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22938 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR00–10–000; and OR96–2–000]

Refinery Holding Company, L.P., Complainant, v. SFPP, L.P., Respondent; Notice of Filing

August 31, 2000.

Take notice that on August 29, 2000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343.1(a)), Refinery Holding Company, L.P. (RHC), tendered for filing a complaint in this proceeding. RHC alleges that SFPP, L.P. (SFPP) has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App § 1 *et seq.* by charging unjust and unreasonable rates for the transportation in interstate commerce of petroleum products in its East Line from El Paso, Texas to points in New Mexico and Arizona.

RHC requests that the Commission: (1) Examine SFPP's rates and charges for its jurisdictional interstate East Line service and declare that such rates and charges are unjust and unreasonable; (2) order refunds and reparations to RHC, including appropriate interest thereon, for the applicable refund and reparations periods to the extent the Commission finds that such rates and charges are unlawful; (3) determine just, reasonable, and nondiscriminatory rates for SFPP's jurisdictional interstate East Line service; (4) award RHC reasonable attorneys' fees and costs and reasonable experts' fees and costs; and (5) order such other and further relief as may be appropriate.

RHC states that it has served the complaint on SFPP. Pursuant to Rule 206(f) of the Commission's Rules of Practice and Procedure, answers to this complaint are due on September 18, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 8, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22858 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2717–001, et al.]

New England Power Pool, et al.; Electric Rate and Corporate Regulation Filings

August 29, 2000.

Take notice that the following filings have been made with the Commission:

1. New England Power Pool

[Docket No. ER00–2717–001]

Take notice that on August 24, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing notification that the effective date of membership in NEPOOL of Quinnipiaic Energy LLC was August 17, 2000.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Western Area Power Administration

[Docket No. EF00–5161–000]

Take notice that on August 23, 2000, the Deputy Secretary of the U.S. Department of Energy, by Rate Order No. WAPA–93, did confirm and approve on an interim basis, to be effective on October 1, 2000, the Western Area Power Administration's (Western) Rate Schedule SNF–5 for the Washoe Project, Stampede Division (Stampede).

The rates in Rate Schedule SNF–5 will be in effect pending the Federal Energy Regulatory Commission's (Commission) approval of these rates or of substitute rates on a final basis through September 30, 2005.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. California Electricity Oversight Board Complainant v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; All Scheduling Coordinators Acting On Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation Respondents

[Docket No. EL00–104–000]

Take notice that on August 29, 2000, the California Electricity Oversight Board (California Board), tendered for filing a Complaint alleging that California's wholesale markets as administered by the California Independent System Operator Corporation and the California Power Exchange Corporation are not workably competitive and that wholesale rates are not just and reasonable. The California Board urges the Commission to take such action to ensure the California's wholesale rates are just and reasonable and to maintain bid caps of no more than $250 per MW of ancillary services, $250 per MWh for energy and $100 per MW for replacement reserve capacity until demonstrable evidence exists that California's wholesale market are workably competitive and that wholesale rates are just and reasonable.

Comment date: September 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Reliant Energy Mid-Atlantic Power Holdings, L.L.C.

[Docket No EG00–248–000]

Take notice that on August 23, 2000, Reliant Energy Mid-Atlantic Power Holdings, L.L.C. (Reliant Energy Mid-Atlantic) tendered for filing information with respect to a change in facts relative to its status as exempt wholesale generator and a demonstration that such change does not affect such status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended (PUHCA), 15 U.S.C. § 79z–5a(a)(1) (1994) and Section 365.8 of the Commission's regulations, 18 CFR 365.8.

Comment date: September 19, 2000, in accordance with Standard Paragraph

E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Reliant Energy New Jersey Holdings, L.L.C.

[Docket No EG00–249–000]

Take notice that on August 23, 2000, Reliant Energy New Jersey Holdings, L.L.C. (Reliant Energy New Jersey) tendered for filing information with respect to a change in facts relative to its status as an exempt wholesale generator and a demonstration that such change does not affect such status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended (PUHCA), 15 U.S.C. § 79z–5a(a)(1) (1994) and Section 365.8 of the Commission's regulations, 18 CFR 365.8.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Reliant Energy Maryland Holdings, L.L.C.

[Docket No EG00–250–000]

Take notice that on August 23, 2000, Reliant Energy Maryland Holdings, L.L.C. (Reliant Energy Maryland) tendered for filing information with respect to a change in facts relative to its status as exempt wholesale generator status and a demonstration that such change does not affect such status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 as amended (PUHCA), 15 U.S.C. § 79z–5a(a)(1) (1994) and Section 365.8 of the Commission's regulations, 18 CFR 365.8.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. New England Power Pool

[Docket No. ER00–3339–001]

Take notice that on August 24, 2000, the New England Power Pool (NEPOOL), Participants Committee tendered for filing a correction to its filing dated July 31, 2000 in the Docket No. ER00–3339.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Western Resources, Inc.

[Docket No. ER00–3189–001]

Take notice that on August 24, 2000, Western Resources, Inc. (WR), tendered for filing an amendment to its July 19, 2000 filing in this proceeding. The amendment includes (i) an Order No. 614 compliant version of the Letter Agreement between WR, Missouri Joint Municipal Electric Utility Commission (MJMEUC), and Associated Electric Cooperative, Inc. (AECI), (ii) an Order No. 614 compliant version of the Control Area Services Agreement between WR and MJMEUC; and (iii) a statement of intent to refund the time value of money pursuant to § 35.19(a) of the Federal Energy Regulatory Commission's Regulations.

Copies of the filing were served upon MJMEUC.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket Nos. ER95–112–010 and ER96–586–005]

Take notice that on August 24, 2000, Entergy Services, Inc., tendered for filing replacement clean copies of its June 19, 2000, compliance filing in Docket Nos. ER95–112 and ER96–586 proceedings.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Columbia Falls Aluminum Company, PPL Montana LLC, Alcoa, Inc. and Kaiser Aluminum & Chemical Corporation

[Docket No. ER00–3210–001]

Take notice that on August 23, 2000, Columbia Falls Aluminum Company, PPL Montana, LLC, Alcoa, Inc., and Kaiser Aluminum & Chemical Corporation, tendered for filing an amendment to its July 19, 2000 filing in Docket No. ER00–3210.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER00–3389–001]

Take notice that on August 24, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a complete Participating Generator Agreement (PGA) between the ISO and San Joaquin Cogen Limited (Service Agreement No. 283). The filing is meant to correct a filing made on August 10, 2000, in which the ISO submitted a revised Schedule 1, Section 1 to the PGA but failed to include the PGA itself in the filing. No changes have been made to the PGA originally filed on January 12, 2000, apart from the revision to Schedule 1, Section 1.

The ISO has requested waiver of the 60-day prior notice requirement to allow the revised Schedule 1, Section 1 to become effective on August 24, 2000.

The ISO states that copies of this filing have been served upon all parties in the above-referenced docket.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER00–3506–000]

Take notice that on August 23, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing signature pages to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) for HIS Power & Water, L.L.C. (HIS Power), It's Electric & Gas, L.L.C., (It's Electric & Gas), and The New Power Company (New Power), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including HIS Power, It's Electric & Gas, New Power, and each of the state electric utility regulatory commissions within the PJM Control Area.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Pool

[Docket No. ER00–3507–000]

Take notice that on August 24, 2000, the New England Power Pool (NEPOOL), Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include Edison Mission Marketing & Trading, Inc. (EMMT) and to terminate the membership of Citizens Power Sales, LLC (Citizens).

NEPOOL requests an effective date for the commencement of EMMT's participation in and Citizens' termination from NEPOOL as of the date of the closing of the merger of Citizens with and into EMMT.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. American Electric Power Service Corporation

[Docket No. ER00–3517–000]

Take notice that on August 24, 2000, American Electric Power Service

Corporation (AEP), tendered for filing changes to the AEP open access transmission service tariff (OATT) in the above-referenced proceeding.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of New Mexico

[Docket No. ER00–3508–000]

Take notice that on August 24, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff, with PacifiCorp (dated March 19, 1999). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to PacifiCorp and to the New Mexico Public Regulation Commission.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Company

[Docket No. ER00–3509–000]

Take notice that on August 24, 2000, Commonwealth Edison Company (ComEd), tendered for filing an Interconnection Agreement with LSP-Nelson Energy, LLC.

ComEd requests an effective date of August 25, 2000 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on LSP-Nelson and the Illinois Commerce Commission.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool

[Docket No. ER00–3510–000]

Take notice that on August 24, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for acceptance materials to permit NEPOOL to expand its membership to include CMS Marketing Services and Trading CMS).

The Participants Committee requests an effective date of September 1, 2000 for commencement of participation in NEPOOL by CMS.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Carolina Power & Light Company

[Docket No. ER00–3511–000]

Take notice that on August 24, 2000, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service with Florida Power Corporation and Public Service Electric and Gas Company. Service to these Eligible Customers will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of August 3, 2000 for the Agreement with Florida Power and an effective date of August 7, 2000 for the Agreement with Public Service.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. LSP Energy Limited Partnership

[Docket No. ER00–3512–000]

Take notice that on August 24, 2000, LSP Energy Limited Partnership (LSP Energy), tendered for filing under Section 205 of the Federal Power Act two short-term umbrella service agreements between LSP Energy and Virginia Electric and Power Company, and one short-term umbrella service agreement between LSP Energy and Aquila Energy Marketing Corporation. The umbrella service agreements provide for sales of test energy under LSP Energy's market-based rate schedule.

LSP Energy requests an effective date for the umbrella service agreements of July 26, 2000.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. PJM Interconnection, L.L.C.

[Docket No. ER00–3513–000]

Take notice that on August 24, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to Attachment K (PJM Interchange Energy Market) of the PJM Open Access Transmission Tariff (PJM Tariff) and to Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement), to clarify that generation facilities located in the PJM control area may obtain ''Station Power,'' *i.e.,* energy consumed by a generation facility, or by other equipment or facilities located at the site of a generation facility, from the PJM Interchange Energy Market.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. FirstEnergy System

[Docket No. ER00-3514–000]

Take notice that on August 24, 2000, FirstEnergy System tendered a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Alliance Energy Services Partnership, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is August 15, 2000 for the above mentioned Service Agreement in this filing.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. LSP Energy Limited Partnership

[Docket No. ER00–3515–000]

Take notice that on August 24, 2000, LSP Energy Limited Partnership (LSP Energy), tendered for filing under Section 205 of the Federal Power Act three short-term umbrella service agreements between LSP Energy and Virginia Electric and Power Company, and one short-term umbrella service agreement between LSP Energy and Aquila Energy Marketing Corporation. The umbrella service agreements provide for sales of test energy under LSP Energy's market-based rate schedule.

LSP Energy requests an effective date for the umbrella service agreements coincident with the commencement of service thereunder.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. FirstEnergy System

[Docket No. ER00–3516–000]

Take notice that on August 24, 2000, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Alliance Energy Services Partnership, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is August 15,

2000 for the above mentioned Service Agreement in this filing.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Indianapolis Power & Light Company

[Docket No. ER00–3518–000]

Take notice that on August 24, 2000, Indianapolis Power & Light Company (IPL), tendered for filing an Interconnection, Operation and Maintenance Agreement between IPL and the Board of Directors for Utilities for the Department of Public Utilities of the City of Indianapolis, as trustee of a public charitable trust, d/b/a Citizens Gas & Coke Utility (Citizens), in the above-captioned docket.

IPL requests an effective date as of the closing of the sale to Citizens of certain steam production and distribution facilities, which date is not presently known but which would not occur before sixty (60) days after the date of filing.

Copies of this filing have been served upon Citizens and the Indiana Utility Regulatory Commission.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Pool

[Docket No. ER00–3519–000]

Take notice that on August 24, 2000, the New England Power Pool (NEPOOL), Participants Committee submitted several revised Market Rules and Procedures (the Market Rules), and revisions and deletions of several relevant appendices to the Market Rules, which collectively remove from the Market Rules all mention of the Installed Capability auction market in accordance with NEPOOL's proposed elimination of that Auction market as set forth in the Fifty-Eighth Agreement Amending New England Power Pool Agreement filed with the Commission on July 28, 2000 in Docket Nos. EL00–62–000, *et al.*

The NEPOOL Participants Committee states that copies of these materials were sent to all Participants in NEPOOL, the New England state governors and regulatory commissions.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Western Resources, Inc.

[Docket No. ES00–52–000]

Take notice that on August 24, 2000, Western Resources, Inc. (Western) filed an application under section 204 of the Federal Power Act seeking authorization to issue no more than 6,000,000 shares of common stock pursuant to Western's Direct Stock Purchase Plan.

Western also requests a waiver of the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2 and a waiver of the reporting requirements under 18 CFR 34.10 with regard to issuances of common stock pursuant to the Direct Stock Purchase Plan.

Comment date: September 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. American Electric Power Service Corporation

[Docket No. ER00–3517–000]

Take notice that on August 24, 2000, American Electric Power Service Corporation tendered for filing, on behalf of the operating companies of the American Electric Power System, proposed amendments to the Open Access Transmission Tariff accepted for filing by the Commission in Docket No. ER98–2786–000.

AEP requests effective dates of April 13, 1999, June 15, 2000, October 31, 2000 and January 1, 2001 for such amendments.

Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Tennessee, Texas, Virginia and West Virginia and the Oklahoma Corporation Commission.

Comment date: September 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22857 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 31, 2000.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: New Minor License.

b. *Project No.*: P–2694–002.

c. *Date filed*: September 27, 1999.

d. *Applicant*: Nantahala Power and Light, a division of Duke Energy Corporation.

e. *Name of Project*: Queens Creek Hydroelectric Project.

f. *Location*: On Queens Creek, near the town of Topton, in Macon County, North Carolina. The project would not utilize federal lands.

g. *Field Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. John Wishon; Nantahala Power and Light, a Division of Duke Energy Corporation; 301 NP&L Loop Road; Franklin, NC 28734; (828) 369–4604.

i. *FERC Contact*: Kevin Whalen (202) 219–2790.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary; Federal Energy Regulatory Commission; 888 First Street, NE; Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis*: This application has been accepted for

filing and is ready for environmental analysis at this time.

l. *Description of the Project*: The project consists of the following existing facilities: (1) A 78-foot-high, 382-foot-long earth-faced rock fill dam; (2) a 4-foot-wide by 4-foot-high horizontal intake structure, having a trashrack with 1.0-inch clear bar spacing; (3) a 6,250-foot-long steel penstock leading to a concrete and steel powerhouse containing a single generating unit, having an installed capacity of 1,440 kilowatts; (4) a 37-acre impoundment that extends approximately 0.7 miles upstream; and (5) appurtenant facilities. The applicant estimates the total average annual generation would be approximately 5,000 megawatt hours.

m. *Locations of the application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'', ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22923 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11847–000.

c. *Date filed:* July 21, 2000.

d. *Applicant:* Washington Hydro Energy Development Corporation.

e. *Name of Project:* Cumberland Creek Project.

f. *Location:* On Cumberland Creek, in Skagit County, Washington. The project would utilize federal lands within Mt Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Jacobs, Hydro Energy Development Corporation, 19515 North Creek Parkway, Suite 310, Bothell, WA 98011–8208, (425) 487–6550.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) a 50-foot-long, 14-foot-high concrete diversion structure; (2) an impoundment with a surface area of 0.2 acres and negligible storage, with a normal water surface elevation of 1,964 feet msl; (3) an intake structure; (4) a 10,785-foot-long, 42-inch-diameter steel penstock; (5) a powerhouse containing one generating having an installed capacity of 8.9 MW; (6) a 1,525-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 33 GWh that would be sold to a local utility.

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a

competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance. Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22924 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11848–000.

c. *Date filed:* July 21, 2000.

d. *Applicant:* Washington Hydro Energy Development Corporation.

e. *Name of Project:* Mill Creek Project.

f. *Location:* On Mill Creek, in Skagit County, Washington. The project would utilize no federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Jacobs, Hydro Energy Development Corporation, 19515 North Creek Parkway, Suite 310, Bothell, WA 98011–8208, (425) 487–6550.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days form the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A 45-foot-long, 10-foot-high concrete diversion structure; (2) an impoundment with a surface area of 0.2 acres and negligible storage, with a normal water surface elevation of 2,050 feet msl; (3) an intake structure; (4) a 5,485-foot-long, 30-inch-diameter steel penstock; (5) a powerhouse containing one generating having an installed capacity of 4 MW; (6) a1,330-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 15 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely

notice of intent to file a development application allows and interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22925 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11849–000.

c. *Date filed:* July 21, 2000.

d. *Applicant:* Washington Hydro Energy Development Corporation.

e. *Name of Project:* O'Toole Creek Project.

f. *Location:* On O'Toole Creek, in Skagit County, Washington. The project would utilize federal lands within Mt Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Jacobs, Hydro Energy Development Corporation, 19515 North Creek Parkway, Suite 310, Bothell, WA 98011–8208, (425) 487–6550.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A 46-foot-long, 11-foot-high concrete diversion structure; (2) having an impoundment with a surface area of 0.2 acres and negligible storage, with normal water surface elevation of 2,105 feet msl; (3) an intake structure; (4) a 10,782-foot-long, 36-inch diameter steel penstock; (5) a powerhouse containing one generating having an installed capacity of 8 MW; (6) a 3-mile-long, 34.5 kV transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 29.5 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work (proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPLETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22926 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11850–000.

c. *Date filed:* July 21, 2000.

d. *Applicant:* Skookum Hydro Inc.

e. *Name of Project:* Skookum Creek Project.

f. *Location:* On Skookum and Orsino Creeks, in Whatcom County, Washington. The project would utilize no federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Scott Jacobs, Skookum Hydro Inc., 19515 North Creek Parkway, Suite 310, Bothell, WA 98011–8208, (425) 487–6550.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) a 48-foot-long, 20-foot-high Skookum Creek diversion structure; (2) having an impoundment with negligible storage, with normal water surface elevation of 2,137 feet msl; (3) a 4,940-foot-long, 48-inch-diameter steel penstock; (4) an 20-foot-long, 10-foot high Orsino Creek diversion structure; (5) having an impoundment with negligible storage, with normal water surface elevation of 2,117 feet msl; (6) a 1,250-foot-long, 30-inch diameter steel penstock; (7) both penstocks would enter a single 17,400-foot-long, 48-inch-diameter steel penstock; (8) a powerhouse containing one generating unit having a total installed capacity of 9.8 MW; (9) a tailrace; (10) 12,325-foot-long, 34.5 kV transmission line; and (11) appurtenant facilities.

The project would have an annual generation of 41.2 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a

notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22927 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11851–000.

c. *Date Filed:* July 24, 2000.

d. *Applicant:* City of Grafton, West Virginia.

e. *Name of Project:* Tygart Lake Project.

f. *Location:* On Tygart River, in Taylor County, West Virginia, utilizing a federal Dam administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mayor Thomas L. Horacek, 1 West Main Street, Grafton, WV 26354, (304) 265–1412.

i. *FERC Contact:* Robert Bell, telephone (202) 219–2806.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11840–000, Date Filed: May 8, 2000, Date Notice Closed: July 24, 2000.

l. *The proposed project would utilize the existing U.S. Army Corps of Engineers' Tygart Dam and would consist of:* (1) an intake structure; (2) a 460-foot-long, 15-foot-diameter steel penstock; (3) a powerhouse containing two generating units having a total installed capacity of 20 MW; (4) a tailrace; (5) a 6,700-foot-long, 138-kV transmission line; and (7) appurtenant facilities.

Applicant estimates that the average annual generation would be 117 GWh and project energy would be sold to a local utility. There is a pending legislation, H.R. 4494, that would reinstate the license for this project (P–7307). If the legislation is enacted, this permit would have no value since it does not convey a property right.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work

proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22928 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11852–000.

c. *Date Filed:* July 24, 2000.

d. *Applicant:* Potter Hydroelectic Authority.

e. *Name of Project:* Emsworth Project.

f. *Location:* On Ohio River, in Allegheny County, Pennsylvania, utilizing a federal Dam administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard A. Volkin, Potter Hydroelectric Authority, C/O Engineering Company, Inc., 600 Chapman Street, P.O. Box 359, Canton, MA. 02021, (781) 821–4338.

i. *FERC Contact:* Robert Bell, telephone (202) 219–2806.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 11839–000, Date Filed: May 8, 2000, Date Notice Closed: July 24, 2000.

l. *The proposed project would utilize the existing U.S. Army Corps of Engineers' Emsworth Lock and Dam and would consist of:* (1) a 2000-foot-long, forebay varying in width; (2) a 250-foot-long, intake channel arced around the dam; (3) a powerhouse containing four generating units having a total installed capacity of 20 MW; (4) a tailrace; (5) a 1,800-foot-long, 34.5–kV transmission line; and (7) appurtenant facilities.

Applicant estimates that the average annual generation would be 122 GWh and project energy would be sold to a local utility. There is a pending legislation, S. 2499, that would reinstate the license for this project (P–7041). If the legislation is enacted, this permit would have no value since it does not convey a property right.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22929 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11857–000.

c. *Date Filed:* August 23, 2000.

d. *Applicant:* Welcome Springs.

e. *Name of Project:* Nooksack Falls Project.

f. *Location:* On Nooksack River, in Whatcom County, Washington. The project would utilize federal lands within Mt. Baker-Snoqualmie Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James Howell Sr., Welcome Springs., P.O. Box 28622, Mt. Baker Station, Bellingham, WA 98226, (360) 592–9062.

i. *FERC Contact:* Robert Bell, telephone (202) 219–2806.

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A 60-foot-long, 15-foot-high plank type with concrete toe dam; (2) an impoundment with a surface area of 0.5 acres and negligible storage; (3) an intake structure; (4) a 467-foot-long concrete flume; (5) 566-foot-long wood stave pipe; (6) a 1,025-foot-long, 7-foot by 8-foot unlined tunnel; (7) surge tank; (8) a 564-foot-long, 6-foot diameter steel penstock (5) a powerhouse containing four generating units having a total installed capacity of 1.5 MW; (6) a 2,200-foot-long, 55 kV transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 1 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22939 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11856–000.

c. *Date Filed:* August 8, 2000.

d. *Applicant:* City of Lockport, New York.

e. *Name of Project:* Independence Transmission Line Project.

f. *Location:* On Hydraulic Race, in Niagara County, New York. The project would utilize no federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Paul V. Nolan, 5515 North 17th Street, Arlington, VA 22205 (703) 534–5509.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) a 8,590-foot-long, 12 kV transmission line; and (7) appurtenant facilities.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, Room 2A, NE, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application must be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies. The Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional

copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22940 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

August 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11853–000.

c. *Date filed:* August 1, 2000.

d. *Applicant:* Stroughton Water Power, Inc.

e. *Name of Project:* Stroughton Project.

f. *Location:* On Yahara River, in Dane County, Wisconsin. The project would utilize no federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas J. Reiss, President, Stroughton Water Power Company, P.O. Box 553, 319 Hart Street, Watertown, WI 53094 (920) 261–7975.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed would consist of: (1) A 520-foot-long, 14.3-foot-high earthen dam; (2) an impoundment with a surface area of 80 acres and negligible storage, with normal water surface elevation of 841.5 feet msl; (3) an intake structure; (4) 200-foot-long, 40 foot-wide headrace channel; (5) a powerhouse containing two generating units having a total installed capacity of 192kW; (6) a 350-foot-long, 34.5 kV transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 450 MWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NW., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm. (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requiremeents of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to

intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22941 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, Draft Environmental Assessment and Soliciting Comments, Motions To Intervene, and Protests

August 31, 2000.

Take notice that the following hydroelectric application and draft environmental assessment has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Licenses.

b. *Project Nos:* 935–037, 2071–105, and 2111–011.

c. *Date Filed:* July 6 and August 17, 2000.

d. *Applicant:* PacifiCorp.

e. *Name of Projects:* Merwin, Yale, and Swift No. 1 Projects.

f. *Location:* On the North Fork Lewis River, in Cowlitz, Clark, and Skamania Counties, Washington. No federal lands are involved in this application.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Frank Shrier, PacifiCorp, 825 NE Multnomah, 1500 LTC, Portland, OR 97232, (503) 813–6622.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Hastreiter at (503) 944–6760 or by email at james.hastreiter@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed wit: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project numbers (935–037, 2071–015, and 2111–011 on any comments or motions filed.

k. *Description of Filing:* PacifiCorp proposes to amend certain license articles to incorporate conservation measures that are intended to avoid and minimize effects as a result of project operations on species listed under the Endangered Species Act. These measures include: (1) Assist with the acquisition of Eagle Island and the conveyance of that land to the State of Washington; (2) purchase lands in the Cougar Creek area and place conservation easements on the Courgar Creek and Panamaker Creek riparian corridors; (3) purchase lands in the Swift Creek area known as Devil's Backbone and create a conservation easement within the Swift Creek parcel; (4) limit downramping at the Merwin Project (5) develop an engineering design study to modify the Yale Project spillway; and (6) continue net and haul activities for adult bull trout in the Yale Project tailrace and fund and implement the activities in the Bull Trout Plan.

PacifiCorp provided a draft environmental assessment of the proposed amendment application with its filing. Commission staff is adopting the draft environmental assessment as its own. Any comments received on this draft environmental assessment will be addressed by Commission staff, and incorporated into the final environmental assessment of the proposed amendment application.

l. *Location of the Application and draft environmental assessment:* A copy of the application and draft environmental assessment is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm. (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commissions mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commissions's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number(s) of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state and local agencies are invited to file comments on the described application and draft environmental assessment. A copy of the application and draft environmental assessment may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22942 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, Draft Environmental Assessment and Soliciting Comments, Motions To Intervene, and Protests

August 31, 2000.

Take notice that the following hydroelectric application and draft environmental assessment has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project Nos.:* 2213–002.

c. *Dated Filed:* August 17, 2000.

d. *Applicant:* Cowlitz County PUD No. 1.

e. *Name of Projects:* Swift No. 2 Project.

f. *Location:* On the North Fork Lewis River, in Cowlitz, Clark, and Skamania Counties, Washington. No federal lands are involved in this application.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Dennis P. Robinson, Cowlitz County PUD No. 1, P.O. Box 3007, 961 12th Avenue, Longview, WA 98632, (360) 423–2210.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Hastreiter at (503) 944–6760 or by email at james.hastreiter@ferc.fed.us

j. *Deadline for filing comments and/or motions:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2213–002) on any comments or motions filed.

k. *Description of Filing:* Cowlitz PUD No. 1 proposes to amend a license article to incorporate conservation measures that are intended to avoid and minimize effects as a result of project operations on species listed under the Endangered Species Act. This measure consists of the purchase of lands in the Swift Creek area known as Devil's Backbone and creation of a conservation easement for lands adjacent to Swift Reservoir.

Cowlitz PUD No. 1 provided draft environmental assessment of the proposed amendment application with its filing. Commission staff is adopting the draft environmental assessment as its own. Any comments received on this draft environmental assessment of the proposed amendment application.

l. *Location of the Application and draft environmental assessment:* A copy of the application and draft environmental assessment is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm. (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item above.

m. Individuals desiring to be included on the Commissions mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFS 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number(s) of the particular application to which the filing refers. Any of the above-named documents must filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state and local agencies are invited to file comments on the described application and draft environmental assessment. A copy of the application and draft environmental assessment may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–22943 Filed 9–6–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6865–6]

Agency Information Collection Activities; EPA ICR No. 1715.03; Submission to OMB; Additional Opportunity To Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: TSCA Sections 402/404 Training, Certification, Accreditation and Standards for Lead-Based Paint Activities (EPA ICR No. 1715.03; OMB No. 2070–0155). The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. On February 23, 2000 (65 FR 8964), EPA solicited comment on this ICR pursuant to 5 CFR 1320.8(d). Comments received by EPA are addressed in the ICR.

DATES: Additional comments may be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epa.gov,'' by mail as indicated below. You may access the ICR at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1715.03.

ADDRESSES: Send comments, referencing the proper ICR numbers, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code: 2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title: TSCA Sections 402/404 Training, Certification, Accreditation and Standards for Lead-Based Paint Activities (OMB Control No. 2070–0155; EPA ICR No. 1715.03).

Request: This is a request to renew an existing information collection, currently scheduled to expire on August 31, 2000. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection applies to reporting and recordkeeping requirements found in sections 402 and 404 of the Toxic Substances Control Act (TSCA) and applicable regulations at 40 CFR 745. The purposes of the requirements under TSCA section 402 are to ensure that individuals conducting activities that prevent, detect and eliminate hazards associated with lead-based paint in residential facilities, particularly those occupied or used by children, are properly trained and certified, that training programs providing instruction in such activities are accredited, and that these activities are conducted according to reliable,

effective and safe work practice standards. The TSCA section 404 regulations include reporting and recordkeeping requirements that apply to states and Indian Tribes that seek Federal authorization to administer and enforce state and tribal programs that regulate lead-based paint activities based on the section 402 regulations. The overall goals of the section 402 and section 404 regulations and the reporting and recordkeeping requirements found therein are to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards in residences, and to protect the general public from exposure to lead hazards.

Responses to the collection of information are mandatory (see 40 CFR part 745). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Burden Statement: The annual public burden for this collection of information is estimated to average 17.2 hours per response. Under the PRA, ''burden'' means the total time, effort or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the burden and cost estimates for this ICR, which are only briefly summarized here:

Respondents/Affected Entities: Persons who provide training or engage in lead-based paint activities or a state agency administering lead-based paint activities.

Frequency of Response: On occasion.

Estimated Number of Respondents: 21,529.

Estimated Total Annual Burden: 371,214 hours.

Estimated Total Annual Non-labor Costs: $0.

Changes in Burden Estimates: The total burden associated with this ICR has decreased from 403,541 hours in the previous ICR. This decrease, which is described in more detail in the ICR, represents several adjustments in the calculations related to the progress in implementing this program, which was being newly established when the previous ICR was approved.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: August 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–22971 Filed 9–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6865–5]

Agency Information Collection Activities; EPA ICR No. 1710.03; Submission to OMB; Additional Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Residential Lead-Based Paint Hazard Disclosure Requirements (EPA ICR No. 1710.03, OMB No. 2070–0151) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this ICR was issued on April 22, 1999 (64 FR 19772). EPA did not receive any comments.

DATES: Additional comments may be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or by mail at the address indicated below. You may also access the ICR at http://www.epa.gov/icr/icr.htm. Please refer to EPA ICR No. 1710.03 or OMB Control No. 2070–0151.

ADDRESSES: Send comments, referencing the proper ICR number, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW., Washington, DC 20460; and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title: Residential Lead-Based Paint Hazard Disclosure Requirements (EPA ICR No. 1710.03; OMB Control No. 2070–00151).

Review Requested: This is a request under 5 CFR 1320.12 to renew an existing ICR currently scheduled to expire on August 31, 2000. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d) requires that sellers and lessors of most residential housing built before 1978 disclose known information on the presence of lead-based paint and lead-based paint hazards, and provide an EPA-approved pamphlet to purchasers and renters before selling or leasing the housing. Sellers of pre-1978 housing are also required to provide prospective purchasers with 10 days to conduct an inspection or risk assessment for lead-based paint hazards before obligating purchasers under contracts to purchase the property. The rule does not apply to rental housing that has been found to be free of lead-based paint, zero-bedroom dwellings, housing for the elderly, housing for the handicapped, or short-term leases. The affected parties and the information collection-related requirements related to each are described below:

1. Sellers of pre-1978 residential housing. Sellers of pre-1978 housing must attach certain notification and disclosure language to their sales/leasing contracts. The attachment lists the information disclosed and acknowledges compliance by the seller, purchaser and any agents involved in the transaction.

2. Lessors of pre-1978 residential housing. Lessors of pre-1978 housing

must attach notification and disclosure language to their leasing contracts. The attachment, which lists the information disclosed and acknowledges compliance with all elements of the rule, must be signed by the lessor, lessee and any agents acting on their behalf. Agents and lessees must retain the information for 3 years from the completion of the transaction.

3. Agents acting on behalf of sellers or lessors. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 specifically directs EPA and HUD to require agents acting on behalf of sellers or lessors to ensure compliance with the disclosure regulations.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the Paperwork Reduction Act, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear as part of the collection instruments (*i.e.,* form or instructions), in the **Federal Register** notices for related rulemaking and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Burden Statement: There are an estimated 12,359,721 real estate transactions that will require one or more submissions of information annually. The annual public reporting burden for this collection of information is estimated to average 34.7 minutes per transaction for an estimated 16,014,310 respondents (0.77 transactions for each respondent). Under the PRA, ''burden'' includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/affected entities: Entities potentially affected by this action are sellers, purchasers, lessors, and lessees of non-exempt residential dwellings built before 1978, or a real estate agents representing such parties.

Estimated Number of Potential Respondents: 16,014,310.

Frequency of response: On occasion.

Estimated Number of Responses per Respondent: One, per occasion.

Estimated Total Annual Burden: 7,145,412.

Estimated Total Annual Non-labor Costs: $0.

Changes in the ICR Since the Last Approval: There is a net increase of 1,421 hours (from 7,143,991 hours to 7,145,412 hours) in the total estimated respondent burden compared with that identified in the previous ICR. This increase reflects an adjustment in the calculations for the ICR and is described in detail in the ICR document.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: August 31, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–22972 Filed 9–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6865–7]

Agency Information Collection Activities; EPA ICR No. 1139.06; Submission to OMB; Additional Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: TSCA Existing Chemical Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Test Data Submissions (EPA ICR No. 1139.06, OMB No. 2070–0033) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on this ICR was issued on July 28, 1999 (64 FR 40865). EPA received comments on the draft ICR during the comment period, which are addressed in the ICR.

DATES: Additional comments may be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: ''farmer.sandy@epamail.epa.gov,'' or by mail at the address indicated below. You may also access the ICR at http://www.epa.gov/icr/icr.htm. Please refer to EPA ICR No. 1139.06 or OMB Control No. 2070–0033.

ADDRESSES: Send comments, referencing the proper ICR number, to the following addresses: Ms. Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW., Washington, DC 20460; and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title: TSCA Existing Chemical Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Test Data Submissions (EPA ICR No. 1139.06; OMB Control No. 2070–0033).

Review Requested: This is a request under 5 CFR 1320.12 to renew an existing ICR currently scheduled to expire on August 31, 2000. Under 5 CFR 1320.10(e)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This data collection program is designed to provide EPA with necessary test data on health effects, ecological effects and environmental fate to predict the probable impacts on human health or the environment of chemicals that may present an unreasonable risk to which there is substantial exposure or release. Section 4 of the Toxic Substances Control Act (TSCA) provides the authority for collecting this test data, and is intended to assure that chemicals that may pose serious risks to human health or the environment undergo testing by manufacturers or processors, and that the results of such testing are made available to EPA. EPA uses the information collected to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

The Agency may obtain the needed test data (1) by issuing a test rule through notice and comment rulemaking, (2) through negotiation with industry and issuing an Enforceable Consent Agreement (ECA), or (3) through commitments from industry as Voluntary Testing Agreements (VTAs). The testing specified in a rule or ECA issued under TSCA section 4, or any testing identified

in a VTA, only needs to be conducted once for each specified chemical. As such, only one of the entities that manufacture, import, or process the specified chemical, or a consortia formed by these entities, will conduct the specified testing and report the results of that testing to EPA. An entity subject to a test rule may also apply for an exemption from the testing requirement if that testing will be or has been performed by another party.

Responses to the collection of information specified in a rule issued under TSCA section 4 are mandatory (see 40 CFR part 790), while response to a consent order issued under TSCA section 4 is only mandatory for the participants in the ECA. Participating in a VTA is voluntary. The export notification provisions apply to any exporter of a chemical subject to a rule or consent order issued under TSCA section 4, regardless of their participation in the ECA or any related testing consortia.

Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public burden for this collection of information is estimated to average 68.36 hours per response. According to the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the Paperwork Reduction Act, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear as part of the collection instruments (*i.e.,* form or instructions), in the **Federal Register** notices for related rulemaking and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR Part 9.

The ICR provides a detailed explanation of the burden and cost estimates for this ICR, which are only briefly summarized here:

Respondents/affected entities: Entities potentially affected by this action are companies that manufacture, process, import, use, distribute or dispose of chemicals.

Estimated Number of Potential Respondents: 128.

Estimated Number of Responses per Respondent: One, per occasion.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,182,574 hours.

Estimated Total Annual Non-labor Costs: $0.

Changes in the ICR Since the Last Approval: There is an increase of 1,106,124 hours in the estimated total annual burden for this ICR, from 76,450 hours currently in the OMB inventory to 1,182,574 hours requested in this ICR. This increase, and the corresponding increase in the costs, are described in detail in the ICR document. In short, this increase is the result of a program related to the two new VTAs recently initiated, the voluntary HPV Challenge Program and the voluntary children's health testing program.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: August 30, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–22973 Filed 9–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[TRL–6865–4]

Request for Statement of Qualifications (RFQ) for Administrative, Technical and Scientific Support to the Chesapeake Bay Program

The U.S. Environmental Protection Agency (EPA) is issuing a request for statement of qualifications for organizations interested in assisting the Chesapeake Bay Program in its effort to provide the administrative, technical and scientific support for the Bay Program partnership. Applicants must be a local, state, interstate agencies, academic institution, or other nonprofit organizations. Note, this is a request for qualifications for the benefit of the Chesapeake Bay Program partnership and not for direct benefit to EPA. funding will be provided to an organization under the authority of the Clean Water Act, section 117.

The RFQ is available at the following web-site: *http//www.epa.gov/r3chespk/.* You may also request a copy by calling Robert Shewack at 410–267–9856 or by E-mail at: shewack.robert@epa.gov. Statement of qualifications (an original and five (5) copies) must be postmarked no later than October 6, 2000. Any late, incomplete or fax proposals will not be considered.

William Matuszeski,

Director, Chesapeake Bay Program.

[FR Doc. 00–22967 Filed 9–6–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6866–4]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the Project XL Draft Final Project Agreement: Lead-Safe Boston.

SUMMARY: EPA is requesting comments on a draft Project XL Final Project Agreement (FPA) for Lead-Safe Boston (LSB). LSB is a program operated by the City of Boston's Department of Neighborhood Development that collaborates with state agencies and private organizations to prevent lead poisoning of young children by working to control lead hazards in Boston's highest risk areas. The FPA is a voluntary agreement developed collaboratively by LSB, Massachusetts Department of Environmental Protection (MA DEP), the United States Department of Housing and Urban Development (HUD) and the United States Environmental Protection Agency (US EPA). Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the opportunity to develop alternative strategies that will replace or modify specific regulatory requirements, policies, procedures and guidance on the condition that they produce greater environmental benefits.

In this XL project, LSB seeks to utilize provisions in the RCRA Household Waste Exclusion (HWE) Rule at 40 CFR 261.4(b)(1) to allow lead-based paint

(LBP) debris from residential housing units to be disposed of as household waste. Disposing of LBP debris as a household waste will reduce the cost of lead abatements in residential housing. As part of this project, LSB has pledged to utilize the cost savings made available through implementation of this XL project to perform approximately 12 additional residential lead abatements that will reduce lead exposure risks for roughly 30 children in Boston's Dorchester and Roxbury neighborhoods.

These additional residential abatements will be pursued according to HUD procedures. The HWE provisions utilized by LSB in this project will also be made available on a nationwide basis to any individual or contractor performing lead abatement activities in residential housing units—ultimately sparing thousands of children from lead poisoning.

DATES: The period for submission of comments ends on September 21, 2000.

ADDRESSEES: All comments on the draft Final Project Agreement should be sent to: Michael Hill One Congress Street Suite 1100 (M/C CMA), Boston, MA 02114–2023. Comments may be faxed to Mr. Hill at 617–918–1505.

FOR FURTHER INFORMATION: To obtain a copy of the draft Final Project Agreement, contact Michael Hill, US EPA, Region I, One Congress Street, Suite 1100 (M/C CMA), Boston, MA 02114–2023). The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL.* In addition, the draft FPA is available at the Lead-Safe Boston, 38 Winthrop Street, Boston 02136. Questions to EPA regarding the documents can be directed to Michael Hill at (617) 918–1398 or John DuPree at (202) 260–4468. Questions to LSB regarding this project can be directed to Kenneth Griffin at Lead-Safe Boston, 38 Winthrop Street, Boston, MA 02136. Mr. Griffin's telephone number is (617) 635–0444. For information on all other aspects of the XL Program contact Nancy Birnbaum at the following address: Office of Policy Economics and Innovation, United States Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, Room M3802 (1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, are available via the Internet at http://www.epa.gov/ProjectXL.

Dated: August 31, 2000.

Elizabeth A. Shaw,

Director, Office of Environmental Policy Innovation.

[FR Doc. 00–22975 Filed 9–6–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 30, 2000.

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 November 6, 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 Commissions, 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 Control No.: 3060–XXXX.

Title: Extending Wireless Telecommunications Services to Tribal Lands.

Form No.: FCC Form 601.

Type of Review: New collection.

Respondents: State, Local or Tribal Government, business or other for-profit, and not-for-profit institutions.

Number of Respondents: 3,844.

Estimated Time Per Response: 200 hours.

Frequency of Response: On occasion.

Total Annual Burden: 768,800 hours.

Needs and Uses: Report and Order implements bidding credits for federally-recognized tribal areas that have a telephone service penetration rate below seventy percent (qualifying tribal land).

OMB Control Number: 3060–0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station.

Form Number: FCC 346.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents: 1,200.

Estimated time per response: 20 hours (split between contractors and respondent, depending on type of application).

Frequency of Response: Reporting, on occasion; third party disclosure.

Total annual burden: 8,400.

Total annual costs: $3,597,600.

Needs and Uses: FCC Form 346 is used by licensees/permittees/applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator or TV Booster broadcast station.

Applicants are also subject to the third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for new or major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be locally maintained along with the application.

The data is used by FCC staff to determine if the applicant is qualified, meets basic statutory and treaty requirements and will not cause interference to other authorized broadcast services.

OMB Number: 3060–0414.

Title: Terrain Shielding Policy.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 500.

Estimated time per response: 10 hours (1 hours respondent/9 hours consulting engineer).

Frequency of response: Reporting, on occasion.

Total annual burden: 500.

Total annual costs: $675,000.

Needs and Uses: The terrain shielding policy requires respondents to submit either a detailed terrain study, or to submit letters of assent from all potentially affected parties and graphic depiction of the terrain when intervening terrain prevents a low power television applicant from interfering with other low power television or full-power television stations. The data is used by FCC staff to determine if adequate interference protection can be provided by terrain shielding and if a waiver of Sections 74.705 and 74.707 of the Rules is warranted.

OMB Number: 3060–0427.

Title: Section 73.3523 Dismissal of applications in renewal proceedings.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1.

Estimated time per response: 8 hours (1 hour licensee, 7 hours attorney).

Frequency of responding: Reporting, on occasion.

Total annual burden: 1 hour.

Total annual costs: $1,600.

Needs and Uses: Section 73.3523 requires an applicant for a construction permit to obtain approval from the FCC to dismiss or withdraw its application when that application is mutually exclusive with a renewal application. This request for approval must contain a copy of any written agreement and an affidavit, stating that it has not received any consideration (pre-Initial Decision) or it has not received any consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of its application. In addition, within 5 days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit certifying that it has not paid any consideration (pre-Initial Decision), or that it has not paid consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/ withdrawal of a competing application. The data is used by FCC staff to ensure that an application was filed under appropriate circumstances and not to extract payments prohibited by the Commission.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–22917 Filed 9–6–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 30, 2000.

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 October 10, 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 Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0075.

Title: Application for Transfer of Control of a Corporate Licensee or Permittee or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station.

Form No.: FCC Form 345.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 655.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 655 hours.

Total Annual Cost: $1,054,178.75.

Needs and Uses: FCC Form 345 is required when applying for authority for assignment of license or permit, or for consent to transfer of control of corporate licensee or permittee for an FM translator station, or a low power TV station.

This collection also includes a third party disclosure requirement of Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for assignment of license/ permit. This notice must be completed within 30 days of the tendering of the application. A copy of this notice must be placed in the public inspection file along with the application.

The FCC Form 345 has been revised to facilitate electronic filing by replacing narrative exhibits with the use of certifications. The Commission also deleted and narrowed overly burdensome questions. The FCC Form 345 will be supplemented with detailed instructions to explain processing standards and rule interpretations to help ensure that applicants certify accurately. The form was also revised to include a reporting requirement concerning the transfer or assignment of authorizations obtained through the competitive bidding process. As a result, the Commission has added instructions and a question about competitive bidding.

OMB Control No.: 3060–0697.

Title: Parts 22 and 90 to Facilitate Future Development of Paging Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit,

not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 934.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 934 hours.

Total Annual Cost: N/A.

Needs and Uses: This collection is necessary to: lessen the administrative burden of licensees; determine the partitioned service areas and geographic area licensee's remaining service area of parties to an agreeement; determine whether geographic area licensee and parties to agreements have met the applicable coverage requirements for their service areas; to determine whether the applicant is eligible to receive bidding credit as a small business; determine the real parties interest in any joint bidding agreements; and determine the appropriate unjust enrichment compensation to be remitted to the government.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–22918 Filed 9–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 12, 2000, 10 a.m.

PLACE: 999 E Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 14, 2000, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Dole for President—Statement of Reasons (LRA#467).

Dole/Kemp '96, Inc.—Statement of Reasons (LRA#506).

Buchanan for President, Inc.—Statements of Reasons (LRA#512).

Advisory Opinion 2000–20: Committee for Quality Cancer Care by counsel, Brett G. Kappel.

Advisory Opinion 2000–22: Air Transportation Association of America, American Land Title Association, Council of Insurance Agents and Brokers, Independent Insurance Agents of America, and the Society of Independent Gasoline Marketers of America by counsel, Scott A. Sinder and Stephen Gold.

Revisions to Reporting Forms and Instructions.

Explanation and Justification for Revisions to FEC Reporting Forms.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–23158 Filed 9–5–00; 3:30 pm]

BILLING CODE 6715–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Proposed Policy Statement; request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) [1] is requesting comments on a proposed Policy Statement on Allowance for Loan and Lease Losses (ALLL) Methodologies and Documentation for Banks and Savings Institutions (Policy Statement). This proposed Policy Statement is intended to provide guidance on the design and implementation of ALLL methodologies and supporting documentation practices.

DATES: Comments must be received by November 6, 2000.

ADDRESSES: Comments should be directed to Keith J. Todd, Executive Secretary, Federal Financial Institutions Examination Council, 2000 K Street, N.W., Suite 310, Washington, DC 20006, fax number: (202) 872–7501. Comments will be available for public inspection during regular business hours at the above address. Appointments to inspect comments are encouraged and can be arranged by calling the FFIEC at (202) 872–7500.

FOR FURTHER INFORMATION CONTACT:

FDIC: Carol L. Liquori, Examination Specialist, Division of Supervision, (202) 898–7289, or Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905, FDIC, 550 17th Street, N.W., Washington, DC 20429.

FRB: Linda V. Griffith, Supervisory Financial Analyst, (202) 452–3506, or Arthur Lindo, Supervisory Financial Analyst, (202) 452–2695, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

OCC: Richard Shack, Senior Accountant, Chief Accountant's Office, Core Policy Division, (202) 874–5411, or Louise A. Francis, National Bank Examiner, Chief Accountant's Office, Core Policy Division, (202) 874–1306, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, DC 20219.

OTS: William Magrini, Policy Analyst, Policy Division, (202) 906–5744, or Harrison E. Greene, Jr., Securities Accountant, Accounting Policy Division, (202) 906–7933, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On March 10, 1999, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission (together, the Agencies) issued a joint letter to financial institutions on the allowance for loan and lease losses (the Joint Letter). In the Joint Letter, the Agencies agreed to establish a Joint Working Group to study ALLL issues and to assist financial institutions by providing them with improved guidance on this topic. The Agencies agreed that the Joint Working Group would develop and issue parallel guidance for two key areas regarding the ALLL:

- Appropriate methodologies and supporting documentation, and
- Enhanced disclosures.

This proposed Policy Statement represents the banking agencies'

[1] The FFIEC consists of representatives from the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS) (referred to as the ''banking agencies''), and the National Credit Union Administration. However, this guidance is not directed to credit unions.

guidance to banks and savings institutions relating to methodologies and supporting documentation for the ALLL. The Securities and Exchange Commission staff is planning to provide parallel guidance on this topic for public companies in a future Staff Accounting Bulletin.[2]

This Policy Statement clarifies the banking agencies' expectations regarding methodologies and documentation support for the ALLL from a generally accepted accounting principles (GAAP) perspective. For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with GAAP and supervisory guidance. GAAP requires that an institution maintain written documentation to support the amounts of the ALLL and the provision for loan and lease losses reported in the financial statements.

The proposal is not intended to change existing accounting guidance in, or modify the documentation requirements of, GAAP or guidance provided in the relevant joint interagency statements issued by the Agencies. It is intended to supplement, not replace, the guidance the banking agencies provided in their Interagency Policy Statement on the Allowance for Loan and Lease Losses, which was issued in December 1993. It is also intended to supplement guidance the banking agencies provided in their interagency guidelines establishing standards for safety and soundness that were issued in 1995 and 1996 pursuant to Section 39 of the Federal Deposit Insurance Act (FDI Act).[3] Under the guidelines for asset quality, each institution should estimate and establish a sufficient ALLL supported by adequate documentation. The proposed Policy Statement does not address or change current guidance regarding loan charge-offs; therefore, institutions should continue to follow existing regulatory guidance that addresses the timing of charge-offs.

The guidance in this Policy Statement recognizes that institutions should adopt methodologies and documentation practices that are appropriate for their size and complexity. For smaller institutions with fewer and less complex loan products, the amount of supporting documentation for the ALLL may be less exhaustive than for larger institutions.

Recognizing that a primary mission of the banking agencies is to support a safe and sound banking system, examiners will continue to evaluate the overall adequacy of the ALLL, including the adequacy of supporting documentation, to ensure that it is appropriate. While the proposed Policy Statement generally does not provide guidance to examiners in conducting safety and soundness examinations, examiners may criticize institutions that fail to document and maintain an adequate ALLL in accordance with this Policy Statement and other banking agency guidance. In such cases, institution management may be cited for engaging in unsafe and unsound banking practices and may be subject to further supervisory action.

II. Principal Elements of the Policy Statement

The proposed Policy Statement clarifies that the board of directors of each institution is responsible for ensuring that controls are in place to determine the appropriate level of the ALLL. It also emphasizes the banking agencies' long-standing position that institutions should maintain and support the ALLL with documentation that is consistent with their stated policies and procedures, GAAP, and applicable supervisory guidance.

The proposed Policy Statement provides guidance on significant aspects of ALLL methodologies and documentation practices. Specifically, the proposal provides guidance on maintaining and documenting policies and procedures that are appropriately tailored to the size and complexity of the institution and its loan portfolio. The proposed Policy Statement notes that it is critical for an institution's ALLL methodology to incorporate management's current judgments about the credit quality of the loan portfolio. The methodology must be a thorough, disciplined, and consistently applied process that is reviewed and approved by the institution's board of directors.

The proposal also discusses the methodology and documentation needed to support ALLL estimates prepared in accordance with GAAP, which requires loss estimates based upon reviews of individual loans and groups of loans. After determining the allowance on individually reviewed loans and groups of loans, the proposal states that management should consolidate these loss estimates and summarize the amount to be reported in the financial statements for the ALLL. To verify that the ALLL methodology is effective and conforms to GAAP and supervisory guidance, a review of the methodology and its application should be completed by external or internal auditors or some other party unrelated to the ALLL process, as appropriate for the size and complexity of the institution.

The proposal includes illustrations of implementation practices that institutions may find useful for enhancing their own ALLL practices, an appendix that provides examples of certain key aspects of ALLL guidance, a summary of applicable GAAP guidance, and a bibliographical list of relevant GAAP guidance, joint interagency statements, and other literature on ALLL issues.

III. Comments

Comment is requested on all aspects of the proposed Policy Statement.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the banking agencies have reviewed the proposed Policy Statement and determined that it does not add any collections of information pursuant to the Act.

V. Proposed Policy Statement

The text of the proposed Policy Statement follows:

Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Institutions

Boards of directors of banks and savings institutions are responsible for ensuring that their institutions have controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with the institutions' stated policies and procedures, generally accepted accounting principles (GAAP), and ALLL supervisory guidance.[4] To fulfill this responsibility, boards of directors instruct management to develop and maintain an appropriate, systematic, and consistently applied process to determine the amounts of the ALLL and provisions for loan losses. Management should create and implement suitable policies and procedures to communicate the ALLL process internally to all applicable personnel. By creating an environment that encourages personnel to follow these policies

[2] The American Institute of Certified Public Accountants is developing more specific guidance on the accounting for loan losses and the techniques for measuring probable incurred loss in a loan portfolio. This guidance is expected to be released in final form in 2001.

[3] Institutions should refer to the guidelines adopted by their primary federal regulator as follows: For national banks, Appendix A to Part 30; for state member banks, Appendix D to Part 208; for state nonmember banks, Appendix A to Part 364; for savings associations, Appendix A to Part 570.

[4] A bibliography is attached that lists applicable ALLL GAAP guidance, interagency policy statements, and other reference materials that may assist in understanding and implementing an ALLL in accordance with GAAP. See Appendix B for additional information on applying GAAP to determine the ALLL.

and procedures, management improves procedural discipline and compliance.

The determination of the amounts of the ALLL and provisions for loan and lease losses should be based on management's current judgments about the credit quality of the loan portfolio, and should consider all known relevant internal and external factors that affect loan collectibility as of the reporting date. The ALLL methodology, the associated policies and procedures, and the amounts to be reported each period for the provision for loan and lease losses and ALLL should be reviewed and approved by the board of directors. To ensure the methodology remains appropriate for the institution, the board of directors should have the methodology periodically validated and, if appropriate, revised. The board of directors' audit committee [5] should oversee and monitor the internal controls over the ALLL determination process.[6]

The banking agencies' [7] have long-standing examination policies that call for examiners to review an institution's lending and loan review functions and recommend improvements, if needed. Additionally, in 1995 and 1996, the banking agencies adopted interagency guidelines establishing standards for safety and soundness, pursuant to Section 39 of the Federal Deposit Insurance Act (FDI Act).[8] The interagency asset quality guidelines and the guidance in this paper assist an institution in estimating and establishing a sufficient ALLL supported by adequate documentation, as required under the FDI Act. Additionally, the guidelines require operational and managerial standards that are appropriate for an institution's size and the nature and scope of its activities.

For financial reporting purposes, including regulatory reporting, the provision for loan and lease losses and the ALLL must be determined in accordance with GAAP. GAAP requires that allowances be well documented, with clear explanations of the supporting analyses and rationale. This Policy Statement describes but does not increase the documentation requirements already existing within GAAP. Failure to maintain, analyze, or support an adequate ALLL in accordance with GAAP and supervisory guidance is generally an unsafe and unsound banking practice.

This guidance applies equally to all institutions, regardless of the size. Because of their less complex lending activities and products, smaller institutions may find it more efficient to combine a number of procedures (*e.g.,* information gathering, documentation, and internal approval processes) while continuing to ensure the institution has a consistent and appropriate methodology. Thus, much of the documentation that a larger institution might retain in support of the allowance may be combined into fewer supporting documents in a smaller institution. For example, simplified documentation can include spreadsheets, check lists, and other summary documents that many institutions currently use. Illustrations A and C provide specific examples of how smaller institutions may determine and document portions of their loan loss allowance.

Documentation Standards

Appropriate written supporting documentation facilitates review of the ALLL process and reported amounts, builds discipline into the ALLL determination process, and improves the process for estimating loan and lease losses by helping to ensure that all relevant factors are appropriately considered in the ALLL analysis. An institution should document the relationship between the findings of its detailed review of the loan portfolio and the amount of the ALLL and the provision for loan and lease losses reported in each period.[9]

At a minimum, institutions should maintain written supporting documentation for the following decisions, strategies, and processes:

(1) Policies and procedures:

(a) Over the systems and controls that maintain an appropriate ALLL and

(b) Over the ALLL methodology,

(2) Loan grading system or process,

(3) Summary or ''roll-up'' of the ALLL balance,

(4) Validation of the ALLL methodology, and

(5) Justification for periodic adjustments to the ALLL process.

The following sections of this Policy Statement provide guidance on significant aspects of ALLL methodologies and documentation practices. Specifically, the paper provides guidance on:

(1) Policies and Procedures,

(2) Methodology,

(3) ALLL Under Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan (FAS 114),

(4) ALLL Under FASB Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5),

(5) Consolidating the Loss Estimates, and

(6) Validating the ALLL Methodology.

Policies and Procedures

Financial institutions utilize a wide range of policies, procedures, and control systems in their ALLL process. Sound policies should be appropriately tailored to the size and complexity of the institution and its loan portfolio.

An institution's written policies and procedures for the systems and controls that maintain an appropriate ALLL should address but not be limited to:

(1) The roles and responsibilities of the institution's departments and personnel (including the lending function, credit review, financial reporting, internal audit, senior management, audit committee, board of directors, and others, as applicable) who determine the ALLL to be reported in the financial statements;

(2) The institution's accounting policies for loans and loan losses, including the policies for charge-offs and recoveries and for estimating the fair value of collateral, where applicable;

(3) The description of the institution's systematic methodology, which should be consistent with the institution's accounting policies for determining its ALLL; [10] and

(4) The system of internal controls used to ensure that the ALLL process is maintained in accordance with GAAP and supervisory guidance.

An internal control system for the ALLL estimation process should:

(1) Include measures to ensure the reliability and integrity of information and compliance with laws, regulations, and internal policies and procedures;

(2) Ensure that the institution's financial statements (including regulatory reports) are prepared in accordance with GAAP and ALLL supervisory guidance; [11] and

(3) Include a well-defined loan review process containing:

(a) An effective loan grading system that is consistently applied, identifies differing risk characteristics and loan quality problems accurately and in a timely manner, and prompts appropriate administrative actions;

(b) Sufficient internal controls to ensure that all relevant loan review information is

[5] While all institutions are encouraged to establish audit committees, small institutions without audit committees should have the board of directors assume this responsibility.

[6] Institutions and their auditors should refer to Statement on Auditing Standards No. 61, Communication With Audit Committees (as amended by Statement on Auditing Standards No. 90, Audit Committee Communications), which requires certain discussions between the auditor and the audit committee. These discussions should include items, such as accounting policies and estimates, judgments, and uncertainties, that have a significant impact on the accounting information included in the financial statements.

[7] The banking agencies are the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

[8] Institutions should refer to the guidelines adopted by their primary federal regulator as follows: For national banks, Appendix A to Part 30; for state member banks, Appendix D to Part 208; for state nonmember banks, Appendix A to Part 364; for savings associations, Appendix A to Part 570.

[9] This position is fully described for public companies in the Securities and Exchange Commission's (SEC) Financial Reporting Release No. 28 (FRR 28), in which the SEC indicates that the books and records of public companies engaged in lending activities should include documentation of the rationale supporting each period's determination that the ALLL and provision amounts reported were adequate.

[10] Further explanation is presented in the Methodology section that appears below.

[11] 11 In addition to the supporting documentation requirements for financial institutions, as described in interagency asset quality guidelines, public companies are required to comply with the books and records provisions of the Securities Exchange Act of 1934 (Exchange Act). Under Sections 13(b)(2)–(7) of the Exchange Act, registrants must make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the registrant. Registrants also must maintain internal accounting controls that are sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP. See also SEC Staff Accounting Bulletin No. 99, Materiality.

appropriately considered in estimating losses. This includes maintaining appropriate reports, details of reviews performed, and identification of personnel involved; and

(c) Clear formal communication and coordination between an institution's credit administration function, financial reporting group, management, board of directors, and others who are involved in the ALLL determination process (*e.g.,* written policies and procedures, management reports, audit programs, and committee minutes).

Methodology

An ALLL methodology is a system that an institution designs and implements to reasonably estimate loan and lease losses as of the financial statement date. It is critical that ALLL methodologies incorporate management's current judgments about the credit quality of the loan portfolio through a disciplined and consistently applied process.

An institution's ALLL methodology is influenced by institution-specific factors, such as an institution's size, organizational structure, business environment and strategy, management style, loan portfolio characteristics, loan administration procedures, and management information systems. However, there are certain common elements an institution should incorporate in its ALLL methodology. A summary of common elements is provided in Appendix B.[12]

Documentation of ALLL Methodology in Written Policies and Procedures

An institution's formal policies and procedures should describe the primary elements of the institution's ALLL methodology. Such elements would include portfolio segmentation, impairment measurement, and loss rate determination. Specifically, written policies and procedures should describe the methodology:

(1) For segmenting the portfolio:

(a) How the segmentation process is performed (*i.e.,* by loan type, industry, risk rates, etc.),

(b) When a loan grading system is used to segment the portfolio:

(i) The definitions of each loan grade,

(ii) A reconciliation of the internal loan grades to supervisory loan grades, and

(iii) The delineation of responsibilities for the loan grading system.

(2) For determining and measuring impairment under FAS 114:

(a) The methods used to identify loans to be analyzed individually;

(b) For individually reviewed loans that are impaired, how the amount of any impairment is determined and measured, including:

(i) Procedures describing the impairment measurement techniques available and

(ii) Steps performed to determine which technique is most appropriate in a given situation.

(c) The methods used to determine whether and how loans individually evaluated under FAS 114, but not considered to be individually impaired, should be grouped with other loans that share common characteristics for impairment evaluation under FAS 5.

(3) For determining and measuring impairment by applying loss rates to loan balances under FAS 5:

(a) How loans with similar characteristics are grouped to be evaluated for loan collectibility (such as loan type, past-due status, and risk);

(b) How historical loss rates are determined and what factors are considered when establishing appropriate time frames over which to evaluate loss experience; and

(c) Descriptions of qualitative factors (*e.g.,* changes in economic conditions) that may affect loss rates or other loss measurements.

The supporting documents for the ALLL may be integrated in an institution's credit files, loan review reports or worksheets, board of directors' and committee meeting minutes, computer reports, or other appropriate documents and files.

ALLL Under FAS 114

An institution's ALLL methodology related to FAS 114 loans begins with the use of its normal loan review procedures to identify whether a loan is impaired as defined by the accounting standard. Institutions should document:

(1) The method and process for identifying loans to be evaluated under FAS 114 and

(2) The analysis that resulted in an impairment decision for each loan and the determination of the impairment measurement method to be used (i.e., present value of expected future cash flows, fair value of collateral less costs to sell, or the loan's observable market price).

Once an institution has determined which of the three available measurement methods to use for an impaired loan under FAS 114, it should maintain supporting documentation as follows:

(1) When using the present value of expected future cash flows method:

(a) The amount and timing of cash flows,

(b) The effective interest rate used to discount the cash flows, and

(c) The basis for the determination of cash flows, including consideration of current environmental factors and other information reflecting past events and current conditions.

(2) When using the fair value of collateral method:

(a) How fair value was determined, including the use of appraisals, valuation assumptions, and calculations,

(b) The supporting rationale for adjustments to appraised values, if any,

(c) The determination of costs to sell, if applicable, and

(d) Appraisal quality and expertise of the appraiser.

(3) When using the observable market price of a loan method:

(a) The amount, source, and date of the observable market price.

Illustration A describes a practice used by a small financial institution to document its FAS 114 measurement of impairment using a comprehensive worksheet.[13] Q&A #1 and #2 in Appendix A provide examples of applying and documenting impairment measurement methods under FAS 114.

Begin Text Box—Illustration A (Documenting an ALLL Under FAS 114, Comprehensive worksheet for the impairment measurement process): A small institution utilizes a comprehensive worksheet for each loan being reviewed individually under FAS 114. Each worksheet includes a description of why the loan was selected for individual review, the impairment measurement technique used, the measurement calculation, a comparison to the current loan balance, and the amount of the ALLL for that loan. The rationale for the impairment measurement technique used (e.g., present value of expected future cash flows, observable market price of the loan, fair value of the collateral) is also described on the worksheet. End Text Box

Some loans that are evaluated individually for impairment under FAS 114 may be fully collateralized and therefore require no ALLL. Q&A #3 in Appendix A presents an example of an institution whose loan portfolio includes fully collateralized loans and describes the documentation maintained to support the conclusion that no ALLL was needed for those loans.

ALLL Under FAS 5

Segmenting the Portfolio

For loans evaluated on a group basis under FAS 5, management should segment the loan portfolio by identifying risk characteristics that are common to groups of loans. Institutions decide how to segment their loan portfolios based on many factors, which vary with their business strategies as well as their information system capabilities. Smaller institutions that are involved in less complex activities often segment the portfolio into broad loan categories. This method of segmenting the portfolio is likely to be appropriate in only the smallest of institutions offering a narrow range of loan products. Larger institutions typically offer a more diverse and complex mix of loan products. Such institutions may start by segmenting the portfolio into major loan types but typically have more detailed information available that allows them to further segregate the portfolio into product line segments based on the risk characteristics of each portfolio segment. Regardless of the method used, documentation should be maintained to support that the loans in each segment have similar attributes or characteristics.

As economic and other business conditions change, institutions often modify their business strategies, which may result in adjustments to the way in which they segment their loan portfolio for purposes of estimating loan losses. Illustration B presents an example in which an institution refined its segmentation method to more effectively

[12] Also, refer to paragraph 7.05 of the American Institute of Certified Public Accountants' (AICPA) Audit and Accounting Guide, Banks and Savings Institutions, 1999 edition (AICPA Audit Guide).

[13] The referenced ''gray box'' illustrations are presented to assist institutions in evaluating how to implement the guidance provided in this document. The methods described in the illustrations may not be suitable for all institutions and are not considered required processes or actions. For additional descriptions of key aspects of ALLL guidance, a series of ALLL Questions and Answers (Q&As) are included in Appendix A of this paper.

consider risk factors and maintains documentation to support this change.

Begin Text Box—Illustration B (Documenting Segmenting Practices, Documenting a refinement in a segmentation method): An institution with a significant portfolio of consumer loans performed a review of its ALLL methodology. The institution had determined its ALLL based upon historical loss rates in the overall consumer portfolio. The ALLL methodology was validated by comparing actual loss rates (charge-offs) for the past two years to the estimated loss rates. During this process, the institution decided to evaluate loss rates on an individual product basis (e.g., auto loans, unsecured loans, or home equity loans). This analysis disclosed significant differences in the loss rates on different products. With this additional information, the methodology was amended in the current period to segment the portfolio by product, resulting in a better estimation of the loan losses associated with the portfolio. To support this change in segmentation practice, the credit review committee records contain the analysis that was used as a basis for the change and the written report describing the need for the change. End Text Box

Institutions use a variety of documents to support the segmentation of their portfolios. Some of these documents include:

(1) Loan trial balances by categories and types of loans,

(2) Management reports about the mix of loans in the portfolio,

(3) Delinquency and nonaccrual reports, and

(4) A summary presentation of the results of an internal or external loan grading review.

Reports generated to assess the profitability of a loan product line may be useful in identifying areas in which to further segment the portfolio.

Estimating Loss on Groups of Loans

Based on the segmentation of the portfolio, an institution estimates the loan and lease losses to determine the appropriate level of the FAS 5 portion of the ALLL.[14] For those segments that require an ALLL, the institution estimates the loan and lease losses, on at least a quarterly basis, based upon its ongoing loan review process and analysis of loan performance. The institution should follow a systematic and consistently applied approach to select the most appropriate loss measurement methods and support its conclusions and rationale with written documentation. Regardless of the method used to determine loss rates, an institution should demonstrate and document that the loss rates used to estimate the ALLL for each segment are determined in accordance with GAAP as of the financial statement date.[15]

One method of estimating loan losses for groups of loans is through the application of loss rates to the groups' aggregate loan balances. Such loss rates typically reflect historical loan loss experience for each group of loans, adjusted for relevant environmental factors (e.g., industry, geographical, economic, and political factors) over a defined period of time. If an institution does not have loss experience of its own, it may be appropriate to reference the loss experience of other institutions, provided that the institution demonstrates that the attributes of the loans in its portfolio segment are similar to those of the loans included in the portfolio of the institution providing the loss experience.[16] Institutions should maintain supporting documentation for the technique used to develop their loss rates, including the period of time over which the losses were incurred. Institutions that determine losses based upon a range of loss should maintain documentation to support the identified range of loss and the rationale used for determining which estimate is the best estimate within the range of loan losses. An example of how a small institution performs a comprehensive historical loss analysis is provided as the first item in Illustration C.

Begin Text Box—Illustration C (Documenting Setting Loss Rates, First Illustration, Comprehensive historical loss analysis in a small institution): A small institution determines its historical loss rates based on annual loss rates over a three-year historical period. The analysis is conducted by type of loan and is further segmented by originating branch office. The analysis considers charge-offs and recoveries in determining the loss rate. The institution also considers the loss rates for each loan grade and compares them to historical losses on similarly rated loans in arriving at the historical loss factor. The institution maintains supporting documentation for its loss factor analysis, including historical losses by type of loan, originating branch office, and loan grade for the three-year period.

(Second Illustration, Adjustment of historical rates for changes in local economic conditions): An institution develops a factor to adjust historical loss rates for its assessment of the impact of changes in the local economy. For example, when analyzing the loss rate on commercial real estate loans, the assessment identifies changes in recent commercial building occupancy rates. The institution generally finds the occupancy statistics to be a good indicator of probable losses on these types of loans. The institution maintains documentation that summarizes the relationship between current occupancy rates and its loss experience. End Text Box

Before employing a loss estimation model, an institution should evaluate and modify, as needed, the model's assumptions to ensure that the resulting loss estimate is consistent with GAAP. Institutions that use loss estimation models typically document the evaluation, the conclusions regarding the appropriateness of estimating loan losses with a model or other loss estimation tool, and the support for adjustments to the model or its results.

To adjust historical loss rates for current conditions, institutions should consider environmental factors and then document which factors were used in the analysis. Factors that should be considered in adjusting historical loss rates include the following:[17]

(1) Levels of and trends in delinquencies and impaired loans;

(2) Levels of and trends in charge-offs and recoveries;

(3) Trends in volume and terms of loans;

(4) Effects of any changes in risk selection and underwriting standards, and other changes in lending policies, procedures, and practices;

(5) Experience, ability, and depth of lending management and other relevant staff;

(6) National and local economic trends and conditions, and industry conditions; and

(7) Effects of changes in credit concentrations.

For any adjustment of historical loss rates, the institution should document that the adjustment is necessary to reflect current information, events, circumstances, and conditions in the loss rates. The second item in Illustration C provides an example of how an institution adjusts its commercial real estate historical loss rates for changes in local economic conditions. Q&A #4 in Appendix A provides an example of maintaining supporting documentation for adjustments to portfolio segment loss rates for an environmental factor related to an economic downturn in the borrower's primary industry. Q&A #5 in Appendix A describes one institution's process for determining and documenting an ALLL for loans that are not individually impaired but have characteristics indicating there are loan losses on a group basis.

Consolidating the Loss Estimates

To verify that ALLL balances are presented fairly in accordance with GAAP and are auditable, management should prepare a document that summarizes the amount to be reported in the financial statements for the ALLL. The board of directors should review and approve this summary.

Common elements in such summaries include:

(1) An estimate of the probable loss or range of loss incurred for each category evaluated (*e.g.,* individually evaluated impaired loans, homogeneous pools, and other groups of loans that are collectively evaluated for impairment);

(2) The aggregate probable loss estimated using the institution's methodology;

(3) A summary of the current ALLL balance;

(4) The amount, if any, by which the ALLL is to be adjusted;[18] and

(5) Depending on the level of detail that supports the ALLL analysis, detailed subschedules of loss estimates that reconcile to the summary schedule.

[14] An example of a loan segment that does not generally require an ALLL includes loans that are fully secured by deposits maintained at the lending institution.

[15] Refer to paragraph 8(b) of FAS 5. Also, the AICPA is currently developing a Statement of Position that will provide more specific guidance on accounting for loan losses.

[16] Refer to paragraph 23 of FAS 5.

[17] Refer to paragraph 7.13 in the AICPA Audit Guide.

[18] Subsequent to adjustments, there should be no material differences between the consolidated loss estimate, as determined by the methodology, and the final ALLL balance reported in the financial statements.

Illustration D describes how institutions may document their estimated ALLL by adding comprehensive explanations to their summary schedules.

Begin Text Box—Illustration D (Consolidating Estimates, Descriptive comments added to the consolidated ALLL summary schedule): To simplify the supporting documentation process and to eliminate redundancy, some institutions include detailed supporting information on their summary schedules. For example, in the summary schedule that presents FAS 114 allowances, some institutions describe their policy for selecting loans for evaluation under FAS 114. Institutions identify which FAS 114 impairment measurement method was used for each individually reviewed impaired loan. Other items include brief descriptions of loss factors for particular segments of the loan portfolio, the basis for adjustments to loss rates, and explanations of changes in ALLL amounts from period to period. End Text Box

Generally, an institution's review and approval process for the ALLL relies upon the data provided in these consolidated summaries. There may be instances in which individuals or committees that review the ALLL methodology and resulting allowance balance identify adjustments that need to be made to the loss estimates to provide a better estimate of loan losses. These changes may be due to information not known at the time of the initial loss estimate (*e.g.,* information that surfaces after determining and adjusting, as necessary, historical loss rates, or a recent decline in the marketability of property after conducting a FAS 114 valuation based upon the fair value of collateral). It is important that these adjustments are consistent with GAAP and are reviewed and approved by appropriate personnel. Additionally, the summary should provide each subsequent reviewer with an understanding of the support behind these adjustments. Therefore, management should document the nature of any adjustments and the underlying rationale for making the changes. This documentation should be provided to those making the final determination of the ALLL amount. Q&A #6 in Appendix A addresses the documentation of the final amount of the ALLL.

Validating the ALLL Methodology

To verify that the ALLL methodology is effective and conforms to GAAP and supervisory guidance, an institution's directors should establish internal control procedures, appropriate for the size and complexity of the institution. These procedures should include an independent review of the methodology and its application.

In practice, financial institutions employ numerous procedures when validating the reasonableness of their ALLL methodology and determining whether there may be deficiencies in their overall methodology or loan grading process. Examples are:

(1) A review of trends in loan volume, delinquencies, restructurings, and concentrations.

(2) A review of previous charge-off and recovery history, including an evaluation of the timeliness of the entries to record both the charge-offs and the recoveries.

(3) A review by an independent party, such as an independent loan review committee, external auditors, or internal audit staff. This often involves the independent party reviewing, on a test basis, source documents and underlying assumptions to determine that the established methodology develops reasonable loss estimates.

(4) An evaluation of the appraisal process of the underlying collateral. This may be accomplished by periodically comparing the appraised value to the actual sales price on selected properties sold.

Supporting Documentation for the Validation Process

Management usually supports the validation process with the workpapers from the review of the ALLL function. Additional documentation often includes the summary findings of the independent third party reviewer. The institution's board of directors, or its designee, reviews the findings and acknowledges its review in its meeting minutes. If the methodology is changed based upon the findings of the validation process, documentation that describes and supports the changes should be maintained.

Appendix A.—ALLL Questions and Answers

Q&A #1—ALLL Under FAS 114—Measuring and Documenting Impairment

Facts: Approximately one-third of Institution A's commercial loan portfolio consists of large balance, non-homogeneous loans. Due to their large individual balances, these loans meet the criteria under Institution A's policies and procedures for individual review for impairment under FAS 114. Upon review of the large balance loans, Institution A determines that certain of the loans are impaired as defined by FAS 114.

Question: For the commercial loans reviewed under FAS 114 that are individually impaired, how should Institution A measure and document the impairment on those loans? Can it use an impairment measurement method other than the methods allowed by FAS 114?

Interpretive Response: For those loans that are reviewed individually under FAS 114 and considered individually impaired, Institution A must use one of the methods for measuring impairment that is specified by FAS 114 (that is, the present value of expected future cash flows, the loan's observable market price, or the fair value of collateral). Accordingly, in the circumstances described above, for the loans considered individually impaired under FAS 114, it would not be appropriate for Institution A to choose a measurement method not prescribed by FAS 114. For example, it would not be appropriate to measure loan impairment by applying a loss rate to each loan based on the average historical loss percentage for all of its commercial loans for the past five years.

Institution A should maintain written documentation to support its measurement of loan impairment under FAS 114. If it uses the present value of expected future cash flows to measure impairment of a loan, it should document the amount and timing of cash flows, the effective interest rate used to discount the cash flows, and the basis for the determination of cash flows, including consideration of current environmental factors and other information reflecting past events and current conditions. When using the fair value of collateral to measure impairment, Institution A should document how it determined the fair value, including the use of appraisals, valuation assumptions and calculations, the supporting rationale for adjustments to appraised values, if any, and the determination of costs to sell, if applicable. Similarly, Institution A should document the amount, source, and date of the observable market price of a loan, if that method of measuring loan impairment is used.

Q&A #2—ALLL Under FAS 114—Measuring Impairment for a Collateral Dependent Loan

Facts: Institution B has a $10 million loan outstanding to Company X that is secured by real estate, which Institution B individually evaluates under FAS 114 due to the loan's size. Company X is delinquent in its loan payments under the terms of the loan agreement. Accordingly, Institution B determines that its loan to Company X is impaired, as defined by FAS 114. Because the loan is collateral dependent, Institution B measures impairment of the loan based on the fair value of the collateral. Institution B determines that the most recent valuation of the collateral was performed by an appraiser eighteen months ago and, at that time, the estimated value of the collateral (fair value less costs to sell) was $12 million.

Institution B believes that many of the assumptions that were used to value the collateral eighteen months ago do not reflect current market conditions and, therefore, the appraiser's valuation does not approximate current fair value of the collateral. Several buildings, which are comparable to the real estate collateral, were recently completed in the area, increasing vacancy rates, decreasing lease rates, and attracting several tenants away from the borrower. Accordingly, credit review personnel at Institution B adjust certain of the valuation assumptions to better reflect the current market conditions as they relate to the loan's collateral. After adjusting the collateral valuation assumptions, the credit review department determines that the current estimated fair value of the collateral, less costs to sell, is $8 million. Given that the recorded investment in the loan is $10 million, Institution B concludes that the loan is impaired by $2 million and records an allowance for loan losses of $2 million.

Question: What type of documentation should Institution B maintain to support its determination of the allowance for loan losses of $2 million for the loan to Company X?

Interpretive Response: Institution B should document that it measured impairment of the loan to Company X by using the fair value of the loan's collateral, less costs to sell, which it estimated to be $8 million. This documentation should include the institution's rationale and basis for the $8 million valuation, including the revised valuation assumptions it used, the valuation calculation, and the determination of costs to sell, if applicable. Because Institution B

arrived at the valuation of $8 million by modifying an earlier appraisal, it should document its rationale and basis for the changes it made to the valuation assumptions that resulted in the collateral value declining from $12 million eighteen months ago to $8 million in the current period.[19]

Q&A #3—ALLL Under FAS 114—Fully Collateralized Loans

Facts: Institution C has $10 million in loans that are fully collateralized by highly rated debt securities with readily determinable market values. The loan agreement for each of these loans requires the borrower to provide qualifying collateral sufficient to maintain a loan-to-value ratio with sufficient margin to absorb volatility in the securities' market prices. Institution C's collateral department has physical control of the debt securities through safekeeping arrangements. In addition, Institution C perfected its security interest in the collateral when the funds were originally distributed. On a quarterly basis, Institution C's credit administration function determines the market value of the collateral for each loan using two independent market quotes and compares the collateral value to the loan carrying value. If there are any collateral deficiencies, Institution C notifies the borrower and requests that the borrower immediately remedy the deficiency. Due in part to its efficient operation, Institution C has historically not incurred any material losses on these loans. Institution C believes these loans are fully-collateralized and therefore does not maintain any ALLL balance for these loans.

Question: What documentation does Institution C maintain to adequately support its determination that no allowance is needed for this group of loans?

Interpretive Response: Institution C's management summary of the ALLL includes documentation indicating that, in accordance with the institution's ALLL policy, the collateral protection on these loans has been verified by the institution, no probable loss has been incurred, and no ALLL is necessary. Documentation in Institution C's loan files includes the two independent market quotes obtained each quarter for each loan's collateral amount, the documents evidencing the perfection of the security interest in the collateral, and other relevant supporting documents. Additionally, Institution C's ALLL policy includes a discussion of how to determine when a loan is considered ''fully collateralized'' and does not require an ALLL. The policy requires the following factors, at a minimum, to be considered and the institution's findings concerning these factors to be fully documented:

(1) Volatility of the market value of the collateral

(2) Recency and reliability of the appraisal or other valuation

(3) Recency of the bank or other third party inspection of the collateral

(4) Historical losses on similar loans

(5) Confidence in the bank's lien or security position including appropriate:

(a) Type of security perfection (e.g., physical possession of collateral or secured filing)

(b) Filing of security perfection (i.e., correct documents and with the appropriate officials), and

(c) Relationship to other liens.

Q&A #4—ALLL Under FAS 5—Adjusting Loss Rates

Facts: Institution D's lending area includes a metropolitan area that is financially dependent upon the profitability of a number of manufacturing businesses. These businesses use highly specialized equipment and significant quantities of rare metals in the manufacturing process. Due to increased low-cost foreign competition, several of the parts suppliers servicing these manufacturing firms declared bankruptcy. The foreign suppliers have subsequently increased prices and the manufacturing firms have suffered from increased equipment maintenance costs and smaller profit margins. Additionally, the cost of the rare metals used in the manufacturing process increased and has now stabilized at double last year's price. Due to these events, the manufacturing businesses are experiencing financial difficulties and have recently announced downsizing plans.

Although Institution D has yet to confirm an increase in its loss experience as a result of these events, management knows that the institution lends to a significant number of businesses and individuals whose repayment ability depends upon the long-term viability of the manufacturing businesses. Institution D's management has identified particular segments of its commercial and consumer customer bases that include borrowers highly dependent upon sales or salary from the manufacturing businesses. Institution D's management performs an analysis of the affected portfolio segments to adjust its historical loss rates used to determine the ALLL.

Question: How should Institution D document its support for the loss rate adjustments that result from considering these manufacturing firms' financial downturns?

Interpretive Response: Institution D should document its identification of the particular segments of its commercial and consumer loan portfolio for which it is probable that the manufacturing business' financial downturn has resulted in loan losses. In addition, Institution D should document its analysis that resulted in the adjustments to the loss rates for the affected portfolio segments. As part of its documentation, Institution D maintains copies of the documents supporting the analysis, including relevant newspaper articles, economic reports, and economic data.

Because Institution D has had similar situations in the past, its supporting documentation also includes an analysis of how the current situation compares to the institution's previous loss experiences in similar circumstances. A summary of the amount and rationale for the adjustment factor is presented to the audit committee and board for their review and approval prior to the issuance of the financial statements.

Q&A #5—ALLL Under FAS 5—Estimating Losses on Loans Individually Reviewed for Impairment but Not Considered Individually Impaired

Facts: Institution E has outstanding loans of $2 million to Company Y and $1 million to Company Z, both of which are paying as agreed upon in the loan documents. The institution's ALLL policy specifies that all loans greater than $750,000 must be individually reviewed for impairment under FAS 114. Company Y's financial statements reflect a strong net worth, good profits, and ongoing ability to meet debt service requirements. In contrast, recent information indicates Company Z's profitability is declining and its cash flow is tight. Accordingly, this loan is rated substandard under the institution's loan grading system. Despite its concern, management believes Company Z will resolve its problems and determines that neither loan is individually impaired as defined by FAS 114.

Institution E segments its loan portfolio to estimate loan losses under FAS 5. Two of its loan portfolio segments are Segment 1 and Segment 2. The loan to Company Y has risk characteristics similar to the loans included in Segment 1 and the loan to Company Z has risk characteristics similar to the loans included in Segment 2.[20]

Question: How does Institution E adequately support and document an ALLL under FAS 5 for these loans that were individually reviewed for impairment but are not considered individually impaired?

Interpretive Response: In its determination of the ALLL under FAS 5, Institution E includes its loans to Company Y and Company Z in the groups of loans with similar characteristics (*i.e.,* Segment 1 for Company Y's loan and Segment 2 for Company Z's loan). Management's analyses of Segment 1 and Segment 2 indicates that it is probable that each segment includes some losses, even though the losses cannot be identified to one or more specific loans. Management estimates that the use of its historical loss rates for these two segments, with adjustments for changes in environmental factors, such as current local economic conditions, provides a reasonable estimate of the institution's probable loan losses in these segments.

Institution E documents its decision to include its loans to Company Y and Company Z in its determination of its ALLL under FAS 5. It also documents the specific characteristics of the loans that were the basis for grouping these loans with other loans in Segment 1 and Segment 2, respectively. Institution E maintains documentation to support its method of estimating loan losses for Segment 1 and

[19] In accordance with the FFIEC's **Federal Register** Notice, Implementation Issues Arising from FASB No. 114, ''Accounting by Creditors for Impairment of a Loan,'' published February 10, 1995 (60 FR 7966, February 10, 1995), impaired, collateral-dependent loans must be reported at the fair value of collateral, less costs to sell, in regulatory reports. This treatment is to be applied to all collateral-dependent loans, regardless of type of collateral.

[20] These groups of loans do not include any loans that have been individually reviewed for impairment under FAS 114 and determined to be impaired as defined by FAS 114.

Segment 2, including the average loss rate used, the analysis of historical losses by loan type and by internal risk rating, and support for any adjustments to its historical loss rates. The institution also maintains copies of the economic and other reports that provided source data.

Q&A #6—Consolidating the Loss Estimates—Documenting the Reported ALLL

Facts: Institution F determines its ALLL using an established systematic process. The accounting department prepares supporting schedules that include the amount of each of the components of the ALLL, as well as the total ALLL amount, for review by senior management and the Credit Committee. Members of senior management and the Credit Committee meet to discuss the ALLL. During these discussions, they identify changes to be made to certain of the ALLL estimates. As a result of the adjustments made by management, the total amount of the ALLL changes. The supporting schedules are not updated to reflect the adjustments made by senior management and the Credit Committee. When performing their audit of the financial statements, the independent accountants are provided with the original ALLL supporting schedules that were reviewed by management and the Credit Committee, as well as a verbal explanation of the changes made by management and the Credit Committee when they met to discuss the loan loss allowance.

Question: Are Institution F's documentation practices related to the balance of its loan loss allowance appropriate?

Interpretive Response: No. An institution must maintain supporting documentation for the loan loss allowance amount reported in its financial statements. An institution should document not only the determination of the ALLL using its methodology, but also any subsequent adjustments to the amount of the ALLL and the rationale for those adjustments, such as adjustments made by management or board committees as in the circumstances described above.

Appendix B—Application of GAAP

An ALLL recorded pursuant to GAAP is an institution's best estimate of the probable amount of loans and lease-financing receivables that it will be unable to collect based on current information and events.[21] A creditor should record an ALLL when the criteria for accrual of a loss contingency as set forth in GAAP have been met. Estimating the amount of an ALLL involves a high degree of management judgment and is inevitably imprecise. Accordingly, an institution may determine that the amount of loss falls within a range. An institution should record its best estimate within the range of loan losses.[22]

Under GAAP, Statement of Financial Accounting Standards No. 5, Accounting for Contingencies (FAS 5), provides the basic guidance for recognition of a loss contingency, such as the collectibility of loans (receivables), when it is probable that a loss has been incurred and the amount can be reasonably estimated. Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of a Loan (FAS 114) provides more specific guidance about the measurement and disclosure of impairment for certain types of loans.[23] Specifically, FAS 114 applies to loans that are identified for evaluation on an individual basis. Loans are considered impaired when, based on current information and events, it is probable that the creditor will be unable to collect all interest and principal payments due according to the contractual terms of the loan agreement.

For individually impaired loans, FAS 114 provides guidance on the acceptable methods to measure impairment. Specifically, FAS 114 states that when a loan is impaired, a creditor should measure impairment based on the present value of expected future principal and interest cash flows discounted at the loan's effective interest rate, except that as a practical expedient, a creditor may measure impairment based on a loan's observable market price or the fair value of collateral, if the loan is collateral dependent. When developing the estimate of expected future cash flows for a loan, an institution should consider all available information reflecting past events and current conditions, including the effect of existing environmental factors. The following Illustration provides an example of an institution estimating a loan's impairment when the loan has been partially charged-off.

Begin Text Box—Illustration (Interaction of FAS 114 With an Adversely Classified Loan, Partial Charge-Off, and the Overall ALLL): An institution determined that a collateral dependent loan, which it identified for evaluation, was impaired. In accordance with FAS 114, the institution established an ALLL for the amount that the recorded investment in the loan exceeded the fair value of the underlying collateral, less costs to sell. Consistent with relevant regulatory guidance, the institution classified a portion of the recorded investment as ''Loss'' and the remaining recorded investment as ''Substandard.'' For this loan, the amount classified ''Loss,'' which was deemed to be the confirmed loss, was less than the impairment amount (as determined under FAS 114). The institution charged off the ''Loss'' portion of the loan. After the charge-off, the portion of the ALLL related to this ''Substandard'' loan (1) reflects an appropriate measure of impairment under FAS 114, and (2) is included in the aggregate FAS 114 ALLL for all loans that were identified for evaluation and individually considered impaired. The aggregate FAS 114 ALLL is included in the institution's overall ALLL. End Text Box

Large groups of smaller-balance homogeneous loans that are collectively evaluated for impairment are not included in the scope of FAS 114.[24] Such groups of loans may include, but are not limited to, credit card, residential mortgage, and consumer installment loans. FAS 5 addresses the accounting for impairment of these loans. Also, FAS 5 provides the accounting guidance for impairment of loans that are not identified for evaluation on an individual basis and loans that are individually evaluated but are not individually considered impaired.

Institutions should ensure that they do not layer their loan loss allowances. Layering is the inappropriate practice of recording in the ALLL more than one amount for the same probable loan loss. Layering can happen when an institution includes a loan in one segment, determines its best estimate of loss for that loan either individually or on a group basis (after taking into account all appropriate environmental factors, conditions, and events), and then includes the loan in another group, which receives an additional ALLL amount.[25]

There are certain common elements an institution should incorporate in its loan loss allowance methodology. Generally, an institution's methodology should:[26]

(1) Include a detailed analysis of the loan portfolio, performed on a regular basis;

(2) Consider all loans (whether on an individual or group basis);

(3) Identify loans to be evaluated for impairment on an individual basis under FAS 114 and segment the remainder of the portfolio into groups of loans with similar risk characteristics for evaluation and analysis under FAS 5;

(4) Consider all known relevant internal and external factors that may affect loan collectibility;

(5) Be applied consistently but, when appropriate, be modified for new factors affecting collectibility;

(6) Consider the particular risks inherent in different kinds of lending;

[21] This Appendix provides guidance on the ALLL and does not address allowances for credit losses for off-balance sheet instruments (e.g., loan commitments, guarantees, and standby letters of credit). Institutions should record liabilities for these exposures in accordance with GAAP. Further guidance on this topic is presented in the American Institute of Certified Public Accountants' Audit and Accounting Guide, Banks and Savings Institutions (AICPA Audit Guide). Additionally, this Appendix does not address allowances or accounting for assets or portions of assets sold with recourse, which is described in Statement of Financial Accounting Standards No. 125, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities (FAS 125).

[22] Refer to FASB Interpretation No. 14, Reasonable Estimation of the Amount of a Loss, and Emerging Issues Task Force Topick No. D–80, Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (EITF Topic D–80).

[23] EITF Topic D–80 includes additional guidance on the requirements of FAS 5 and FAS 114 and how they relate to each other. The AICPA is currently developing a Statement of Position (SOP) that will provide more specific guidance on accounting for loan losses.

[24] In addition, FAS 114 does not apply to loans measured at fair value or at the lower of cost or fair value, leases, or debt securities.

[25] According to the Federal Financial Institutions Examination Council's Federal Register Notice, Implementation Issues Arising from FASB Statement No. 114, Accounting by Creditors for Impairment of a Loan, published February 10, 1995, institution-specific issues should be reviewed when estimating loan losses under FAS 114. This analysis should be conducted as part of the evaluation of each individual loan reviewed under FAS 114 to avoid potential ALLL layering.

[26] Refer to paragraph 7.05 of the AICPA Audit Guide.

(7) Consider collateral values (less costs to sell), where applicable;

(8) Require that analyses, estimates, reviews and other ALLL methodology functions be performed by competent and well-trained personnel;

(9) Be based on current and reliable data;

(10) Be well documented with clear explanations of the supporting analyses and rationale; and

(11) Include a systematic and logical method to consolidate the loss estimates and ensure the ALLL balance is recorded in accordance with GAAP.

A systematic methodology that is properly designed and implemented should result in an institution's best estimate of the ALLL. Accordingly, institutions should adjust their ALLL balance, either upward or downward, in each period for material differences between the results of the systematic determination process and the unadjusted ALLL balance in the general ledger.[27]

Bibliography

GAAP and Auditing Guidance

American Institute of Certified Public Accountants' Audit and Accounting Guide, Banks and Savings Institutions, 1999 edition

Auditing Standards Board Statement on Auditing Standards No. 61, Communication With Audit Committees (AICPA, Professional Standards, vol. 1, AU sec. 380)

Emerging Issues Task Force Topic No. D–80, Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio (EITF Topic D–80 and attachments), discussed on May 19–20, 1999

Financial Accounting Standards Board Interpretation No. 14, Reasonable Estimation of the Amount of a Loss (An Interpretation of FASB Statement No. 5)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 5, Accounting for Contingencies

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 114, Accounting by Creditors for Impairment of A Loan (An Amendment of FASB Statements No. 5 and 15)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 118, Accounting by Creditors for Impairment of a Loan—Income Recognition and Disclosures (An Amendment of FASB Statement No. 114)

Financial Accounting Standards Board Statement of Financial Accounting Standards No. 125, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities

Regulatory Guidance

Federal Deposit Insurance Act, Section 39, Standards for Safety and Soundness (12 U.S.C. 1831p–1)

Federal Financial Institutions Examination Council's Instructions for Preparation of Consolidated Reports of Condition and Income

Interagency Guidelines Establishing Standards for Safety and Soundness, established in 1995 and 1996, as amended on October 15, 1998

Interagency Policy Statement on the Allowance for Loan and Lease Losses (ALLL), December 21, 1993

Joint Interagency Statement (regarding the ALLL), November 24, 1998

Joint Interagency Letter to Financial Institutions (regarding the ALLL), March 10, 1999

Joint Interagency Letter to Financial Institutions (regarding the ALLL), July 12, 1999

Securities and Exchange Commission Financial Reporting Release No. 28, Accounting for Loan Losses by Registrants Engaged in Lending Activities, December 1, 1986

Securities and Exchange Commission Securities Act Industry Guide 3, Statistical Disclosure by Bank Holding Companies

Securities and Exchange Commission Staff Accounting Bulletin No. 99, Materiality, August 1999

Securities Exchange Act of 1934, Section 13(b)(2)–(7) (15 U.S.C. 78m(b)(2)–(7))

United States General Accounting Office Report to Congressional Committees, Depository Institutions: Divergent Loan Loss Methods Undermine Usefulness of Financial Reports, (GAO/AIMD–95–8), October 1994

Dated: August 30, 2000.

Joanne M. Giese,

Assistant Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 00–22719 Filed 9–6–00; 8:45 am]

BILLING CODE 6210–01–P (25%), 6714–01–P (25%) 6720–01–P (25%), 4810–33–P (25%)

[27] Institutions should refer to the guidance on materiality in SEC Staff Accounting Bulletin No. 99, Materiality.

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 011421–024.

Title: The East Coast South America Discussion Agreement.

Parties:

Crowley American Transport
Alianca Transportes Maritimos S.A.
Columbus Line
Lykes Lines Ltd., LLC
APL Co. PTE. Ltd.
P&O Nedlloyd B.V. and P&O Nedlloyd Limited
Pan American Independent Line
Zim Israel Navigation Co., Ltd.
Mediterranean Shipping Co. S.A.
Euroatlantic Container Line S.A.
Senator Lines GmbH
A.P. Moller-Maersk Sealand
Compania Sud Americana de Vapores, S.A.
Evergreen Marine Corporation (Taiwan) Limited
Braztrans Transportes Maritimos Limitada
Compania Libra de Navegacao

Synopsis: The proposed amendment sets out the obligations of the members with respect to the payment of Agreement expenses and would permit the expulsion of members who fail to meet those obligations.

Agreement No.: 011426–030.

Title: The West Coast South America Discussion Agreement.

Parties:

Crowley American Transport
Seaboard Marine Ltd.
Columbus Line
Compania Chilena de Navegacion Interoceania, S.A.
APL Co. PTE. Ltd.
P&O Nedlloyd B.V.
South America Independent Association and its members:
Trinity Shipping Line, SA
Interocean Lines Inc.
Mediterranean Shipping Co. S.A.
South Pacific Shipping Company, Ltd. d/b/a
Ecuadorian Line
NYK/NOS Joint Service
A.P. Moller-Maersk Sealand
Compania Sud Americana de Vapores, S.A.

Synopsis: The proposed amendment sets out the obligations of the members with respect to the payment of Agreement expenses and would permit the expulsion of members who fail to meet those obligations.

Agreement No.: 011722.

Title: New World Alliance/A.P. Moller Maersk-Sealand Slot Exchange Agreement.

Parties:

A.P. Moller-Maersk Sealand
American President Lines, Ltd
APL Co. PTE Ltd.
Hyundai Merchant Marine Co., Ltd
Mitsui O.S.K. Lines, Ltd.

Synopsis: The agreement authorizes the parties to exchange slot spaces on each others vessels in the trade between U.S. Atlantic and Gulf Coast ports and ports in Northern Europe.

Agreement No.: 011723.

Title: New World Alliance Facilitation Agreement.

Parties:

American President Lines, Ltd
APL Co. PTE Ltd.
Hyundai Merchant Marine Co., Ltd
Mitsui O.S.K. Lines, Ltd.

Synopsis: The agreement allows the members of the New World Alliance (TNWA) to undertake the rights, powers, obligations and liabilities granted them as a group by the New World Alliance/Maersk Sealand Agreement (TNWA/MSL) and to establish initial sub-allocations of slots under TNWA/MSL to TNWA members, initial vessel contributions by the TNWA parties, and provide that the agreement shall remain in effect as long as the TNWA/MSL Agreement remains in effect.

Agreement No.: 201075–002.

Title: Terminal Agreement between The Port of Oakland and Maersk Pacific, Ltd.

Parties:

The Port of Oakland
Maersk Line Pacific, Ltd. Service, Inc.

Synopsis: The amendment provides for changes in the use of certain areas as a result of the new relationships among the various Maersk and the Sea-Land companies. It also extends the agreement through December 31, 2004.

Dated: September 1, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–23009 Filed 9–6–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance of License

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by OSRA 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No., Name/Address, and Date Reissued

16363N—Capitol Transportation, Inc., P.O. Box 363008, San Juan, PR 00936–1361—May 14, 2000

1417F—Interconex Transport, International, Inc., 50 Main Street, 11th Floor, White Plains, NY 10606—May 27, 2000

206F—Marine Forwarding Company, Incorporated, 90 West Street, New York, NY 10006—April 27, 2000

4279F—SR International Logistics, LLC d/b/a High Country Maritime, 5310 Ward Road, Suite G–05, Arvada, CO 80002—July 7, 2000

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 00–23007 Filed 9–6–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Celtic Shipping Line, LLC, 190 Middlesex Turnpike, Suite 203, Iselin, NJ 08830, Officers: Kevin William Shields, President (Qualifying Individual), Kenneth Demitus, Vice President

Sonic Container Line, Inc., 870 Sivert Drive, Wood Dale, IL 60191, Officers: Chih Cheng Hsiao, Manager (Qualifying Individual), Maria Chen, Manager.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

D.L. Central America, Inc., 3500 NW 115 Avenue, Miami, FL 33178, Officers: Sandra Calveiro, Ocean Dept. Coordinator (Qualifying Individual), Alfredo De Leon, Vice President

Pegasus Maritime Inc., 7 Dey Street, Suite 1000A, New York, NY 10002, Officers: Alvaro William Marrero, CEO (Qualifying Individual), Tariq Mahmood, Chairman.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

U C Bridge Inc. d/b/a Rapid Freight International Inc., 210 West Walnut Street, Suite #A, Compton, CA 90220, Officer: Julie Zhu, President (Qualifying Individual)

Dated: September 1, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–23008 Filed 9–6–00; 8:45 am]

BILLING CODE 6730–01–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. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 September 29, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Basile Bancshares, Inc., Basile, Louisiana; to become a bank holding

company by acquiring 100 percent of the voting shares of Basile State Bank, Basile, Louisiana.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Independence Bancshares, Inc., Independence, Iowa; to acquire approximately 100 percent of the outstanding voting shares of Fairbank Bancshares Corp., Fairbank, Iowa and thereby indirectly acquire shares of Fairbank State Bank, Fairbank, Iowa.

Board of Governors of the Federal Reserve System, August 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–22842 Filed 9–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Children's Online Privacy Protection Safe Harbor Proposed Self-Regulatory Guidelines; TRUSTe Application

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed ''Safe Harbor'' Guidelines and request for public comment.

SUMMARY: The Federal Trade Commission publishes this notice and request for public comment concerning proposed self-regulatory guidelines submitted by TRUSTe, under the safe harbor provision of the Children's Online Privacy Protection Rule, 16 CFR 312.10.

DATES: Written comments must be submitted on or before October 10, 2000.

ADDRESSES: Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and public access, comments also should be submitted, if possible, in electronic form, on either a 5¼ or 3½ inch computer disk, with a disk label stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) Alternatively, the Commission will accept comments submitted to the following e-mail address, <*safeharbor@ftc.gov*>. Individual members of the public filing comments need not submit multiple copies or comments in electronic form. All submissions should be captioned: ''TRUSTe Safe Harbor Proposal--Comment, P00450---.'' Comments will be posted on the Commission's web site: <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Toby Levin, (202) 326–3156, Mamie Kresses, (202) 326–2070, or Karen Muoio, (202) 326–2491, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 601 Pennsylvania Ave., NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On October 20, 1999, the Commission issued its final Rule [1] pursuant to the Children's Online Privacy Protection Act, 15 U.S.C. 6501, *et seq.* The Rule requires certain web site operators to post privacy policies, provide notice, and obtain parental consent prior to collecting, using, or disseminating personal information from children. The Rule contains a ''safe harbor'' provision enabling industry groups or others to submit self-regulatory guidelines that would implement the protections of the Rule to the Commission for approval.[2]

Pursuant to Section 312.10 of the Rule, TRUSTe has submitted proposed self-regulatory guidelines to the Commission for approval. The full text of the proposed guidelines is available on the Commission's website, <*www.ftc.gov*>.

Section B. Questions on the Proposed Guidelines

The Commission is seeking comment on various aspects of the proposed guidelines, and is particularly interested in receiving comment on the questions that follow. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. Responses to these questions should cite the numbers and subsection of the questions being answered. For all comments submitted, please provide any relevant data, statistics, or any other evidence, upon which those comments are based.

1. Please provide comment on any or all of the provisions in the proposed guidelines. For each provision commented on please describe (a) the impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, TRUSTe should consider, as well as the costs and benefits of those alternatives.

2. Do the provisions of the proposed guidelines governing operators' information practices provide ''the same or greater protections for children'' as those contained in Sections 312.2–312.8 of the Rule? [3] Where possible, please cite the relevant sections of both the Rule and the proposed guidelines.

3. Are the mechanisms used to assess operators' compliance with the guidelines effective? [4] If not, please describe (a) how the proposed guidelines could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

4. Are the incentives for operators' compliance with the guidelines effective? [5] If not, please describe (a) how the proposed guidelines could be modified to satisfy the Rule's requirements, and (b) the costs and benefits of those modifications.

5. Do the guidelines provide adequate means for resolving consumer complaints? If not, please describe (a) how the proposed guidelines could be modified to resolve consumer complaints adequately, and (b) the costs and benefits of those modifications.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 00–22946 Filed 9–6–00; 8:45 am]

BILLING CODE 6750–01–M

[1] 64 FR 59888 (1999).

[2] *See* 16 CFR 312.10; 64 FR at 59906–59908, 59915.

[3] See 16 CFR 312.10(b)(1); 64 FR at 59915.

[4] See 16 CFR 312.10(b)(2); 64 FR at 59915.

[5] See 16 CFR 312.10(b)(3); 64 FR at 59915.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Workshop in Vaccine Communication

The National Vaccine Program Office (NVPO), of the Centers for Disease Control and Prevention (CDC), announces the following meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop on Vaccine Communication.

Times and Dates: 8:30 a.m.—6 p.m., October 5, 2000. 8:30 a.m.—2 p.m., October 6, 2000.

Place: Key Bridge Marriott Hotel, Arlington, Virginia.

Status: Open to the public, limited only by the space available. The meeting

room accommodates approximately 150 people.

Purpose: The National Vaccine Advisory Committee, the Inter-Agency Vaccine Communications Group and the National Vaccine Program Office will sponsor a Workshop on Vaccine Communication to provide a forum for identifying and discussing more effective approaches to vaccine benefit and risk communication.

This Workshop should be of interest to people working in the vaccine and immunization arena including health communication and public affairs specialists, public and private sector health care providers, parent and consumer groups, vaccine manufacturers, and immunization program managers and directors.

Matters to be Discussed: The Workshop will focus on (1) identifying key issues, forces and trends that are influencing and shaping perceptions about vaccines; (2) determining how to establish more meaningful discussions regarding issues of concern; (3) defining options for establishing more effective mechanisms for communicating vaccine benefits and risks; and (4) examining and discussing the effectiveness, purpose, methods, and timing of current vaccine communications.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Lena Kombo, NVPO, CDC, 1600 Clifton Road, NE, M/S D66, Atlanta, Georgia 30333, telephone 404/687–6672. You may also visit the NVPO website for additional information: *www.cdc.gov/od/nvpo/calendar.* The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 31, 2000.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–22902 Filed 9–6–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1449]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Changes to an Approved NDA or ANDA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in a guidance for industry entitled ''Changes to an Approved NDA or ANDA.''

DATES: Submit written or electronic comments on the collection of information by November 6, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the collection of information on the Internet at: http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Changes to an Approved NDA or ANDA (OMB Control No. 0910–0431)—Extension

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act (the Modernization Act) (Public Law 105–115) into law. Section 116 of the Modernization Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506A (21 U.S.C. 356a), which describes requirements and procedures for making and reporting manufacturing changes to approved new drug applications (NDA's) and abbreviated new drug applications (ANDA's), to new and abbreviated animal drug applications, and to license applications for biological products.

The guidance is intended to assist applicants in determining how they should report changes to an approved NDA or ANDA under section 116 of the Modernization Act, which provides requirements for making and reporting manufacturing changes to an approved application and for distributing a drug product made with such changes.

The guidance provides recommendations to holders of approved NDA's and ANDA's who intend to make postapproval changes in accordance with section 506A of the act. The guidance covers recommended reporting categories for postapproval changes for drugs, other than specified biotechnology and specified synthetic biological products. Recommendations

are provided for postapproval changes in: (1) Components and composition, (2) sites, (3) manufacturing process, (4) specification(s), (5) package, (6) labeling, and (7) miscellaneous changes.

Section 116 of the Modernization Act amended the act by adding section 506A. Some of the basic elements of section 506A of the act are as follows:

- A drug made with a manufacturing change, whether a major manufacturing change or otherwise, may be distributed only after the applicant validates the effects of the change on the identity, strength, quality, purity, and potency of the drug as these factors may relate to the safety or effectiveness of the drug (section 506A(a)(1) and (b) of the act). This section recognizes that additional testing, beyond testing to ensure that an approved specification is met, is required to ensure unchanged identity, strength, quality, purity, or potency as these factors may relate to the safety or effectiveness of the drug.
- A drug made with a major manufacturing change may be distributed only after the applicant submits a supplemental application to FDA and the supplemental application is approved by the agency. The application is required to contain information determined to be appropriate by FDA and include the information developed by the applicant when ''validating the effects of the change'' (section 506A(c)(1) of the act).
- A major manufacturing change is a manufacturing change determined by FDA to have substantial potential to adversely affect the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Such changes include: (1) A change made in the qualitative or quantitative formulation of the drug involved or in the specifications in the approved application or license unless exempted by FDA by regulation or guidance; (2) a change determined by FDA by regulation or guidance to require completion of an appropriate clinical study demonstrating equivalence of the drug to the drug manufactured without the change; and (3) other changes determined by FDA by regulation or guidance to have a substantial potential to adversely affect the safety or effectiveness of the drug (section 506A(c)(2) of the act).
- FDA may require submission of a supplemental application for drugs made with manufacturing changes that are not major (section 506A(d)(1)(B) of the act) and establish categories of manufacturing changes for which a supplemental application is required (section 506A(d)(1)(C) of the act). In such a case the applicant may begin distribution of the drug 30 days after FDA receives a supplemental application unless the agency notifies the applicant within the 30-day period that prior approval of the application is required (section 506A(d)(3)(B)(i) of the act). FDA may also designate a category of manufacturing changes that permit the applicant to begin distributing a drug made with such changes upon receipt by the agency of a supplemental application for the change (section 506A(d)(3)(B)(ii) of the act). If FDA disapproves a supplemental application, the agency may order the manufacturer to cease the distribution of drugs that have been made with the disapproved change (section 506A(d)(3)(B)(iii) of the act).
- FDA may authorize applicants to distribute drugs without submitting a supplemental application (section 506A(d)(1)(A) of the act) and may establish categories of manufacturing changes that may be made without submitting a supplemental application (section 506A(d)(1)(C) of the act). The applicant is required to submit a report to FDA on such a change and the report is required to contain information the agency deems to be appropriate and information developed by the applicant when validating the effects of the change. FDA may also specify the date on which the report is to be submitted (section 506A(d)(2)(A) of the act). If during a single year an applicant makes more than one manufacturing change subject to an annual reporting requirement, FDA may authorize the applicant to submit a single report containing the required information for all the changes made during the year (annual report) (section 506A(d)(2)(B) of the act).

Section 506A of the act provides FDA with considerable flexibility to determine the information and filing mechanism required for the agency to assess the effect of manufacturing changes in the safety and effectiveness of the product. There is a corresponding need to retain such flexibility in the guidance on section 506A of the act to ensure that the least burdensome means for reporting changes are available. FDA believes that such flexibility will allow it to be responsive to increasing knowledge of and experience with certain types of changes and help ensure the efficacy and safety of the products involved. For example, a change that may currently be considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, at a later date, based on new information or advances in technology, be determined to have a lesser potential to have such an adverse effect. Conversely, a change originally considered to have a minimal or moderate potential to have an adverse effect on the safety or effectiveness of the product may later, as a result of new information, be found to have an increased, substantial potential to adversely affect the product. The guidance enables the agency to respond more readily to knowledge gained from manufacturing experience, further research and data collection, and advances in technology. The guidance describes the agency's current interpretation of specific changes falling into the four filing categories. Section 506A of the act explicitly provides FDA the authority to use guidance documents to determine the type of changes that do or do not have a substantial potential to adversely affect the safety or effectiveness of the drug product. The use of guidance documents allows FDA to more easily and quickly modify and update important information.

As explained below, FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Federal Food, Drug, and Cosmetic Act Sections	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
506A(c)(1) 506A(c)(2) Prior approval supplement (supp.) 506A(d)(1)(B) 506A(d)(1)(C) 506A(d)(3)(B)(i)	594	3	1,744	120	209,280
Changes being effected (CBE) in 30-days supp. 506A(d)(1)(B) 506A(d)(1)(C) 506A(d)(3)(B)(ii)	594	5	2,754	80	220,320
CBE supp. 506A(d)(1)(A) 506A(d)(1)(C) 506A(d)(2)(A) 506A(d)(2)(B)	486	1	486	80	38,880
Annual report	704	10	6,929	25	173,225
Total					641,705

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 506A(a)(1) and (b) of the act require the holder of an approved application to validate the effects of a manufacturing change on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug before distributing a drug made with the change. Under section 506A(d)(3)(A) of the act, information developed by the applicant to validate the effects of the change regarding identity, strength, quality, purity, and potency is required to be submitted to FDA as part of the supplement or annual report. Thus, no separate estimates are provided for section 506A in table 1; estimates for validation requirements are included in the estimates for supplements and annual reports. The guidance does not provide recommendations on the specific information that should be developed by the applicant to validate the effect of the change on the identity, strength (*e.g.*, assay, content uniformity); quality (*e.g.*, physical, chemical, and biological properties); purity (*e.g.*, impurities and degradation products); or potency (*e.g.*, biological activity, bioavailability, bioequivalence) of a product as they may relate to the safety or effectiveness of the product.

Section 506A (c)(1) and (c)(2) of the act set forth requirements for changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes). Under this section, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. The applicant must obtain approval of a supplement from FDA prior to distribution of a product made using the change.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1,744 supplements will be submitted annually under section 506A(c)(1) and (c)(2) of the act. FDA estimates that approximately 594 applicants will submit such supplements, and that it will take approximately 120 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) of the act set forth requirements for changes requiring supplement submission at least 30 days prior to distribution of the product made using the change (moderate changes). Under this section, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. Distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 2,754 supplements will be submitted annually under section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) of the act. FDA estimates that approximately 594 applicants will submit such supplements, and that it will take approximately 80 hours to prepare and submit to FDA each supplement.

Under section 506A(d)(3)(B)(ii) of the act, FDA may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug upon receipt by the agency of a supplement for the change. Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 486 supplements will be submitted annually under section 506A(d)(3)(B)(ii) of the act. FDA estimates that approximately 486 applicants will submit such supplements, and that it will take approximately 80 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) of the act set forth requirements for changes to be described in an annual report (minor changes). Under this section of the act, changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product must be documented by the applicant in the next annual report.

Based on data concerning the number of supplements and annual reports received by the agency, FDA estimates that approximately 6,929 annual reports will include documentation of certain manufacturing changes as required under section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) of the act. FDA estimates that approximately 704 applicants will submit such information, and that it will take approximately 25 hours to prepare and submit to FDA the information for each annual report.

Dated: August 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–22948 Filed 9–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1467]

Agency Information Collection Activities; Proposed Collection; Comment Request; Shipment of a Blood Product Prior to Completion of Testing for Hepatitis B Surface Antigen (HBsAg); and Shipment of Blood Products Known Reactive for HBsAg

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA regulations for the shipment of a blood product prior to completion of testing for Hepatitis B Surface Antigen (HBsAg); and shipment of blood products known reactive for HBsAg.

DATES: Submit written or electronic comments on the collection of information by November 6, 2000.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at: http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Shipment of a Blood Product Prior to Completion of Testing for Hepatitis B Surface Antigen (HBsAg)—(21 CFR 610.40(b)); and Shipment of Blood Products Known Reactive for HBsAg—(21 CFR 610.40(d)) (OMB Control Number 0910–0168)—Extension

Under sections 351 and 361 of the Public Health Service Act (42 U.S.C. 262 and 42 U.S.C. 264), FDA prescribes standards designed to ensure the safety, purity, potency, and effectiveness of biological products including blood and blood components and to prevent the transmission of communicable diseases. To accomplish this, FDA requires, among other things, that each unit of Whole Blood or Source Plasma be tested by a licensed serologic test for hepatitis B surface antigen (HBsAg). Section 610.40(b)(4) (21 CFR 610.40(b)(4)) permits preapproved or emergency shipments of blood products for further manufacturing before the test for HBsAg is completed. To obtain approval for such shipments, the collection facility must submit a description of the control procedures to be used by the collection facility and manufacturer. Proper control procedures are essential to ensure the safe shipment, handling, and quarantine of untested or incompletely tested blood products, communication of test results, and appropriate use or disposal of the blood products based on the test results. Section 610.40(d)(1)(v) and (d)(2)(iv) requires that a collection facility notify FDA of shipments of HBsAg reactive source blood, plasma, or serum for manufacturing into hepatitis B vaccine and licensed or unlicensed in vitro diagnostic biological products, including clinical chemistry control reagents. The reporting requirements inform FDA of the shipment of potentially infectious biological products that may be capable of transmitting disease. FDA's monitoring of such activity is essential should any deviations occur that may require immediate corrective action to protect public safety.

The respondents for this information collection are the blood collection facilities that ship hepatitis B reactive products. Only a few firms are actually engaged in shipping hepatitis B reactive products and making the reports required by § 610.40. Also, there are very few to no emergency shipments per year related to further manufacturing and the only product currently shipped prior to completion of hepatitis B testing is a licensed product, Source Leukocytes. Shipments of Source Leukocytes are preapproved under the product license applications and do not require notification of shipment. Currently, there have been no respondents reporting emergency or preapproved shipments (§ 610.40(b)). However, FDA is listing one report per year for emergency or preapproved shipments to account for the possibility of future emergency shipments. The estimated number of respondents and total annual responses under § 610.40(d) are based on the annual average of reports submitted to FDA in 1999. The hours per response are based on past FDA experience.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
610.40(b) [2]	1	1	0.5	0.5	
610.40(d) [3]	12	1.83	22	0.5	11
Total					11.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The notice involves a brief letter and an enclosure. The letter identifies who is making the shipment, to whom shipped, the nature of the emergency, the kind and quantity shipped, and date of shipment. The enclosure is a copy of the shippers written standard operating procedures for handling, labeling storage, and shipment of contaminated (contagious) product. The burden for development and maintenance of standard operating procedures is approved under OMB No. 0910–0116.

[3] The notice of reactive product shipment is limited to information on: The identity of the kind and amount of source material shipped; the name and address of the consignee; the date of shipment; and the manner in which the source material is labeled.

FDA has calculated no additional burden in this information collection package for the labeling requirements in § 610.40(d) because the information and statements on the label necessary for public disclosure and safety are provided by FDA in these regulations. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: August, 30 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–22951 Filed 9–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0836]

Agency Information Collection Activities; Announcement of OMB Approval; Environmental Impact Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Environmental Impact Considerations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the**Federal Register** of March, 13, 2000 (65 FR 13405), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0322. The approval expires on August, 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: August 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–22849 Filed 9–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N 0928]

Agency Information Collection Activities; Announcement of OMB Approval; Request for Samples and Protocols

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Request for Samples and Protocols'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA 250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 2000 (65 FR 41678), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910 0206. The approval expires on August 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: August 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–22850 Filed 9–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00P–1439]

Iceberg Water Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Iceberg Industries Corp. to market test a product designated as ''Borealis Iceberg Water'' that deviates from the U.S. standard of identity for bottled water. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for bottled water.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 6, 2000.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4561.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Iceberg Industries Corp., 16 Forest Rd., suite 200, P.O. Box 8251, St. John's, Newfoundland, Canada, A1B 3N4.

The permit covers limited interstate marketing tests of products identified as ''iceberg water'' that deviate from the U.S. standard of identity for bottled water (21 CFR 165.110) in that the source of the water is an iceberg. The test product meets all the requirements of the standard with the exception of the source definition. Because test preferences vary by area, along with social and environmental differences, the purpose of this permit is to test the product throughout the United States.

Under this temporary permit, the bottled water will be test marketed as ''Borealis Iceberg Water.''

This permit provides for the temporary marketing of 150,000 cases of the 24 x 350 milliliters (ml), 150,000 cases of the 12 x 1 liters (L), and another 100,000 cases of the 24 x 500 ml giving 400,000 cases in total. The total fluid weight of the test product will be 1,124,024 gallons or 4,260,000 L). The test product will be manufactured at Iceberg Industries Corp. Water Bottling Plant, Daniel's Point, Trepassy, Newfoundland, Canada, A0A 4B0. The product will be distributed by Iceberg Industries in the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101.

This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than December 6, 2000.

Dated: August 23, 2000.

Christine J. Lewis,

Director, Office of Nutritional Products Labeling and Dietary Supplements Center for Food Safety and Applied Nutrition.

[FR Doc. 00–22950 Filed 9–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: AIDS Drug Assistance Program (ADAP): ADAP Monthly Client Utilization and Program Expenditures Report (OMB No. 0915–0219)—Revision

State AIDS Drug Assistance Programs (ADAPs), funded under Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Amendments of 1996 (Pub. L. 104–146), are designed to provide low income, uninsured, and underinsured individuals with access to HIV/AIDS medications that prevent serious deterioration of health arising from HIV disease, including the prevention and treatment of opportunistic infections.

During the last several years, there has been an increasing need for pharmaceuticals among uninsured and underinsured low-income individuals who are HIV positive or diagnosed with AIDS. Due to the increasing demand, the Division of Service Systems (DSS), Health Resources and Services Administration (HRSA) recognizes the importance of program planning and budget forecasting in order to maximize resources, and proposes to revise the current data collection form to better collect relevant client utilization data and program expenditure information from State ADAPs. This data collection effort is designed to allow DSS/HRSA (the funding agency) to monitor nationwide trends in program growth, client utilization, expenditures and to assess the capacity of State ADAPs to maintain services for clients throughout the fiscal year. The revised form will improve DSS/HRSA's ability to track the prices of HIV/AIDS drugs in order to ensure that State ADAPs are receiving the best price possible, to identify emerging issues and technical assistance needs, and to share information among State ADAPs. It will also assist Title II grantees, State ADAPs, DSS/HRSA staff, and policymakers at both the Federal and State level to better understand the level of client demand for medications and the resources needed to meet those needs.

The revised report will collect time-specific data for the number of enrolled clients, the number of new clients, the number of utilizing clients, the level of funds expended, and the price of HIV/AIDS drugs. A text box is provided to allow State ADAPs to report significant changes to their program, such as a projected budget shortfall, program restrictions, client waiting lists, a change in eligibility criteria, or formulary changes. On a quarterly basis, State ADAPs will report the purchase price paid on a select number of HIV pharmaceuticals dispensed by each program. DSS/HRSA will continue to compile summary reports that are distributed back to grantees and State ADAPs on a quarterly basis. The data collected is used to guide program planning, formulate budget recommendations, and monitor State ADAPs, especially monitoring the balance between an individual State ADAP's available resources against the client demand for medications. The burden estimates are as follows:

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Title II ADAP Grantees (Clients and Expenditures)	54	12	648	0.75	486
Title II ADAP Grantees (Pricing)	54	4	216	0.75	162

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Total	54	16	864	0.75	648

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC. 20503.

Dated: August 31, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–22947 Filed 9–6–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Use of Cumulative Distribution Functions To Determine Protein Purity and Homogeneity

Alfred L. Yergey, Paul S. Blank, Christin M. Sjomeling (NICHD)

DHHS Reference No. E–163–00/0 filed 28 Apr 2000

Licensing Contact: Vasant Gandhi; 301/496–7056 ext. 224; e-mail:gandhiv@od.nih.gov

Successful solutions to numerous problems in the biochemical sciences depend on the ability to produce ''pure'' proteins and recognize the degree to which proteins might be modified. Current methods used for assessing purity are relatively nonspecific and insensitive to small differences in molecular weight. The inventors have developed a computer-implemented method and system for nonparametric statistical analysis of matrix-assisted laser desorption ionization (MALDI) protein spectra but is equally applicable to deconvoluted electrospray ionization (ESI) spectra. The invention facilitates assessing protein heterogeneity and detection of otherwise indistinguishable differences in the distribution of molecular weight. A principal advantage is that no additional instrumentation is required beyond that typically included in a mass spectrometry analysis system.

Hsp70-Like ATPase Peptide Binds Chap1/Dsk2

Frederic J. Kaye (NCI)

DHHS Reference No. E–282–99/0 filed 15 Sep 1999

Licensing Contact: Elaine White; 301/496–7056 ext. 282; e-mail: gesee@od.nih.gov

The current invention embodies the identification of a novel gene and protein, Chap1/Dsk2, a ubiquitin-linked protein which appears to play a vital role in regulating mitosis. Identified also is the conserved 20 amino acid region within the ATPase domain of the protein chaperone STCH, an Hsp70-like protein, which is the binding site for Chap1/Dsk2 and other ubiquitin-linked proteins.

Protein chaperones are essential for cell viability, regulating various cell cycle events including the biosynthesis, folding and unfolding, transport, multiunit assembly, and degradation of cell proteins. Overexpression of protein chaperones, such as STCH, can serve to suppress tumorigenesis and apoptosis. It therefore is believed that the peptide identified as the binding domain of STCH may have potential for use as a therapeutic agent against cancer or various infectious diseases, via modulation of tumorigenesis, apoptosis, or the multiunit assembly of viral particles such as HIV.

Polypeptides Comprising IL–6 Ligand Binding Receptor Domains and Related Nucleic Acids, Antibodies, Compositions and Methods

W. Carl Saxinger (NCI)

DHHS Reference No. E–061–99/0 filed 27 Aug 1999

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

The biological activities of IL–6 include the stimulation of B and T cell growth and differentiation, production of acute-phase proteins by hepatocytes, multilineage hematopoiesis, osteoblast formation, maturation of megakaryocytes and platelet production. An abnormal expression of IL–6 may be involved in the pathogenesis of a variety of diseases, among which are multiple myeloma, rheumatoid arthritis, postmenopausal osteoporosis, chronic autoimmune diseases, Castleman's disease and AIDS. Methods of abrogating the effects of abnormal expression of IL–6 can be made at its site of production or at its target. The inventors of this technology have focused on the latter technique. Using a unique, newly patented, automated peptide array system, the inventors have studied specific sequences potentially involved in protein-protein interactions at the molecular level. This system was used to identify and isolate potential target peptide sequences within the IL–6 receptor molecule. Candidate peptide sequences were identified by direct binding to the IL–6 ligand by optimally displayed IL–6 receptor peptide segments in solid phase form. The specific binding properties of the peptide sequences were verified by using IL–6 heteroantisera, and the peptides have been shown to mitigate or reverse the effects of the above referenced properties of IL–6 in tissue culture.

Receptor-Mediated Uptake of an Extracellular Bcl-XL Fusion Protein Inhibits Apoptosis

Richard J. Youle, Xiuhuai Liu, JoAnn Castelli (NINDS)

DHHS Reference No. E–073–99/0 filed 16 Aug 1999

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov

The present invention relates to the field of apoptosis, in particular, it relates to apoptosis-modifying fusion proteins with at least two domains, one of which targets the fusion proteins to a target cell, and another of which modifies an apoptotic response of the target cell. For example, fusing various cell-binding domains to Bcl-XL and Bad allows targeting to specific subsets of cells in vivo, permitting treatment and/or prevention of cell-death related consequences of various diseases and injuries. This technology could be used to minimize or prevent apoptotic damage that can be caused by neurodegenerative disorders, *e.g.,* Alzheimer's disease, Huntington's disease or spinal-muscular atrophy, stroke episodes or transient ischemic neuronal injury, *e.g.,* spinal cord injuries. Additionally, apoptotic-enhancing fusion proteins of the current invention could be used to inhibit cell growth, *e.g.,* uncontrolled cellular proliferation.

DNA Binding Protein and Sequence as Insulators Having Specific Enhancer Blocking Activity for Regulation of Gene Expression

Adam C. Bell, Adam G. West, Gary Felsenfeld (NIDDK)

DHHS Reference Nos. E–220–98/0 filed 30 Jun 1999 and E–220-98/1 filed 19 Apr 2000

Licensing Contact: Girish Barua; 301/496–7735 ext. 263; e-mail: gb18t@nih.gov

This patent application has two components. The first is the identification of a functional 50bp fragment of a previously known chicken chromatin insulator protein. The second component is the identification of the REBL (Required for Enhancer Blocking) CTCF protein (CCCTC-binding factor) which binds to the 50bp fragment. [The relationship between these two can be analogized as a receptor (50 bp fragment) and its ligand (the REBL CTCF protein).] These two elements can be used separately or together to regulate gene expression.

An insulator is a DNA sequence which is capable of acting as a barrier to neighboring cis-acting elements, preventing gene activation when juxtaposed between an enhancer and a promoter (*i.e.,* when the insulator is placed between the enhancer and the promoter gene activation is blocked). An insulator will also act to protect a stably integrated reporter gene from position effects. This 50 bp fragment represents a functionally active domain of the chicken insulator protein which is both necessary and sufficient for enhancer blocking activity in human cells. The previously described chicken chromatin insulator is a 1.2 kb fragment which, where overall size of the vector to be delivered is a concern, for example, in gene therapy, may be too large for some applications. The identification of this active 50 bp fragment may therefore be a preferred alternative.

The identification of the REBL CTCF protein as an agent which binds to the 50 bp insulator fragment and whose binding activity is necessary for blocking of enhancer activity provides an additional element which may be used to more specifically control gene regulation. As most gene expression is dependent on the activity of multiple components the identification of a specific binding factor which functions as a blocking enhancer activity may permit more precise control of gene expression. The human REBL protein has regions which share homology with previously disclosed partial human cDNAs. It has a molecular weight of 135 kDa. A chicken homolog has also been identified. CTCF was originally identified as a repressor of the chicken c-myc gene.

Dated: August 29, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–22880 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Marlene Shinn, J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 285; fax: 301/402–0220; e-mail: shinnm@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Inhibition of Smad3 To Prevent Fibrosis and Improve Wound Healing

Anita B. Roberts *et al.* (NCI)

DHHS Reference No. E–070–00/0 filed 19 May 2000; PCT/US00/13725

Millions of dollars are spent each year to heal chronic non-healing wounds and in the treatment of severe burn patients. The NIH announces a new technology that may lead to improved approaches to treatment of burn patients and the reduction of scarring and more rapid closure of both acute (surgical) and chronic wounds (e.g., diabetic, decubitus, and venus statis ulcers).

Smad2 and Smad3 are highly homologous cytoplasmic proteins which function to transduce signals from Transforming Growth Factor-beta (TGF–β) and activin receptors to promoters of target genes found in the nucleus. This new technology indicates that interference with specific signaling pathways downstream of TGF–β may be more selective and have a better outcome than approaches aimed at blocking all effects of this pleiotropic cytokine. Specifically, it is proposed that elimination or inhibition of Smad3 may interfere with fibrogenic mechanisms and reduce the accumulation of scar tissue associated with high dose radiation and wound healing, while increasing the rate of re-epithelialization of wounds.

Although this technology is still in an early stage, our researchers have obtained solid evidence of the involvement of Smad3 in these processes by use of a Smad3 null mouse model which they have developed. Based on these results, it is believed that antisense Smad3 or small molecule inhibitors of Smad3 will have clinical applications in wound healing, in improving growth and reducing unwanted fibrosis of autologous skin grafts for treatment of burn patients, and in treatment of radiation fibrosis and other fibrotic diseases associated with chronic inflammation. In addition, the discovery of inhibitors to Smad3 signaling may lead to radiation dose escalation and accelerated tumor cell death while reducing the side effects associated with radiation therapy.

Anti-γ-H2A Antibody and Method for Detecting DNA Double-Stranded Breaks

William M. Bonner, Efthimia P. Rogakou (NCI)
Serial No. 09/351,721 filed 12 Jul 1999

There presently exist assays for determining DNA breakage due to stresses such as radiation and toxins. These include the TUNEL assay and single cell gel electrophoresis, among others. The difficulty in using these and other assays arises in that a great number of DNA breaks are necessary for adequate detection of the breakage. Since only 40 double-stranded breaks in the DNA leads to cell death, it is evident that there is a need for an assay with greater specificity.

The NIH announces a new technology which relates to such an improvement over current DNA detection assays, with the ability to be sensitive enough to detect a single DNA double-stranded break in a cell's nucleus. This method for detection uses antibodies directed against a synthetic phosphorylated peptide containing the mammalian γ-H2AX C-terminal sequence for deletion of DNA double-stranded breaks. It centers on the activity of the H2A histone. In response to a DNA break, H2A can become phosphorylated in great numbers and provide protection for the break site to assist in repair. The antibody and method available show specificity for this occurrence and thus allow detection at levels much lower than are presently needed by other detection techniques. Use of such technology could be widespread, both as a diagnostic tool and with specific DNA breakage-related disease and syndrome research.

Dated: August 29, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–22881 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A High Yield Pertussis Vaccine Production Strain and Method for Making Same

Tod J. Merkel, Jerry M. Keith and Xiaoming Yang (NIDCR)
DHHS Reference No. E–159–99/0 filed 26 Jun 2000
Licensing Contact: Uri Reichman; 301/496–7736 ext. 240; e-mail: reichmau@od.nih.gov

Pertussis Toxin (PT) in its chemically detoxified forms has emerged as the most promising acellular vaccine against *Bordetella pertussis (B. pertussis),* the organism responsible for whooping cough. Genetically detoxified forms of PT have recently been demonstrated as potential vaccine candidates against this organism, and may offer the advantages of enhanced stability and ease of manufacturing. The need for production of large quantities of PT and its genetically detoxified forms keeps growing, but the current methods of production of the toxin from *B. pertussis* have proven to be rather cumbersome and inefficient, resulting in poor yields and impure form of the desired protein. The present invention provides for a new way to circumvent these difficulties and renders the process more amenable to industrial needs. The present invention describes the development of a new genetically engineered strain of *Bordetella bronchiseptica,* named BBPT, which grows at a high rate relative to *B. pertussis,* and is capable of producing wild type or genetically detoxified form of PT in pure form, with high yields and in a cost effective fashion. The high degree of purity of the product is achieved due to the knockout of the filamentous hemagglutinin (FHA) gene in this new strain. The presence of the FHA protein, which is inherent in the conventional methods of production, requires extra purification steps, thus resulting in poor and inconsistent yields of the toxin. The BBPT strain of the present invention may play a major role in the acceleration of programs dedicated to the development of improved and efficacious vaccines against *B. pertussis.*

Activation of Antigen Presenting Cells to Respond To a Selected Antigen

Polly Matzinger, Stefania Gallucci, Martijn Lolkema (NIAID)
DHHS Reference No. E–018–00/0 filed 25 Oct 1999
Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: soukasp@od.nih.gov

The inventors have found that alpha interferon and the supernatant of necrotic cells can act as adjuvants when co-injected along with a protein, such as OVA, to initiate a primary *in vivo* immune response in mice. The compositions of the present invention can induce dendritic cells to activate and become good Antigen Presenting Cells (APCs) and consequently initiate an immune response. The advantage of these adjuvants is that they are more physiological and they allow for repeated vaccination, which current adjuvant technology makes difficult due to the side effects of the adjuvants. The invention also provides uses and applications for the adjuvants, including, but not limited to, transplant rejection, spontaneous tumor rejection, some forms of spontaneous abortion, and some forms of autoimmunity. The invention is further described in Nature Medicine 1999 Nov; 5(11):1249–55.

Dated: August 29, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–22882 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and

development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by Uri Reichman, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7736 ext. 240; fax: 301/402–0220; e-mail: reichmau@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Use of Recombinant Parainfluenza Viruses (PIVs) as Vectors To Protect Against Infection and Disease Caused by PIV and Other Human Pathogens

B. Murphy, P. Collins, A. Durbin, M. Skiadopoulos and T. Tao (NIAID)
DHHS Reference No. E–099–99/0 filed 10 Dec 1999

The invention relates to the design and creation of recombinant chimeric parainfluenza viruses, novel vaccine candidates against PIV and non-PIV pathogens. The chimeric viruses utilize the PIV genome as a carrier/vector for heterologous PIV or non-PIV genes that code for the protective antigens of the pathogens. For example, the glycoproteins genes of PIV1 and PIV2 can be incorporated into PIV3 genome, either substituting for or in addition to the vector's glycoprotein genes. The latter design can serve as a single vaccine against the three types of PIV pathogens. Furthermore, PIV can serve as a carrier for the ''protective'' genes of non-PIV pathogens such as measles, RSV, mumps, herpes, influenza and more. In this design, again, the ''donor'' genes can substitute for or be added to the vector's protecting genes. The latter design can serve as a single vaccine against plurality of pathogens. In particular, the invention describes the potential benefit of developing new vaccine candidates against the measles virus.

The live attenuated measles virus currently in commercial use must be administered by intramuscular injection, and cannot be given until 12 months of age due to neutralization by maternal antibodies present in young infants. There is a strong need to develop a vaccine which will be effective in the first year of life. A chimeric PIV3-measles vaccine described in this invention has shown to confer protection against the two pathogens. Initial studies indicate that this vaccine candidate will be able to circumvent the difficulties encountered by the currently licensed vaccine, i.e., it will be possible to administer the vaccine by intranasal route so that it will be effective in the presence of maternal antibodies. This vaccine will make it possible, for the first time, to immunize young infants against the deadly measles virus.

Attenuated Human-Bovine Chimeric Parainfluenza Virus (PIV) Vaccines

M. Skiadopoulos, P. Collins, B. Murphy and A. Schmidt (NIAID)
DHHS Reference No. E–201–00/0 filed 05 Jul 2000

The invention relates to the engineering and creation of recombinant chimeric human-bovine parainfluenza viruses (PIVs) and novel vaccine candidates against PIV. The chimera of the invention include a partial or complete ''background'' PIV genome or antigenome derived from or patterned after a bovine PIV virus, combined with one or more heterologous gene(s) or genome segment(s) of a human PIV virus to form a human-bovine chimeric PIV genome or antigenome. The inverted design is also possible, where the chimeric PIV incorporates a partial or complete human PIV ''background'' genome or antigenome, combined with one or more heterologous gene(s) or genome segment(s) from bovine PIV, whereby the resultant chimeric virus is attenuated by virtue of the host-range restriction specified by the bovine genes. In particular, the invention describes the creation of chimera where the human PIV HN and F ''protective'' genes are incorporated into a bovine ''background'' genome, and another one where bovine PIV3 P and M open reading frames replace that of human in a human PIV3 ''background'' genome. The vaccine candidates created by this recombinant technique can be further attenuated by incorporating specific point mutations and nucleotide modifications into the genome to yield desired phenotypic and structural effects.

Respiratory Syncytial Virus Vaccines Expressing Protective Antigens From Promoter-Proximal Genes

C. Krempl, P. Collins, B. Murphy, U. Buchholz and S. Whitehead (NIAID)
DHHS Reference No. E–225–00/0 filed 23 Jun 2000

The invention relates to the engineering and creation of novel live-attenuated RSV vaccine candidates. The viruses of this invention have been modified by shifting the position of one or more of various viral genes relative to the viral promoter. The gene-shifted RSVs are constructed by insertion, deletion and rearrangement of genes or genome segments within the recombinant genome or antigenome. Shifting the position of the gene(s) in this manner provides for a selective increase or decrease in expression of the gene(s), depending on the nature and degree of the positional shift. Genes of interest for manipulation to create gene position-shifted RSV include any of the NS1, NS2, N, P, M, SH, M2(ORF1), M2(ORF2), L, F or G genes or genome segment.

One modification of particular interest is to place the G and F protective antigen genes in a promoter-proximal position for increased expression. The gene position-shifted RSV can be further manipulated by the addition of specific nucleotide and amino acid point mutations or host range restriction determinants to yield desired phenotypic and structural effects. This technique offers the possibility of producing a vaccine that is ''better than nature'' by increasing the relative expression of particular genes.

Multiple Hybridization System for the Identification of Pathogenic *Mycobacterium* Species and Method of Use

Steven Fischer, Gary Fahle, Patti Conville and Jang Rampall (CC)
DHHS Reference No. E–278–99/0 filed 03 March 2000

The invention relates to a multiplex system that allows simultaneous detection and identification of any one of six different species of mycobacteria, *M. gordonae, M. intracellulare, M. avium, M. tuberculosis, M. marinum,* or *M. kansasii*. The *Mycobacterium* species included in this detection system, collectively, constitute about 90% of the patient isolates detected in many clinical mycobacteriology lab sections. The system includes primers and amplification reagents that, when applied to the clinical specimen can generate detection oligonucleotide for the *Mycobacterium* species, in one step and in a single tube. The system also includes a plastic device comprising an array of the corresponding capture oligonucleotides of known sequences. Upon generating the amplified detection probes, the detection mixture is applied to the plastic device for hybridization to take place. Following a wash step, the hybridized locations on the array are detected by fluorescence or chemiluminescence to determine which of the six possible *Mycobacterium* species are present in the sample. The system is simple to operate and permits the identification of these six

mycobacteria in patient samples in a single day.

Method of Diagnosing Multidrug Resistant Tuberculosis

Clifton E. Barry, III, Andrea E. DeBarber, Khisimuzi Mdluli and Linda-Gail Bekker (NIAID)

DHHS Reference No. E–093–00/0 filed 26 Jun 2000

The invention relates to the discovery that a putative gene of *Mycobacterium tuberculosis* (*MTb*) with no previously identified function is responsible for the ability of the bacteria to activate a class of second line thioamide drugs used for *MTb* infections. The gene, termed ''*etaA*'', codes for the synthesis of a monooxigenase, the enzyme responsible for the oxidative activation of the drugs. Mutation in the *etaA* gene leads to the expression of mutated, inactivated enzyme, thus resulting in thioamide drug-resistant bacteria. The significance of this discovery is that now, resistance to the class of thioamide drugs in clinical isolates can be identified in a relatively short time, eliminating the need to perform lengthy culturing procedures. The invention claims test methods for determining resistance to thioamide drugs by detecting gene mutation. These include (a) amplifying the *etaA* gene or a portion of it containing the mutation, with a set of primers which provide amplified product, and sequencing the amplified product to compare the sequence with a known sequence of the wild-type *etaA*. A difference in sequence patterns indicate mutation, (b) subjecting the amplified gene product to digestion by restriction enzymes and comparing the cleaved DNA gel pattern to the one obtained from digestion of the wild type *etaA* gene. A difference indicates mutation in *etaA*, and (c) detecting the mutations by probe hybridization techniques, where the amplified product hybridizes to a nucleic acid of known sequence under stringent conditions, and the hybridized product is detected. In addition to the above, the invention proposes other detection methods such as commonly used for SNPs. Other methods claimed in the invention are immunoassay (*i.e.* ELISA) for the *etaA* gene product or mutated versions of it, or immunoassay and chemical analysis of the drug metabolites, whereby the absence of the metabolites indicates gene mutation and impaired activating ability.

Dated: August 29, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–22883 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)94) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, General Clinical Research Centers Review Committee.

Date: October 11–12, 2000.

Open: October 11, 2000, 8 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Close: October 11, 2000,, 9:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John L. Meyer, PhD, Deputy Director, Office of Review, National Center for research Resources, National Institutes of Health, One Rockledge Centre, Suite 6018, 6705 Rockledge Drive, Msc 7965, Bethesda, MD 20892–7965, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 30, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22872 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Biomedical Research Technology.

Date: October 26, 2000.

Time: 8:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca A. Fuldner, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0809.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 30, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22873 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: October 19–20.

Open: October 19, 2000, 8:30 AM to 2 PM.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: October 19, 2000, 2 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Carlsen, Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(Catalog of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 30, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22874 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: November 2–3, 2000.

Open: November 2, 2000, 5:30 p.m. to adjournment.

Agenda: To discuss committee activities.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Closed: November 3, 2000, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Dan Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 649, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: November 2–3, 2000.

Open: November 2, 2000, 5:30 p.m. to adjournment.

Agenda: To discuss committee activities.

Place: Embassy Suites, 4300 Military Road, NW., Chevy Chase, MD 20015.

Closed: November 3, 2000, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW., Chevy Chase, MD 20015.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 657, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: November 2–3, 2000.

Open: November 2, 2000, 5:30 p.m. to adjournment.

Agenda: To discuss committee activities.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Closed: November 3, 2000, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Ann A. Hagan, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 29, 2000.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22870 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with

attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: October 19–20, 2000.

Open: October 19, 2000, 4:30 p.m. to 5 p.m.

Agenda: Report of the Director, NIDCD, report of the Scientific Director, NIDCD.

Place: 5 Research Court, Conference Room 2A07, Rockville, MD 20850.

Closed: October 19, 2000, 5 p.m. to 7:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 5 Research Court, Conference Room 2A07, Rockville, MD 20850.

Closed: October 20, 2000, 8 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: 5 Research Court, Conference Room 2A07, Rockville, MD 20850.

Contact Person: Robert J. Wenthold, PhD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Conference Room 2B28, Rockville, MD 20852, 301–402–2829.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 29, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22871 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: September 21–22, 2000.

Open: September 21, 2000, 8:30 AM to 5 PM.

Agenda: Director's Report, Presentations, Council Business.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: September 22, 2000, 9 AM to 5 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Dushanka V. Kleinman, DDS, Deputy Director, National Institute of Dental & Craniofacial Res., National Institutes of Health, 9000 Rockville Pike, 31/2C39, Bethesda, MD 20892, (301) 496–9469.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: August 30, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22875 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Instiutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: October 1–2, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Ramanda Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertily Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: August 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22877 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, VHP Anatomical Methods.

Date: September 19, 2000.

Time: 1 PM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894, (Telephone Conference Call).

Contact Person: Donald Jenkins, BS, PHC, PhD, Project Officer, High Performance Computing & Communications, Lister Hill Nat'l Ctr for Biomed Communications; National Library of Medicine, 8600 Rockville Pike, Bldg 38A, RM B1N30P, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22878 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.

Date: October 23–24, 2000.

Time: October 23, 2000, 7:00 PM to 10:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Time: October 24, 2000, 8:30 AM to 2:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: David J. Lipman, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22879 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 6, 2000.

Time: 2:30 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Clare Walker, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 11, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Narayani Ramakrishnan, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2138, MSC 7720, Bethesda, MD 20892, (301) 435–0715, ramakrin@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 28, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–22876 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Drug and Method for the Therapeutic Treatment of Human Brain Tumors

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to U.S. Patents and Patent Applications USPA SN: 60/185,039, entitled: ''Anti-EGFRvIII with Improved Cytotoxicity and Yield, Immunotoxins Based

Thereon and Methods of Use Thereof''; USP SN: 4,892,827, entitled, ''Recombinant *Pseudomonas* Exotoxin: Construction of an Active Immunotoxin with Low Side Effects''—excluding any foreign equivalents corresponding to 4,892,827 (= USSN 06/911,227); USP SN: 5,747,654, entitled, ''Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity''; USPA SN: 09/002,753, entitled: ''Recombinant Disulfide-Stabilized Polypeptide Fragments Having Binding Specificity''; USP SN: 6,051,435, entitled: ''Recombinant Antibody-Toxin Fusion Protein''; USPN 5,863,745, entitled: Recombinant Antibody-Toxin Fusion Protein; USPN 5,696,237, entitled: ''Recombinant Antibody-Toxin Fusion Protein'' and corresponding foreign patent applications to IVAX Corporation having an address in Miami, Florida. The United States of America is an assignee of the patent rights in these inventions and the contemplated exclusive license may be limited to the use of TGF-Alpha-PE38 and MR–1–1(dsFv)-PE38KDEL [= Anti-EGFRvIII (dsFv)-PE38KDEL] based immunotoxins as an *In vitro* diagnostic and therapeutic modality for the treatment of human brain tumors.

DATES: Only written comments and/or applications for a license which are received by NIH on or before November 6, 2000 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to this contemplated exclusive licenses should be directed to: J. R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 206; Facsimile: (301) 402-0220, E-Mail: DixonJ@OD.NIH.GOV. A signed Confidentiality Agreement will be required to receive copies of any patent applications.

SUPPLEMENTARY INFORMATION: The technology is directed to the use of TGF-Alpha-PE38 and MR–1–1(dsFv)-PE38KDEL [= Anti-EGFRvIII(dsFv)-PE38KDEL] based immunotoxins as an *in vitro* diagnostic and therapeutic modality for the treatment of human brain tumors.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35

U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the exclusive license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license [*i.e.,* completed ''Application for License to Public Health Service Inventions''] in the field of use of TGF-Alpha-PE38 and MR–1–1(dsFv)-PE38KDEL [= Anti-EGFRvIII(dsFv)-PE38KDEL] based immunotoxins as an *in vitro* diagnostic and therapeutic modality for the treatment of human brain tumors filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: August 30, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–22885 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Principles for Recipients of NIH Research Grants and Contracts on Obtaining and Disseminating Biomedical Research Resources: Request for Comments

AGENCY: National Institutes of Health (NIH), Public Health Service, DHHS.

ACTION: Notice.

Introduction: On December 23, 1999, the National Institutes of Health (NIH) published in the **Federal Register** its final notice of a policy entitled Sharing Biomedical Research Resources: Principles and Guidelines for Recipients of NIH Research Grants and Contracts [64 FR 72090]. The policy is designed to provide recipients of NIH funding with guidance concerning appropriate terms for disseminating and acquiring unique research resources developed with federal funds and assist recipients in complying with their obligations under the Bayh-Dole Act and NIH funding policy. This Notice is to obtain public comment on experience realized in implementing the Principles and Guidelines.

Purpose: The subject policy document set forth fundamental principles and guidelines for implementation by patenting and licensing professionals and sponsored research administrators. The intent of the document is to assist Recipients in ensuring that the conditions they impose and accept on the transfer of research tools will facilitate further biomedical research, consistent with the requirements of the Bayh-Dole Act and NIH funding agreements.

Request for Comments: NIH is seeking comments from NIH recipients, academic, not-for-profit, government, and private sector participants (both individuals and institutions or organizations) in biomedical research and development on their experience in implementing and utilizing the Principles and Guidelines included in the subject document. It is the intent of the NIH to use the comments and anecdotal information received from Recipients throughout this first year of implementation to provide the basis for a report to the Advisory Council to the Director, NIH.

Respondents should provide their views on the value of the NIH document and their experience in implementing the document within their institution and with other entities when providing or receiving research tools. We would appreciate receiving information as to the issues or situations encountered, the effect on operations or research, any specific terms or actions in the Guidelines and/or in institution/company documents that were found to be of assistance or problematic, and the name or type of organizations involved (educational institution, for-profit, etc.). Comments offered in confidence should be marked as such.

Comments should be addressed to: Research Tools Guidelines Project, Theodore J. Roumel, NIH Office of Technology Transfer, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Comments may also be sent by facsimile transmission to Research Tools Guidelines Project, Attention: Theodore J. Roumel, at 301–402–3257, or by e-mail to *nihott@od.nih.gov.*

DATES: Comments must be received by NIH on or before October 12, 2000.

Dated: August 29, 2000.

Maria C. Freire,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–22884 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–21]

Notice of Proposed Information Collection: Comment Request; Request for Final Endorsement of Credit Instrument

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Michael L. McCullough, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–3000, (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Final Endorsement of Credit Instrument.

OMB Control Number, if applicable: 2502–0016.

Description of the need for the information and proposed use: 24 CFR 200.100—The credit instrument shall be initially and finally endorsed simultaneously for insurance pursuant to a firm commitment to insure upon completion. Advances of construction funds are to be insured pursuant to a firm commitment of insured advances, initial endorsement of the credit instrument shall occur before disbursement of any mortgage proceeds. After all advances of mortgage proceeds, terms, and conditions of the firm commitment are met to the satisfaction of the Department, HUD, will again endorse the credit instrument. Further, the mortgagor must certify at final endorsement of the loan for mortgage insurance that the property covered by the mortgage is free and clear of all liens other than such mortgage, and that there will be no other outstanding unpaid obligations contracted in connection with the mortgage transaction.

Form HUD–92023 is to request final endorsement of the credit instrument by the Department. It is completed by the mortgagee to indicate the schedule of advances made on the project and the final advance to be disbursed immediately upon final endorsement. The reverse side of the form provides for certifications by the mortgagor and the general contractor that there will not be any outstanding unpaid obligations following receipt of the final advance of mortgage proceeds, except such obligations as may be approved by the Commissioner as to term, form and amount.

Agency form number, if applicable: HUD–92023.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 465, frequency of responses is 1, total annual burden hours requested are 465.

Status of the proposed information collection: Reinstatement without change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 30, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–22982 Filed 9–6–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4567–N–02]

Notice of Proposed Information Collection: Comment Request; Ginnie Mae Prospectus

AGENCY: Office of the President of the Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: November 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Government National Mortgage Association, Office of Policy, Planning and Risk Management, Department of Housing & Urban Development, 451—7th Street, SW, Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

Through this Notice, the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the

burden of the collection of information on those who are to respond, including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Prospectus.

OMB Control Number, if applicable: 2503–0018.

Description of the need for the information and proposed use: These forms are used to provide a standard format for the description of securities for each type of mortgage eligible for inclusion in a mortgage-backed securities pool. The prospectus summarizes the type of security being sold or offered to a prospective buyer.

Agency form numbers, if applicable: HUD 11712, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II, and 11772.

Members of affected public: For-profit business (mortgage industry trade associations, securities companies, accounting firms, law firms, service providers, etc.)

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Estimation of total number of hours needed to prepare the information collection is based on the number of respondents multiplied by the frequency of responses.

(1) 655 respondents × 48 responses = 31,540 total annual responses

(2) 31,540 × .25 hours/response = 7,885 annual burden hours

Status of the proposed information collection: This is a reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 11, 2000.

J. Nicholas Shelley,

Acting Vice President for Customer Service.

[FR Doc. 00–22983 Filed 9–6–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sonoran Desert Conservation Plan (SDCP) for Pima County, Arizona

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of public scoping meetings related to the SDCP.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare an EIS to evaluate the impacts of and alternatives for the possible issuing an incidental take permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), to Pima County. Pima County proposes to be an applicant for an incidental take permit, through development and implementation of the Sonoran Desert Conservation Plan (SDCP), which will serve as a habitat conservation plan, as required by the Act for issuance of an incidental take permit. The SDCP will provide the measures to minimize and mitigate the effects of the proposed taking on listed and sensitive species and the habitats upon which they depend.

DATES AND ADDRESSES: Written comments on conservation alternatives and issues to be addressed in the EIS are requested by October 23, 2000, and should be sent to Mr. David Harlow, Field Supervisor, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021 at 602/640–2720. Oral and written comments will also be accepted at the public scoping meetings to be held at the following locations:

October 4, 2000, 3–5 PM, Arizona-Sonora Desert Museum, Gallery, 2021 N. Kinney Road, Tucson, AZ 85743.

October 4, 2000, 6–8 PM, Arizona-Sonora Desert Museum, Gallery, 2021 N. Kinney Road, Tucson, AZ 85743.

For the information of the general public, names and addresses of anyone who comments may and can be disclosed under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: *On the EIS, Contact:* Ms. Sherry Barrett, Assistant Field Supervisor, Tucson Suboffice, U.S. Fish and Wildlife Service, 300 West Congress, Room 6J, Tucson, AZ, 85701, at 520/670–4617, or Mr. David Harlow, Field Supervisor, Arizona State Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ, 85021 at 602/640–2720.

For Further Information on the SDCP, Contact: Mr. Paul Fromer, RECON, 1927 Fifth Avenue, Suite 200, San Diego, California 92101–2358 at 619/308–9333. Information on the purpose, membership, meeting schedules, and documents associated with the SDCP may be obtained on the Internet at *http://www.co.pima.az.us/cmo/sdcp/index.html.*

SUPPLEMENTARY INFORMATION: This notice advises the public that the Service intends to gather information necessary to determine impacts and formulate alternatives for an EIS related to the potential issuance of an incidental take permit to Pima County, Arizona, and the development and implementation of the SDCP, which will provide measures to minimize and mitigate the effects of the incidental take of federally listed species.

Background

Pima County, Arizona, is home to over 800,000 residents, and the population is expected to reach 1.2 million by the year 2020. The Pima County Board of Supervisors is responsible for the protection of those lands in unincorporated Pima County that are of environmental, cultural, or historic importance. Given Pima County's rapid growth rate, Pima County has recognized the need to balance economic, environmental, and human interests by implementing a regional ecosystem-based multi-species conservation program.

Section 9 of the Act prohibits the ''taking'' of threatened and endangered species. The Service may, however, under limited circumstances, issue permits to take federally listed and candidate species, incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22. The term ''take'' under the Act means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. The proposed permit would allow approved incidental take outside of proposed preserve lands within the proposed permit boundaries.

Section 10(a)(1)(B) of the Act and regulations at 50 CFR 17.32, contain provisions for issuing incidental take permits to non-federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;

2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

3. The applicant will ensure that adequate funding for the Plan will be provided;

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

5. Any other measures that the Service may require as being necessary

or appropriate for the purposes of the Plan are met.

The proposed action is the issuance of an incidental take permit for listed and sensitive species in Pima County, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Pima County will develop and implement the SDCP, which will serve as a habitat conservation plan, as required by section 10(a)(1)(B) of the Endangered Species Act. The SDCP will provide measures to minimize and mitigate the effects of the taking on listed and sensitive species and their habitats. The biological goal of the SDCP is to ensure the long-term survival of the full spectrum of plants and animals that are indigenous to Pima County through maintaining or improving the habitat conditions and ecosystem functions necessary for their survival.

Activities proposed for coverage under the incidental take permit include lawful activities that would occur outside the proposed preserve, and include, but are not limited to, maintenance of county operations, implementation of capital improvement projects, and issuance of land use related permits, including those for development.

Pima County is expected to apply for an incidental take permit for the following federally listed species (proposed covered species): the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), southwestern willow flycatcher (*Empidonax traillii extimus*), cactus ferruginous pygmy owl (*Glaucidium brasilianum cactorum*), desert pupfish (*Cyprinodon macularius*),

Pima pineapple cactus (*Coryphantha scheeri var. robustispina*), Nichol's Turk's head cactus (*Echinocactus horizonthalonius var. nicholli*), and Huachuaca water umbel (*Lilaeopsis schaffneriana recurva*). In addition, Pima County will seek to address and cover the Chiricahua leopard frog (*Rana chiricahuensis*), a species proposed for listing, and the Gila chub (*Gila intermedia*) and the Acuna cactus (*Echinomastus erectocentrus var. acunensis*), both of which are candidates for listing. Pima County is also seeking to address and cover at least 50 other rare and/or sensitive species that occur in the County. Unlisted species that are addressed as if they were listed, and that are found to be adequately conserved by the SDCP, will be automatically permitted for take should they be listed as federally threatened or endangered species at some time in the future. Numerous other listed and sensitive species for which Pima County is not seeking permit coverage will also benefit from the conservation measures provided in the SDCP.

The purpose of and need for the EIS and proposed SDCP are:(1) to ensure the long-term survival of the full spectrum of plants and animals that are indigenous to Pima County, through maintaining or improving the habitat conditions and ecosystems necessary for their survival; and, (2) to provide the framework for a combination of actions to protect and enhance the natural environment through comprehensive, long-range planning. This will ensure that the County's natural and urban environments not only can coexist, but also can develop an interdependent relationship with one another, thus guiding already approved public bond investments and conservation and preservation actions, defining Federal program and funding priorities, and establishing a regional preference for the expenditure of State funds to preserve and protect State Trust lands threatened by urbanization. The Sonoran Desert Conservation Plan contains the following six elements: (1) Ranch conservation, (2) historic and cultural preservation, (3) riparian restoration, (4) mountain parks, (5) habitat, biological and ecological corridor conservation, and (6) critical and sensitive habitat preservation.

In October of 1998 a draft Sonoran Desert Conservation Concept Plan was proposed by Pima County. During a three-month comment period, nearly 200 written responses were received. The SDCP was adopted in concept by Pima County in March of 1999 to frame future regional conservation planning. An 84 member Steering Committee and numerous technical teams were formed.

It was also agreed to pursue an ecosystem-based approach to developing the SDCP for interim and long-term compliance with applicable endangered species and environmental laws and to implement conservation and protection measures for species and habitats covered in the SDCP.

It is anticipated that Pima County will request permit coverage for a period of 30–50 years. Implementation of the SDCP will result in the establishment of a preserve system that will provide for the conservation of covered species and their habitats in perpetuity. Research and monitoring, in combination with adaptive management, will be used to facilitate accomplishment of these goals.

The proposed action and alternatives to be analyzed in the EIS will be assessed against a No Action/No Project alternative, which assumes that some or all of the current and future projects proposed in Pima County would be implemented individually, one at a time, and be in compliance with the ESA. The No Action/No Project alternative implies that the impacts from these potential projects on sensitive species and habitats would be evaluated and mitigated on a project-by-project basis, as is currently the case. Individual ESA Section 10(a) permits would be required for any activities involving take of federally listed species due to non-federal projects/actions. Without a coordinated, comprehensive, ecosystem-based conservation approach for the region, listed species may not be adequately addressed by individual project-specific mitigation requirements, unlisted candidate and sensitive species would not receive proactive actions intended to benefit them and prevent their listing, and project-specific mitigation would be less cost effective and piecemeal and would not help Federal and non-federal agencies work toward recovery of listed species.

Urban land uses, including residential, commercial, and industrial development
Transportation
Water resources, including hydrology and water quality
Agriculture
Air resources
Cultural and historical resources
Recreation
Ranching practices and livestock grazing
Mineral resources
Utility rights-of-way
Fire management
Social and economic resources
Environmental justice

The Service will conduct an environmental review that analyzes the proposed action, as well as a range of reasonable alternatives and the associated impacts of each. The EIS will be the basis for the Service's evaluation of impacts to the species and to the environment, and the range of alternatives to be addressed. The EIS is expected to provide biological descriptions of species and habitats and socioeconomic effects of the proposed action to be affected by the SDCP.

Comments and suggestions are invited from all interested parties to ensure that a range of issues and alternatives related to the proposed action are identified. The review of this project will be conducted according to the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act Regulations (40 CFR parts 1500–1508), and other appropriate Federal laws, regulations, policies and guidance.

Related Project Documentation—It is anticipated that the EIS process will make full use (including incorporation by reference, as appropriate, pursuant to NEPA) of documents prepared by Pima County and other entities regarding the environmental and socioeconomic issues in the project area, copies of which will be available for public inspection at the Pima County Administrator's Office, 130 West Congress, 10th floor, Tucson AZ 85701.

After the environmental review is completed, the Service will publish a notice of availability and a request for comment on the draft EIS and Pima County's permit application, which will include the SDCP.

The draft EIS is expected to be completed by December, 2002.

Dated: August 31, 2000.

Domenick R. Ciccone,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 00–22903 Filed 9–6–00; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC). The meeting will be held on October 4, in Phoenix, Arizona. The RAC meeting will begin at 9 a.m. and will conclude at approximately 4 p.m. The agenda items to be covered include the review of the March 31, May 11, and August 4, 2000, meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; New RAC Member Introductions; Wilderness Area Access Regulations; Update on Undocumented Immigrants and the Impacts to the San Pedro Riparian National Conservation Area; RAC Discussion of Rangeland Resource Teams' Progress; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on October 3, 2000, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Gary D. Bauer,

Acting Arizona State Director.

[FR Doc. 00–22904 Filed 9–6–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–1269; COC–28334]

Public Land Order No. 7461; Partial Revocation of Oil Shale Withdrawals; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order and a public land order insofar as they affect 753.38 acres of public lands withdrawn for the protection of oil shale values. This order also partially revokes the Executive order establishing Naval Oil Shale Reserve No. 3 insofar as it affects 73.38 acres of public land. These revocations will allow for disposal of the lands by exchange. The lands have been and will remain open to mineral leasing. The lands continue to be segregated by an overlapping exchange proposal.

EFFECTIVE DATE: October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 5327 and Public Land Order No. 4522, which withdrew oil shale deposits and the lands containing such deposits for the protection of oil shale and associated values, are hereby revoked insofar as they affect the following described public land:

Sixth Principal Meridian

T., 4 S., R. 95 W.,
Sec. 22, W½;
Sec. 23, SE¼NW¼ and E½SW¼;
Sec. 34, SW¼.
T. 5 S., R. 95 W.,
Sec. 4, lots 5 and 7.
T. 5 S., R. 96 W.,
Sec. 15, SE¼NE¼.
T. 6 S., R. 96 W.,
Sec. 21, NE¼SW¼.

The areas described aggregate 753.38 acres in Garfield County.

2. The Executive Order dated September 27, 1924, which established Naval Oil Shale Reserve No. 3, is hereby revoked insofar as it affects the following described public lands:

Sixth Principal Meridian

T. 5 S., R. 95 W.,
Sec. 4, lots 5 and 7.

The area described contains 73.38 acres in Garfield County.

3. At 9 a.m. on October 10, 2000, the lands described in Paragraphs l and 2, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 10, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: August 11, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–22855 Filed 9–6–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information under 30 CFR Part 769, Petition process for designation of federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information

collection but may respond after 30 days. Therefore, pubic comments should be submitted to OMB by October 10, 2000, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to approve the collection of information in 30 CFR part 769, Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number of this collection of information is 1029–0098.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on May 10, 2000 (65 FR 30132). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations—30 CFR Part 769.

OMB Control Number: 1029–0098.

Summary: This Part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve or disapprove a request.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: People may be adversely affected by surface mining on Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 120.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–22915 Filed 9–6–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for Requirements for Permits and Permit Processing, 30 CFR Part 773. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 10, 2000, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmere.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to approve the collection of information for Requirements for Permits and Permit Processing, 30 CFR Part 773. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0041.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on June 2, 2000 (65 FR 35394). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Requirements for Permits and Permit Processing, 30 CFR Part 773.

OMB Control Number: 1029–0041.

Summary: The collection activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Control and Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mining and reclamation permits and state governments and Indian Tribes.

Total Annual Responses: 333.

Total Annual Burden Hours: 1,909.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to

minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: August 31, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–22916 Filed 9–6–00; 8:45 am]

BILLING CODE 4310–05–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 19, 2000 Board of Directors Meeting; Sunshine Act Meeting

TIME AND DATE: Tuesday, September 19, 2000, 1:00 PM (Open Portion); 1:30 PM (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting OPEN to the Public from 1:00 PM to 1:30 PM Closed portion will commence at 1:30 PM (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. Testimonial
3. Confirmation—Rod Morris
4. Approval of June 13, 2000 Minutes (Open Portion)
5. Amendment of the OPIC Bylaws

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 PM)

1. Proposed FY 2002 Budget Proposal and Allocation of Retained Earnings
2. Finance Project in Costa Rica
3. Finance Project in Trinidad and Tobago
4. Finance Project in Bulgaria
5. Insurance Project in Philippines
6. Insurance Project in Colombia
7. Approval of June 13, 2000 Minutes (Closed Portion)
8. Pending Major Projects
9. Reports

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: September 5, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–23069 Filed 9–6–00; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–71]

Crabmeat From Swimming Crabs

Determination

On the basis of the information in the investigation, the Commission determines,[1] pursuant to section 202(b) of the Trade Act of 1974, that crabmeat from swimming crabs [2] is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article.

Background

Following receipt of a petition filed on behalf of the Blue Crab Coalition, the Commission, effective March 2, 2000, instituted investigation No. TA–201–71, Crabmeat from Swimming Crabs, under section 202 of the Trade Act of 1974 to determine whether crabmeat from swimming crabs is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 20, 2000 (65 FR 15008). The hearing in connection with the injury phase of the investigation was held on June 15, 2000, in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the President on August 29, 2000. The views of the Commission are contained in USITC Publication 3349 (August 2000), entitled Crabmeat from Swimming Crabs: Investigation No. TA–201–71.

By order of the Commission.

Issued: August 31, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–23010 Filed 9–6–00; 8:45 am]

BILLING CODE 7020–02–P

[1] Chairman Stephen Koplan and Vice Chairman Deanna Tanner Okun dissenting.

[2] For the purposes of this investigation, the subject merchandise is defined as crabmeat from swimming crabs (family Portunidae), in all its forms (except shelf-stable crabmeat in airtight containers), including frozen, fresh, and chilled crabmeat, however packed, preserved, pasteurized, or prepared, and of any grade or size (such as jumbo lump, lump, backfin, claw, select, and the like). Such crabmeat is generally classified in subheadings 1605.10.20 and 1605.10.40 of the Harmonized Tariff Schedule of the United States (HTS), but may also be entering under HTS subheadings 0306.14.20 and 0306.24.20. The petition and scope of investigation initially included shelf-stable crabmeat packed in airtight containers, which is produced using additives and a thermal manufacturing process so that it requires no refrigeration. However, in a letter to the Commission dated April 14, 2000, the petitioner requested the scope of the investigation be amended to exclude such shelf-stable crabmeat. On June 23, 2000, the Commission amended the scope of its investigation to exclude such shelf-stable crabmeat (65 FR 40691, June 30, 2000).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–885–887 (Preliminary)]

Desktop Note Counters and Scanners From China, Korea, and the United Kingdom

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from China, Korea, and the United Kingdom of desktop note counters and scanners, provided for in subheading 8472.90.95 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 17, 2000, a petition was filed with the Commission and the Department of Commerce by Cummins-Allison Corp., Mt. Prospect, IL, alleging

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Bragg dissenting.

that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of desktop note counters and scanners from China, Korea, and the United Kingdom. Accordingly, effective July 17, 2000, the Commission instituted antidumping duty investigations Nos. 731–TA–885–887 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 25, 2000 (65 FR 49224). The conference was held in Washington, DC, on August 7, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 31, 2000. The views of the Commission are contained in USITC Publication 3348 (September 2000), entitled Desktop Note Counters and Scanners from China, Korea, and the United Kingdom: Investigations Nos. 731–TA–885–887 (Preliminary).

Issued: August 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–23011 Filed 9–6–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of a currently approved collection.

Problem-Solving Management Survey

The Department of Justice, Office of Community Oriented Policing Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 9, 2000 (65 FR 6394), allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 10, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave., NW., Washington, DC 20530–0001; attn: Karen Beckman. Additionally, Comments may be submitted to COPS via facsimile to 202–633–1386, attn: Karen Beckman. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, National Place, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC, 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of the Collection

Problem-Solving Management Survey

(1) *Type of information collection.* Extension of a currently approved collection.

(2) *The title of the form/collection.* Problem-Solving Management Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection.* Form: COPS PPSE/01. Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Captains, Chiefs, Detectives/Sergeants, and Crime analysts from 75 large police agencies that have received COPS 1999 School Based Partnership Grants will be asked to respond (approximately 300). The Problem-solving Management Survey will collect basic information about the capacity of police agencies to prioritize problems, their knowledge of agency resources, and their understanding of problem-solving information as it relates to problem-oriented policing.

The COPS office will use the information collected to identify the information necessary for police executives to effectively utilize resources as it relates to problem-solving and to examine existing problem-oriented policing tracking systems for the purpose of identifying best practices in problem-solving management. Data from the surveys will be used to produce a final Problem-Solving Knowledge Management Model. A brochure and video of the Problem-Solving Model will assist agencies in problem prioritization, and the allocation of resources in support of problem-oriented policing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by telephone to approximately 300 position-specific law enforcement officials within 75 large police agencies who have been awarded COPS 1999 School Based Partnership Grants. The four specific positions that will be questioned in each agency are Captains, Chiefs, Detectives or Sergeants, and Crime Analysts. Administrative preparation and survey completion will take approximately 0.75 hours per respondent (there is no record keeping burden for this collection).

(6) *An estimate of the total public burden (in hours) associated with the collection.* Approximately 225 hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: August 31, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–22886 Filed 9–6–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF JUSTICE

DEPARTMENT OF THE TREASURY

OFFICE OF MANAGEMENT AND BUDGET

Financial Privacy and Bankruptcy Study

AGENCIES: Department of Justice, Department of the Treasury, and Office of Management and Budget.

ACTION: Extension of deadline for public comments.

SUMMARY: On July 31, 2000, the Department of Justice, Department of Treasury, and Office of Management and Budget published a notice in the **Federal Register** announcing their intent to conduct a study (the ''Study'') into how the filing of bankruptcy affects the privacy of individual consumer information that becomes part of a bankruptcy case. That notice may be found in the **Federal Register** at 65 Fed. Reg. 46735 (July 31, 2000) and on the Internet site of the Department of Justice's United states Trustee program at *www.usdoj.gov/ust/privacy/privacy.htm.* Public comments were initially requested by Friday, September 8, 2000. In response to requests for additional time for the submission of public views, the comment deadline is being extended two weeks, to Friday, September 22, 2000.

DATES: The revised deadline for the submission of public comments in response to the Study is September 22, 2000.

ADDRESSES: All submissions must be in writing or in electronic from. Written submissions should be sent to Leander Barnhill, Office of General Counsel, Executive Office for United States Trustees, 901 E Street, NW, Suite 780, Washington DC 20530. Electronic submissions should be sent by email to *USTPrivacy.Study@usdoj.gov.* The submissions should include the submitter's name, address, telephone number, and if available, FAX number and e-mail address. All submissions should be captioned ''Comments on Study of Privacy Issues in Bankruptcy Data.''

Dated: August 31, 2000.

Kevyn D. Orr,

Director, Executive Office for United States Trustees, Department of Justice.

[FR Doc. 00–22888 Filed 9–6–00; 8:45 am]

BILLING CODE 4410–40M; 4810–25M; 3110–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of U.S. Submission #2000–01

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The U.S. National Administrative Office (NAO) gives notice that on September 1, 2000, U.S. Submission #2000–01 was accepted for review. The submission was filed with the NAO on July 3, 2000, by Current and Former Workers at Auto Trim and Custom Trim/Breed Mexicana, the Coalition for Justice in the Maquiladoras, and 22 additional unions and nongovernmental organizations in Canada, Mexico, and the United States. The submission raises concerns about occupational safety and health and compensation in cases of occupational injuries and illnesses at Auto Trim of Mexico in Matamoros, Tamaulipas, and at Custom Trim/Breed Mexicana in Valle Hermoso, Tamaulipas.

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO. The objectives of the review of the submission will be to gather information to assist the NAO to better understand and publicly report on the Government of Mexico's compliance with the obligations set forth in the NAALC.

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, Acting Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, NW, Room C–4327, Washington, DC 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On July 3, 2000, U.S. Submission #2000–01 was filed by Current and Former Workers at Auto Trim and Custom Trim/Breed Mexicana, the Coalition for Justice in the Maquiladoras, and 22 additional unions and nongovernmental organizations in Canada, Mexico, and the United States. The submission raises concerns about occupational safety and health and compensation in cases of occupational injuries and illnesses at Auto Trim of Mexico in Matamoros, Tamaulipas, and at Custom Trim/Breed Mexicana in Valle Hermoso, Tamaulipas.

The submitters allege that workers at both plants suffer illnesses and injuries related to exposure to toxic substances and muscular-skeletal disorders caused by poor ergonomics. The submitters also maintain that illnesses and injuries are often unreported or under-reported and inadequately treated and compensated. The submitters allege that the frequency with which these problems occur is due to the Mexican government's persistent failure to enforce occupational safety and health laws and regulations with regard to the two firms. They assert that the Mexican government is in violation of NAALC Article 3(1)(b) in failing to monitor compliance and investigate suspected violations; Article 3(1)(d) in failing to require record-keeping and reporting; Article 3(1)(g) in failing to initiate proceedings in a timely manner to seek appropriate sanctions or remedies for violation of labor law; Article 4(1) in failing to guarantee an individual's access to relevant tribunals for the enforcement of its labor law; Article 5(1) in failing to ensure that all proceedings for the enforcement of labor law are fair, equitable, and transparent, comply with due process of law, are open to the public, and are not unnecessarily complicated or involve unwarranted delays; Article 7(a) in failing to ensure that public information is available related to its labor law and enforcement and compliance procedures; and Article 7(b) in failing to promote public education regarding its labor law.

In addition, the submitters charge that the Mexican government has shown disregard for the principles set out in the preamble to the NAALC. Paragraph 1 of the preamble, for example, refers to the parties' resolve in enacting NAFTA to protect, enhance, and enforce basic workers' rights. In Paragraph 7, the parties resolve to promote high-skill, high productivity economic development in North America by inter alia, encouraging employers and employees in each country to comply with labor laws and to work together in maintaining a progressive, safe, and healthy working environment.

The procedural guidelines for the NAO, published in the **Federal Register** on April 7, 1994, 59 FR 16660, specify that, in general, the Secretary of the NAO shall accept a submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

U.S. Submission #2000–01 relates to labor law matters in Mexico. A review would appear to further the objectives of the NAALC, as set out in Article 1 of the NAALC, among them improving

working conditions and living standards in each Party's territory, promoting the set of labor principles, and encouraging publication and exchange of information, data development, and coordination to enhance mutually beneficial understanding of the laws and institutions governing labor in each Party's territory.

Accordingly, this submission has been accepted for review of the allegations raised therein. The NAO's decision is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission. The objectives of the review will be to gather information to assist the NAO to better understand and publicly report on the issues of occupational safety and health and compensation in cases of occupational illnesses and injuries raised in the submission, including the Government of Mexico's compliance with the obligations agreed to under Articles 3, 4, 5, and 7 of the NAALC. The review will be completed, and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the procedural guidelines of the NAO.

Signed at Washington, D.C. on September 1, 2000.

Lewis Karesh,

Acting Secretary, U.S. National Administrative Office.

[FR Doc. 00–22979 Filed 9–6–00; 8:45 am]

BILLING CODE 4510–28–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Explosive Materials and Blasting Units

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C.. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before November 6, 2000.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

MSHA evaluates and approved explosive materials and blasting units as permissible for use in the mining industry. However, since there are no permissible explosives or blasting units available that have adequate blasting capacity for some metal and nonmetal gassy mines, Standard 57.22606(a) was promulgated to provide procedures for mine operators to follow for the use of non-approved explosive materials and blasting units. Mine operators must notify MSHA in writing, of all non-approved explosive materials and blasting units to be used prior to their use. MSHA evaluates the non-approved explosive materials and determines if they are safe for blasting in a potentially gassy environment.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Explosive Materials and Blasting Units. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechnical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov)* and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act submission (*http://www.msha.gov/regspwork.htm*)'' or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

MSHA uses the information to determine that the explosives and procedures to be used are safe for blasting in a gassy underground mine. Federal inspectors use the notification to ensure that safe procedures are followed.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Explosive Materials and Blasting Units.

OMB Number: 1219–0095.

Affected Public: Businesses or other for-profit.

Total Respondents: 7.

Frequency: On occasion.

Total Responses: 7.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 7.

Estimated Total Burden Hour Cost: $321.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: August 31, 2000.

Brenda C. Teaster,

Acting Chief, Records Managment Division.

[FR Doc. 00–22980 Filed 9–6–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10781, et al.]

Proposed Exemptions; Journal Company, Inc. 401(k) Savings Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Journal Company, Inc. 401(k) Savings Plan (the Plan) Located in Trenton, New Jersey

[Application No. D–10781]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of 406(a) and 406(b)(1), 406(b)(2), and 406(b)(3) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to: (a) the receipt by certain affiliates and predecessors of Journal Register East, Inc. (JRE), by Boatmen's Trust Company (the Bank), and by certain individuals alleged in a complaint to have been or to be fiduciaries of the Plan (collectively, the Defendants) of releases signed by participants in the Plan, in which such participants waive their rights to sue in connection with the acquisition and retention in such participants' accounts in the Plan of interests in certain guaranteed investment contracts (GICs) issued by Confederation Life Insurance Company (CLI); and (b) the payment by the corporate Defendants of a settlement amount to be allocated to the accounts of participants in the Plan in exchange for release from liability obtained from such participants; provided that the following conditions are satisfied:

(a) The payment of the settlement amount is a one-time cash transaction;

(b) Each participant whose account in the Plan has an interest in the GICs decides whether, in exchange for the settlement amount, to waive his or her right to sue in connection with the acquisition and retention in such participant's account in the Plan of interests in such GICs; or to opt out of such settlement and retain all such rights and causes of action;

(c) Pursuant to the terms of the settlement, the account of each participant in the Plan who waives his or her right to sue receives an amount of the settlement proceeds in proportion to the interest each such account has in the GICs;

(d) Pursuant to the terms of the settlement, the corporate Defendants are responsible for paying the attorneys' fees to the law firm representing the plaintiffs (the Plaintiffs);

(e) A portion of the fees that would have been due and payable to the Plaintiffs' attorneys will be withheld from the settlement proceeds by JRE, an employer of employees covered by the Plan, and paid to the Plaintiffs' in cash based on each Plaintiff's share of the amount of the settlement proceeds allocated to all of the Plaintiffs;

(f) Notwithstanding the waiver by any participant of his or her right to sue, the Plan does not release any claims, demands, and/or causes of action which it may have in connection with the acquisition and retention in participants' accounts in the Plan of interests in the GICs;

(g) No expenses are incurred by the Plan as a result of the settlement;

(h) The Plaintiffs' attorneys and each participant who signs the release and waives his or her right to sue will monitor the payment of the settlement proceeds by the corporate Defendants and the allocation of the proper amounts into such participants' accounts in the Plan, in order to ensure compliance with the terms of the settlement agreement; and

(i) All terms and conditions of the transaction are no less favorable than those obtainable at arm's length with unrelated third parties.

Effective Date: The proposed exemption is effective upon the date that the Defendants enter into a settlement of the lawsuit with the Plaintiffs, as described below.

Summary of Facts and Representations

1. The applicant, JRE, is a corporation organized under the laws of the State of Delaware with its principal place of business in Trenton, New Jersey. JRE is the wholly-owned subsidiary of Journal Register Company (JRC). JRC is a publicly traded corporation engaged in the publishing business. In this regard, JRC owns and operates eighteen (18) daily newspapers and 118 non-daily publications throughout the United States.

2. In December of 1993, JRC acquired ownership of the Evening Call Publishing Company (Evening Call). At the time of the acquisition, Evening Call was the publisher of a newspaper in Woonsocket, Rhode Island, and the sponsor of the Evening Call Publishing Company Savings Plan (the Evening Call Plan).

Established in August 1985, the Evening Call Plan was a defined contribution plan in which individual accounts were established and maintained for the benefit of eligible participants. Such accounts consisted of voluntary contributions deducted from participants' wages on a pre-tax or post-tax basis with matching contributions from Evening Call. Certain employees of Evening Call served as trustees and fiduciaries of the Evening Call Plan. Either Evening Call served as plan administrator or delegated that responsibility to various individuals who held the position as publisher of the newspaper.

It is represented that the plan administrator selected CLI, as funding agent for the Evening Call Plan. At that time, CLI was a Canadian corporation doing business as an insurance company in the United States through branches in Michigan and Georgia. Further, it is represented that the plan administrator selected as investment options for the Evening Call Plan an equity fund and a guaranteed investment fund, both of which were managed by CLI. Participants in the Evening Call Plan could specify how the assets allocated to their individual accounts would be invested. In this regard, the Evening Call Plan provided that all or a portion of the assets in a participant's account could be directed into either or both investment options. The guaranteed investment fund consisted entirely of investments in one or more GICs issued by CLI.

It is represented that participants were informed that investments in the GICs, made between August 1, 1986, and July 31, 1988, were guaranteed a rate of return of 9.10% per annum, compounded through July 31, 1996. Under the terms and conditions of the GICs, participants who directed assets from their accounts in the Evening Call Plan into such GICs could not change investment options until the GICs matured in 1995 and 1996. Further, it is represented that the GICs were illiquid, and that there was no secondary market for such GICs.

3. The Journal Company, Inc. 401(k) Savings Plan (the Plan), which is the subject of this exemption, is the successor in interest to the Evening Call Plan. The Evening Call Plan was merged into the Plan in December 1993. In this regard, it is represented that the assets held by the Evening Call Plan in the form of the GICs were allocated to separate accounts for those participants in the Plan who formerly were participants in the Evening Call Plan.

JRE is the employer and sponsor of the Plan. Other participating employers in the Plan are all members of the same controlled group of corporations and include affiliates, divisions, or subsidiaries of JRE or JRC. The Plan is an individual account plan into which employees of such participating employers defer salary. It is represented that there were approximately 939 participants and beneficiaries in the Plan, as of March 31, 1999. As of June 30, 1999, the estimated fair market value of the assets in the Plan was $15,868,776.

The Bank, a Delaware corporation with principal offices in St. Louis, Missouri, served, for the period from April 1, 1994, until January 28, 1998, as trustee and administrator of the Plan. The current trustee of the Plan is Merrill Lynch Trust Co.

4. In 1994, CLI was placed in receivership. In this regard, on August 11, 1994, Canadian insurance regulatory authorities placed CLI into a liquidation and winding-up process. Further, on August 12, 1994, the insurance authorities of the State of Michigan commenced legal action to place the United States operations of CLI into rehabilitation; thereby freezing the investments in GICs held by the participants' individual accounts in the Plan. At that time, CLI proceeded to liquidate its assets under a plan of liquidation approved by the Circuit Court for the County of Ingham, Michigan. It is represented that on or about March 1997, of three (3) distribution options, the Plan selected the one which provided the most immediate payment to participants in the Plan. In April of 1997, CLI began making payments on behalf of the GICs.

It is represented that seventy-five (75) participants in the Plan had interests in the GICs in their accounts which had been frozen. In early June 1997, the Plan received notice of distribution from the estate of CLI on behalf of such participants' accounts. In July 1997, payments made by CLI were allocated to the accounts of such participants in the Plan. The application states that when the accounts were unfrozen, the participants received earnings from the CLI investment that were lower than would have been received pursuant to the terms of the GICs, if such terms had been honored by CLI.

5. On August 11, 1997, twenty-six (26) individuals filed suit in the United States District Court for the District of New Jersey against the Defendants. The Defendants listed in the complaint included the Bank, JRC, Evening Call, and Journal Register Newspaper's, Inc. (JRN), the former parent of Evening Call, and certain individuals alleged to be trustees and fiduciaries of the Evening Call Plan or members of the Board of Directors of JRC and its subsidiaries, JRN and Evening Call. Some of the individual Defendants are also participants in the Plan whose accounts now hold interests in the GICs.

All of the individual Plaintiffs were employees of Evening Call and are or were employees of JRE or its affiliates. All of the Plaintiffs are members of a single bargaining unit represented by Local 128 of the Woonsocket Newspaper Guild, AFL–CIO. The Plaintiffs were all participants in the Evening Call Plan and are participants whose accounts in the Plan hold interests in the GICs. Further, the accounts in the Plan of other participants, who are neither Plaintiffs nor Defendants, also hold interests in the GICs.

The Plaintiffs filed suit against the Defendants for breach of fiduciary duty. In this regard, the complaint alleged that the Defendants breached their fiduciary duties to the Plaintiffs by failing to exercise prudence in the selection of Plan investments, by failing to monitor the continued retention of the GICs in the Plan, by failing to disclose relevant information to the Plaintiffs with respect to the GICs on a timely basis, by failing to create and maintain a system through which participants could direct investments in their accounts consistent with section 404(c) of the Act, and by failing to adequately diversify Plan assets.

As relief, the complaint demands that the Defendants make whole the Plaintiffs' and other participants' individual accounts in the Plan from all losses and damages suffered as a result of the Defendants' breaches of fiduciary duties and violations of the Act. In addition, Plaintiffs seek pre-judgment and post-judgment interest on amounts

awarded, reasonable attorneys fees, costs and expenses, and all other legal, equitable, or remedial relief, as deemed appropriate by the court.

As of August 1999, the Defendants had not filed a formal answer to the complaint. Notwithstanding the Plaintiffs' allegations, the Defendants maintain that there was no breach of fiduciary duty involved in the decision to select or retain the GICs in the Plan or in the handling of such GICs. Rather, the Defendants argue that losses, if any, that may have occurred as a result of the Plan's holding of the GICs were inherent risks associated with the higher returns available from such an investment, and that no compensable injury occurred. Further, JRE maintains that some of the individuals named as Defendants were not, in fact, fiduciaries with respect to the issues raised in the complaint.

The applicant also represents that the Bank contends it was not a fiduciary with respect to the issues raised in the complaint. In this regard, the applicant states that the Bank was the directed trustee of the Plan until January 28, 1998, and thereafter, was not currently a directed trustee or fiduciary of the Plan. Further, it is represented that the Bank is not now a party in interest with respect to the Plan.

6. The two (2) corporate Defendants, JRC and the Bank, have proposed a settlement of the litigation with the Plaintiffs. In this regard, within fifteen (15) days of the publication of a final exemption on the subject transactions, each of the corporate Defendants proposes to deliver to the trustee of the Plan a bank or certified check representing its respective share of the settlement amount. JRC will pay $253,125, plus interest, of the settlement amount; and the Bank will pay $50,000, plus interest, of the settlement amount. The entire settlement amount in the aggregate is equal to $303,125, plus interest. Of this settlement amount, $258,125, plus interest, is allocated for payments to the accounts of participants who accept the settlement terms; and, as discussed more fully below, $45,000, plus interest, is allocated for payment of the fees of the attorneys for the Plaintiffs.

It is represented that the settlement amount was reached based on the costs and risks of litigation and represents a compromise between the conflicting positions of the Plaintiffs and Defendants. None of the individual named Defendants who are also participants in the Plan will contribute any funds toward the settlement amount. The settlement is contingent on all named Plaintiffs executing releases. It is expected that all Plaintiffs will do so, on the recommendation of their counsel.

In the proposed settlement agreement, the Defendants will specifically deny all claims and contentions alleged by the Plaintiffs and will not admit any wrongdoing or liability. Pursuant to the terms of the settlement, an escrow account will be established into which a settlement payment in the amount of $258,125, plus interest, will be deposited.[1] Each of the seventy-five (75) Plan participants whose accounts have an interest in the GICs (including those who are not named as Plaintiffs, and those who are named as Defendants) will be informed of the settlement and its terms, and will be asked to execute and return a release of all actual or potential claims against the named Defendants, all of their affiliates, predecessors, officers, directors, and employees serving as fiduciaries, arising out of the acquisition and holding of interests in the GICs by individual participant accounts in the Plan.

Under the proposed settlement, each Plan participant whose account has an interest in the GICs must decide whether to accept the proposed settlement, or to opt out of it and retain whatever rights and causes of actions he or she may have. Each participant who chooses to accept the proposed settlement must release all claims arising from the matters involved in the litigation. It is represented that no fiduciary of the Plan will exercise discretion or provide advice to, or otherwise assist, any other participant with respect to the decision as to whether to accept the proposed settlement.

To the extent a participant agrees to release all actual or potential claims arising out of the acquisition and holding of interests in the GICs by his or her account in the Plan, it is represented that a proportional amount of the escrow shall be paid to the Plan (in proportion to the amount each such participant's account had invested in the GICs) and that such amount shall be allocated to such participant's account under the Plan. For example, if a participant's account held a one percent (1%) interest in the GICs, that participant's account would receive one percent (1%) of the $258,125, plus interest, out of the settlement proceeds. It is represented that named Defendants whose accounts in the Plan also hold interests in the GICs by reason of such Defendants' status as plan participants will receive the same treatment as all other non-plaintiff plan participants. If a participant who signed the release does not cash the distribution check or cannot be located at the time a distribution from the individual participant accounts would be appropriate under the Plan, standard provisions of the Plan will apply. Such provisions generally provide that the plan administrator will use the appropriate ''lost participant'' facilities to locate the participant, and if the participant cannot be located, the assets in the individual's account will be forfeited to the Plan, subject to restoration to the individual upon location of such missing participant.

Any participants who do not sign a release will not receive an allocation into their account from the settlement proceeds. As a result, the funds that otherwise would have been allocated to such participant's account from the settlement proceeds, had the participant signed the release, will be returned to the settling Defendants.

As described above, $258,125, plus interest, of the settlement amount is allocated for payment to the accounts of participants who accept the settlement terms; and, $45,000, plus interest, is allocated for payment to the law firm representing the Plaintiffs to cover attorneys' fees and expenses in connection with the law suit. In this regard, the law firm representing the Plaintiffs has agreed to waive a portion of such attorneys' fees. It is anticipated that of the sum of $45,000, plus interest, that otherwise would have been paid out of the settlement proceeds to the attorneys of the Plaintiffs, JRE will withhold approximately $16,000, plus interest, representing the portion of such attorneys' fees that will be waived. The portion of the Plaintiffs' attorneys' fees that is waived by the Plaintiffs' attorneys will be paid by JRE to the Plaintiffs in cash, based on each Plaintiffs' share of the amount of the settlement proceeds allocated to all of the Plaintiffs. In this regard, it is represented that it is an accepted practice to reimburse individuals, such as the Plaintiffs, for the time, effort, and financial resources they expended in

[1] The applicant anticipates treating the amounts paid under the settlement agreement, as restorative payments. In this regard, the applicant is relying on certain private letter rulings by the Internal Revenue Service that a restorative payment made to a defined contribution plan in response to claims of fiduciary breach made by participants: (a) Will not constitute a ''contribution'' or other payment subject to the provisions of either section 404 or section 4972 of the Code; (b) will not adversely affect the qualified status of such plan, pursuant to either section 401(a)(4) of section 415 of the Code; and (c) will not, when made to such plan, result in taxable income to the plan participants and beneficiaries. The Department, herein, is offering no opinion on whether the amounts received by the participants, pursuant to the terms of the settlement agreement, constitute restorative payments under the Code.

bringing the litigation and negotiating the settlement.

7. The applicant recognizes that the proposed settlement could be deemed to be an indirect exchange between a plan and a party in interest in violation of section 406 of the Act; and accordingly, has requested administrative relief.

8. It is represented that the proposed exemption is in the best interests of the Plan and its participants, because the accounts of participants which have interests in the GICs will receive an immediate and substantial portion of the return on such GICs. In this regard, when combined with amounts already received upon the liquidation of CLI, each participant's account in the Plan will receive more than 128% of the face value of their share of the GICs, including interest earned to maturity. When frozen on August 12, 1994, the GICs were valued at approximately $1,442,113. The latest maturity date of the Plan's GICs is represented to be July 31, 1996. If allowed to mature on schedule, the value would have grown to an estimated $1,497,646. In this regard, the difference (approximately $50,000) between the value on the date of the freeze and at maturity is attributable to the fact that a substantial number of the GICs began to reach their maturity dates not long after the freeze was imposed. In July 1997, the Plan received approximately $1,620,053 from CLI, which amount was distributed to the participants' accounts in the Plan. The settlement of the litigation in 1999 will add $303,125 to that amount, resulting in an amount (ignoring lost opportunity costs) that is equal to $425,532 above the value of the GICs at maturity.

With respect to compensating the Plaintiffs for any lost opportunity, while the funds were frozen, to invest in a mix of options heavily weighted in favor of equities, it is the Defendants' position that this would give rise to a claim for more than the actual loss. In this regard, although it is now known that the stock market performed well during the freeze period, the Defendants maintain: (a) That the Plaintiffs had demonstrated risk aversion by investing in the fixed-income option offered by the GICs; and (b) that once the GICs matured the Plaintiffs would have invested their accounts in a similar fixed-income option which would have earned far less than the equity-weighted mix, as suggested by their counsel.

Further, the applicant maintains that if the proposed exemption is not granted, the litigation may not be settled, and it is not possible to determine if the Plaintiffs would be successful in pursuing their claims to a judgment. Furthermore, it is possible that those participants who are not named Plaintiffs will never be able to obtain any recovery, because the litigation is not styled as a class action, and it is likely that the statute of limitations will run on the claims of the participants who are not Plaintiffs. Even if the Plaintiffs were to be successful in their suit, any recovery would be delayed substantially, and may prove to be a lesser amount than that offered as part of the proposed settlement.

9. The requested exemption is administratively feasible because it involves a one-time payment of cash to the participants' accounts in Plan in exchange for releases of liability from such participants. In this regard, it is represented that once the settlement amounts have been distributed, no further actions are contemplated under the settlement, and no further review or monitoring will be required. Further, no expenses will be incurred by the Plan as a result of the settlement. JRE will bear the costs of the exemption application and of notifying interested persons.

10. It is represented that the proposed exemption contains sufficient safeguards for the protection of the rights of the participants and beneficiaries of the Plan. In this regard, Plaintiffs' attorneys and each participant who signs the release and waives his or her right to sue will monitor the payment of the settlement proceeds by the corporate Defendants and the allocation of the proper amounts into such participants' accounts in the Plan, in order to ensure compliance with the terms of the settlement agreement. The Plaintiffs' attorney will receive a listing of the allocation for each of the Plaintiffs and will be able to confirm that the allocation has been properly performed. Further, accompanying the notification of settlement, each participant whose account holds an interest in the GICs will receive a statement that includes a calculation of the allocation of the settlement amount and a description of how such amount was calculated. Thereafter, regular statements from the trustee will reflect the allocation of the settlement amount into the account of the Plan participants who accept the settlement terms. It is further represented that the settlement provides that any breach of the settlement agreement can be remedied by the district court judge overseeing such litigation.

11. In summary, the applicant represents that the proposed transactions will meet the statutory criteria of section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) The payment of the settlement amount will be a one-time cash transaction;

(b) Each participant whose account in the Plan has an interest in the GICs will decide whether to waive his or her right to sue the Defendants in exchange for the settlement amount; or to opt out of such settlement and retain all such rights and causes of action against the Defendants;

(c) Pursuant to the terms of the settlement, the account of each participant in the Plan who waives his or her right to sue the Defendants will receive an amount of the settlement proceeds in proportion to the interest each such account has in the GICs;

(d) Pursuant to the terms of the settlement, the corporate Defendants are responsible for paying the attorneys' fees of the law firm representing the Plaintiffs;

(e) A portion of the fees that would have been due and payable to the Plaintiffs' attorneys will be withheld from the settlement proceeds by JRE, the employer, and paid to the Plaintiffs in cash based on each Plaintiff's share of the amount of the settlement proceeds allocated to all of the Plaintiffs;

(f) Notwithstanding the waiver by any participant of his or her right to sue the Defendants, the Plan will not release any claims, demands, and/or causes of action which it may have against the Defendants;

(g) No expenses will be incurred by the Plan as a result of the settlement;

(h) The Plaintiffs attorneys and each participant of the Plan who signs the release and waives his or her right to sue the Defendants shall monitor the payment of the settlement proceeds by the corporate Defendants and the allocation of the proper amounts into such participants' accounts in the Plan, in order to ensure compliance with the terms of the settlement;

(i) All terms and conditions of the transaction will be no less favorable than those obtainable at arm's length with unrelated third parties; and

(j) As a result of the settlement, the participants whose accounts hold an interest in the GICs will receive an immediately and substantial portion of the investment return guaranteed by such GICs.

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the requested exemption are all participants and beneficiaries in the Plan who have an interest in the GICs. It is represented that within ten (10) days after the publication of the Notice of Proposed Exemption (the Notice) in

the **Federal Register**, JRE will notify interested persons by mailing first class to the last known mailing address of such persons a copy of the Notice and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2) to each participant and beneficiary in the Plan who has an interest in the GICs. All interested persons are invited to submit written comments or requests for a hearing on this proposed exemption to the Department. Comments and requests for a hearing must be received by the Department within 45 days of publication of the Notice in the **Federal Register**.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Sun Life Assurance Company of Canada (Sun Life), Located in Toronto, Ontario, Canada

[Application No. D–10814]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective March 22, 2000, to the (1) receipt of common stock (Common Shares) issued by Sun Life Financial Services of Canada, Inc., the holding company for Sun Life (the Holding Company), or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Policyholder) of Sun Life which is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, including any Eligible Policyholder which is a Plan established by Sun Life or an affiliate for their own employees (the Sun Life Plans), in exchange for such Eligible Policyholder's membership interest in Sun Life, in accordance with the terms of a plan of conversion (the Conversion Plan) adopted by Sun Life and implemented under the insurance laws of Canada and the State of Michigan.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Conversion Plan was implemented in accordance with procedural and substantive safeguards that were imposed under the insurance laws of Canada and the State of Michigan and was subject to review and/or approval in Canada by the Office of the Superintendent of Financial Institutions (OSFI) and the Minister of Finance (the Canadian Finance Minister) and, in the State of Michigan, by the Commissioner of Insurance (the Michigan Insurance Commissioner).

(b) OSFI, the Canadian Finance Minister and the Michigan

Insurance Commissioner reviewed the terms of the options that were provided to Eligible Policyholders of Sun Life as part of their separate reviews of the Conversion Plan. In this regard,

(1) OFSI (i) authorized the release of the Conversion Plan and all information to be sent to Eligible Policyholders; (ii) oversaw each step of the conversion process (the Conversion); and (iii) made a final recommendation to the Canadian Finance Minister on the Conversion Plan.

(2) The Canadian Finance Minister, in his sole discretion, could consider such factors as whether: (i) The Conversion Plan was fair and equitable to Eligible Policyholders; (ii) whether the Conversion Plan was in the best interests of the financial system in Canada; and (iii) sufficient steps had been taken to inform Eligible Policyholders of the Conversion Plan and of the special meeting (the Special Meeting) on the Conversion.

(3) The Michigan Insurance Commissioner made a determination that the Conversion Plan was (i) fair and equitable to all Eligible Policyholders and (ii) consistent with the requirements of Michigan law.

(4) Both the Canadian Finance Minister and the Michigan Insurance Commissioner concurred on the terms of the Conversion Plan.

(c) Each Eligible Policyholder had an opportunity to vote to approve the Conversion Plan after full written disclosure was given to the Eligible Policyholder by Sun Life.

(d) One or more independent fiduciaries of a Plan that was an Eligible Policyholder received Common Shares, Cash or Policy Credits pursuant to the terms of the Conversion Plan and neither Sun Life nor any of its affiliates exercised any discretion or provided ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c), with respect to such acquisition.

(e) After each Eligible Policyholder was allocated 75 Common Shares, additional consideration was allocated to an Eligible Policyholder who owned an eligible policy based on an actuarial formula that took into account such factors as the total cash value, the base premium and the duration of such eligible policy. The actuarial formula was reviewed by the Canadian Finance Minister and the Michigan Insurance Commissioner.

(f) With respect to a Sun Life Plan, where the consideration was in the form of Cash or Common Shares, an independent Plan fiduciary —

(1) Determined that the Conversion Plan was in the best interest of the Sun Life Plans and their participants and beneficiaries;

(2) Voted for the Conversion Plan on behalf of the Sun Life Plans;

(3) Received either Common Shares or Cash on behalf of a Sun Life Plan;

(4) Determined that the transactions did not violate the investment objectives and policies of the Sun Life Plans;

(5) Negotiated on behalf of the contributory Sun Life Plans and determined a reasonable allocation of proceeds between Sun Life and the participants in the Sun Life Plans; and

(6) Took (and will continue to take until the proposed exemption becomes final) all actions that were (or will be) necessary and appropriate to safeguard the interests of the Sun Life Plans.

(g) All Eligible Policyholders that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Policyholders that were not Plans.

(h) No Eligible Policyholder paid any brokerage commissions or fees to Sun Life or its affiliates in connection with their receipt of Common Shares or with respect to the implementation of the initial public offering (the IPO) in which an Eligible Policyholder could elect to sell such Common Shares for cash.

(i) All of Sun Life's policyholder obligations will remain in force and will not be affected by the Conversion Plan.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Sun Life'' means Sun Life Assurance Company of Canada and any affiliate of Sun Life as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Sun Life includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under

[2] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

common control with Sun Life; (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.) or

(2) Any officer, director or partner in such person.

(c) The term ''Eligible Policyholder'' means a policyholder who—

(i) On January 27, 1998 (the Eligibility Day) was the owner of a voting policy;

(ii) Was the holder of a voting policy issued by Sun Life, if the policy was applied for by that person on or before the Eligibility Day and the application was received by Sun Life within a period specified by Sun Life in the Conversion Plan;

(iii) Was the holder of a voting policy, issued to the holder by Sun Life, that lapsed before Sun Life's Eligibility Day and was reinstated during the period beginning on the Eligibility Day and ending 90 days before the day on which Sun Life's Special Meeting was held; or

(iv) Was named by Sun Life in its Conversion Plan as an Eligible Policyholder under subsection 4(4) of the Conversion Regulations.

(d) The term ''Policy Credit'' means—

(1) For an individual or joint ordinary life insurance policy, an increase in the paid-up dividend additional cash value or dividend accumulation value;

(2) For a policy that is in force as extended term life insurance pursuant to a nonforfeiture provision of a life insurance policy, an extension of the coverage expiry date;

(3) For a policy which is a deferred annuity certificate, an increase in the deferred annuity payment; and

(5) For a policy which is an individual accumulation annuity, an increase in the account value.

Effective Date: If granted, this proposed exemption will be effective as of March 22, 2000.

Summary of Facts and Representations

1. Sun Life is an insurance company that is incorporated under the laws of Canada. Formerly, Sun Life was a mutual life insurance company that had no issued or outstanding capital stock. On March 22, 2000 (the Effective Date), Sun Life changed its business structure from a mutual life insurance company to a stock life insurance company through a process called ''demutualization'' (also referred to herein as the ''Conversion'').[3]

[3] By a special act of the Canadian Parliament that was ratified in 1865, Sun Life originally had a corporate existence as a stock life insurance company. However, it was converted to a mutual life insurance company in 1962 and it remained that way until March 22, 2000, at which time it became a stock life insurance company once again.

Sun Life is subject to the Insurance Companies Act of Canada (ICA). Its United States branch, which functions as a business unit through which the insurer engages in the business of insurance in the United States, is subject to the insurance laws of the State of Michigan. Sun Life maintains its headquarters at 150 King Street West, Toronto, Ontario, Canada M5H IJ9.

Sun Life, which has a Standard & Poor's rating of ''AA+'' and a Duff & Phelps rating of ''AAA,'' carries on its insurance business in Canada and internationally through its branches in the United States, the United Kingdom, Hong Kong, Bermuda and the Philippines. In addition, Sun Life carries on the business of life insurance, investment management, mutual fund management, banking, and the provision of trust services through various subsidiaries in Canada and internationally. The insurance business in which Sun Life and its international operations are engaged include the sale of various insurance products, which include individual, group life, disability and health insurance, as well as annuities and pensions.

Sun Life's principal place of business in the United States is One Sun Life Executive Park, Wellesley Hills, Massachusetts. The insurer uses Michigan as its port of entry in the United States. Consequently, the Michigan Department of Insurance (the Michigan Insurance Department) has the principal insurance regulatory authority over Sun Life in the United States.

2. Sun Life and its affiliates provide a variety of fiduciary and other services to pension and welfare plans that are covered under relevant provisions of the Act and/or the Code. These services include, but are not limited to, investment management and contract administrative services, such as the payment of benefits and the preparation of reports and schedules as required by law. By providing these services, Sun Life may be considered a party in interest with respect to such Plans under section 3(14)(A) and (B) of the Act or other related provisions of section 3(14).

3. Sun Life sponsors several Plans which received distributions in the Conversion that were allocated to Plan participants. These Plans are referred to collectively as ''the Sun Life Plans'' and are described below.

(a) *The Sun Life United States Agents' and Salaried Field Representatives' Retirement Plan (the Retirement Plan)* is a pension plan that has both defined benefit and defined contribution components. As of December 31, 1999, the defined benefit component of the Retirement Plan had $30,991,406 and 506 participants (336 retirees and 254 terminated vested participants). Also as of December 31, 1999, the defined contribution component of the Retirement Plan had $3,519,425 in total assets and 184 participants. A pension committee currently exercises investment discretion over the assets of this Plan.

(b) *The Sun Life Staff Life Insurance Plan (the Staff Life Insurance Plan)* is a welfare plan that is a term life plan. The Staff Life Insurance Plan has no assets other than policies of insurance that provide benefits to participants. As of December 31, 1999, the Staff Life Insurance Plan had 1,680 participants who received life insurance, 670 participants who received optional benefits and 125 retirees.

(c) *The Sun Life United States Staff Group Life Insurance Plan (the Group Life Insurance Plan)* is also a welfare plan that is a term life plan. The sole assets of the Group Life Insurance Plan consist of insurance policies that provide benefits to participants. As of December 31, 1999, the Group Life Insurance Plan had 237 participants.

The Decision To Demutualize

4. As a mutual insurer, Sun Life had no stockholders. However, certain of its policyholders were considered owners of the company. In this capacity, the policyholders had certain rights, including the right to elect directors of the company. These membership interests are referred to herein as ''Ownership Interests.''

In November 1998, a bill was introduced in the Canadian Parliament to amend the ICA to set forth the statutory rules that for the first time would allow the demutualization of Canadian mutual life insurance companies with assets in Canada of CDN$7.5 billion or more. When the bill was introduced, the Canadian Department of Finance reported that Canada's four largest mutual life insurance companies already had announced their intention to develop demutualization plans.

The Canadian Department of Finance released Mutual Company (Life Insurance) Conversion Regulations (the Conversion Regulations), which became effective on March 12, 1999 and which implemented the new legislation. On January 27, 1998, Sun Life issued a press release stating that its Board of Directors had requested Sun Life's management to develop a plan to convert Sun Life from a mutual life insurance company to a publicly-traded stock company.

5. The principal purpose of the Conversion was to create a corporate structure that would allow Sun Life to position itself for long-term growth and increased financial strength in ways that were not then available. Sun Life believed that as a result of the flexibility to be offered by the stock company structure and the access to capital markets, it would be in a position to enhance its market leadership, financial strength and strategic position. In addition, Sun Life believed that it would be able to pursue opportunities for growth, thereby providing greater protection to policyholders.

As a result of the Conversion, Sun Life became a stock insurer and a subsidiary of Sun Life Financial Services of Canada, Inc., a newly-formed holding company. In addition, the Conversion provided economic value to Eligible Policyholders in the form of Common Shares (which are traded on the Toronto, New York, London and Philippines stock exchanges),[4] Cash or Policy Credits, in return for their respective Ownership Interests in Sun Life.

6. Therefore, Sun Life requests a retroactive administrative exemption from the Department that would apply, effective March 22, 2000, to the receipt of Common Shares, Policy Credits or Cash by Eligible Policyholders which are Plans, including the Sun Life Plans identified above, in exchange for their mutual membership interests in Sun Life. To represent the interests of the Sun Life Plans with respect to the Conversion, Sun Life has retained U.S. Trust Company, N.A. (U.S. Trust) to serve as the independent Plan fiduciary.[5]

The proposed exemption includes a requirement that all Eligible Policyholders that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Policyholders that were not Plans. Thus, Sun Life did not treat Plan policyholders any differently from non-Plan policyholders within their respective class groupings.

Regulatory Supervision

7. The various steps of the Conversion were subject to the approval of Sun Life's Board of Directors, OSFI, which had oversight responsibility for the entire conversion process, the Canadian Finance Minister, the Michigan Insurance Commissioner, and other regulatory authorities in Canada, the United Kingdom, Hong Kong, and the Philippines (collectively referred to as the Regulators). In pertinent part, the Conversion Regulations require that the conversion of a mutual life insurance company be implemented in accordance with a detailed proposal that sets forth the terms and means of effecting the Conversion.

In accordance with this requirement, Sun Life's Board of Directors adopted the Conversion Plan on September 28, 1999. A draft of the Conversion Plan was submitted to OSFI, as principal Regulator, along with certain specified information, including, among other things, opinions of Sun Life's actuary and an independent actuary and opinions of a valuation expert and a financial market expert.

After reviewing and commenting on the Conversion Plan, OSFI authorized Sun Life to send approximately one million Eligible Policyholders (of which less than one percent were Plans) notice of the Special Meeting to consider the Conversion Plan. Policyholder Information Statements were mailed to Eligible Policyholders on October 20, 1999. Eligible Policyholders voted in favor of the Conversion Plan at the Special Meeting which was convened on December 15, 1999 in Toronto, Ontario, Canada. Each Eligible Member was entitled to cast one vote. Because the Conversion Plan was approved by the Eligible Policyholders at the Special Meeting,[6] Sun Life's Board of Directors applied to the Canadian Finance Minister for approval of the Conversion Plan and the issuance of Letters Patent of Conversion in order to effect the Conversion. On March 22, 2000, the Canadian Finance Minister approved the Conversion Plan and issued the Letters Patent of Conversion.

It should be noted that Canadian law does not require that the Canadian Finance Minister make any particular findings in deciding whether to approve the Conversion Plan. Therefore, approval was entirely within the discretion of the Canadian Finance Minister. However, the Canadian Finance Minister, in deciding whether to approve the Conversion Plan, could consider such factors as: (a) Whether the Conversion Plan was fair and equitable to policyholders; (b) whether the Conversion Plan was in the best interest of the financial system in Canada; and (c) whether sufficient steps had been taken to inform policyholders of the Conversion Plan and of the special meeting on the Conversion.

8. Because Sun Life operates in the United States through its U.S. branch under the Michigan state of entry statute, the demutualization law of Michigan (the Michigan Demutualization Law) also applied to Sun Life's proposed Conversion. The Michigan Demutualization Law's requirements are similar to those of the ICA and the Conversion Regulations. Among other things, the statute requires that the Conversion Plan be submitted to the Michigan Insurance Commissioner prior to a vote by Sun Life's Eligible Policyholders. In addition, the Conversion Plan cannot become effective without the approval of the Michigan Insurance Commissioner following a public hearing, and such Conversion Plan cannot be amended without the prior approval of the Michigan Insurance Commissioner.

The Michigan Insurance Commissioner is authorized to retain, and did subsequently retain, independent legal and actuarial advisers to assist in reviewing the proposal. Under the Michigan Demutualization Law, the Michigan Insurance Commissioner must approve or disapprove the Conversion Plan within 90 days after its submission, and cannot approve it unless he or she finds the Conversion Plan ''does not prejudice the interests of its members, is fair and equitable, and is not inconsistent with the purpose and intent of the Michigan Demutualization Law.'' If approved, the Conversion would take effect as of the Effective Date specified in the Conversion Plan (*i.e.,* on March 22, 2000).

On November 22, 1999, a public hearing was held with respect to the Conversion Plan in Lansing, Michigan. On December 8, 1999, the Michigan

[4] Eligible Policyholders who received Common Shares were accorded the following rights after the Conversion: (a) The right to vote on matters submitted to such participating policyholders; (b) the right to participate in the distribution of Sun Life's profits; (c) the right to participate in the distribution of Conversion benefits; and (d) the right to participate in the distribution of any remaining surplus after satisfaction of all obligations in the event Sun Life is liquidated.

[5] Sun Life also requested that the exemption cover the acquisition and holding of Common Shares by the Sun Life Plans where such transactions were in violation of sections 406(a)(1)(E) and (a)(2) and 407(a)(2) of the Act. However, as discussed in Representation 16, U.S. Trust determined that there were no such violations because of the forms of consideration it had elected for the various Sun Life Plans. In particular, U.S. Trust elected Cash consideration for the Staff Life Insurance Plan and the Group Life Insurance Plan, and Common Shares for the Retirement Plan.

The Department notes that no opinion is being provided herein regarding whether the receipt of Common Shares by the Retirement Plan, once U.S. Trust made the election, was covered by the statutory exemption provided under section 408(e) of the Act.

[6] Such approval required the affirmative vote of not less than two-thirds of the votes cast by the Eligible Policyholders voting in person or by proxy.

Insurance Commissioner entered an order approving such Plan.

The Transaction

9. As noted above, the Conversion Plan provided for Sun Life to demutualize and convert to a stock life insurance company pursuant to section 237 *et seq.* of the ICA, the Conversion Regulations and the terms of the Conversion Plan. Specifically, in advance of the Conversion, Sun Life incorporated the Holding Company in Canada under the ICA as a new stock life insurance company. Specifically, in September 1999, Sun Life purchased shares of the Holding Company for CDN$10 million, as required under the ICA.

At the Effective Date of the Conversion, Section 2.2 of the Conversion Plan provides for the following transactions, which among others, took place as part of the Conversion:

- All policyholder rights with respect to, and interests in, Sun Life ceased;
- Sun Life issued its common shares to the Holding Company;
- The Holding Company issued its Common Shares to Eligible Policyholders who were issued such shares in exchange for their Ownership Interests and other Eligible Policyholders received Policy Credits or Cash in accordance with Article 4 of the Conversion Plan; and
- Sun Life surrendered to the Holding Company, and the Holding Company purchased for cancellation, for consideration equal to the initial issue price thereof, all of the Common Shares Sun Life held immediately before the Effective Date.

10. The applicant represents that the Conversion did not (and will not) affect the terms of any of Sun Life's policies. Rather, all policies will continue in force with Sun Life in accordance with their current terms notwithstanding the Conversion. In particular, the Conversion will not affect the level of premiums, coverage or benefits payable under any Policies, and dividends will continue to be declared with respect to participating policies at the discretion of Sun Life's Board of Directors. Accordingly, the Conversion will not adversely affect the contractual rights of any participating policyholder. However, all policyholder rights with respect to, and interests in, Sun Life as a mutual company ceased upon the Conversion.

In connection with the Conversion, Eligible Policyholders became entitled to their benefits (in whatever form) on the Effective Date (*i.e.,* March 22, 2000). Share certificates, which entitled Eligible Policyholders to Common Shares, were mailed prior to the Effective Date and became ''live'' certificates upon the closing of the Conversion. Policy Credits were also credited to other Eligible Policyholders on the Effective Date. On March 23, 2000, a public offering of the Holding Company's Common Shares (*i.e.,* the IPO) was closed, at which time the Holding Company paid Cash to Eligible Policyholders who were entitled to receive consideration in this form.

11. Specifically, Policy Credits were posted to each Eligible Policyholder in the United States whose participating policy was—

- An individual retirement annuity contract within the meaning of section 408(b) [of the Code] or a tax sheltered annuity contract within the meaning of section 403(b) of the Code, including for this purpose, custodial accounts under section 403(b)(7) and retirement income accounts under section 403(b)(9);
- An individual annuity contract that had been issued directly to the Plan participant pursuant to a Plan qualified under section 401(a) of the Code or pursuant to a Plan described in section 403(a) [of the Code] directly to the Plan participant; or
- An individual life insurance Policy that had been issued directly to the Plan participant pursuant to a Plan qualified under section 401(a) [of the Code];[7]

Notwithstanding the above, Common Shares were paid to policyholders of individual annuity contracts who were in pay status or whose policies had been terminated and the payment of Common Shares would not raise qualification issues under the Code. Similarly, Common Shares were paid in connection with individual retirement annuities covered under section 408(b) of the Code where the receipt of Common Shares would also not raise qualification issues under the Code.[8]

Finally, the Holding Company made a direct cash payment to each Eligible Policyholder who would be subject to a mandatory cash-out, if Sun Life knew that the policyholder's Participating Policy was subject to a lien or to a bankruptcy proceeding or to certain other title restrictions.[9]

12. Eligible Policyholders whose addresses are unknown to the Holding Company have been classified as ''Lost Policyholders.'' Lost Policyholders who have been issued Common Shares in connection with the Conversion will have such shares recorded in their names on the Holding Company's share register. Common Shares issued to a Lost Policyholder who do not take certain specified actions[10] within 35 months of the Effective Date will revert to the Holding Company together with any dividends paid on such shares. However, after such reversion, the Holding Company will be required to deliver the Common Shares and accumulated dividends (without interest)[11] to the Lost Policyholder if he or she subsequently claims them.

13. About 40 percent of Sun Life's Eligible Policyholders were Canadian residents, 15 percent were U.S. residents, and 45 percent were residents of other countries. While United States residents would comprise roughly 15 percent of the total number of Eligible Policyholders, such policyholders would receive approximately 25 percent of the total Common Shares distributed in Sun Life's Conversion.[12]

14. As required by the Conversion Regulations, the Conversion Plan was accompanied by an opinion prepared by the actuary for Sun Life and an opinion prepared by an independent actuary that the allocation of benefits to Eligible Policyholders in the Conversion was fair and equitable. Eligible Policyholders who were issued Common Shares in the Conversion could elect, by February 16, 2000, to have some or all of those shares (the Electing Shares) sold for cash in the

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[7] In certain circumstances, Policy Credits could also be posted to Eligible Policyholders who did not reside in the United States or where the Board of Directors had determined that the receipt of Common Shares would be disadvantageous to the policyholders.

[8] If an Eligible Policyholder was in ''pay status,'' Sun Life states that the policyholder would have reached an age where he or she would be entitled to receive a distribution under his or her Sun Life policy. Under these circumstances, any distribution of Common Shares or Cash to such policyholder would not be considered premature and would not trigger adverse consequences, such as the disqualification of the Plan.

[9] Sun Life anticipated that fewer than 10 percent of the Eligible Policyholders would receive demutualization benefits in the form of Cash or Policy Credits and that at least 90 percent of the Eligible Policyholders would be issued common Shares.

[10] In order to cease being a Lost Policyholder, a policyholder must take one of the following actions: (a) Respond to a letter from Sun Life or the Holding Company requesting confirmation of his or her current address; (b) contact Sun Life or the Holding Company and confirm his or her current address; (c) inform Sun Life or the Holding Company of a change of address; or (d) otherwise confirm his or her current address to Sun Life or the Holding Company in a manner satisfactory to Sun Life or the Holding Company, as applicable.

[11] Sun Life represents that it does not propose to pay interest on accumulated dividends to Lost Policyholders because it is not the standard practice among insurance companies to do so, whether in the context of demutualizations, or more generally, of shareholders who are late in claiming dividends.

[12] The differences between the relative numbers of Eligible Policyholders residing in each country and the estimated percentages of total Common Shares to be distributed to such Eligible Policyholders who resided in each covered country were attributable to the fact that Conversion benefits would be allocated in part based on such factors as the type, duration, face amount and cash surrender value of an eligible policy, and not simply on a per capita basis.

IPO.[13] The purchasers of the Electing Shares were required to be either independent investment dealers or investment banks (the Underwriters) who had entered into underwriting agreements with Sun Life and the Holding Company with respect to the IPO. In regard to purchases of Electing Shares by the Holding Company, Plans that were covered under the provisions of the Act were not permitted to engage in such transactions as the transactions were considered prohibited transactions. No commissions or fees were charged to Eligible Policyholders seeking to sell Electing Shares.[14]

A total of 143,602,914 Common Shares were sold in the IPO.[15] The total number of Common Shares sold in the IPO was set by the Holding Company and the Underwriters prior to the IPO. The Holding Company also paid the Underwriters' fees that were associated with the Underwriters' purchase of the Common Shares from Eligible Policyholders [16] and the sale of the Common Shares in the IPO.[17]

Except for a very small number of Common Shares that were sold to fund mandatory direct Cash payments (as distinguished from Cash elections), and Policy Credits, all of the Common Shares sold in the IPO represented shares allocated to Eligible Policyholders who decided to redeem their shares for Cash. (All Eligible Policyholder Cash requests were honored, *i.e.,* no policyholder who elected Cash received Common Shares.)

On March 31, 2000, each Underwriter exercised an ''overallotment option'' granted to them in their respective Underwriting Agreements. The option permitted the Underwriters to purchase an additional 21,540,437 Common Shares from the Holding Company that were equal to 15 percent of the main offering. The sale of the Common Shares closed on April 4, 2000. As a result, Canadian Eligible Policyholders received 14,001,284 Common Shares, U.S. Eligible Policyholders received 5,385,109 Common Shares and International Eligible Policyholders received 2,154,044 Common Shares.

CIBC Mellon Trust Company, or its successors or assigns, is serving as the registrar and transfer agent (the Transfer Agent) for the Common Shares. The Transfer Agent will record the Common Shares on a share register on behalf of the Holding Company. The Transfer Agent also will be responsible for transmitting dividend payments from the Holding Company to the Holding Company shareholders.

15. In addition to allowing Eligible Policyholders to sell their Electing Shares in the IPO, Sun Life has established a service, effective March 23, 2000, which affords Eligible Policyholders, including U.S. Eligible Policyholders, who hold Common Shares in their Sun Life Share Accounts, the opportunity to sell such shares after the IPO. The sales are being executed through TD Waterhouse Investor Services (TD Waterhouse), an unrelated broker-dealer. All sales through TD Waterhouse are being treated as ordinary brokerage transactions that are made at prevailing market prices on the New York Stock Exchange and are subject to TD Waterhouse's normal commission rates. Sun Life represents that no time limit has been imposed on sales of Common Shares through TD Waterhouse. [18]

16. Following the Conversion, a participating account mechanism (the Participating Account) will be implemented by Sun Life, as provided for in the Conversion Plan. With respect to the participating policies in force at the date of the Conversion, the Participating Account will operate like a closed block. In other words, a set of assets for such policies (*e.g.,* bonds, mortgages, real estate, cash and cash equivalents), that are designed to meet Sun Life's contractual obligations and policyholder reasonable dividend expectations with respect to those policies, will be earmarked. Sun Life represents that the Participating Account will not alter, diminish, reduce, or in any way affect a policyholders' contractual rights. Although the details of the Participating Account have been developed by Sun Life in conjunction with OSFI and the Michigan Insurance Department, Sun Life's actuaries and the actuarial advisers to OSFI have not yet determined the specific dollar amount of assets that will be placed in the Participating Account. [19]

[13] In other words, if an Eligible Policyholder was a resident of the United States and was issued less than 1,000 Common Shares, the policyholder was required to make a cash election for all of such shares. However, if the Eligible Policyholder was issued 1,000 or more Common Shares in the IPO, the policyholder could make a cash election to sell any of such shares.

[14] The offering price for the Common Shares was CDN$12.50 per share and U.S.$8.50 per share. These were equivalent amounts using the exchange rate on the date of the pricing, which occurred on March 22, 2000. The Canadian dollar price applied to Common Shares that were sold in Canada and the U.S. dollar price applied to shares that were sold both in the United States and internationally.

[15] Of this total, Canadian Eligible Policyholders received 93,341,894 Common Shares, U.S. Eligible Policyholders received 35,900,729 Common Shares and International Eligible Policyholders received 14,360,291 Common Shares.

[16] Sun Life concluded (and it advised its Eligible Policyholders and the Internal Revenue Service) that its payment of the Underwriters' fee for Eligible Policyholders who sold their Common Shares in the IPO would be treated as a dividend for Canadian tax purposes. Sun Life further advised its Eligible Policyholders that Canadian non-resident withholding tax would apply to such deemed dividend, and that the rate would generally be 15 percent. The amount of the tax would be withheld from the proceeds of the sale of the Common Shares and would be remitted to the Canadian tax authorities. Finally, Sun Life advised its Eligible Policyholders that they could take the amount of the Canadian withholding tax into account as a credit or a deduction in determining their United States income tax.

[17] Consistent with sections 1 and 4(1)(e)(i) of the Conversion Regulations, the Conversion Plan generally provides that the policyholder eligible to participate in the distribution of Common Shares, Cash or Policy Credits resulting from the Conversion Plan is the ''owner'' of the policy, and that the ''owner'' of any policy shall generally be determined on the basis of the records of Sun Life. Sun Life further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, Sun Life represents that it is required under the foregoing provisions of Canadian law and the Conversion Plan to make distributions resulting from such Plan to the employer, or trustee as owner of the policy, except as provided below.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when Sun Life incurred the obligation to distribute Common Shares, Cash or Policy Credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[18] Sun Life initially proposed to offer a share selling service (the Share Selling Service) to recipients of Common Shares. Under the Share Selling Service, Eligible Policyholders would be permitted to sell their Common Shares at prevailing market prices without the payment of fees or commissions. Sun Life represents that it was unable to offer the Share Selling Service to Eligible Policyholders residing in the United States because the New York Stock Exchange and the Securities Exchange Commission would have required Sun Life to issue Common Shares to Eligible Policyholders in non-certificated form provided the Common Shares had been included in Depository Trust Company's Direct Registration System (the DRS). Because Sun Life's registrar and transfer agent did not have the equipment and systems necessary to access the DRS, Sun Life decided to issue Common Shares to Eligible Policyholders in certificated form. Nevertheless, for technical and logistical reasons, Sun Life declined to offer the Share Selling Service using physical share certificates.

[19] The Participating Account, which includes polices issued both before and after the Conversion, responds to concerns that a demutualization will adversely affect the value of dividend-paying policies since Sun Life's profits, following the Conversion will be shared with the shareholders. It is represented that traditionally, insurers have addressed the concern over the value of dividend-paying policies by segregating pre-demutualization participating policies in a ''closed block''

Continued

Under the ICA, participating policyholders also will have rights upon completion of the Conversion that are accorded to participating policyholders of a stock life insurance company in Canada. Such rights include the right to elect at least one-third of the Sun Life's Directors as well as the right to any dividends that are declared.

17. As noted above, in the case of the Sun Life Plans, U.S. Trust is representing their interests and it has acknowledged and accepted the duties, responsibilities and liabilities required of an independent fiduciary. In this regard, U.S. Trust represents that it is an affiliate of United States Trust Company of New York (USTC). USTC was founded in New York in 1853 and is subject to regulation as a trust company by the State of New York. USTC is the principal subsidiary of U.S. Trust Corporation, a member of the Federal Reserve System and the Federal Deposit Insurance Corporation, and an entity having approximately $4.1 billion in assets as of December 31, 1999. USTC has over $75 billion in assets under management, a significant percentage of which consists of the assets of Plans that are covered by the Act and/or Code.

In addition, U.S. Trust has served as an independent fiduciary for numerous Plans that acquire or hold employer securities and it has managed, at various times, over $16 billion in employer securities that have been held by such Plans. In managing these investments, U.S. Trust has acted as a fiduciary in a number of transactions involving the acquisition, retention and disposition of employer securities.

U.S. Trust is independent of Sun Life and its affiliates. In this respect, it has no business, ownership or control relationship, nor is it affiliated with Sun Life and its affiliates. In addition, U.S. Trust derives less than one percent of its annual income from Sun Life and its affiliates.

U.S. Trust states that it was retained by Sun Life to consider, on behalf of the Sun Life Plans, whether to approve the Conversion Plan and, if approved, whether to receive consideration in the form of Common Shares or Cash. Specifically, U.S. Trust determined, pursuant to its engagement letter with Sun Life and subject to satisfaction of certain contingencies, that the consummation of the transactions would be prudent for each of the Sun Life Plans. In particular, U.S. Trust: (a) Determined that the Conversion Plan was in the best interest of the Sun Life Plans and their participants and beneficiaries; (b) voted for the Conversion Plan on behalf of the Sun Life Plans; (c) received either Common Shares or Cash on behalf of a Sun Life Plans; (d) determined that the transactions would not violate the investment objectives and policies of the Sun Life Plans; (e) negotiated a reasonable allocation of proceeds between Sun Life and the participants in the Sun Life Plans based upon employee and employer contributions made to such Sun Life Plans over a three year period; and (f) took (and will continue to take until the proposed exemption becomes final) all actions that were (or will be) necessary and appropriate to safeguard the interests of the Sun Life Plans.

U.S. Trust states that the aforementioned determinations were based upon its analyses of Sun Life's Conversion Plan and financial performance. In addition, U.S. Trust explains that its determinations were based upon the assumption that the exemption would be granted. Further, U.S. Trust notes that the consummation of the transactions was conditioned upon approval by Eligible Policyholders of the Conversion Plan, including the receipt of Canadian and Michigan regulatory approvals, and other conditions set forth in the Conversion Plan.

As a general matter, U.S. Trust states that its determinations regarding the proposed transactions were based upon its economic analysis of the consideration to be acquired by the Sun Life Plans. In this connection, U.S. Trust represents that it performed a comprehensive analysis of Sun Life in the context of prevailing market conditions and concluded that the proposed aggregate consideration that would be received by the Sun Life Plans was fair to such Plans from financial point of view. In forming its conclusion, U.S. Trust asserts that it reviewed various documents, including but not limited to, (a) Sun Life's annual reports and related financial information; (b) a Statement of Actuarial Opinion regarding the methodology used to allocate the demutualization benefits among the policyholders; (c) opinions of the appointed actuary; and (d) ratings of Sun Life by Standard & Poor's and Duff & Phelps. In addition, U.S. Trust represents that it hired independent legal counsel and reviewed all relevant information regarding the Plans and public documents provided by the Michigan Insurance Commissioner.

On December 15, 1999, U.S. Trust states that its Special Fiduciary Committee (the Special Fiduciary Committee), including representatives from corporate counsel and other bank management, met and determined that the transactions were in the best interests of the participants and beneficiaries of the Sun Life Plans. Then, on February 9, 2000, the Special Fiduciary Committee convened again and determined to elect to receive compensation in the form of 139,787 Common Shares for the Retirement Plan, and to elect to receive Cash for the Staff Life Insurance Plan (*i.e.,* the cash equivalent of 53,144.5 shares) and the Group Life Insurance Plan (*i.e.* the cash equivalent of 34,573.5 shares).

Both the Staff Life Insurance Plan and the Group Life Insurance Plan provide for employee contributions.[20] Therefore, U.S. Trust represents that it asked Sun Life to describe whether and how participants in those Plans would be assured of enjoying benefits equal to that portion of the demutualization consideration allocated to each Plan that was attributable to past participant contributions.

With respect to the Staff Life Insurance Plan under which participants make contributions solely to pay for optional benefits and Sun Life makes contributions for basic benefits, U.S. Trust explains that the proportion of total premiums paid by participants was 38 percent. Therefore, Sun Life proposed to allocate 38 percent of the demutualization proceeds to pay for optional participant benefits under the Staff Life Insurance Plan. According to U.S. Trust, Sun Life expects that the demutualization proceeds would be sufficient to pay for a 1.5 year ''premium holiday'' for participants

containing assets sufficient to cover the liabilities associated with those policies in order to protect the policies from the demands of shareholders. In effect, experience and investment gains and losses associated with policies in the closed block will only affect the closed block. Thus, the block will be closed in two contexts—(a) no new policies can be added and (b) the block will be ''closed off'' from the rest of the insurer's business.

With respect to Sun Life's Participating Account which operates like the closed block, an appointed actuary, who reports to OSFI, will certify that the assets placed in the Participating Account are sufficient to cover the liabilities associated with the pre- and post-demutualization participating policies, including the reasonable dividend expectations of those policyholders. Sun Life is required to place additional assets in the Participating Account, if necessary, and may transfer amounts out of such account after five years only if the appointed actuary determines that the assets are more than sufficient to cover the liabilities of the participating policies.

[20] U.S. Trust did not address the allocation of Common Shares to the Retirement Plan in its independent fiduciary report. Sun Life represents that because the Retirement Plan has both a defined benefit and a defined contribution component, the Common Shares that were received as a result of the Conversion were pursuant to an investment in the defined benefit component. Therefore, the Common Shares are being held with the other assets of the Retirement Plan.

with respect to the optional benefit based on a sale of the Common Shares at the assumed IPO price and current premium costs.

Under the Group Life Insurance Plan, U.S. Trust notes that participants contributed 54 percent of the total premiums paid by this Plan until 1997, after which time the Plan became totally noncontributory. U.S. Trust points out that Sun Life proposed to increase the benefit levels of the current participants so that these participants would be able to share in the demutualization proceeds in a manner proportionate to their past contributions. In this regard, benefits for participants in the Group Life Insurance Plan would be enhanced by 54 percent of the Conversion consideration received, thereby representing the same ratio participant premium payments bore to the total premiums paid. Although Sun Life expected the demutualization proceeds would be sufficient to pay for two years of the benefit enhancement based on a sale of the Common Shares at the assumed IPO price and current premium costs,[21] U.S. Trust explains that the Group ife Plan would remain noncontributory.

In evaluating Sun Life's proposed methods of providing benefits to participants equal to the portion of the demutualization consideration received by each Sun Life Plan that was attributable to participant contributions, U.S. Trust states that it took into account such factors as: (a) The practical impossibility of allocating benefits directly to the participants whose contributions contributed to the demutualization proceeds;[22] (b) the substantial overlap between the groups of participants making such contributions and the participants receiving benefits; (c) the use of an allocation method involving participant contributions over a period of years rather than a single year; and (d) the economic value to participants of the proposed ''premium holiday.'' Based upon these factors, U.S. Trust determined that the proposed method for allocating benefits to each Sun Life Plan was reasonable and fair to the respective Plan participants as a group.

18. In summary, it is represented that the transactions satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Conversion Plan, which was implemented pursuant to stringent procedural and substantive safeguards imposed under Canadian and Michigan law, will not require any ongoing supervision by the Department.

(b) One or more independent Plan fiduciaries, including U.S. Trust, which is representing the interests of the Sun Life Plans, had an opportunity to determine whether to vote to approve the Conversion Plan and was responsible for all such decisions.

(c) Eligible Policyholders that were Plans were allowed to acquire Common Shares, Cash or Policy Credits, in exchange for and in extinguishment of, their membership interests in Sun Life, and no Eligible Policyholder paid any brokerage commissions or fees to Sun Life or its affiliates in connection with their receipt of Common Shares or with respect to the sale of Electing Shares in the IPO.

(d) Neither Sun Life nor its affiliates exercised discretion with respect to voting on the Conversion Plan or with respect to an election made by any Eligible Policyholder which was a Plan, nor did Sun Life or its affiliates provide ''investment advice,'' as that term is defined in 29 CFR 2510.3–21(c) with respect to any election made by such Plan policyholder.

(e) The Conversion did not (and will not) reduce policy benefits, values or guarantees, or increase premiums, in any way, and dividend-paying policies will continue to receive dividends if and when declared.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

IRA FBO Floyd A. Ross (the IRA), Located in Ukiah, California

[Application No. D–10871]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase by the IRA of certain closely held common stock (the Stock) from the Ross Family Trust (the Family Trust), a disqualified person with respect to the IRA,[23] provided that the following conditions are satisfied:

(a) The purchase is a one-time transaction for cash;

(b) The terms and conditions of the purchase are at least as favorable to the IRA as those available in a comparable arm's length transaction with an unrelated party;

(c) The IRA pays a purchase price that is no greater than the fair market value of the Stock at the time of the transaction, as established by a qualified, independent appraiser;

(d) The IRA pays no commissions nor other expenses in connection with the purchase; and

The fair market value of the Stock represents no more than 25 percent of the total assets of the IRA at the time of the transaction.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described under section 408(a) of the Code. The IRA was established by Floyd A. Ross, who is the sole participant. As of June 30, 2000, the IRA had total assets of $373,222.91. The trustee of the IRA is the Capital Guardian Trust Co.

2. It is proposed that the IRA purchase shares of the Stock from the Family Trust, established October 23, 1985, with Mr. Ross and his wife as the grantors and co-trustees.[24] All of the community property of the grantors and their separate property as husband and wife have been conveyed to the Family Trust.

The Stock consists of shares of the Savings Bank of Mendocino County (the Bank), a state chartered bank headquartered in Ukiah, California. Mr. Ross is the Executive Vice President of the Bank. According to the applicant, the Bank was established in 1903, and a majority of the 100,000 shares outstanding of the Stock is held by a descendant of one of the Bank's founders, who is not related to Mr. Ross. There are a total of 265 registered shareholders of the Stock. The Family Trust holds 1,332 shares of the Stock. Mr. Ross does not own any shares of the Stock in his personal capacity. The Stock has paid quarterly dividends every year and has paid $4.50 per share each quarter of the current year.

3. The Stock has been appraised by F. D. Grothe, a qualified, independent

[21] In this proposed exemption, the Department is not commenting on or providing exemptive relief with respect to the allocation methodology utilized by U.S. Trust.

[22] According to U.S. Trust, both the Staff Life Insurance Plan and the Group Life Insurance Plan will bear the cost of allocating demutualization proceeds among participants based on actual contributions.

[23] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

[24] Section 4975(e)(2)(G) of the Code defines the term ''disqualified person'' to include a trust of which (or in which) 50 percent or more of the beneficial interest of such trust is owned, or held by, a fiduciary of a plan.

appraiser. Mr. Grothe is a Certified General Real Estate Appraiser licensed in the State of California and maintains his appraisal business in Lakeport, California. He also serves as the California Probate Referee for Lake and Mendocino Counties in Northern California, which encompass the areas served by the Bank. In an appraisal report, dated April 7, 2000, Mr. Grothe states that, in his duties as Probate Referee, he is required to appraise all assets, including closely held stock, in probate estate cases heard in the Superior Courts of the State of California for Lake and Mendocino Counties. In this capacity, he is required to value the Bank's Stock two to four times a year, upon the death of one of the Stock's shareholders. Thus, Mr. Grothe is familiar with the appropriate valuation methodologies for determining the fair market value of the Stock.

Mr. Grothe concluded that the fair market value of the Stock was $755.00 per share, as of April 7, 2000. He states that the Bank is nationally ranked among the top one percent of small banks. Mr. Grothe attached to his report a list of the last five sales of the Stock. He states that these sales are market-driven and are higher than the average book value of the Stock, which, according to the 1999 Annual Report, was $635.80 per share. He also states that the market for stocks in small, independent banks is driven by larger banks wanting to expand into certain areas. It has been Mr. Grothe's experience that most merger sales are at two to two and one-half times book value. Thus, in Mr. Grothe's opinion, the $775.00 per share market price could be very conservative, in the event of a merger or buyout.

4. Accordingly, the applicant represents that the Stock is an excellent investment opportunity for the IRA. Thus, it is proposed that 25 percent of the IRA's assets ($93,305.73) be used to purchase approximately 120 shares (assuming a value of $775.00 per share) of the 1332 shares of the Stock held by the Family Trust.[25] The Stock to be acquired by the IRA will represent less than one percent of the total outstanding shares of the Stock at the time of the transaction.

The IRA's purchase price will be the fair market value of the Stock at the time of the transaction, based upon an updated independent appraisal. The IRA will pay no commissions nor other expenses in connection with the purchase. The applicant represents that, although the Stock is closely held, there is a definite market for the Stock. Therefore, the applicant states that the proposed purchase of the Stock by the IRA will not adversely affect the liquidity needs of the IRA.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The purchase will be a one-time transaction for cash; (b) the terms and conditions of the purchase will be at least as favorable to the IRA as those available in a comparable arm's length transaction with an unrelated party; (c) the IRA will pay a purchase price that is no greater than the fair market value of the Stock at the time of the transaction, as established by a qualified, independent appraiser; (d) the IRA will pay no commissions nor other expenses in connection with the purchase; and (e) the fair market value of the Stock will represent no more than 25 percent of the total assets of the IRA at the time of the transaction.

Notice to Interested Persons

Because Mr. Ross is the sole participant in his IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Platt Orthopedics Retirement Plan (the Plan), Located in Rancho Mirage, California

[Application No. D–10875]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain improved real property (the Property) to Morris and Arthur Platt, disqualified persons with respect to the Plan,[26] provided that the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the Plan receives an amount equal to the average of two independent appraisals of the Property's fair market value, as of the date of the sale.

Summary of Facts and Representations

1. The Plan, which is a defined contribution profit sharing plan sponsored by Platt Orthopedics (the Employer), has three participants, Morris and Arthur Platt and Arthur Platt's wife. Morris and Arthur Platt, orthopedic surgeons, are the owners of the Employer and the trustees of the Plan. Their practice was formerly in the State of New York but was relocated to Rancho Mirage, California. The fair market value of the assets of the Plan was $762,832, as of December 31, 1998, the date of the Plan's most recently available financial statement.

2. The Property consists of a five-story commercial building on a 2,319 sq. ft. lot, located at 165 Orchard Street, Borough of Manhattan, New York, New York. The building is vacant and boarded up and in need of renovation. The adjacent lots are owned by persons unrelated to the Plan, the Employer, and the Platts.

3. The Property was acquired by the Plan from Orcho Realty, an unrelated party, in 1996, for a total purchase price of $435,000. Orcho Realty also financed the purchase of the Property, which the Plan now owns free and clear. The applicants represent that the following amounts were expended by the Plan at various times from September 3, 1996 to December 31, 1999 in connection with the purchase of the Property (mortgage and interest payments), plus expenses (maintenance, taxes, and insurance): $206,381.25 in 1996; $60,100 in 1997; $98,347 in 1998; and $134,023 in 1999. Thus, including the $435,000 purchase price, the Plan has made total expenditures of $498,851.25 with respect to the Property from 1996 to 1999. The applicants represent that the Property has not been leased to, nor used by, by anyone, including a disqualified person with respect to the Plan, at any time since its acquisition by

[25] See ERISA Advisory Opinion 2000–10A (July 27, 2000) for a recent discussion of the Department's views regarding co-investing by an IRA and certain disqualified persons in a limited partnership. The Department notes that no relief is being provided in this proposed exemption beyond the IRA's initial purchase of the Stock for any additional prohibited transactions that may occur as a result of co-investing by the IRA and the Family Trust in shares of the Stock.

[26] Because Morris and Arthur Platt, who are owner-employees, and Arthur Platt's wife are the only participants in the Plan, the Plan is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

the Plan. The Property has produced no income for the Plan.

4. The applicants have obtained two appraisals of the Property by qualified, independent appraisers, both certified in the State of New York. The first appraiser is Eric A. Sterling, IFA, ASA, GAA, of Sterling Appraisals Associates, Inc. (the Sterling Appraisal), located in Bronx, New York. The Sterling Appraisal, relying on the Direct Sales Comparison Approach to valuation, estimated that the fair market value of the Property was $460,000, as of September 23, 1999. The second appraiser is John M. Watch, of JW Consulting (the Watch Appraisal), located in Flushing, New York. The Watch Appraisal utilized the Market Approach and Cost Approach and concluded that the fair market value of the Property was $525,000, as of September 24, 1999.

The Sterling Appraisal examined four recent sales of comparable properties, while the Watch Appraisal examined five recent sales of comparable properties, in the local real estate area, in making a determination of the fair market value of the Property. The zoning of the Property is ''C6–1, Commercial.'' Both appraisals noted that the improvements are in poor condition and that the Property needs to be restored before it can attain its highest and best use, which likely would be a ''Mixed Use'' apartment building with retail space on the ground level.

5. The applicants represent that they have attempted to sell the Property on the open market but were advised by a broker that, because the Property needs extensive renovation, it would be difficult to sell at all, except for a bargain price. The applicants propose, therefore, to purchase the Property from the Plan for an amount in cash equal to the fair market value of the Property, as of the date of the sale. This amount would be based upon an average of the two independent appraisals referred to in Item 4, above, because of a significant disparity in the valuations. This amount was $492,500, as of September, 1999. The appraisals will be updated at the time of the transaction. The Plan would pay no commissions nor other expenses relating to the sale.

The applicants represent that the exemption will be in the best interests of the Plan because the sale will allow the Plan to divest itself of a non-income producing, illiquid asset. In addition, the sale proceeds will be reinvested in other assets that will increase diversification of the Plan's assets, achieve a higher overall rate of return for the Plan's assets, and facilitate the payment of retirement benefits.

6. In summary, the applicants represent that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code for the following reasons: (a) The sale will be a one-time transaction for cash; (b) the Plan will pay no commissions nor other expenses relating to the sale; (c) the Plan will receive an amount equal to the average of two independent appraisals of the Property's fair market value, as of the date of the sale; and (d) the sale will allow the Plan to reinvest the sale proceeds in other assets that will achieve greater diversification and a higher overall rate of return for the Plan's assets.

Notice to Interested Persons

Because Morris and Arthur Platt, and Arthur Platt's wife, are the only participants in the Plan to be affected by the subject transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing with respect to the proposed exemption are due within 30 days of the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 31st day of August, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–45; Exemption Application Nos. D–10809 and D–10865]

Grant of Individual Exemption To Amend and Replace Prohibited Transaction Exemption (PTE) 99–15, Involving Salomon Smith Barney Inc. (Salomon Smith Barney), Located in New York, NY

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Grant of individual exemption to modify and replace PTE 99–15.

SUMMARY: This document contains a final exemption (the Final Exemption) by the Department of Labor (the Department) which amends and replaces PTE 99–15 (64 FR 1648, April 5, 1999), an exemption granted to Salomon Smith Barney. PTE 99–15 relates to the operation of the TRAK Personalized Investment Advisory Service product (the TRAK Program) and the Trust for Consulting Group Capital Markets Funds (the Trust). These transactions are described in a notice of pendency (the Proposed

Exemption) that was published in the **Federal Register** on June 1, 2000 at 65 FR 35138.

EFFECTIVE DATES: This exemption is effective as of April 1, 2000 with respect to the amendments to Section II(i) and Section III(b) of the grant notice. In addition, this exemption is effective as of April 1, 2000 with respect to the inclusion of new Section III(d) in the grant notice.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 1, 2000, the Department published, in the **Federal Register**, the above referenced Proposed Exemption which would amend and replace PTE 99–15. PTE 99–15, provides an exemption from certain prohibited transaction restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code), as amended, by reason of section 4975(c)(1) of the Code. Specifically, PTE 99–15 provides exemptive relief from the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for the purchase or redemption of shares in the Trust by an employee benefit plan, an individual retirement account (the IRA), a retirement plan for a self-employed individual, or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan; collectively, the Plans).

PTE 99–15 also provides exemptive relief from the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, with respect to the provision, by the Consulting Group of Salomon Smith Barney (the Consulting Group), of (1) investment advisory services or (2) an automatic reallocation option to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary) which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.[1]

In the Proposed Exemption, Salomon Smith Barney requested a modification of PTE 99–15 and a replacement of that exemption with a new exemption for purposes of uniformity.[2] Specifically, Salomon Smith Barney requested that the term ''affiliate,'' as set forth in PTE 99–15, in Section II(h) of the General Conditions and in Section III(b) of the Definitions, be amended and clarified to avoid possible misinterpretation. In this regard, Salomon Smith Barney also requested that the term ''officer'' be defined and incorporated into the Proposed Exemption, in new Section III(d), to limit the affiliate definition to persons who have a significant management role. Further, Salomon Smith Barney requested that Section II(i) of PTE 99–15 be amended to permit an independent sub-adviser (the Sub-Adviser), under certain circumstances, to exceed the current one percent limitation on the acquisition of securities that are issued by Salomon Smith Barney and/or its affiliates, notably in the Sub-Adviser's replication of a third-party index (the Index). The Final Exemption is effective as of April 1, 2000 with respect to the amendments to Sections II(i) and III(b) of the grant notice, and is effective as of July 10, 2000 with respect to Section III(d) of the grant notice.

The Proposed Exemption was requested in an application filed on behalf of Salomon Smith Barney pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures (the Procedures) set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this Final Exemption is being issued solely by the Department.

The Proposed Exemption gave interested persons an opportunity to comment and to request a hearing. During the comment period, the Department received two written comments and no requests for a hearing. One of the comments was submitted by the holder of an IRA which participates in the TRAK Program. The commenter said he concurred with the modifications proposed by Salomon Smith Barney to amend and clarify the terms ''affiliate'' and ''officer.'' The commenter also stated that he supported the proposed modification of the one percent limitation on the acquisition, by an independent Sub-Adviser, of securities that are issued by Salomon Smith Barney and/or its affiliates in the Sub-Adviser's replication of an Index. The commenter explained that he believed the requested changes made sense and would be beneficial to all TRAK Program participants. Therefore, the commenter urged the Department to approve the Final Exemption.

The second comment was submitted by Salomon Smith Barney. The comment is intended to clarify and modify the preamble (the Preamble) of the Proposed Exemption. Following is a discussion of Salomon Smith Barney's comment letter and the Department's responses with respect thereto.

1. *Modifications to the Proposed Exemption.* On page 35139 of the Proposed Exemption, the first paragraph of the Preamble states that ''As of December 31, 1998, the TRAK Program held assets that were in excess of $9.6 billion.'' Also, in that same paragraph, the last sentence states, in part, that ''one or more unaffiliated [S]ub-advisers [is] selected by Salomon Smith Barney.'' Salomon Smith Barney notes that the December 31, 1998 valuation date at the beginning of the paragraph should be changed to September 30, 1999 and the last words of the paragraph should be changed from ''Salomon Smith Barney'' to ''the Consulting Group,'' which actually chooses the Sub-Advisers.

In addition, on page 35140 of the Proposed Exemption, the last paragraph of the Preamble states, in part, that—

[1] PTE 99–15 also (a) described a series of corporate mergers which changed the names of the parties identified in two prior TRAK exemptions which it superseded [*i.e.*, PTE 94–50 (59 FR 32024, June 21, 1994) and PTE 92–77 (55 FR 45833, October 5, 1992)] and which would permit broader distribution of TRAK-related products; (b) implemented a recordkeeping reimbursement offset procedure under the TRAK Program; (c) adopted an automated reallocation option under the TRAK Program that would reduce the reallocation option under the TRAK Program that would reduce the Plan-level investment advisory fee (the Outside Fee) paid to Salomon Smith Barney by a Plan investor; and (d) expanded the scope of the exemption to include Section 403(b) Plans.

PTE 94–50 permitted Smith, Barney Inc. (Smith Barney), Salomon Smith Barney's predecessor, to add a daily-traded collective investment fund (the GIC Fund) to the existing portfolios (the Portfolios) of mutual funds (the Funds) comprising the Trust, and to describe the various entities operating the GIC Fund. PTE 94–50 also replaced references to Shearson Lehman Brothers, Inc. (Shearson Lehman) with Smith Barney and amended and replaced PTE 92–77.

Finally, PTE 92–77 permitted Shearson Lehman to make the TRAK Program available to Plans that acquired shares in the former Trust for TRAK Investments and allowed the Consulting Group to provide investment advisory services to an Independent Plan Fiduciary which might result in such fiduciary's selection of a Portfolio in the TRAK Program for the investment of Plan assets.

[2] The Department deems PTE 94–50 as having been effectively superseded by PTE 99–15. Therefore, the amendments described herein do not apply to PTE 94–50.

Due to the one percent limitation of Section II(i), Salomon Smith Barney states that active Sub-Advisers for the Consulting Group may not own or trade Citigroup Common Stock and they will continue to be prohibited from trading in Citigroup Common Stock.

Salomon Smith Barney wishes to clarify that active Sub-Advisers also do not trade in Citigroup Common Stock because of restrictions that apply under Rule 12d3–1(c) of the Investment Company Act of 1940 (the ICA).[3]

On page 35141 of the Proposed Exemption, the third sentence of the first ''carry-over'' paragraph of the Preamble identifies two Funds which currently comply with the one percent limitation on investments in Citigroup Common Stock. These Funds are the ''Consulting Group Capital Markets Large Cap Value Fund'' and the ''Large Cap Growth Consulting Group Capital Markets Fund.'' However, Salomon Smith Barney suggests, for the purpose of clarity, that the formal names of the subject Funds be specified. Thus, Salomon Smith Barney explains that the proper names for the Funds are the ''Consulting Group Capital Markets Funds Large Capitalization Value Equity Investments'' and the ''Consulting Group Capital Markets Funds Large Capitalization Growth Investments.'' Similarly, in the next paragraph of the Proposed Exemption on page 35141 of the Preamble, Salomon Smith Barney wishes to clarify that the formal name for the S&P Fund designated as the ''Consulting Group Capital Markets S&P 500 Index Investment Fund Portfolio'' is the ''Consulting Group Capital Markets S&P Index Investment Fund Portfolio.''

In response to these comments, the Department acknowledges the foregoing clarifications to the names for the Funds identified in the Preamble of the Proposed Exemption.

2. *General Information.* As a matter of general information, Salomon Smith Barney states that beginning with the billing cycle commencing on January 1, 2001, the Outside Fee charged to 401(k) Plan clients will be calculated on the average daily asset value for the quarter for which the fee is billed rather than the asset value on the last day of the quarter. Salomon Smith Barney explains that this change generally conforms to the billing procedure in the industry generally and is believed to be more equitable since it reflects the asset value over time rather than on a single day during a calendar quarter which may not be representative of the account balance during the period.

In response to this comment, the Department notes Salomon Smith Barney's modification to the billing procedure in the calculation of the Outside Fee for participants in the TRAK Program that are section 401(k) Plans.

For further information regarding the comments or other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application files (Exemption Application Nos. D–10809 and D–10865) the Department is maintaining in this case. The complete application files, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after giving full consideration to the entire record, including the written comments received, the Department has decided to grant the exemption subject to the modifications and clarifications described above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and the Procedures cited above, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) The exemption is subject to the express condition that the Summary of Facts and Representations set forth in the notice of proposed exemption relating to PTE 99–15, as amended by this Final Exemption, accurately describe, where relevant, the material terms of the transactions to be consummated pursuant to this exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the Procedures set forth above, the Department hereby amends PTE 99–15 as follows:

Section I. Covered Transactions

A. The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA), a retirement plan for self-employed individuals (the Keogh Plan), or an individual account pension plan that is subject to the provisions of Title I of the Act and established under section 403(b) of the Code (the Section 403(b) Plan; collectively, the Plans) in the Trust for Consulting Group Capital Market Funds (the Trust), established by Salomon Smith Barney, in connection with such Plans' participation in the TRAK Personalized Investment Advisory Service product (the TRAK Program).

B. The restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, to the provision, by the Consulting Group, of (1) investment advisory services or (2) an automatic reallocation option (the Automatic Reallocation Option) to an

[3] Rule 12d3–1(c) of the ICA states that an acquiring company, such as a registered investment company, may not acquire a general partnership interest or a security issued by the acquiring company's investment adviser, promoter, or principal underwriter, or by any affiliated person of such investment adviser, promoter, or principal underwriter.

independent fiduciary of a participating Plan (the Independent Plan Fiduciary), which may result in such fiduciary's selection of a portfolio (the Portfolio) in the TRAK Program for the investment of Plan assets.

This exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(a) The participation of Plans in the TRAK Program will be approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Salomon Smith Barney and/or its affiliates covered by an IRA not subject to Title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(b) The total fees paid to the Consulting Group and its affiliates will constitute no more than reasonable compensation.

(c) No Plan will pay a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(d) The terms of each purchase or redemption of Trust shares shall remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) The Consulting Group will provide written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(f) Any recommendation or evaluation made by the Consulting Group to an Independent Plan Fiduciary will be implemented only at the express direction of such Independent Plan Fiduciary, provided, however, that—

(1) If such Independent Plan Fiduciary shall have elected in writing (the Election), on a form designated by Salomon Smith Barney from time to time for such purpose, to participate in the Automatic Reallocation Option under the TRAK Program, the affected Plan or participant account will be automatically reallocated whenever the Consulting Group modifies the particular asset allocation recommendation which the Independent Plan Fiduciary has chosen. Such Election shall continue in effect until revoked or terminated by the Independent Plan Fiduciary in writing.

(2) Except as set forth below in paragraph II(f)(3), at the time of a change in the Consulting Group's asset allocation recommendation, each account based upon the asset allocation model (the Allocation Model) affected by such change would be adjusted on the business day of the release of the new Allocation Model by the Consulting Group, except to the extent that market conditions, and order purchase and redemption procedures, may delay such processing through a series of purchase and redemption transactions to shift assets among the affected Portfolios.

(3) If the change in the Consulting Group's asset allocation recommendation exceeds an increase or decrease of more than 10 percent in the absolute percentage allocated to any one investment medium (*e.g.,* a suggested increase in a 15 percent allocation to greater than 25 percent, or a decrease of such 15 percent allocation to less than 5 percent), Salomon Smith Barney will send out a written notice (the Notice) to all Independent Plan Fiduciaries whose current investment allocation would be affected, describing the proposed reallocation and the date on which such allocation is to be instituted (the Effective Date). If the Independent Plan Fiduciary notifies Salomon Smith Barney, in writing, at any time within the period of 30 calendar days prior to the proposed Effective Date that such fiduciary does not wish to follow such revised asset allocation recommendation, the Allocation Model will remain at the current level, or at such other level as the Independent Plan Fiduciary then expressly designates, in writing. If the Independent Plan Fiduciary does not affirmatively ''opt out'' of the new Consulting Group recommendation, in writing, prior to the proposed Effective Date, such new recommendation will be automatically effected by a dollar-for-dollar liquidation and purchase of the required amounts in the respective account.

(4) An Independent Plan Fiduciary will receive a trade confirmation of each reallocation transaction. In this regard, for all Plan investors other than Section 404(c) Plan accounts (*i.e.,* 401(k) Plan accounts), Salomon Smith Barney will mail trade confirmations on the next business day after the reallocation trades are executed. In the case of Section 404(c) Plan participants, notification will depend upon the notification provisions agreed to by the Plan recordkeeper.

(g) The Consulting Group will generally give investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios. However, in the case of a Plan providing for participant-directed investments (the Section 404(c) Plan), the Consulting Group will provide investment advice that is limited to the Portfolios made available under the Plan.

(h) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio will be independent of Salomon Smith Barney and its affiliates.

(i) Immediately following the acquisition by a Portfolio of any securities that are issued by Salomon Smith Barney and/or its affiliates, such as Citigroup Inc. common stock (the Citigroup Common Stock), the percentage of that Portfolio's net assets invested in such securities will not exceed one percent. However, this percentage limitation may be exceeded if—

(1) The amount held by a Sub-Adviser in managing a Portfolio is held in order to replicate an established third party index (the Index).

(2) The Index represents the investment performance of a specific segment of the public market for equity securities in the United States and/or foreign countries. The organization creating the Index must be—

(i) Engaged in the business of providing financial information;

(ii) A publisher of financial news information; or

(iii) A public stock exchange or association of securities dealers.

The Index is created and maintained by an organization independent of Salomon Smith Barney and its affiliates and is a generally-accepted standardized Index of securities which is not specifically tailored for use by Salomon Smith Barney and its affiliates.

(3) The acquisition or disposition of Citigroup Common Stock does not include any agreement, arrangement or understanding regarding the design or operation of the Portfolio acquiring the Citigroup Common Stock, which is intended to benefit Salomon Smith Barney or any party in which Salomon Smith Barney may have an interest.

(4) The Independent Plan Fiduciary authorizes the investment of a Plan's assets in an Index Fund which purchases and/or holds Citigroup Common Stock and the Sub-Adviser is responsible for voting any shares of Citigroup Common Stock that are held by an Index Fund on any matter in which shareholders of Citigroup Common Stock are required or permitted to vote.

(j) The quarterly investment advisory fee that is paid by a Plan to the Consulting Group for investment advisory services rendered to such Plan will be offset by such amount as is necessary to assure that the Consulting Group retains no more than 20 basis points from any Portfolio (with the exception of the Government Money Investments Portfolio and the GIC Fund Portfolio for which the Consulting Group and the Trust will retain no

investment management fee) which contains investments attributable to the Plan investor.

(k) With respect to its participation in the TRAK Program prior to purchasing Trust shares,

(1) Each Plan will receive the following written or oral disclosures from the Consulting Group:

(A) A copy of the Prospectus for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between the Consulting Group, Salomon Smith Barney and its subsidiaries and the compensation paid to such entities.[4]

(B) Upon written or oral request to Salomon Smith Barney, a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize and certain risks attendant to those investments, policies and strategies.

(C) A copy of the investment advisory agreement between the Consulting Group and such Plan relating to participation in the TRAK Program and, if applicable, informing Plan investors of the Automatic Reallocation Option.

(D) Upon written request of Salomon Smith Barney, a copy of the respective investment advisory agreement between the Consulting Group and the Sub-Advisers.

(E) In the case of a Section 404(c) Plan, if required by the arrangement negotiated between the Consulting Group and the Plan, an explanation by a Salomon Smith Barney Financial Consultant (the Financial Consultant) to eligible participants in such Plan, of the services offered under the TRAK Program and the operation and objectives of the Portfolios.

(F) A copy of the Proposed Exemption and the Final Exemption pertaining to the exemptive relief described herein.

(2) If accepted as an investor in the TRAK Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing, prior to purchasing Trust shares that such fiduciary has received copies of the documents described above in subparagraph (k)(1) of this Section.

[4] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the Independent Plan Fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. In this regard, the Department expects the Independent Plan Fiduciary to consider carefully the totality of the fees and expenses to be paid by the Plan, including the fees paid directly to Salomon Smith Barney or to other third parties.

(3) With respect to a Section 404(c) Plan, written acknowledgement of the receipt of such documents will be provided by the Independent Plan Fiduciary (*i.e.*, the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares). Such Independent Plan Fiduciary will be required to represent in writing to Salomon Smith Barney that such fiduciary is (a) independent of Salomon Smith Barney and its affiliates and (b) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(4) With respect to a Plan that is covered under Title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to Salomon Smith Barney that such fiduciary is (a) independent of Salomon Smith Barney and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the TRAK Program.

(l) Subsequent to its participation in the TRAK Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation in the TRAK Program:

(1) The Trust's semi-annual and annual report which will include financial statement for the Trust and investment management fees paid by each Portfolio.

(2) A written quarterly monitoring statement containing an analysis and an evaluation of a Plan investor's account to ascertain whether the Plan's investment objectives have been met and recommending, if required, changes in Portfolio allocations.

(3) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly, detailed investment performance monitoring report, in writing, provided to an Independent Plan Fiduciary of such Plan showing Plan level asset allocations, Plan cash flow analysis and annualized risk adjusted rates of return for Plan investments. In addition, if required by such arrangement, Financial Consultants will meet periodically with Independent Plan Fiduciaries of Section 404(c) Plans to discuss the report as well as with eligible participants to review their accounts' performance.

(4) If required by the arrangement negotiated between the Consulting Group and a Section 404(c) Plan, a quarterly participant performance monitoring report provided to a Plan participant which accompanies the participant's benefit statement and describes the investment performance of the Portfolios, the investment performance of the participant's individual investment in the TRAK Program, and gives market commentary and toll-free numbers that will enable the participant to obtain more information about the TRAK Program or to amend his or her investment allocations.

(5) On a quarterly and annual basis, written disclosures to all Plans of the (a) percentage of each Portfolio's brokerage commissions that are paid to Salomon Smith Barney and its affiliates and (b) the average brokerage commission per share paid by each Portfolio to Salomon Smith Barney and its affiliates, as compared to the average brokerage commission per share paid by the Trust to brokers other than Salomon Smith Barney and its affiliates, both expressed as cents per share.

(m) Salomon Smith Barney shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (n) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Salomon Smith Barney and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than Salomon Smith Barney shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (n) below.

(n)(1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subparagraphs (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (m) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Service;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly

authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph (n) shall be authorized to examine the trade secrets of Salomon Smith Barney or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) The term ''Salomon Smith Barney'' means Salomon Smith Barney Inc. and any affiliate of Salomon Smith Barney, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Salomon Smith Barney includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Salomon Smith Barney (For purposes of this subparagraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any individual who is an officer (as defined in Section III(d) hereof), director or partner in Salomon Smith Barney or a person described in subparagraph (b)(1);

(3) Any corporation or partnership of which Salomon Smith Barney, or an affiliate described in subparagraphs(b)(1), is a 10 percent or more partner or owner; and

(4) Any corporation or partnership of which any individual which is an officer or director of Salomon Smith Barney is a 10 percent or more partner or owner.

(c) An ''Independent Plan Fiduciary'' is a Plan fiduciary which is independent of Salomon Smith Barney and its affiliates and is either—

(1) A Plan administrator, sponsor, trustee or named fiduciary, as the recordholder of Trust shares under a Section 404(c) Plan;

(2) A participant in a Keogh Plan;

(3) An individual covered under (i) a self-directed IRA or (ii) a Section 403(b) Plan, which invests in Trust shares;

(4) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act; or

(5) A participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of such Plan to direct, and who elects to direct, the investment of assets of his or her account in such Plan.

(d) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policymaking function for the entity.

Section IV. Effective Dates

This exemption is effective as of April 1, 2000 with respect to the amendments to Section II(i) and Section III(b) of this grant notice. In addition, this exemption is effective as of April 1, 2000 with respect to the inclusion of new Section III(d) in the grant notice.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application for exemption are true and complete and accurately describe all material terms of the transactions. In the case of continuing transactions, if any of the material facts or representations described in the applications change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 92–77, PTE 94–50 and PTE 99–15, refer to the proposed exemptions and the grant notices which are cited above.

Signed at Washington, D.C., this 31st day of August, 2000.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–22853 Filed 9–6–00; 8:45 am]

BILLING CODE 4510–29–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 14, 2000, and Friday, September 15, 2000, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on September 14, and 9:00 a.m. on September 15.

Topics for discussion include: quality standards for Medicare+Choice, update on Medicare+Choice plan withdrawals and the approval of the private fee-for-service plan, risk adjustment in Medicare+Choice, risk adjustment for the frail elderly, options for accelerating the buy-down of beneficiary coinsurance under the outpatient prospective payment system (PPS), consistency of physician payments and actual practice expenses, indicators for evaluating Medicare payment policies, update on the post-acute care PPSs, defining access and options to improve monitoring, approaches for measuring access to home health services under the new PPS, and special payment provisions for rural providers.

Agendas will be mailed on September 5, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov)

ADDRESSES: MedPac's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 00–22869 Filed 9–6–00; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–104]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Subcommittee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASD Advisory Council, Space Science Advisory Committee, Structure of Evolution of the Universe Subcommittee.

DATES: Monday, September 25, 2000, 8:30 a.m. to 5:30 p.m., Tuesday, September 26, 2000, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Conference Room 5H 46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Alan Bunner, Code S, National

Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

- Structure and Evolution of the Universe in Decadal Survey and Enterprise Strategic Plan
- Supernova Acceleration Probe
- Space Station Issues
- Structure and Evolution of the Universe/National Aeronautics and Space Administration Basic Physics Calibrations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–22987 Filed 9–6–00; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

4th Digital Earth Community Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The 4th Digital Earth Community Meeting will bring together federal, state, and local government organizations, private industry, academia, and others to work together to share data, time, and knowledge. The purpose of the meeting is to enable and facilitate the evolution of Digital Earth, a digital representation of the planet that will allow people to explore and interact with vast amounts of natural and cultural information. To accomplish this, it is important to access all Earth referenced data and resources to enhance our understanding of the physical, ecological, and social dimensions of the Earth. The data, infrastructure, and capabilities supporting a Digital Earth are found throughout the public and private sectors.

DATES: The meeting will be held on Tuesday, September 19, 2000, from 8 a.m. to 5 p.m. Group demonstrations will be held from 5 p.m. to 8 p.m.

ADDRESSES: The meeting will be held in the National Geographic Society Auditorium, 1145 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: To reserve a space for the meeting, please contact Amy Frederick at (301) 286–4058 or via email at *afrederi@pop700.gsfc.nasa.gov* with your name, address, telephone number, and email address. Although the meeting is open to all interested parties, space is limited and will be allocated on a first come basis. The deadline for registration is Tuesday, September 12, 2000.

SUPPLEMENTARY INFORMATION: *Format:* The morning sessions will focus on providing status of the National Digital Earth Initiative, organizational committee, Digital Earth 2001 Conference, and collaborative efforts with other programs. The afternoon sessions will be devoted to discussions on the Digital Earth Alpha Versions, interoperability, presentations, and demonstrations. Presentations will be held from 3:45 p.m. to 5 p.m. and should be limited to 10 minutes. There will be a room available for one-on-one demonstrations throughout the day, and group demonstrations will be held from 5 p.m. to 8 p.m. Although the meeting is open to all interested parties, time availability for presentations and demonstrations is limited and will be allocated on a first come basis. All interested parties must contact Amy Frederick by September 12, 2000.

Additional Information: Additional details on the Community Meeting will be posted to *www.digitalearth.gov* in the near future.

Dated: August 31, 2000.

Thomas S. Taylor,

Program Manager.

[FR Doc. 00–22905 Filed 9–6–00; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board and the National Commission on Libraries and Information Science; Sunshine Act Meeting

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board and the National Commission on Libraries and Information Science. This notice also describes the function of the boards. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 9 am–12 pm on Friday, September 15, 2000.

STATUS: Open.

ADDRESSES: The Madison Hotel, 15th and M Streets, NW, Mt. Vernon Room—Salon C, Washington, DC 20005, (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The United States National Commission on Libraries and Information Science (NCLIS) is established under Public law 91–345 as amended, The National Commission on Libraries and Information Science Act. In accordance with section 5(b) of the Act, the commission has the responsibility for advising the Director of the Institute of Museum and Library Services on general policies relating to library services.

The meeting on Friday, September 15, 2000 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

4th Annual Meeting of the National Museum Services Board and the National Commission on Libraries and Information Science at the Madison Hotel, 15th and M Streets, NW, Mt. Vernon Room—Salon C, Washington, DC 20005, on Friday, September 15, 2000.

9 am–12 pm

I. The Chairs' Welcome and Minutes of the 3rd Annual Meeting
II. Director's Welcome and Opening Remarks
III. Outcomes-based Evaluation: Methodology/Training Schedule
IV. National Leadership Grants

a. Analysis: National Leadership Grants 2000

b. Panel and Field Review Process

c. Review of Guidelines
V. Emerging Issues in Digitization
a. Presenters
b. Q and A
VI. National Award for Museum Service/National Award for Library Service
VII. Reauthorization update

Dated: August 30, 2000.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 00–23073 Filed 9–5–00; 1:29 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681–MLA–8, ASLBP No. 00–782–08-MLA]

International Uranium (USA) Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding:

International Uranium (USA) Corporation (Source Material License Amendment)

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns an August 9, 2000 request for hearing submitted by petitioner Sarah M. Fields. The request was filed in response to a July 5, 2000 request from International Uranium (USA) Corporation (IUSA) to amend its source material license to receive and process alternate feed materials at its Blanding, Utah White Mesa Uranium Mill from the Heritage Minerals, Inc. site located in Lakehurst, New Jersey. The notice of receipt of the amendment and opportunity for a hearing was published in the **Federal Register** on July 17, 2000 (65 FR 44078).

The Presiding Officer in this proceeding is Administrative Judge Ann Marshall Young. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Charles N. Kelber has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Young and Kelber in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Ann Marshall Young, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Charles N. Kelber, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Issued at Rockville, Maryland, this 31st day of August 2000.

G. Paul Bollwerk III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 00–22955 Filed 9–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License (OL) No. NPF–90, issued to the Tennessee Valley Authority (TVA, the licensee), for operation of the Watts Bar Nuclear Plant, Unit 1 (WBN), located in Rhea County, Tennessee.

The proposed amendment would change the OL and Technical Specifications for WBN to reflect an increase in allowable thermal power to 3459 megawatts (thermal), an increase of approximately 1.4 percent.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 10, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention

and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: 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 the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, ET 10H, 400 East Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 7, 2000, as supplemented June 23 and August 24, 2000, which is 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 Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 31st day of August 2000.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 2, Project Directorate II–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–22958 Filed 9–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meeting on 10 CFR Part 70—Standard Review Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion on the revised Standard Review Plan (SRP) Chapter 11 and Nuclear Energy Institute's (NEI) revised Integrated Safety Analysis (ISA) Summary guidance document. The revised SRP can be reviewed on the Internet at the following website: http://techconf.llnl.gov/cgi-bin/library?source=*&library=Part_70—lib_file.

The web site can also be reached by the following method:

1. Go the main NRC web site at: http://www.nrc.gov

2. Scroll down towards the bottom of that page and click on the word ''Rulemaking.''

3. Scroll down on the Rulemaking page till you see the words ''Technical Conference.'' Click on those words.

4. On the page titled ''Welcome to the NRC Technical Conference Forum,'' click where it says to participate in Technical Conferences.

5. Scroll down to the topic ''Draft Standard Review Plan and Guidance on Amendment to 10 CFR Part 70.''

6. Select ''Document Library.''

PURPOSE: This meeting will provide an opportunity to discuss any comments on the staff's recently revised Chapter 11.

DATES: The meeting is scheduled for Tuesday, September 12, 2000, from 9:00 a.m. to 4:30 p.m. The meeting is open to the public.

ADDRESSES: Technical Training Center T–3B–43 at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Heather Astwood, Project Manager, Fuel Cycle Licensing Branch, Division of Fuel Cycle and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–5819, e-mail *hma@nrc.gov.*

Dated at Rockville, Maryland this 31st day of August, 2000.

For the Nuclear Regulatory Commission

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–22957 Filed 9–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting to Present Draft Plan for Using Risk Information in NMSS—Case Studies

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is developing an approach for using risk information in the nuclear materials regulatory process. As part of this effort, the NRC staff has developed a draft plan for using risk-informed approaches in the Office of Nuclear Material Safety and Safeguards (NMSS). The plan includes case studies to examine the use of risk information in NMSS. The purpose of the case studies is (1) to illustrate what has been done and what could be done in NMSS to alter the regulatory approach in a risk-informed manner, and (2) to establish a framework for using a risk-informed approach in NMSS. The purpose of the meeting is to communicate the draft plan to the public and receive feedback. The meeting is open to the public and all interested parties may attend and provide comments.

DATES: The meeting will be held on September 21, 2000, from 9 a.m. to 12 noon, in the U.S. Nuclear Regulatory

Commission Auditorium, 11545 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION, CONTACT: Marissa Bailey, Mail Stop T–8-A–23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–8531; Internet: MGB@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Draft Plan for Using Risk Information in NMSS—Case Studies

Background

In SECY–99–100, ''Framework for Risk-informed Regulation in the Office of Nuclear Material Safety and Safeguards,'' dated March 31, 1999, the NRC staff proposed a framework for risk-informed regulation in NMSS. On June 28, 1999, the Commission approved the staff's proposal. In the associated staff requirements memorandum, the Commission approved the staff's recommendation to implement a five-step process consisting of: (1) Identifying candidate regulatory applications that are amenable to expanded use of risk assessment information; (2) making a decision on how to modify a regulation or regulated activity; (3) changing current regulatory approaches; (4) implementing risk-informed approaches; and (5) developing or adapting existing tools and techniques of risk analysis to the regulation of nuclear materials safety and safeguards.

Step one of the five-step process will be accomplished by applying screening criteria to regulatory application areas as a means to identify the candidate regulatory applications. To be a candidate for expanded use of risk information in NMSS, regulatory application areas must meet the screening criteria.

As part of the staff's effort to use an enhanced public participatory process in developing the framework, the staff held a public workshop in Washington, DC, on April 25 and 26, 2000. The staff published draft screening criteria in a **Federal Register** Notice (65 FR 14323, March 16, 2000) announcing the workshop. The purpose of the first part of the workshop was to solicit public comment on the draft screening criteria and their applications. The purpose of the second part of the workshop was to solicit public input for the process of developing safety goals for nuclear materials applications.

The workshop included participation by representatives from NRC, Environmental Protection Agency, Department of Energy, Occupational Safety and Health Administration, Organization of Agreement States, Health Physics Society, Nuclear Energy Institute, environmental and citizen groups, licensees, and private consultants. A consensus among the workshop participants was that case studies and iterative investigations would be useful for the following purposes: (1) To test the screening criteria, (2) to show how the application of risk information has affected or could affect a particular area of the regulatory process, and (3) to develop safety goal parameters and a first draft of safety goals for each area.

Purpose

The purpose of the case studies is (1) to illustrate what has been done and what could be done in NMSS to alter the regulatory approach in a risk-informed manner, and (2) to establish a framework for using a risk-informed approach in NMSS by testing the draft screening criteria, and determining the feasibility of safety goals. Once the screening criteria have been tested using a spectrum of case studies, the criteria can be modified as appropriate, placed in final form, and established as part of the framework for prioritizing the use of risk information in NMSS regulatory applications.

The case studies will also be used to begin the process of developing safety goals for NMSS applications. Specifically, safety goal parameters (*e.g.,* public, worker, acute fatality, latent fatality, injury, property damage, environment damage, safeguards, absolute vs. relative) should be identified in each study. Each case study will determine the feasibility of safety goals in that area. If feasible, a first draft of safety goals will be developed.

All case studies will have these general objectives. However, certain case studies may have specialized objectives. For example, as one type of test of the screening criteria, a case study will be chosen in an area that the staff intuitively feels might not pass the screening criteria. These additional objectives are discussed in the case study outline which is included in this plan.

The intent of the case studies is not to reopen or reassess previous decisions made by the staff and the Commission. The information gained by performing the case studies may impact future decisions to be made by the staff and the Commission.

Questions have been developed for each case study to answer. Answering these questions will guide the case studies to meet the objectives outlined below. Each case study will be of limited scope, but collectively, the case studies will cover a broad spectrum of NMSS regulatory applications. The case studies have been selected in areas that the staff believes would specifically help in establishing a framework, as well as areas that would help to set the groundwork for establishing safety goals.

Objectives

Case studies will have the following objectives: (1) Objective 1—Produce a final version of the NMSS screening criteria. (2) Objective 2—Illustrate how the application of risk information has improved or could improve a particular area of the NMSS regulatory process. (3) Objective 3—Determine the feasibility of safety goals in a particular area. If feasible, develop safety goal parameters, and a first draft of safety goals. If infeasible, document the reasons.

Draft Screening Criteria

Draft screening criteria were published in the **Federal Register** Notice (65 FR 14323, March 16, 2000) announcing the April 2000 workshop. On the basis of comments received at the workshop and discussions with the NMSS Risk Steering Group, the criteria have been revised. The revised draft screening criteria are as follows:

1. Would a risk-informed regulatory approach help to resolve a question with respect to maintaining or improving the activity's safety?

2. Could a risk-informed regulatory approach improve the efficiency or the effectiveness of the NRC[1] regulatory process?

3. Could a risk-informed regulatory approach reduce unnecessary regulatory burden for the applicant or licensee?

4. Would a risk-informed approach help to effectively communicate a regulatory decision or situation?

If the answer to any of the above is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

5. Do information (data) and analytical models exist that are of sufficient quality or could they be developed to support risk-informing a regulatory activity?

If the answer to criterion 5 is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

6. Can startup and implementation of a risk-informed approach be realized at a reasonable cost to the NRC,[1] applicant or licensee, and/or the public, and provide a net benefit? The net benefit

[1] For those regulatory processes in which Agreement States are involved, this criterion is applicable to Agreement States.

will be considered to apply to the public, the applicant or licensee, and the NRC. [1] The benefit to be considered can be improvement of public health and safety, improved protection of the environment, improved regulatory efficiency and effectiveness, improved communication to the public, and/or reduced regulatory burden (which translates to reduced cost to the public.)

If the answer to criterion 6 is yes, proceed to additional criteria; if not, the activity is considered to be screened out.

7. Do other factors exist (e.g., legislative, judicial, adverse stakeholder reaction) which would preclude changing the regulatory approach in an area, and therefore, limit the utility of implementing a risk-informed approach?

If the answer to criterion 7 is no, a risk-informed approach may be implemented; if the answer is yes, the activity may be given additional consideration or be screened out.

Measures of Success

Success of the case studies will be measured by the following: (1) If, based on the testing of the draft screening criteria, final screening criteria are established, the case studies will, collectively, meet Objective 1; (2) if a case study can illustrate how the application of risk information has affected or could affect and improve a particular area of the regulatory process, the case study will meet Objective 2; and (3) if a case study can determine the feasibility of establishing safety goals, and if feasible, develop the necessary safety goal parameters and a first draft of goals, the case study will meet Objective 3.

When completed, the staff will present the results of the spectrum of case studies to the Commission.

Case Study Outline

I. Revise draft screening criteria based on workshop and other suggestions (completed prior to September 21, 2000, meeting).

II. Meet with the NRC historian.

III. Review tables from the NRC–EPA risk harmonization effort and other sources such as the National Academy of Sciences study to uncover any implicit objectives (goals) under the existing regulatory framework. Glean insights on any potential underlying safety goals.

IV. Case Study Areas.

A. Gas Chromatographs (new and old designs, the line between general licenses and specific licenses for almost identical devices is unclear—illustrate how the application of risk information could improve a particular area of the regulatory process)

B. Fixed Gauges (some are specifically licensed, and others are under a general license; regulatory criteria for general versus specific license are not based on risk—illustrate how the application of risk information could improve a particular area of the regulatory process; also, this could be a test case for a safety goal on property damage)

C. Site Decommissioning—the study may focus on certain well decommissioning incidents and certain selected sites (elements of implied safety goals may be found in Commission decisions)

D. Uranium Recovery Facilities (gaps in the regulations may be found; helpful in testing the screening criteria; if determined to be a good candidate for using risk, develop and use risk information for new Part 41 rulemaking effort)

E. Radioactive Material Transportation (elements of existing, implicit safety goals may be found in Commission decisions; public confidence and communication issue)

F. Part 76 (decide to use expanded risk information for gaseous diffusion plants or document the reasons why risk information will not improve the regulatory process in this area—contrast with new Part 70 approach; this decision-making process will be a good test for the draft screening criteria and will help establish consistency in applying risk information across NMSS programs; also, possibly an area to look at chemical risks.)

G. Spent Fuel Interim Storage (study probabilistic hazards analysis exemptions and proposed rulemaking—implicit safety goals may be found; public confidence issues and burden considerations)

H. Static Eliminators (public confidence issue; risk communication issue—regulatory changes were made even though perceived risk was low)

V. Case Study Structure.

A. Develop a set of questions for all case studies to answer.

B. Select a case-specific contact in each NMSS Division; obtain agreement with the Divisions on participation.

C. Public meeting to announce our plan for case studies (September 21, 2000).

D. Make any necessary revisions to plan based on input from public meeting.

E. Develop detailed approach and timeline for each case study including the need and level of involvement of contractor support.

F. Begin work on case studies.

G. Test screening criteria for each case study.

H. Answer all questions for each case study.

I. Meet with case-specific stakeholders as input to case studies.

J. Develop recommendations for safety goals (will be done in parallel with above).

K. Document results.

L. Conduct public meeting to present results of case studies.

M. Inform Commission of results.

VI. Assess the Outcome and Develop a Plan to Move Forward.

Draft Questions for Case Studies

A. Screening criteria analysis/risk analysis questions:

1. What risk information is currently available in this area? (Have any specific risk studies been done?)

2. What is the quality of the study? (Is it of sufficient quality to support decision-making?)

3. What additional studies would be needed to support decision-making and at what cost?

4. How is/was risk information used and considered by the NRC and licensee in this area?

5. What is the societal benefit of this regulated activity?

6. What is the public perception/acceptance of risk in this area?

7. What was the outcome when this application was put through the draft screening criteria? Did this application pass any of the screening criteria? Does the outcome seem reasonable? Why or why not?

B. Safety goal analysis questions:

1. What is the basis for the current regulations in this area (*e.g.,* legislative requirements, international compatibility, historical events, public confidence, undetermined, etc.)?

2. Are there any explicit safety goals or implicit safety goals embedded in the regulations, statements of consideration, or other documents (an example would be the acceptance of a regulatory exemption based in part on a risk analysis and the outcome)?

3. What was the basis for the development of the strategic goals, performance goals, measures and metrics? How are they relevant/applicable to the area being studied and how do they relate/compare with the regulatory requirements? How would they relate to safety goals in this area?

4. Are there any safety goals, limits, or other criteria implied by decisions or evaluations that have been made that are relevant to this area?

5. If safety goals were to be developed in this area, would tools/data be available for measurement?

6. Who are/were the populations at risk?

7. What are/were, and what could be/have been, the various consequences to the populations at risk?

8. What parameters should be considered for the safety goals (*e.g.,* workers vs. public, individual vs. societal, accidents vs. normal operations, acute vs. latent fatality or serious injury, environmental and property damage)?

9. On the basis of the answers to the questions above, would it be feasible to develop safety goals in this regulatory area?

10. What methods, data results, safety goals, or regulatory requirements would be necessary to make it possible to risk-inform similar cases?

C. Questions upon development of draft safety goals:

1. Are the current regulations sufficient in that they reflect the objectives of the draft goals? Would major changes be required?

2. Would the regulations need to be tightened?

3. Are the regulations overly conservative and/or too prescriptive with respect to the goals?

4. If these were the safety goals, what decisions would be made?

5. Would these goals be acceptable to the public?

The meeting will include a presentation of the draft plan and an opportunity for interested government agencies, organizations, and individuals to provide comments on the draft plan. Persons who wish to attend the meeting should contact Marissa Bailey no later than September 19, 2000.

Dated at Rockville, MD, this 31st day of August, 2000.

For the Nuclear Regulatory Commission

Lawrence E. Kokajko,

Section Chief, Risk Task Group, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–22956 Filed 9–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Human Interaction With Reused Soil: A Literature Search; Draft NUREG–1725 for Public Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period for Draft NUREG–1725.

SUMMARY: The Nuclear Regulatory Commission is extending the public comment period for Draft NUREG–1725 ''Human Interaction with Reused Soil: A Literature Search.''

DATES: Submit comments by November 17, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: David L. Meyer, Chief, Rules and Directives Branch, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of the Draft NUREG report can be obtained through the NRC website address: *http://www.nrc.gov/NRC/NUREGS/SR1725/index.html* (please note the URL is case sensitive) or by request to the NRC staff contact, Thomas J. Nicholson.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nicholson; e-mail: *tjn@nrc.gov.* telephone: (301) 415–6268; Office of Nuclear Regulatory Research, Mail Stop T–9F31, USNRC, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) issued Draft NUREG–1725 ''Human Interaction with Reused Soil: A Literature Search'' on July 19, 2000 for a 60-day public comment period (closing date was originally September 18, 2000). Copies of the report were sent to Land-Grant University and selected Federal Agency libraries for review and comment. This activity is a joint effort by the NRC Staff and the National Agricultural Library (NAL) staff of the U.S. Department of Agriculture working under an Interagency Agreement with the NRC. The comment period is being extended for an additional 60 days to allow for responses from the Land-Grant University and Federal Agency libraries. The report presents the literature and INTERNET search strategies for identifying documented information sources on types of soil reuse. The report discusses how this information will be used to establish the technical bases for evaluating possible dose impacts from the reuse of soils from NRC-licensed facilities. Information received through the public comment process will assist the NRC staff in developing technical bases for characterizing soil reuse practices and related dose assessment scenarios.

Specifically, the NRC staff is seeking information through comments on Draft NUREG–1725 regarding potential uses of soil which may be excavated and transported offsite from NRC-licensed facilities for use in commerce or by the general public. This information will assist in developing a reasonably complete characterization of relevant usages for these reused soils. The soil reuse scenarios would include, but not be limited to, soil processing, construction and agricultural uses, and other commercial and residential uses of reused soil and soil-related products. The goal of the solicitation of comments on the Draft NUREG–1725 report is to further the development of technical bases and the supporting documentation that could be used to characterize the soil reuse scenarios.

Electronic Access: Information on draft NUREG–1725 for public comment can be accessed using the following NRC website address: *http://www.nrc.gov/NRC/NUREGS/SR1725/index.html* (please note the URL is case sensitive) or by notifying the NRC staff contact, Thomas J. Nicholson.

Dated at Rockville, Maryland, this 31st day of August 2000.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiation Protection, Environmental Risk and Waste Management Branch, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 00–22959 Filed 9–6–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27225]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

September 1, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 22, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person

who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in the matter. After September 22, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Dominion Resources, et al. [70–9679]

Dominion Resources, Inc. (''Dominion''), 120 Tredegar Street, Richmond, Virginia 23219, a registered holding company, and its wholly owned subsidiary Consolidated Natural Gas Company (''CNG''), CNG Tower, 625 Liberty Avenue, Pittsburgh, PA 15222–3199, also a registered holding company (together, ''Applicants''), have filed an application-declaration under section 12(c) of the Act and rules 46 and 54 under the Act.

On January 28, 2000, CNG became a wholly owned subsidiary of Dominion (''Merger'').[1] As a result of the accounting treatment of the Merger, the retained earnings of CNG were recharacterized as paid-in-capital. Dominion now requests authorization to pay dividends out of the additional paid-in-capital account up to the amount of its aggregate retained earnings just prior to the Merger.

Applicants also seeks the ability to reorganize and restructure their nonutility businesses so that all nonutility subsidiaries engaged in similar activities can be part of the same intra-corporate grouping.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–23012 Filed 9–1–00 5:06 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24631; 812–11882]

State Street Bank and Trust Company, et al.; Notice of Application

September 1, 2000.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain open-end management investment companies, whose portfolios will consist of the component securities of certain indices, to issue shares of limited redeemability; permit secondary market transactions in the shares of the companies at negotiated prices; and permit affiliated persons of the companies to deposit securities into, and receive securities from, the companies in connection with the purchase and redemption of aggregations of the companies' shares.

APPLICANTS: State Street Bank and Trust Company (the ''Adviser''), ALPS Mutual Funds Services, Inc. and State Street Capital Markets, LLC, (each a ''Distributor'' and together the ''Distributors''), The Select Sector SPDR Trust and The Index Exchange Listed Securities Trust (each a ''Trust'' and together the ''Trusts'').

FILING DATES: The application was filed on December 8, 1999 and amended on August 1, 2000. 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 SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 22, 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 issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Michael E. Gillespie, Vice President and Associate Counsel, State Street Bank and Trust Company, P.O. Box 1713, Boston, MA 02105–1713.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 5th Street, NW., Washington DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each Trust is an open-end management investment company organized as a Massachusetts business trust and registered under the Act. Each Trust has separate investment portfolios (each, a ''Fund''). The Adviser acts as investment adviser and custodian for each Fund. ALPS Mutual Fund Services, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act''), serves as the principal underwriter of each Fund in The Select Sector SPDR Trust. State Street Capital Markets, LLC, a broker-dealer registered under the Exchange Act, serves as the principal underwriter for each Fund in The Index Exchange Listed Securities Trust. Each Distributor will distribute Fund shares on an agency basis.

2. The Trusts currently have 10 Funds operating under the terms of a prior order[1] and are now requesting to supersede the prior order to add 10 new Funds, each of which will be a series of The Index Exchange Listed Securities Trust, and to add certain conditions. Each Fund will invest in a portfolio of equity securities (''Portfolio Securities'') generally consisting of the component securities of a specified equity securities index (''Index'').[2] The proposed Indices are the Morgan Stanley High-Tech 35 Index, the Morgan Stanley Internet Index (the ''Morgan Stanley Indices''), the Dow Jones U.S. Small-cap Growth Stock Index, the Dow Jones U.S. Small-cap Value Stock Index, the Dow Jones U.S. Large-cap Growth Stock Index, the Dow Jones U.S. Large-cap Value Stock Index, the Dow Jones Global Titans Index (collectively, the ''Dow Jones Equity Indices''), the Wilshire Real Estate Investment Trust Index (the ''Real Estate Investment Trust Index''), the

[1] Holding Co. Act Release No. 27113 (Dec. 15, 1999).

[1] *See* The Select Sector SPDR Trust, Investment Company Act Release Nos. 23492 (Oct. 20, 1998) (notice) and 23534 (Nov. 13, 1998) (order).

[2] Each Fund will invest at least 90% of its total assets in common stocks that comprise the relevant Index. A Fund may invest up to 10% of its total assets in securities, options and futures not included in the relevant Index but which the Adviser believes will help the Fund track the Index. A Fund may accept as Deposit Securities (as defined below) stocks that are publicly announced as additions to the relevant Index prior to their actual date of inclusion in the index. A Fund also may hold Portfolio Securities that have recently been deleted from the Index. In addition, this 10% portion of the Fund's assets may be invested in securities not included in the Index to comply with the registered investment company diversification requirements of the Internal Revenue Code. This portion of the Fund's assets also may be invested in money market instruments and money market funds (subject to the Act's limitations).

Fortune 500 Index and the Fortune e-50 Index (the ''Fortune Indices'').[3]

3. In the future, the applicants may offer additional Funds (''Future Funds'') based on other Indices. Applicants request that the order apply to any Future Funds. Any Future Funds will (a) be advised by the Adviser or an entity controlled by or under common control with the Adviser and (b) comply with the terms and conditions of the order. References in the application to ''Funds'' include the existing Funds, the proposed Funds and any Future Funds. No entity that creates, compiles, sponsors or maintains an Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, the Distributors or any sub-adviser to a Fund.

4. The investment objective of each Fund will be to provide investment results that correspond, before expenses, generally to the price and yield performance of its relevant Index. A Fund may not hold all of the underlying securities that comprise an Index in certain instances. When a potential component security is illiquid or when there are substantial costs involved in matching an Index with hundreds of component securities, a Fund may hold a representative sample of the component securities of the Index determined using a technique known as ''portfolio optimization.''[4] Applicants anticipate that a Fund that utilizes the portfolio optimization technique will not track its Index with the same degree of accuracy as an investment vehicle that invested in every component security of the Index with the same weighting as the Index. Applicants also state that over time the Adviser will be able to employ the portfolio optimization technique so that the expected tracking error of a Fund relative to the performance of its Index will be less than 5 percent.

5. Shares of a Fund (''Shares'') will be issued in aggregations of at least 50,000 Shares (''Creation Units''). The price of a Creation Unit will be approximately $3,800,000 to $6,300,000 (based on the values of the Indices as of June 30, 2000). Orders to purchase Creation Units must be placed by or through an ''Authorized Participant,'' which is either (a) a ''Participating Party,'' (*i.e.*, a broker-dealer or other participant in the Shares Clearing Process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency that is registered with the SEC), or (b) a participant in the Depository Trust Company (''DTC'') system, which in either case has executed an agreement with the Trust and with the Distributor with respect to creations and redemptions of Creation Units (''Participant Agreement''). A Creation Unit purchase or redemption can only be placed by or through an Authorized Participant that has signed a Participant Agreement. An investor wishing to purchase a Creation Unit from a Fund will have to transfer to the Fund a ''Fund Deposit'' consisting of: (a) A portfolio of securities that has been selected by the Adviser to correspond to the returns on the Index (''Deposit Securities''),[5] and (b) a cash payment to equalize any differences between the market value per Creation Unit of the Deposit Securities and the net asset value (''NAV'') per Creation Unit (''Cash Component''). Certain of the Funds may include as part of the Cash Component a ''Dividend Equivalent Payment,'' which is an amount equal per Creation Unit to the dividends accrued on the Deposit Securities of a Fund since the last dividend payment by the Fund, net of expenses and liabilities.[6] An investor purchasing a Creation Unit from a Fund will be charged a purchase fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the Creation Units.[7] Each Fund will disclose the Transaction Fees charged by the Fund in its prospectus and the method of calculating the Transaction Fees in its statement of additional information (''SAI'').

6. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the orders to each Fund. The Distributor will issue confirmations of acceptance, issue delivery instructions to the Fund to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units.

7. Persons purchasing Creation Unit-size aggregations of Shares from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. An AMEX specialist will be assigned to

[3] The Morgan Stanley High-Tech 35 Index is comprised of 35 actively traded stocks of U.S. companies in the computer and technology industries with large market capitalization. The Morgan Stanley Internet Index is comprised of the common stocks of leading U.S. public companies that are driving the growth of Internet usage. The Morgan Stanley Indices will be calculated by Morgan Stanley Inc. The Dow Jones U.S. Small-cap Growth Stock Index consists of typical growth stocks in the Dow Jones U.S. Small-cap Index. The Dow Jones U.S. Small-cap Value Stock Index consists of typical value stocks in the Dow Jones U.S. Small-cap Index. The Dow Jones U.S. Large-cap Growth Stock Index consists of typical growth stocks in the Dow Jones U.S. Large-cap Index. The Dow Jones U.S. Large-cap Value Stock Index consists of typical value stocks in the Dow Jones U.S. Large-cap Index. The Dow Jones Global Titans Index consists of 50 common stocks that meet certain criteria and are drawn from the Dow Jones Global Indices. The Dow Jones Equity Indices will be calculated by the Dow Jones Company. The Real Estate Investment Trust Index is a market capitalization weighted index of publicly traded Real Estate Investment Trusts. It will be calculated by Wilshire Associates. The Fortune 500 Index is based on *Fortune*'s list of America's 500 largest companies, ranked by revenue. The Fortune e-50 Index tracks the performance of companies shaping the internet economy. The Fortune Indices will be calculated by the Fortune Group. Each Index's value will be disseminated every 15 seconds through the facilities of the Consolidated Tape Association.

[4] The Adviser will consider each component security in an Index for inclusion in a Fund based on the security's contribution to certain capitalization, industry, and fundamental investment characteristics. The Adviser will seek to construct the portfolio of a Fund so that, in the aggregate, its capitalization, *industry, and fundamental investment characteristics perform like those in the corresponding Index.*

[5] The identity and number of shares of the Deposit Securities required for a Fund Deposit for each Fund will change as rebalancing adjustments and corporate events are reflected from time to time by the Adviser. The composition of the Deposit Securities may also change in response to adjustments to the weighting or composition of the securities constituting an Index.

[6] On each business day, the custodian in consultation with the Adviser will make available, immediately prior to the opening of trading on the AMEX, a list of the names and the required number of shares of each Deposit Security included in the current Fund Deposit. The Fund Deposit will be applicable to effect purchases of Creation Units until the Fund Deposit composition is next announced. The custodian also makes available the previous day's Cash Component, as well as the estimated Cash Component for the current day. In addition, each Fund reserves the right to permit or require a cash in lieu amount or the substitution of any security to replace any Deposit Security that may be unavailable in sufficient quantity for delivery to the Fund upon the purchase of a Creation Unit, or which may be ineligible for transfer through the DTC system and therefore ineligible for transfer through the Shares Clearing Process or ineligible for trading by an Authorized Participant or the investor on whose behalf it is acting. In cases in which cash is substituted, the Adviser will adjust the Transaction Fee to cover the brokerage costs a Fund will incur in connection with the acquisition of a Deposit Security.

The AMEX will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing on a per Share basis the sum of the current value of the Deposit Securities and, when applicable to the Fund, the Dividend Equivalent Payment effective through and including the prior business day.

[7] The Transaction Fee for each Fund will be separately determined. The Transaction Fee will be limited to amounts determined by the Adviser to be appropriate and will take into account the transaction costs associated with the Deposit Securities of each Fund.

make a market in Shares. The price of Shares on the AMEX will be based on a current bid/offer market and will be in the range of $70 to $125 per Share (based on the values of the Indices as of June 30, 2000). Transactions involving the sale of Shares will be subject to customary brokerage commissions and charges. Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specalist, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[8]

9. Shares will not be individually redeemable. Shares will only be redeemable in Creation Unit-size aggregations through each Fund.[9] An investor redeeming a Creation Unit generally will receive a portfolio of securities (''Fund Securities'') plus a ''Cash Redemption Amount.'' The Cash Redemption Amount is cash in an amount equal to the difference between the NAV of the Shares being redeemed and the market value of the Fund Securities. The Cash Redemption Amount may include a Dividend Equivalent Payment. An investor may receive the cash equivalent of a Fund Security upon its request if, for example, the investor were constrained from effecting transactions in the Fund Security by regulation or policy. A redeeming investor will pay a Transaction Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.[10]

10. Because each Fund will redeem Creation Units in kind, a Fund will not have to maintain cash reserves for redemptions. This will allow the assets of each Fund to be committed as fully as possible to tracking its Index. Accordingly, applicants state that each Fund will be able to track its Index more closely than certain other investment products that must allocate a greater portion of their assets for cash redemptions.

11. Applicants state that neither Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Rather, applicants state that each Fund will be marketed as an ''exchange-traded fund.'' No Fund marketing materials (other than as required in the prospectus) will refer to a Fund as an ''open-end'' or ''mutual fund,'' except to contrast a Fund with a conventional open-end management investment company. In all marketing materials where the method of obtaining, buying or selling Shares is described, applicants will include a statement to the effect that Shares are not redeemable through a Fund except in Creation Units. The same type of disclosure will be provided in each Fund's prospectus, SAI, advertising materials, and all reports to shareholders.[11]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and 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.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Trust to register and operate as an open-end management investment company. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Sections 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) and rule 22c–1. Applicants request an exemption from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) and rule 22c–1 with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract

[8] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Records reflecting the beneficial owners of Shares will be maintained by DTC or its participants.

[9] Creation Units may be redeemed through either NSCC or DTC. Investors who redeem through DTC will pay a higher Transaction Fee.

[10] *See supra* note 7.

[11] Applicants state that persons purchasing Creation Units will be cautioned in a Fund's prospectus and/or SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933 (''Securities Act''). For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Shares, and sells shares directly to its customers; or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. A Fund's prospectus and/or SAI will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. A Fund's prospectus and/or SAI also will state that broker-dealer firms should also note that dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Shares that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (a) that secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 17(a) of the Act

7. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units will be ''in-kind'' rather than cash transactions, section 17(a) may prohibit affiliated persons of the Fund from purchasing or redeeming Creation Units. Because the definition of ''affiliated person'' or another person in section 2(a)(3)(A) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with a Fund so long as fewer than twenty Creation Units of the Fund are in existence. In addition, any person owning more than 25% of the Shares of a Fund may be deemed an affiliated person under section 2(a)(3)(C) of the Act. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit such affiliated persons of the Funds to purchase and redeem Creation Units.

8. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund described above from purchasing or redeeming Creation Units. The composition of a Fund Deposit made by a purchaser or the Fund Securities and Cash Redemption Amount given to a redeeming investor will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that ''in kind'' purchases and redemptions will afford no opportunity for the affiliated persons described above to effect a transaction detrimental to the other holders of its Shares. Applicants also believe that ''in kind'' purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Fund.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Applicants will not register the Shares of any Future Fund by means of filing a post-effective amendment to a Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) the Future Fund will be listed on a national securities exchange without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Fund's prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Fund and that acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as each Trust operates in reliance on the requested order, the Shares of the Funds will be listed on a national securities exchange.

4. Neither the Trusts nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's prospectus will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Trust and tender those Shares for redemption to the Trust in Creation Units only.

5. The website for each Trust, which will be publicly accessible at no charge, will contain the following information, or a per Share basis, for each Fund: (a) the prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

6. The prospectus and annual report for each Fund will also include: (a) the information listed in condition 6(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Funds): (i) the cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the relevant Index.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22988 Filed 9–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43228; File No. SR–AMEX–00–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1, Amendment No. 2, and Amendment No. 3 Thereto by American Stock Exchange LLC Relating to Fees on Equity Option Transactions of Specialist and Registered Option Traders

August 30, 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 20, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Amex submitted Amendments No. 1, 2, and 3 to the proposed rule change on August 17, 24, and 28, 2000, respectively. 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 establish a marketing fee for equity option transactions of specialists and registered options traders. The text of the proposed rule change is available at the principal office of the Amex.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to establish a new equity option marketing fee on the transactions of specialists and registered options traders, designed to compete for order flow in equity options traded on the Exchange. The revenue that these marketing fees generate will be used to compete for order flow in equity options listed for trading on the Exchange. Through the program, the Exchange will collect a fee of $0.40 on every equity option contract that specialists and registered options traders execute on the Exchange. The Exchange will collect fees on all equity option transactions except for those options overlying Nasdaq-100 index shares. In addition, trades between registered options traders and trades between specialists and registered options traders will not be subject to the program.

The Exchange will collect the fees and then allocate the funds to all of the Exchange's specialists. The Exchange will allocate the funds among the specialists on a *pro rata* basis, in amounts proportional to each specialist's share of the overall volume of the options traded on the Exchange. Each specialist will use the funds to attract orders in the classes of options that the specialist trades. These funds may be used by Exchange specialists to pay broker-dealers for orders they direct to, and that are executed on, the Exchange. The specific terms governing the orders that qualify for payment and the amount of any payment to be made will be determined by the specialists in whatever manner they believe is most likely to be effective in attracting order flow to the Exchange in options traded by the specialists. The specialists will be obligated to account to the Exchange for the use they make of the funds that the Exchange makes available to them for this purpose, but all determinations concerning the amount the specialists may pay for orders and the types and sizes of orders that qualify for payment will be made exclusively by the specialists, and not by the Exchange.

The Amex will assess the new fee monthly, beginning as of July 1, 2000. The funds that the new fee generates will be segregated according to the station where the classes of options subject to the fee are traded, and will be made available to the specialist at the station where the funds were collected for the specialist's use in attracting orders in the classes of options traded at that station. Members who pay the new fees will also be able to participate in the order flow derived from the program. Accordingly, the Exchange believes that there will be a fair correlation between the costs that the members will pay for the marketing program and the benefits that they will receive from it.

The Exchange may provide administrative support to the specialists in such matters as keeping track of the number of qualified orders each firm directs to the Exchange, and making debits and credits to the accounts of the specialists and the firms to reflect the payments that are to be made. If the amount of the payment to be received by the order flow provider exceeds any fees owed to the Exchange, such amounts may be paid directly by the Exchange to the member order flow provider pursuant to payment parameters that the specialist establishes.

The Exchange believes that this proposal may raise issues similar to those raised by the payment-for-order-flow proposals that the Boston Stock Exchange,[3] the Chicago Stock Exchange,[4] the Cincinnati Stock Exchange,[5] the National Association of Securities Dealers, Inc., [6] and the Chicago Board Options Exchange, Inc.[7] have submitted. Accordingly, the Exchange anticipates issuing a circular to members discussing the disclosure and best execution obligations of members who receive payments under the program.

The Exchange believes that the implementation of the program is necessary to promote the Exchange's competitiveness within the exchange-traded equity options marketplace. Any changes to this proposal, including those affecting the size of the fee or the inclusion or exclusion of any class of option in the program, will be subject to a separate filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] and in particular furthers the objectives of Section 6(b)(4) of the Act,[10] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not 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 proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40591 (Oct. 22, 1998), 63 FR 58078 (Oct. 29, 1998).

[4] Securities Exchange Act Release No. 38237 (Feb. 4, 1997), 62 FR 6592 (Feb. 12, 1997).

[5] Securities Exchange Act Release No. 39395 (Dec. 3, 1997), 62 FR 65113 (Dec. 10, 1997).

[6] Securities Exchange Act Release No. 41174 (Mar. 16, 1999), 64 FR 14035 (Mar. 23, 1999).

[7] Securities Exchange Act Release No. 43112 (Aug. 3, 2000), 65 FR 49040 (Aug. 10, 2000).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) thereunder.[12] At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this 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 the furtherance of the purposes the Act.

IV. Solicitation of Comments

The Commission has frequently raised serious concerns about payment for order flow and internalization.[13] Payment for order flow is of concern because brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe their customers to find the best execution available. While payment for order flow has been a common practice in the equities markets for some time, only recently has payment for order flow developed in the options markets. Despite these concerns, however, the Amex's proposal involves the imposition of a fee and the Act gives exchanges wide latitude to establish, revise, and collect fees and other charges without prior Commission approval. The Commission invites interested persons to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. In particular, the Commission asks persons who submit comments whether the payment for order flow facilitated by the Amex's proposal raises greater or different concerns than payment for order flow at other option exchanges. After receiving comments, and at any time within 60 days from the date the Amex filed its proposal, the Commission can decide to require the Amex to stop collecting the fee, refile the proposal, and await Commission approval before reinstituting the fee.

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 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–00–38 and should be submitted by September 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22865 Filed 9–6–00; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] *See* Securities Exchange Act Release No. 43177 (August 18, 2000), 65 FR 51889 (Aug. 25, 2000); Securities Exchange Act Release No. 43112 (Aug. 3, 2000), 65 FR 49040 (Aug. 10, 2000); Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577 (Feb. 28, 2000); Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006 (Nov. 2, 1994). *See also* Securities Exchange Act Release No. 43084 (July 28, 2000).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43226; File No. SR–CBOE–00–33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending the Exchange's Fee Schedule To Impose a Fee on the Designated Primary Market-Maker for Transacting in Options on the CBOE Mini-NDX Index for Its Proprietary Account

August 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 31, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule to require the Designated Primary Market-Maker (''DPM''), who transacts options on the reduced-value of the Nasdaq-100 Index (''MNS[SM]'') for its proprietary account, to pay a new exchange fee of $0.25 per contract.[2] The text of the proposed rule change may be examined at the places specified in Item IV below.

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 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

On July 10, 2000, the Commission approved the listing and trading by the CBOE of the MNX product.[3] The purpose of the proposed rule change is to require the DPM, who trade the MNX product for its proprietary account, to pay a new exchange fee of $0.25 per contract.

Currently, all DPMs are charged $0.19 per contract for transactions for their proprietary accounts. The Exchange proposes that the DPM trading the MNX product be charged an additional fee of $0.25 per contract, totaling $0.44 per contract. This new fee would be used to assist the Exchange in offsetting some of the royalty fees that the Exchange must pay to the Nasdaq Stock market (''Nasdaq'') for permission to trade the MNX product.

The Exchange believes that this new fee is reasonable and justified because the DPM for the MNX product has been awarded special status for the product (*i.e.,* the DPM status) and thus, stands to

[2] The CBOE started trading the MNX product on August 14, 2000. The reduced-value of the Nasdaq-100 index is equal to one-tenth of the current value of the Nasdaq-100 index. *See* Securities Exchange Act Release No. 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (SR–CBOE–00–15).

[3] *Id.*

gain the most by the CBOE listing the product. In addition, all DPM applicants for the MNX product submitted their applications with full knowledge that the Exchange intended to impose a fee on the DPM who is selected to trade this product for its proprietary account.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, and, therefore has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] 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, 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 such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–00–33 and should be submitted by September 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22863 Filed 9–6–00; 8:45 am]

BILLING CODE 8010–01–M

[4] The Exchange informed the membership of the anticipated DPM fee in an Information Circular, IC00–63 (June 28, 2000), which solicited DPM applicants for trading the MNX product. Telephone conversation between Jaime Galvin, Counsel, CBOE, and Hong-anh Tran, Attorney, Division of Market Regulation (''Division''), Commission (August 4, 2000).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43221; File No. SR–CBOE–00–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Amending the Exchange's Fee Schedule

August 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 31, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule to waive all customer fees for option transactions based on the reduced-value of the Nasdaq-100 Index (''MNX℠'').[2] The text of the proposed rule change may be examined in the places specified in Item IV below.

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 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, Proposed Rule Change

1. Purpose

On July 10, 2000, the Commission approved the listing and trading by the CBOE of the MNX product.[3] The purpose of the proposed rule change is to waive all customer fees relating to public customer MNX options orders. These fee waivers will be in effect beginning with the launch of trading of the MNX product on August 14, 2000.

Specifically, the Exchange proposes to waive the transaction fee, trade match fee, floor brokerage fee and the retail automatic execution system (''RAES'') fee for public customer MNX options orders. The Exchange has decided to waive these fees to promote the launch of the MNX product, and may determine to reevaluate the fee waiver at a future time. The Exchange believes these fee waivers will serve to make MNX options competitive with competing products at other exchanges while generating significant savings for its customers.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

[1] 15 U.S.C. 78s(b)(1).

[2] The CBOE started trading the MNX product on August 14, 2000. The reduced-value of the Nasdaq-100 index is equal to one-tenth of the current value of the Nasdaq-100 index. *See* Securities Exchange Act Release No. 43000 (June 30, 2000), 65 FR 42409 (July 10, 2000) (SR–CBOE–00–15).

[3] *Id.*

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act [6] and rule 19b–4(f)(2) thereunder.[7] 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 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 CBOE. All submissions should refer to the File No. SR–CBOE–00–39 and should be submitted by September 27, 2000.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22864 Filed 9–06–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43220; File No. SR–NASD–00–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Options Position Reporting Requirements and the Application of Options Position and Exercise Limits to Trades With Non-Member Brokers and Dealers

August 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 14, 2000, 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 (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. 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

NASD Regulation is proposing to amend Rule 2860 of the NASD, to: (1) Apply the NASD's options position and exercise limits to members that effect trades for non-member brokers and non-members dealers; (2) require members to report the options positions that they effect for non-member brokers and non-member dealers where such positions meet the reporting thresholds under NASD rules; (3) codify an interpretative position with respect to which firms are required to report standardized options positions under the NASD's options position reporting requirements; and (4) clarify that a member may have its clearing firm report options positions to the NASD.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule is available at the Office of NASD Regulation 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, 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

The NASD's options position limits, exercise limits, and reporting requirements, Rules 2860(b)(3), 2860(b)(4) and 2860(b)(5), respectively, apply to any account in which a member, or any partner, officer, director or employee of the member has an interest, or for the account of any customer. However, because the NASD's definition of ''customer'' excludes a broker or dealer, non-member brokers and non-member dealers are currently outside the scope of these rules.[3] Thus, conventional options transactions [4] of a non-member broker or non-member dealer that are effected by an NASD member are not subject to any position and exercise limits or options reporting.[5] To remedy this gap, NASD Regulation proposes amending its options position and exercise limits and reporting requirements to include the accounts of non-member brokers and non-member dealers.

In addition, NASD Regulation proposes several technical amendments to the options position reporting requirements to take into account staff interpretive positions with respect to reporting standardized and conventional options. Specifically, the

[3] Rule 0120(g) states that the term ''customer'' shall not include a broker or dealer.

[4] Standardized options transactions of a non-member are subject to position and exercise limits and reporting requirements of the applicable options exchange(s) on which the member of such exchange(s) effects the transaction. A ''standardized option'' is any options contract issued, or subject to issuance by, the Options Clearing Corporation that is not a FLEX Equity Option.

[5] A ''conventional option'' is any option contract not issued, or subject to issuance, by the Options Clearing Corporation. NASD Rule 2860(b)(2)(N).

amendments codify the options position reporting requirements as set forth in Notice to Members 94–46, which state that the reporting requirements are ''applicable to all standardized options positions established by 'access' firms or their customers and all conventional options positions established by members or their customers.'' Access firms are defined as NASD members that conduct a business in exchange-traded options but are not themselves members of the options exchange upon which such options are listed and traded. Limiting reporting of standardized options positions under NASD rules to access firms only avoids imposing duplicative reporting requirements on NASD members who are also members of an options exchange, inasmuch as members of an options exchange (*i.e.,* dual members) are required to report positions on standardized options pursuant to the rules of the options exchange(s) of which they are a member.

Finally, NASD Regulation proposes an amendment to clarify that, consistent with current practices, a member may report positions directly to the Association or have such positions reported to the Association by another firm, such as the member's clearing firm. The amendment is accomplished by using the phrase ''file or cause to be filed.'' This amendment would not eliminate the member's ultimate responsibility to ensure that the firm reporting the positions on the member's behalf makes the necessary filings with the NASD.

2. Statutory Basis

NASD Regulation represents that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[6] of the Act, which requires, among other things, that the Association's rules must 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. The NASD represents that applying options positions and exercise limits and position reporting requirements to transactions effected by members of non-member brokers and non-member dealers preserves the integrity and effectiveness of position and exercise limits. In this manner, the proposed rule change promotes just and equitable principles of trade and protects investors and the public interest.

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 Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, 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 SR–NASD–00–36 and should be submitted by September 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–22862 Filed 9–6–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78o(b)(6).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–00–022]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: LMRWSAC will meet on Tuesday, October 3, 2000, from 9 a.m. to 12 noon. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 25, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 25, 2000.

ADDRESSES: LMRWSAC will meet in the basement conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA. Send written material and requests to make oral presentations to M. M. Ledet, Committee Administrator, c/o Commander, Eighth Coast Guard District (m), 501 Magazine Street, New Orleans, LA 70130–3396. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact M. M. Ledet, Committee Administrator, telephone (504) 589–6271, Fax (504) 589–4999.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.

(2) Election of Committee Chairman & Vice Chairman
(3) Remarks by RADM P. Pluta, Committee Sponsor.
(4) Approval of the April 26, 2000 minutes.
(5) Old Business: VTS Update and PORTS Update reports.
(6) New Business:
(7) Next meeting.
(8) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than September 25, 2000. Written material for distribution at the meeting should reach the Coast Guard no later than September 25, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 28 copies to the Committee Administrator at the location indicated under Addresses no later than September 25, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: August 18, 2000.

K.J. Eldridge,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 00–22977 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7841]

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Extension of comment period.

SUMMARY: The Maritime Administration (MARAD) is hereby giving notice that the closing date for comments in Docket No. MARAD–2000–7841, application of Marine Transport Corporation for written permission for temporary transfer to the coastwise trade of the integrated tug barge *SMT Chemical Trader*, has been extended to close of business (5:00 p.m. edt) September 15, 2000. The notice of application in Docket No. MARAD–2000–7841 was published in the **Federal Register** of August 28, 2000 (65 FR 52157–52158).

(Catalog of Federal Domestic Assistance Program)

By Order of the Maritime Administrator.

Dated: September 1, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–23034 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket 98–4957 Notice 22]

Extension of Existing Information Collection: Comment Request

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for public comments.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for extension of an existing RSPA collection of information. RSPA intends to request OMB approval of information collection 2137–0596, National Pipeline Mapping System (NPMS) under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320.

DATES: Comments on this notice must be received on or before November 6, 2000 to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments in duplicate to the Dockets Facility, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001 or e-mail to http://dms.dot.gov. Please identify the docket and notice numbers shown in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice, or write by e-mail to marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: National Pipeline Mapping System.

Type of Request: Extension of existing information collection.

Abstract: RSPA's Office of Pipeline Safety (OPS), along with state agencies, have been working with natural gas and hazardous liquid pipeline operators to develop NPMS. When complete, NPMS will depict and provide data on all natural gas transmission and hazardous liquid pipeline systems operating in the United States. OPS is extending its volunteer pilot program to all regulated transmission operators. OPS will be compensating the states and regional repositories for their startup and operating costs.

Estimate of Burden: 20 hours per operator.

Respondents: Gas transmission and hazardous liquid operators.

Estimated Number of Respondents: 1350.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 27,000 hours.

This document can be reviewed between 10 a.m.–5 p.m. Monday through Friday, except Federal holidays, at the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh St., SW., Washington, DC 20590.

Comments are invited on: (a) The need for the proposed collection of information 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 of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

All timely written comments to this notice will be summarized and included in the request for OMB approval. Comments will be available to the public in the docket.

Issued in Washington, DC on August 31, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–22848 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7283; Notice No. 00–10]

Advisory Notice; Transportation of Lithium Batteries

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory notice.

SUMMARY: RSPA (we) is aware of an incident during transportation in which a fire occurred in a shipment of primary lithium batteries which are excepted from the Hazardous Materials Regulations (HMR). We are issuing this advisory notice to (1) inform persons of this incident and the potential hazards that shipments of lithium batteries may present while in transportation, (2) recommend actions to offerors and transporters to ensure the safety of such shipments, (3) provide information concerning the current requirements for the transportation of lithium batteries, (4) inform persons of recommendations that we received from the National Transportation Safety Board (NTSB) on the transportation of lithium batteries and our response to those recommendations, (5) inform persons of the actions we have taken to date and plan to take in the future to address the hazards of these batteries, and (6) provide information concerning initiatives being taken by members of the battery manufacturing and distribution industry to address concerns relating to transportation of these batteries.

FOR FURTHER INFORMATION CONTACT: John Gale or Eric Nelson, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Guidance and Recommendations

We recommend that offerors and transporters take precautions in the transportation of lithium batteries that are presently excepted from regulation as a hazardous material under 49 CFR 173.185 of the HMR (49 CFR parts 171–180) and Special Provision A45 of the International Civil Aviation Organization (ICAO) Technical Instructions for the Transport of Dangerous Goods by Air (Technical Instructions). On April 28, 1999, at Los Angeles International Airport (LAX), a shipment of two pallets of primary lithium batteries caught fire and burned after being off-loaded from a Northwest Airlines flight from Osaka, Japan. While the pallets were being handled by cargo handling personnel, the packages were damaged. This is believed to have initiated the subsequent fire. The fire was initially fought by Northwest employees with portable fire extinguishers and a fire hose. Each time the fire appeared to be extinguished, it flared up again.

The two pallets involved in the fire contained 120,000 non-rechargeable lithium primary batteries. These batteries contain small amounts of lithium metal. However, because of existing exceptions in the HMR and the ICAO Technical Instructions, these packages were excepted from all hazard communication requirements (*i.e.,* marking, labeling and shipping papers). It should be noted that there are two basic categories of lithium batteries: primary (non-rechargeable) lithium batteries, and secondary (rechargeable) lithium batteries. Primary lithium batteries employ different technology to produce electricity than do rechargeable lithium batteries. The incident at LAX airport involved primary lithium batteries; however, in the interest of caution, we recommend that an offeror of either category of lithium batteries take the following steps:

(1) Ensure that the batteries are packaged in a manner that conforms to the HMR, in packages capable of withstanding conditions normally encountered in transportation, including preventing the release of packaged contents or damage to the package which could make the batteries unsafe.

(2) Inform transporters that packages contain such batteries, and specify what actions should be taken if packages are damaged through package markings, shipping papers or other means.

We recommend that a transporter, especially an aircraft operator:

(1) Exercise care in handling of all packages to avoid damage, whether or not those packages are identified as containing hazardous materials.

(2) Remove any damaged packages containing lithium batteries from transportation until it is determined that the batteries are free from damage and can be appropriately repackaged and continue in transportation.

These recommendations are consistent with actions being taken voluntarily by members of the battery industry as discussed in more detail below.

II. Regulatory Provisions, NTSB Recommendations and DOT Actions

A. Regulatory Provisions for Lithium Batteries

Consistent with international standards, the HMR regulate lithium metal as a Division 4.3 (Dangerous When Wet) material and lithium batteries are regulated as Class 9 (miscellaneous) hazardous materials. However, many lithium batteries which meet certain conditions are excepted from other requirements in the HMR. All lithium batteries and cells must be designed or packed in a way as to prevent short-circuits under conditions normally encountered in transportation. Lithium batteries excepted from the HMR include liquid cathode batteries containing no more than 0.5 grams of lithium or lithium alloy per cell, or containing an aggregate quantity of no more than 1 gram of lithium or lithium alloy, and solid cathode batteries containing no more than 1 gram of lithium or lithium alloy per cell, or an aggregate quantity of no more than 2 grams of lithium or lithium alloy. Cells that contain 5 grams or less of lithium or lithium alloy and no more than 25 grams of lithium or lithium alloy per battery are also excepted from the HMR if they pass tests specified in the United Nations (UN) Manual of Tests and Criteria. Cells and batteries that do not meet the test requirements and cells and batteries that contain lithium and lithium alloys above these levels are subject to the HMR as a Class 9 material and must be packed in UN performance oriented packagings, and marked, labeled, and described on shipping papers in accordance with the HMR.

B. NTSB Recommendations

On November 16, 1999, the National Transportation Safety Board issued five safety recommendations to RSPA on the transportation of lithium batteries. The recommendations were issued as the result of the Safety Board's investigation of the incident that occurred on April 28, 1999, at LAX. The recommendations are as follows:

A–99–80. With the Federal Aviation Administration, evaluate the fire hazards posed by lithium batteries in an air transportation environment and require that appropriate safety measures be taken to protect aircraft and occupants. The evaluation should consider the testing requirements for lithium batteries in the United Nation's Transport of Dangerous Goods Manual of Tests and Criteria, the involvement of packages containing large quantities of tightly packed batteries in a cargo compartment fire, and the possible exposure of batteries to rough handling in an air transportation environment, including being or abraded open.

A–99–81. Pending completion of your evaluation of the fire hazards posed by lithium batteries in an air transportation environment, prohibit the transportation of lithium batteries on passenger-carrying aircraft.

A–99–82. Require that packages containing lithium batteries be identified as hazardous materials, including appropriate marking and labeling of the packages and proper identification in shipping documents, when transported on aircraft.

A–99–83. Pending completion of your evaluation of the fire hazards posed by lithium batteries in an air transportation environment, notify the International Civil Aviation Organization's Dangerous Goods Panel about the circumstances of the fire in the Northwest Airlines cargo facility at Los Angeles International Airport on April 28, 1999. Also pending completion of your evaluation of the fire hazards posed by lithium batteries in an air transportation environment, initiate action through the Dangerous Goods Panel to revise the *Technical Instructions for the Safe Transportation of Dangerous Goods by Air* to prohibit the transportation of lithium batteries on passenger-carrying aircraft.

A–99–84. Initiate action through the Dangerous Goods Panel to revise the *Technical Instructions for the Safe Transportation of Dangerous Goods by Air* to require that packages containing lithium batteries be identified as hazardous materials when transported on aircraft.

Copies of the November 16, 1999, NTSB letter and our response are in the public docket. A summary of our response appears in the next section of the preamble.

C. DOT Actions

We responded to the NTSB in a letter dated March 29, 2000. In that response, we stated that we were re-evaluating both the hazards posed by lithium batteries in air transportation and the safety measures necessary to protect an aircraft and its occupants. Additional information is being collected from lithium battery manufacturers and Federal agencies with extensive experience with testing and the use of lithium batteries. DOT also intends to conduct experimental evaluations necessary to obtain information not available from other sources. Our investigation is studying both primary lithium batteries and rechargeable lithium batteries.

In our response to NTSB we stated that, taking into account the hazards that lithium batteries present in transportation, the unusual nature of the LAX incident, the number of lithium batteries that have been transported safely on passenger-carrying aircraft, and the potential economic consequences, we could not justify an immediate prohibition on the transportation of lithium batteries on passenger-carrying aircraft. We are, however, initiating alternative actions to address the risk lithium batteries present in air transportation. These alternative actions include developing and distributing information aimed at shippers and airline personnel on the potential hazards of lithium batteries, such as the information contained in this notice, and based on the findings of our evaluation, initiating rulemaking action as necessary to address the classification, hazard communication, packaging, and operational controls relating to lithium batteries. We have also notified the ICAO Dangerous Goods Panel of the LAX incident and have initiated proposals to amend the United Nations Recommendations on the Transport of Dangerous Goods.

We have met with representatives of the battery industry concerning actions being taken voluntarily by them to mitigate these hazards, as set forth in the following section.

Upon completion of our evaluation of lithium batteries, we will initiate any additional actions necessary to address the hazards posed by the transportation of lithium batteries.

III. Actions by Members of the Battery Industry

To address the concerns described above while we are considering further regulatory action, companies from around the world involved in the manufacture and distribution of small lithium primary, and lithium ion lithium polymer rechargeable cells and batteries voluntarily are implementing a program to identify and provide information concerning these batteries. The activity is expected to result in modification of shipping practices associated with the vast majority of small lithium primary and lithium ion rechargeable cells and batteries. A summary of the program's elements, as provided to us by the these companies, is provided below:

Lithium, lithium ion and lithium polymer cells and batteries exempt from regulations under 49 CFR 173.185, Special Provision A45 of the ICAO Technical Instructions, and/or Special Provision 188 of the UN Recommendations on the Transport of Dangerous Goods Model Regulations (''covered products'') will be affected by this program.

Implementation will begin September 1, 2000. The full program is expected to be in place by February 1, 2001 and DOT will be provided a list of companies who are voluntarily complying.

Each shipment of covered products that is originated by a participating company and contains more than 20 new primary lithium cells or 10 new primary lithium batteries will be marked to identify its content and recommended response actions in the event of an accident or damage to packaging. The text will appear in both English and the language of the shipment's origin, and will state ''Lithium batteries inside. Do not damage or mishandle this package. If package is damaged or mishandled, batteries must be quarantined, inspected, and repacked.'' The label will include a toll free number to call in the event of an emergency.

Each shipment of covered products that is originated by a participating company and contains more than 40 new lithium ion or lithium polymer cells or more than 20 new lithium ion or lithium polymer multi-cell battery packs (regardless of the number of cells in each) will carry a label explicitly identifying its content and recommended response actions in the event of an accident or damage to packaging. The text will appear in both English and the language of the shipment's origin, and will state ''Lithium ion rechargeable batteries inside. (No lithium metal.) In the event of fire, use Class B or C extinguisher. If package is damaged or mishandled, batteries must be quarantined, inspected, and repacked.''

Packages which are marked will not exceed 30 kg and will be UN 4G fiberboard boxes, at the Packing Group II performance level, or equivalent.

Participating companies will provide to air carriers, freight forwarders and other shippers involved in the air transportation of covered products brochures or similar documents that describe the covered products and packages, the physiochemical characteristics of covered products, the communications program, and safe shipment handling procedures for covered packages.

Issued in Washington, DC, on August 30, 2000.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–22838 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[RSPA–00–7795]

Pipeline Safety: Meeting of the Integrity Management Communication Team

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Integrity Management Communication Team Meeting.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) hereby gives notice that the Integrity Management Communication Team will meet to discuss the content and delivery of pipeline information to be conveyed to local officials and members of the public in or near high consequence areas.

DATES: The meeting will be held on September 12, 2000.

ADDRESSES: Members of the public may attend the meeting at the Department of Transportation, Nassif Building, 400 Seventh Street, SW, Room 6200 Washington, DC 20590. An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement or to participate by conference call should notify Mary Jo Cooney, (202) 366–4774, or Christina Sames, (202) 366–4561, no later than September 7, 2000. Those wishing to make an oral statement must notify OPS of the topic of the statement and the time requested for the presentation. Those wishing to participate by conference call will be notified of the call-in number prior to the meeting.

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance during the telephone conference calls, contact Mary-Jo Cooney at (202) 366–4774.

FOR FURTHER INFORMATION CONTACT: Mary Jo Cooney, OPS, (202) 366–4774, or Christina Sames, OPS, (202) 366–4561.

SUPPLEMENTARY INFORMATION:

Background Information

In connection with the proposed rule on Pipeline Integrity Management in High Consequence Areas, OPS plans to propose related rules governing operator communications with local public officials and agencies. To assist in this effort, the OPS Technical Advisory Committees created an Integrity Management Communications Subcommittee to focus on communications issues and to report back to the full Advisory Committee. OPS expanded this Subcommittee to form a team with equal representation from the public, government agencies, and the pipeline industry, and to consolidate several related efforts.

The Team will provide feedback, insight, and information to the Advisory Committee on the content and delivery of information conveyed to local officials and the public about pipeline operations, systems, and the risks they pose in or near high consequence areas. The Advisory Committee will provide pipeline communication recommendations to OPS for consideration in drafting the Integrity Management Communications rulemaking. The Team will also assist OPS in finalizing a primer to educate local officials on pipelines and their operations.

The topics for discussion for this meeting include discussions of the following: Information that is needed by various groups: landowners/tenants along pipeline rights-of-way; local and regional emergency response officials; excavators and the general public; review of existing materials used by pipeline operators for public education; results from a public awareness survey conducted by the American Petroleum Institute and focus groups sponsored by the Interstate Natural Gas Association of America; Office of Pipeline Safety website materials; information currently available under the Freedom of Information Act; and pending pipeline legislative proposals for community right-to-know.

Issued in Washington, DC on August 31, 2000.

Jeffrey D. Wiese,

Manager, Program Development, Office of Pipeline Safety.

[FR Doc. 00–22985 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33917]

Canton Railroad Company—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NS) has agreed to grant overhead trackage rights to Canton Railroad Company (CTN) over approximately 150 feet of NS' track within its existing right-of-way, being four crossover tracks located between Stations 74+40 and 178+73, on the Southern Bear Creek Branch, and connecting CTN's East Main and West Main, in Baltimore City, MD.[1]

CTN reported that it intends to consummate the transaction on September 1, 2000, or as soon thereafter as the parties may agree or notices to labor may be effective.

The purpose of the trackage rights is to permit CTN to facilitate a more efficient operation of a coal exporting facility served by NS in Baltimore. CTN states that it currently operates over NS' right-of-way at this location pursuant to local operating agreements relating to the yard operations of both railroads. The trackage rights will also allow rail traffic to move more expeditiously in the eastern Maryland region.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33917, 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, one copy of each pleading must be served on Weston A. Park, P.O. Box 28364, 8424 Old Harford Road, Baltimore, MD 21234.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: August 31, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–22981 Filed 9–6–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–99–5889]

Motor Carrier Financial and Operating Information; Requests for Exemptions From Public Release of Reports

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: Class I and Class II motor carriers of property and household goods are required to file annual and quarterly reports with the Bureau of

[1] A redacted version of the trackage rights agreement between NS and CTN was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for a protective order. A protective order was served on August 30, 2000.

Transportation Statistics (BTS). As provided by statute, carriers may request that their reports be withheld from public release. BTS is inviting comments on requests from several carriers, which had previously sought exemptions from public release and are now providing additional information or are requesting reconsideration of BTS's decision on their petitions.

DATES: Comments must be submitted by October 10, 2000.

ADDRESSES: Send comments to the DOT Dockets Management System. You may send them by mail or in person to the Docket Clerk, Docket No. BTS–99–5889, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590. The Docket is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to file comments using the Internet, you may use the DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information.

Comments should identify the docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–99–5889. The Docket Clerk will date stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–1, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

Request for Comments

BTS invites comments on the following:

• Clarksville Refrigerated Lines, Inc.—Reply to Request for Additional Information.

• Drug Transport, Inc.—Request for Reconsideration and Reply to Request for More Information.

• Schneider Transport, Inc., Schneider Tank Lines, Inc., Schneider National Carriers, Inc., Schneider National Bulk Carriers, Inc., Schneider Specialized Carriers, Inc.—Supplemental Request for Reconsideration.

You must use the DOT Dockets Management System if you wish to comment on these documents. Please follow the instructions listed above under **ADDRESSES**. You can also use the Dockets Management System to read related background information, such as the carriers' original exemption requests, comments submitted in regards to their requests, and BTS's initial decisions.

Rick Kowalewski,

Deputy Director.

[FR Doc. 00–22984 Filed 9–6–00; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0001]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0001.''

SUPPLEMENTARY INFORMATION:

Title: Veteran's Application for Compensation and/or Pension, VA Form 21–526.

OMB Control Number: 2900–0001.

Type of Review: Revision of a currently approved collection.

Abstract: This form is used as an original application for veterans to apply for compensation and/or pension benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 30, 2000, at page 34531.

Affected Public: Individuals or households.

Estimated Annual Burden: 592,500 hours.

Estimated Average Burden Per Respondent: 90 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 395,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0001'' in any correspondence.

Dated: August 11, 2000.

By direction of the Acting Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–22893 Filed 9–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0025]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Information and Technology, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0025'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for and Consent to Release of Information from Claimant's Records, VA Form 3288.

OMB Control Number: 2900–0025.

Type of Review: Extension of a currently approved collection.

Abstract: The form is completed by veterans and their beneficiaries to provide VA with a written consent to release records or information to third parties such as insurance companies, physicians and other individuals. Use of the form ensures an individual gives an informed written consent for the release of records or information about himself/herself that is consistent with the statutory requirements of the Privacy Act of 1974 and VA's confidentiality statute.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 8, 2000, at page 26661.

Affected Public: Individuals or households.

Estimated Annual Burden: 18,875 hours.

Estimated Average Burden Per Respondent: 7.5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 151,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0025'' in any correspondence.

Dated: August 8, 2000.

By direction of the Acting Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–22894 Filed 9–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0042]

Agency Information Collection Activities Under OMB Review

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Board of Veterans' Appeals (BVA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0042.''

SUPPLEMENTARY INFORMATION:

Title: Statement of Accredited Representative in Appealed Case, VA Form 646.

OMB Control Number: 2900–0042.

Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.

Abstract: The form is used by accredited veterans' service organization representatives to present their argument to the Board on behalf of appellants of whom the service organizations represent. It facilitates appellants' exercise of their representation rights. The legal and factual arguments presented on the form are considered and addressed by the Board in making decisions on appeals. The form is also designed to solicit enough identifying data to enable VA to identify the particular case to which the statement pertains so that it may be properly considered and filed when received by VA. It aids the Board in assuring that rights to representation have been honored by establishing that the record has been made available to the representative for review and presentation of argument.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 4, 2000 at page 25977.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 32,895 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 32,895.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0042'' in any correspondence.

Dated: August 7, 2000.

By direction of the Acting Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–22895 Filed 9–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0051]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0051.''

SUPPLEMENTARY INFORMATION:

Title: Quarterly Report of State Approving Agency Activities, VA Form 22–7398.

OMB Control Number: 2900–0051.

Type of Review: Extension of a currently approved collection.

Abstract: VA reimburses State Approving Agencies (SAAs) for necessary salary, and fringe and travel expenses incurred in the approval and supervision of education and training programs. VA makes reimbursement retrospectively on a monthly or quarterly basis after receiving an itemized invoice by the SAA. This invoice must be supported by other documents (such as showing reports of visits to schools and programs approved

by SAAs). It includes space for the SAA to report appropriate ''work product'' (using numbers to reflect a count, in the appropriate category such as visits to schools, programs approved, technical assistance given, etc.).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 20, 2000, at page 38319.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 228 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 57.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0051'' in any correspondence.

Dated: August 21, 2000.

By direction of the Acting Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–22896 Filed 9–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0078]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Information and Technology, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0078'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request to Correspondent for Identifying Information, VA Form Letter 70–2.

OMB Control Number: 2900–0078.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to obtain additional information from a correspondent when the incoming correspondence does not provide sufficient information to identify a veteran. VA personnel use the information to identify a veteran, determine the location of a specific file, and to accomplish the action requested by the correspondent such as, process a benefit claim or file material in an individual?s claims folder. Completion of the form is voluntary and failure to furnish the requested information has no adverse effect on either the veteran or correspondent.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 4, 2000, at page 25977.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,750 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 45,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0078'' in any correspondence.

Dated: August 8, 2000.

By direction of the Acting Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–22897 Filed 9–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0262.''

SUPPLEMENTARY INFORMATION:

Title: Designation of Certifying Official(s), VA Form 22–8794.

OMB Control Number: 2900–0262.

Type of Review: Extension of a currently approved collection.

Abstract: The law requires specific certifications from an educational institution or job training establishment that provides approved training for veterans and other eligible persons. VA Form 22–8794 serves as the report from the school or job training establishment as to those persons authorized to submit these certifications. The educational institution or job training establishment completes this form by showing the names and signatures of persons whom the educational institution or job training establishment has authorized to certify reports to VA on behalf of the educational institution or job training establishment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 1, 2000, at page 35159.

Affected Public: Business or other for-profit; Not for-profit institutions; and State, Local or Tribal Government.

Estimated Annual Burden: 417 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0262'' in any correspondence.

Dated: August 11, 2000.

By direction of the Acting Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–22898 Filed 9–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0524]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Security and Law Enforcement, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Security and Law Enforcement, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0524.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: VA Police Officer Pre-Employment Screening Checklist, VA Form 0120.

OMB Control Number: 2900–0524.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Each VA medical center has authority to hire its own VA police officers. Prior to employment of a qualified applicant, each facility is required to conduct an FBI arrest record inquiry and to contact listed former employers for a determination of any adverse performance or suitability information. VA Form 0120 is completed by each VA facility human resources office and serves as the record of pre-employment screening to determine the qualifications and suitability of the applicant. The Office of Security and Law Enforcement reviews each completed form and authorizes the VA police badge set issuance only in those instances where screening documentation is satisfactorily accomplished. The form serves as a standard means of ensuring the completion of the pre-employment process.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 27, 2000 at page 16244.

Affected Public: State, Local or Tribal Government, and Business or other for-profit.

Estimated Annual Burden: 300 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,800.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0524'' in any correspondence.

Dated: August 15, 2000.

By direction of the Acting Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–22899 Filed 9–6–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0571]

Agency Information Collection Activities Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the National Cemetery Administration (NCA), Office of Financial Management (OFM), and Office of Inspector General (IG), Department of Veterans Affairs, have submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before October 10, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0571.''

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the National Cemetery Administration, Office of Financial Management, and Office of Inspector General Customer Satisfaction Surveys.

OMB Control Number: 2900–0571.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. The NCA, OFM, and IG use the customer satisfaction surveys to evaluate customer services as well as customer expectations and desires. The results of this information collection lead to improvements in the quality of the NCA, OFM, and IG service delivery by helping to shape the direction and focus of specific services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection

of information was published on June 20, 2000 at pages 38319–38321.

Affected Public: Individuals or households, Business or other for-profit and State, Local or Tribal Government.

Listing of Survey Activities: The following list of activities is a compendium of customer satisfaction survey plans by the NCA, OFM, and IG. The actual conduct of any particular activity listed could be affected by circumstances. A change in, or refinement of, our focus in a specific area, as well as resource constraints could require deletion or substitution of any listed item. If these organizations substitute or propose to add a new activity that falls under the umbrella of this generic approval, including those activities that are currently in a planning stage, OMB will be notified and will be furnished a copy of pertinent materials, a description of the activity and number of burden hours involved. The NCA, OFM, and IG will conduct periodic reviews of ongoing survey activities to ensure that they comply with the PRA.

Year	Number of respondents	Estimated annual burden (in hours)	Frequency
I. National Cementery Administration			
Focus Groups with Next of Kin (10 participants per group/3 hours each session)			
2001	50	150	5 Groups Annually.
2002	50	150	5 Groups Annually.
2003	50	150	5 Groups Annually.
Focus Groups with Funeral Directors (10 participants per group/3 hours each session)			
2001	50	150	5 Groups Annually.
2002	50	150	5 Groups Annually.
2003	50	150	5 Groups Annually.
Focus Groups with Veterans Service Organizations (10 participants per group/3 hours each session)			
2001	50	150	5 Groups Annually.
2002	50	150	5 Groups Annually.
2003	50	150	5 Groups Annually.
Visitor Comments Cards (2,500 respondents/5 minutes per response)			
2001	2,500	208	Annually.
2002	2,500	208	Annually.
2003	2,500	208	Annually.
Next of Kin National Customer Satisfaction Survey (Mail to 10,000 respondents/30 minutes per response)			
2001	10,000	5,000	Annually.
2002	10,000	5,000	Annually.
2003	10,000	5,000	Annually.
Funeral Directors National Customer Satisfaction Survey (Mail to 1,000 respondents/30 minutes per response)			
2001	1,000	500	Annually.
2002	1,000	500	Annually.
2003	1,000	500	Annually.
Veterans-At-Large National Customer Satisfaction Survey (Mail to 5,000 respondents/30 minutes per response)			
2001	5,000	2,500	Annually.
2002	5,000	2,500	Annually.
2003	5,000	2,500	Annually.
Program/Specialized Service Survey (Mail to 1,000 respondents/30 minutes per response)			
2001	1,000	500	Annually.
2002	1,000	500	Annually.
2003	1,000	500	Annually.
II. Office of Financial Management			
Accountability Report Pilot Evaluation Form (550 respondents/150 minutes per response)			
2001	550	138	Annually.
2002	550	138	Annually.
2003	550	138	Annually.
III. Office of Inspector General			
Patient Questionnaire (1,200 respondents/10 minutes per response)			
2001	1,200	200	Annually.
2002	1,200	200	Annually.

Year	Number of respondents	Estimated annual burden (in hours)	Frequency
2003	1,200	200	Annually.

Most customer satisfaction surveys will be recurring so that NCA, OFM, and IG can create and maintain ongoing measures of performance and to determine how well VA meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate each organization's performance. NCA expects to conduct 15 focus groups annually involving a total of 450 hours during the approval period. In addition, NCA expects to conduct mail surveys with a total annual burden of 8,000 hours and will distribute comment cards with a total annual burden of 208 hours. NCA also plans to conduct mail surveys with customers of specific programs (*e.g.* Headstones and Markers, Presidential Memorial Certificates, State Veterans Cemeteries) to determine levels of service satisfaction. Program specific surveys are estimated at 500 burden hours annually during the approval period. OFM and IG will distribute written surveys with a total annual burden of 338 hours.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0571'' in any correspondence.

Dated: August 21, 2000.

By direction of the Acting Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–22900 Filed 9–6–00; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
September 7, 2000

Part II

Department of Defense

Department of the Army

32 CFR Part 651
Environmental Analysis of Army Actions; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

[Army Reg. 200–2]

Environmental Analysis of Army Actions

AGENCY: Department of the Army, DoD

ACTION: Notice of proposed rule.

SUMMARY: The Department of the Army hereby gives notice that it is adopting revised policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) Code of Federal Regulations (CFR) (40 CFR parts 1500–1508). These guidelines replace policy and procedures found in current Army Regulation 200–2, Environmental Effects of Army Actions. The revision is necessary to clarify and update the current regulation. Since the December 1988 update of this regulation, initiatives such as the National Performance Review (NPR) have streamlined the federal government through decentralization, reduction and simplification of regulations, and management of risk. This proposed rule strives to meet the spirit of the NPR, and Executive Order 12861, Elimination of One-Half of Executive Branch Internal Regulations, 11 September 1993.

DATES: Submit comments on or before November 6, 2000.

ADDRESSES: Army Environmental Policy Institute, 101 Marietta Street, Suite 3120, Atlanta, GA 30303–2716. Comments or requests for changes may be submitted on a Department of Defense Form 2028, Recommended Changes to Publications and Blank Forms.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Webster, Army Environmental Policy Institute (404) 880–6707.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule revises policies and responsibilities for assessing the effect of Army actions (32 CFR part 651). The last major revision of this regulation was previously published in 53 FR 46324, November 16, 1988. Since that time, initiatives such as the National Performance Review have tended to streamline the Federal Government through decentralization, reduction and simplification of regulations.

Administrative Requirements

The Regulatory Flexibility Act

The Regulatory Flexibility Act, 5, U.S.C. 601 *et seq*., requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organization must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an action, however, need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

The Department of the Army has considered the impact of the proposed regulation under the Regulatory Flexibility Act. It has been certified that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act

This regulation does not involve the collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. This organization has determined that this rule has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Executive Order 12630, Government Action and Interference With Constitutionally Protected Property Rights

This proposed rule is issued with respect to the National Environmental Policy Act of 1969 and therefore establishes Army's responsibilities for the early integration of environmental consideration into planning and decision-making. This proposal should not impact the provisions of Executive Order 12630 or the Private Property Rights Act.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The proposed revision is not a ''major'' rule within the meaning of Executive Order 12866. The effect on the economy will be less than $100 million. The proposal will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies. The proposal will not have a significant adverse impact on competition, employment, investment productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12875 Enhancing the Intergovernmental Partnership

The proposed rule does not impose non-statutory unfunded mandates on small governments and is not subject to the requirements of the executive order.

Executive Order 12988, Civil Justice

This proposed rule is in compliance with the provisions and requirements of Executive Order 12988.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The proposed rule is issued with respect to existing environmental guidelines and laws. Therefore, the proposed rule should not directly impact this executive order.

Unfunded Mandates Act

This proposal does not impose an enforceable duty upon the private sector nor does it impose unfunded mandates on small governments and therefore is not subject to the requirements of the Unfunded Mandates Reform Act.

National Environmental Policy Act

This regulation implements the National Environmental Policy Act of 1969 (NEPA), and establishes the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

Submission to Congress and the Comptroller General of the General Accounting Office

Pursuant to Section 801(a)(1)(A) of the Administrative Procedures Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army will submit a report

containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedures Act, as amended.

List of Subjects in 32 CFR Part 651

Environmental impact statements, Environmental protection, Foreign relations, Natural resources.

Dated: July 27, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

For the reasons as set forth in the preamble, 32 CFR Part 651 is proposed to be revised to read as follows:

PART 651—ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS (AR 200–2)

Subpart A—Introduction

Sec.

651.1 Purpose.
651.2 References.
651.3 Explanation of abbreviations and terms.
651.4 Responsibilities.
651.5 Army policies.
651.6 NEPA analysis staffing.
651.7 Delegation of authority for non-acquisition systems.
651.8 Disposition of final documents.

Subpart B—National Environmental Policy Act and the Decision Process

651.9 Introduction.
651.10 Actions requiring environmental analysis.
651.11 Environmental review categories.
651.12 Determining appropriate level of NEPA analysis.
651.13 Classified actions.
651.14 Integration with Army planning.
651.15 Mitigation and monitoring.
651.16 Cumulative impacts.
651.17 Environmental justice.

Subpart C—Records and Documents

651.18 Introduction.
651.19 Record of Environmental Consideration.
651.20 Environmental Assessment.
651.21 Finding of No Significant Impact.
651.22 Notice of Intent.
651.23 Environmental Impact Statement.
651.24 Supplemental EAs and Supplemental EISs.
651.25 Notice of Availability.
651.26 Record of Decision.
651.27 Programmatic NEPA analyses.

Subpart D—Categorical Exclusions

651.28 Introduction.
651.29 Determining when to use a CX (screening criteria).
651.30 CX actions.
651.31 Modification of the CX list.

Subpart E—Environmental Assessment

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651.33 Actions normally requiring an EA.
651.34 EA components.
651.35 Decision process.
651.36 Public involvement.
651.37 Public availability.
651.38 Existing environmental assessments.
651.39 Significance.

Subpart F—Environmental Impact Statement

651.40 Introduction.
651.41 Conditions requiring an EIS.
651.42 Actions normally requiring an EIS.
651.43 Format of the EIS.
651.44 Incomplete information.
651.45 Steps in preparing and processing an EIS.
651.46 Existing EISs.

Subpart G—Public Involvement and the Scoping Process

651.47 Public involvement.
651.48 Scoping process.
651.49 Preliminary phase.
651.50 Public interaction phase.
651.51 The final phase.
651.52 Aids to information gathering.
651.53 Modifications of the scoping process.

Subpart H—Environmental Effects of Major Army Action Abroad

651.54 Introduction.
651.55 Categorical exclusions.
651.56 Responsibilities.
Appendix A to Part 651—References
Appendix B to Part 651—Categorical Exclusions
Appendix C to Part 651—Mitigation and Monitoring
Appendix D to Part 651—Public Participation Plan
Appendix E to Part 651—Content of the Environmental Impact Statement
Appendix F to Part 651—Glossary

Authority: 42 U.S.C. 4321 *et seq;* 40 CFR parts 1500–1508; E.O. 12114, 44 FR 1957, 3 CFR, 1979 Comp., p. 356.

Subpart A—Introduction

§ 651.1 Purpose.

(a) This part implements the National Environmental Policy Act of 1969 (NEPA), setting forth the Army's policies and responsibilities for the early integration of environmental considerations into planning and decision-making.

(b) This part requires environmental analysis of Army actions affecting human health and the environment; providing criteria and guidance on actions normally requiring Environmental Assessments (EAs) or Environmental Impact Statements (EISs), and listing Army actions that are categorically excluded from such requirements, provided specific criteria are met.

(c) This part supplements the Code of Federal Regulations (CFR) (40 CFR parts 1500–1508) for Army actions, and must be read in conjunction with it.

(d) All Army acquisition programs must use this part in conjunction with Department of Defense (DOD) 5000.2–R (Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems).

§ 651.2 References.

Required and related publications and referenced forms are listed in Appendix A of this part.

§ 651.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this part are explained in the glossary in appendix F of this part.

§ 651.4 Responsibilities.

(a) *The Assistant Secretary of the Army (Installations and Environment) (ASA(I&E)).* ASA(I&E) is designated by the Secretary of the Army (SA) as the Army's responsible official for NEPA policy, guidance, and oversight. In meeting these responsibilities, ASA(I&E) will:

(1) Maintain liaison with the Office of the Secretary of Defense (OSD), Office of Management and Budget (OMB), Council on Environmental Quality (CEQ), Environmental Protection Agency (EPA), Congressional oversight committees, and other federal, state, and local agencies on Army environmental policies.

(2) Review NEPA training at all levels of the Army, including curricula at Army, DOD, other service, other agency, and private institutions; and ensure adequacy of NEPA training of Army personnel at all levels.

(3) Establish an Army library for EAs and EISs, which will serve as:

(i) A means to ascertain adherence to the policies set forth in this part, as well as potential process improvements; and

(ii) A technical resource for proponents and preparers of NEPA documentation.

(b) *The Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(AL&T)).* ASA(AL&T) will:

(1) Under oversight of the ASA(I&E), execute those NEPA policy provisions contained herein that pertain to the ASA(AL&T) responsibilities in the Army materiel development process, as described in Army Regulation (AR) 70–1, Army Acquisition Policy.

(2) Prepare policy for the Army Acquisition Executive (AAE) to develop and administer a process of review and approval of environmental analyses during the Army materiel development process.

(3) Prepare research, development, test, and evaluation (RDT&E) and procurement budget justifications to support Materiel Developer (MATDEV) implementation of NEPA provisions.

(c) *The Army Acquisition Executive.* ASA(I&E) will, under the Army oversight responsibilities assigned to ASA(I&E):

(1) Administer a process to:

(i) Execute all those NEPA policy provisions contained herein that pertain to all acquisition category (ACAT) programs, projects, and products;

(ii) Ensure that Milestone Decision Authorities (MDAs), at all levels, assess the effectiveness of environmental analysis in all phases of the system acquisition process, including legal review of these requirements;

(iii) Establish resource requirements and program, plan, and budget exhibits for inclusion in annual budget decisions;

(iv) Review and approve NEPA documentation at appropriate times during materiel development, in conjunction with acquisition phases and milestone reviews as established in the Acquisition Strategy; and

(v) Establish NEPA responsibility and awareness training requirements for Army Acquisition Corps personnel.

(2) Ensure Program Executive Officers (PEOs) and direct-reporting Program Managers (PMs) will:

(i) Supervise assigned programs, projects, and products to ensure that each environmental analysis addresses all applicable environmental laws, executive orders, and regulations.

(ii) Ensure that environmental considerations are integrated into system acquisition plans/strategies, Test and Evaluation Master Plans (TEMPs) and Materiel Fielding Plans, system engineering reviews/Integrated Process Team (IPT) processes, and Overarching Integrated Process Team (OIPT) milestone review processes.

(iii) Coordinate environmental analysis with appropriate organizations to include environmental offices such as Army Acquisition Pollution Prevention Support Office (AAPPSO) and U.S. Army Environmental Center (USAEC) and operational offices and organizations such as testers (developmental/operational), producers, users, and disposal offices.

(3) Ensure Program, Project, Product Managers, and other MATDEVs will:

(i) Initiate the environmental analysis process prescribed herein upon receiving the project office charter to commence the materiel development process, and designate a NEPA point of contact (POC) to the Director of Environmental Programs (DEP).

(ii) Integrate the system's environmental analysis (including NEPA) into the system acquisition strategy, milestone review planning, system engineering, and preliminary design, critical design, and production readiness reviews.

(iii) Apply policies and procedures set forth in this regulation to programs and actions within their organizational and staff responsibility.

(iv) Coordinate with installation managers and incorporate comments and positions of others (such as the Assistant Chief of Staff for Installation Management (ACSIM) and environmental offices of the development or operational testers, producers, users, and disposers) into the decision-making process.

(v) Initiate the analysis of environmental considerations, assess the environmental consequences of proposed programs and projects, and undergo environmental analysis, as appropriate.

(vi) Maintain the administrative record of the program's environmental analysis in accordance with this regulation.

(vii) Coordinate with local citizens and other affected parties, and incorporate appropriate comments into NEPA analyses.

(viii) Coordinate with ASA(I&E) when NEPA analyses for actions under AAE purview require publication in the **Federal Register** (FR).

(d) *The Deputy Chief of Staff for Operations and Plans (DCSOPS).* DCSOPS is the proponent for Training and Operations activities. DCSOPS will ensure that Major Army Commands (MACOMs) support and/or perform, as appropriate, NEPA analysis of fielding issues related to specific local or regional concerns when reviewing Materiel Fielding Plans prepared by Combat Developers (CBTDEVs) or MATDEVs. This duty will include the coordination of CBTDEV and MATDEV information with appropriate MACOMs and Deputy Chief of Staff for Logistics (DCSLOG).

(e) *The Assistant Chief of Staff for Installation Management (ACSIM).* ACSIM is responsible for coordinating, monitoring, and evaluating NEPA activities within the Army. The Environmental Programs Directorate is the Army Staff (ARSTAF) POC for environmental matters and serves as the Army staff advocate for the Army NEPA requirements contained in this part. The ACSIM will:

(1) Encourage environmental responsibility and awareness among Army personnel to most effectively implement the spirit of NEPA.

(2) Establish and maintain the capability (personnel and other resources) to comply with the requirements of this part. This responsibility includes the provision of an adequately trained and educated staff to ensure adherence to the policies and procedures specified by this part.

(f) *The Director of Environmental Programs.* The director, with support of the U.S. Army Environmental Center, and under the ACSIM, will:

(1) Advise Army agencies in the preparation of NEPA analyses, upon request.

(2) Review, as requested, NEPA analyses submitted by Army, other DOD components, and other federal agencies.

(3) Monitor proposed Army policy and program documents that have environmental implications to determine compliance with NEPA requirements and ensure integration of environmental considerations into decision-making and adaptive management processes.

(4) Propose and develop Army NEPA guidance pursuant to policies formulated by ASA(I&E).

(5) Support and defend Army NEPA requirements, if requested, through the Environmental Program Requirements (EPR) process.

(6) Provide NEPA process oversight, in support of ASA(I&E), and, as appropriate, technical review of NEPA documentation.

(7) Identify Army-wide NEPA requirements and shortfalls through analysis of Army programming and execution data, and develop and execute programs and initiatives to address them.

(8) Assist the ASA(I&E) in the evaluation of formal requests for the delegation of NEPA responsibilities on a case-by-case basis. This assistance will include:

(i) Determination of technical sufficiency of the description of proposed action and alternatives (DOPAA) when submitted as part of the formal delegation request (§ 651.7).

(ii) Coordination of the action with the MACOM requesting the delegation.

(iii) Drafting of the formal response from ASA(I&E) to the MACOM, varying from project to project (based upon the technical issues involved, the degree of public interest, the possibility of controversy, and other project-specific considerations).

(9) Periodically provide ASA(I&E) with a summary analysis and recommendations on needed improvements in policy and guidance to Army activities concerning NEPA implementation, in support of ASA(I&E) oversight responsibilities.

(10) Assist Headquarters proponents to fund and develop programmatic NEPA analyses to address actions that are Army-wide, where a programmatic approach would be appropriate to address the action.

(11) Designate a NEPA PM to coordinate the Army NEPA program and notify ASA(I&E) of the designation.

(12) Maintain manuals and guidance for NEPA analyses for major Army programs in hard copy and make this guidance available on the World Wide Web (WWW).

(13) Maintain a record of NEPA POCs in the Army, as provided by the MACOMs and other Army agencies.

(g) *Heads of Headquarters, Army agencies.* The heads of headquarters, Army agencies will:

(1) Apply policies and procedures herein to programs and actions within their staff responsibility except for state-funded operations of the Army National Guard (ARNG).

(2) Task the appropriate component with preparation of NEPA analyses and documentation.

(3) Initiate the preparation of necessary NEPA analyses, assess proposed programs and projects to determine their environmental consequences, and initiate NEPA documentation for circulation and review along with other planning or decision-making documents. These other documents include, as appropriate, completed DD Form 1391 (Military Construction Project Data), Case Study and Justification Folders, Acquisition Strategies, and other documents proposing or supporting proposed programs or projects.

(4) Coordinate appropriate NEPA analyses with ARSTAF agencies.

(5) Designate, record, and report to the DEP the identity of the agency's single POC for NEPA considerations.

(6) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(7) Coordinate proposed directives, instructions, regulations, and major policy publications that have environmental implications with the DEP.

(8) Maintain the capability (personnel and other resources) to comply with the requirements of this part and include provisions for NEPA requirements through the Program Planning and Budget Execution System (PPBES) process.

(h) *The Assistant Secretary of the Army for Financial Management (ASA(FM)).* ASA(FM) will establish procedures to ensure that requirements for environmental exhibits and displays of data are supported in annual authorization requests.

(i) *The Judge Advocate General (TJAG).* TJAG will provide legal advice to the Army Staff and assistance in NEPA interpretation, federal implementing regulations, and other applicable legal authority; determine the legal sufficiency for Army NEPA documentation; and interface with the Army General Counsel (GC) and the Department of Justice on NEPA-related litigation.

(j) *The Army General Counsel.* The Army General Counsel will provide legal advice to the Secretary of the Army on all environmental matters, to include interpretation and compliance with NEPA and federal implementing regulations and other applicable legal authority.

(k) *The Surgeon General.* The Surgeon General will provide technical expertise and guidance to NEPA proponents in the Army, as requested, in order to assess public health, industrial hygiene, and other health aspects or proposed programs and projects.

(l) *The Chief, Public Affairs.* The Chief, Public Affairs will:

(1) Provide guidance on issuing public announcements such as Findings of No Significant Impact (FNSIs), Notices of Intent (NOIs), scoping procedures, Notices of Availability (NOAs), and other public involvement activities; and establish Army procedures for issuing/announcing releases in the FR.

(2) Review and coordinate planned announcements on actions of national interest with appropriate ARSTAF elements and the Office of the Assistant Secretary of Defense for Public Affairs (OASD(PA)).

(3) Assist in the issuance of appropriate press releases to coincide with the publication of notices in the FR.

(4) Provide assistance to MACOM and installation Public Affairs Officers (PAOs) regarding the development and release of public involvement materials.

(m) *The Chief of Legislative Liaison.* The Chief of Legislative Liaison will notify Members of Congress of impending proposed actions of national concern or interest. The Chief will:

(1) Provide guidance to proponents at all levels on issuing Congressional notifications on actions of national concern or interest.

(2) Review planned congressional notifications on actions of national concern or interest.

(3) Prior to (and in concert with) the issuance of press releases and publications in the FR, assist in the issuance of congressional notifications on actions of national concern or interest.

(n) *Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander.* Commanders of MACOMs, the Director of the Army National Guard, and the U.S. Army Reserve Commander will:

(1) Monitor proposed actions and programs within their commands to ensure compliance with this part, including mitigation monitoring, utilizing Environmental Compliance Assessment System (ECAS), Installation Status Report (ISR), or other mechanisms.

(2) Task the appropriate proponent with funding and preparation of NEPA documentation and involvement of the public.

(3) Ensure that any proponent at the MACOM level initiates the required environmental analysis early in the planning process and plans the preparation of necessary NEPA documentation.

(4) Assist in the review of NEPA documentation prepared by DOD and other Army or federal agencies, as requested.

(5) Maintain official record copies of all NEPA documentation for which they are the proponent, and file electronic copies of EAs and EISs with the Office of the DEP (ODEP).

(6) Provide coordination with Headquarters, Department of the Army (HQDA) for proposed actions that have either significant impacts requiring an EIS or are of national interest. This process will require defining the purpose and need for the action, alternatives to be considered, and other information, as requested by HQDA. It also must occur early in the process and prior to an irretrievable commitment of resources that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). When delegated signature authority by HQDA, this process also includes the responsibility for complying with this regulation and associated Army environmental policy.

(7) Approve and forward NEPA documentation, as appropriate, for actions under their purview.

(8) In the case of the Director, ARNG, or his designee, approve all federal NEPA documentation prepared by all ARNG activities.

(9) Ensure environmental information received from MATDEVs is provided to appropriate field sites to support site-specific environmental analysis and NEPA requirements.

(10) Designate a NEPA PM to coordinate the MACOM NEPA program and maintain quality control of NEPA

analyses and documentation that are processed through the command.

(11) Budget for resources to maintain oversight of NEPA and this part.

(o) *Installation Commanders; Commanders of U.S. Army Reserve Regional Support Commands; and Director, National Guard Bureau–Army Reserve (NGB–ARE) (Installation Commanders.* Installation Commanders; Commanders of U.S. Army Reserve Regional Support Commands; and Director, National Guard Bureau-Army Reserve (NGB–ARE) (Installation Commanders will:

(1) Establish an installation (organizational) NEPA program and evaluate its performance through the Environmental Quality Control Committee (EQCC) as required by AR 200–1, Environmental Protection and Enhancement.

(2) Designate a NEPA PM to coordinate and manage the installation's NEPA program, integrating it into all activities and programs at the installation. The installation commander will notify the MACOM of the designation.

(3) Establish a process that ensures coordination with the MACOM, other installation staff elements (to include PAOs and tenants) and others to incorporate NEPA requirements early in the planning of projects and activities.

(4) Ensure that actions subject to NEPA are coordinated with appropriate installation organizations responsible for such activities as master planning, natural and cultural resources management, or other installation activities and programs.

(5) Ensure that funding for environmental analysis is prioritized and planned, or otherwise arranged by the proponent, and that preparation of NEPA analyses, including the involvement of the public, is consistent with the requirements of this part.

(6) Approve NEPA analyses for actions under their purview. The Adjutant General will review and endorse documents and forward to the NGB for final approval.

(7) Ensure the proponent initiates the NEPA analysis of environmental consequences and assesses the environmental consequences of proposed programs and projects early in the planning process.

(8) Assist in the review of NEPA analyses affecting the installation or activity, and those prepared by DOD and other Army or federal agencies, as requested.

(9) Provide information through the chain of command on proposed actions of national interest to higher headquarters prior to initiation of NEPA documentation.

(10) Maintain official record copies of all NEPA documentation for which they are the proponent and forward electronic copies of EISs and EAs through the MACOM to ODEP.

(11) Ensure that the installation proponents initiate required environmental analyses early in the planning process and plan the preparation of necessary NEPA documentation.

(12) Ensure NEPA awareness and/or training is provided for professional staff, installation-level proponents, and document reviewers (for example, master planning, range control, etc.).

(13) Solicit support from MACOMs, CBTDEVs, and MATDEVs, as appropriate, in preparing site-specific environmental analysis.

(14) Ensure that local citizens are aware of and, where appropriate, involved in NEPA analyses, and that public comments are seriously considered.

(15) Use environmental impact analyses to determine the best alternatives from an environmental perspective, and to ensure that these determinations are part of the Army decision process.

(p) *Environmental Officers.* Environmental officers (at the Installation, MACOM, and Army activity level) shall, under the authority of the Installation Commander; Commanders of U.S. Army Reserves Regional Support Commands, and Director NGB–ARE (Installation Commanders):

(1) Represent the Installation, MACOM, or activity Commander on NEPA matters.

(2) Advise the proponent on the selection, preparation, and completion of NEPA analyses and documentation. This approach will include oversight on behalf of the proponent to ensure adequacy and support for the proposed action, including mitigation monitoring.

(3) Develop and publish local guidance and procedures for use by NEPA proponents to ensure that NEPA documentation is procedurally and technically correct. (This includes approval of Records of Environmental Consideration (RECs).)

(4) Identify any additional environmental information needed to support informed Army decision-making.

(5) Budget for resources to maintain oversight with NEPA and this part.

(6) Assist proponents, as necessary, to identify issues, impacts, and possible alternatives and/or mitigations relevant to specific proposed actions.

(7) Assist, as required, in monitoring to ensure that specified mitigation measures in NEPA analyses are accomplished. This monitoring includes assessing the effectiveness of the mitigations.

(8) Ensure completion of agency and community coordination.

(q) *Proponents.* Proponents at all levels will:

(1) Identify the proposed action, the purpose and need, and reasonable alternatives for accomplishing the action.

(2) Fund environmental analyses and prepare NEPA analyses and documentation for their proposed actions. This responsibility will include negotiation for matrix support and services outside the chain of command when additional expertise is needed to prepare, review, or otherwise support the development and approval of NEPA analyses and documentation. These NEPA costs may be borne by successful contract offerers.

(3) Ensure accuracy and adequacy of NEPA analyses, regardless of the author. This work includes incorporation of comments from appropriate servicing Army environmental and legal staffs.

(4) Ensure adequate opportunities for public review and comment on proposed NEPA actions, in accordance with applicable laws and EOs as discussed in § 651.13(a). This step includes the incorporation of public and agency input into the decision-making process.

(5) Ensure that NEPA analysis is prepared and staffed sufficiently to comply with the intent and requirements of federal laws and Army policy. These documents will provide enough information to ensure that Army decision makers (at all levels) are informed in the performance of their duties (40 CFR 1501.2, 1505.1). This result requires coordination and resolution of important issues developed during the environmental analysis process, especially when the proposed action may involve significant environmental impacts, and includes the incorporation of comments from an affected installation's environmental office in recommendations made to decision makers.

(6) Adequately fund and implement the decision including all mitigation actions and effectiveness monitoring.

(7) Prepare and maintain the official record copy of all NEPA analyses and documentation for which they are the proponent. This step will include the provision of electronic copies of all draft and final EISs and Records of Decision (RODs) to ODEP for forwarding to the Defense Technical Information Center

(DTIC) as part of their public distribution procedures. In addition, copies of all EAs and FNSIs (in electronic copy) will be provided to ODEP. A copy of the documentation should be maintained for six years after signature of the FNSI/ROD.

(8) Maintain the administrative record for the environmental analysis performed. The administrative record shall be retained by the proponent for a period of six years after completion of the action, unless the action is controversial or of a nature that warrants keeping it longer. The administrative record includes all documents and information used to make the decision. This administrative record should contain, but is not limited to, the following types of records:

(i) Technical information used to develop the description of the proposed action, purpose and need, and the range of alternatives.

(ii) Studies and inventories of affected environmental baselines.

(iii) Correspondence with regulatory agencies.

(iv) Correspondence with, and comments from, private citizens, Native American tribes, Alaskan Natives, local governments, and other individuals and agencies contacted during public involvement.

(v) Maps used in baseline studies.

(vi) Maps and graphics prepared for use in the analysis.

(vii) Affidavits of publications and transcripts of any public participation.

(viii) Other written records that document the preparation of the NEPA analysis.

(ix) An index or table of contents for the administrative record.

(9) Identify other requirements that can be integrated and coordinated within the NEPA process. After doing so, the proponent should establish a strategy for concurrent, not sequential, compliance; sharing similar data, studies, and analyses; and consolidating opportunities for public participation. Examples of relevant statutory and regulatory processes are given in § 651.13(e).

(10) Identify and establish partnerships with public agencies, private organizations, and individuals that may have an interest in or jurisdiction over a resource that might be impacted. These partnerships should be accomplished in cooperation with the Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities. Applicable agencies include, but are not limited to:

(i) State Historic Preservation Officer.

(ii) Tribal Historic Preservation Officer.

(iii) U.S. Fish and Wildlife Service.

(iv) Regional offices of the EPA.

(v) State agencies charged with protection of the environment, natural resources, and fish and wildlife.

(vi) U.S. Army COE Civil Works functions, including Clean Water Act, Section 404, permitting and wetland protection.

(vii) National Marine Fisheries Service.

(viii) Local agencies and/or governing bodies.

(ix) Environmental interest groups.

(x) Minority, low-income, and disabled populations.

(xi) Tribal governments.

(xii) Existing advisory groups (for example, Restoration Advisory Boards, Citizens Advisory Commissions, etc.).

(11) Identify and coordinate, in concert with environmental offices, proposed actions and supporting environmental analyses with local and/or regional ecosystem management initiatives such as the Mojave Desert Ecosystem Management Initiative or the Chesapeake Bay Initiative.

(12) Review Army policies, including AR 200–1 (Environmental Protection and Enhancement), AR 200–3 (Natural Resources—Land, Forest, and Wildlife Management), and AR 200–4 (Cultural Resources Management) to ensure that the proposed action is coordinated with appropriate resource managers, operators, and planners, and is consistent with existing Army plans and their supporting NEPA analyses.

(13) Identify potential impacts to (and consult with as appropriate) American Indian, Alaskan Native, or Native Hawaiian lands, resources, or cultures (for example, sacred sites, traditional cultural properties, treaty rights, subsistence hunting or fishing rights, or cultural items subject to the Native American Graves Protection and Repatriation Act (NAGPRA)). All consultation shall be conducted on a Government-to-Government basis in accordance with the Presidential Memorandum on Government-to-Government Relations With Native American Tribal Governments (April 29, 1994) (3 CFR, 1994 Comp., p. 1007) and AR 200–4 (Cultural Resources Management). Proponents shall consider, as appropriate, executing Memoranda of Agreements (MOAs) with interested Native American groups and tribes to facilitate timely and effective participation in the NEPA process. These agreements should be accomplished in cooperation with Installation Environmental Offices in order to maintain contact and continuity with the regulatory and environmental communities.

(14) Review NEPA documentation that relies upon unfunded mitigations to determine if the NEPA analysis needs to be rewritten or updated. Such an update is required if the unfunded mitigation was used to support a FNSI. Additional public notice/involvement must accompany any rewrites.

(r) *The Commander, U.S. Army Training and Doctrine Command (TRADOC).* The Commander, TRADOC will:

(1) Ensure that NEPA requirements are understood and options incorporated in the Officer Foundation Standards (OFS).

(2) Integrate environmental considerations into doctrine, training, leader development, organization, materiel, and soldier (DTLOMS) processes.

(3) Include environmental expert representation on all Integrated Concept Teams (ICTs) involved in requirements determinations.

(4) Ensure that TRADOC CBTDEVs retain and transfer any environmental analysis or related data (such as alternatives analysis) to the MATDEV upon approval of a materiel need. This information and data will serve as the basis for the MATDEV's Acquisition Strategy and subsequent NEPA analyses.

(5) Ensure that environmental considerations are incorporated into the Mission Needs Statements (MNSs) and Operational Requirements Documents (ORDs).

§ 651.5 Army policies.

(a) NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; comprehensively integrating environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a

productive, meaningful way from the standpoint of environmental quality.

(b) The Army will actively incorporate environmental considerations into informed decision-making, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.

(c) Environmental analyses will reflect appropriate consideration of non-statutory environmental issues identified by federal and DOD orders, directives, and policy guidance. Some examples are in § 651.13 (e). Potential issues will be discussed and critically evaluated during scoping and other public involvement processes.

(d) The Army will continually take steps to ensure that the NEPA program is effective and efficient. Effectiveness of the program will be determined by the degree to which environmental considerations are included on a par with the military mission in project planning and decision-making. Efficiency will be promoted through the following:

(1) Awareness and involvement of the proponent in the NEPA process.

(2) NEPA technical and awareness training, as appropriate, at all decision levels of the Army.

(3) Where appropriate, the use of programmatic analyses and tiering to ensure consideration at the appropriate decision levels, elimination of repetitive discussion, consideration of cumulative effects, and focus on issues that are important and appropriate for discussion at each level.

(4) Use of the scoping and public involvement processes to limit the analysis of issues to those which are of interest to the public and/or important to the decision-making at hand.

(5) Elimination of needless paperwork by focusing documents on the major environmental issues affecting those decisions.

(6) Early integration of the NEPA process into all aspects of Army planning, so as to prevent disruption in the decision-making process; ensuring that NEPA personnel function as team members, supporting the Army planning process and sound Army decision-making. All NEPA analyses will be prepared by an interdisciplinary team.

(7) Partnering or coordinating with agencies, organizations, and individuals whose specialized expertise will improve the NEPA process.

(8) Oversight of the NEPA program to ensure continuous process improvement. NEPA requirements will be integrated into other environmental reporting requirements, such as the ISR.

(9) Clear and concise communication of data, documentation, and information relevant to NEPA analysis and documentation.

(10) Environmental analysis of strategic plans based on:

(i) Scoping thoroughly with agencies, organizations, and the public;

(ii) Setting specific goals for important environmental resources;

(iii) Monitoring of impacts to these resources;

(iv) Reporting of monitoring results to the public; and

(v) Adaptive management of Army operations to stay on course with the strategic plan's specific resource goals.

(11) Responsive staffing through HQDA and the Secretariat. Documents and transmittal packages will be acted upon within 14 calendar days of receipt by the subject office. These actions will be approved and transmitted, if the subject material is adequate; or returned with comment in those cases where additional work is required. Cases where these policies are violated should be identified to ASA(I&E) for resolution.

(e) Army leadership and commanders at all levels are required to:

(1) Establish and maintain the capability (personnel and other resources) to ensure adherence to the policies and procedures specified by this regulation. This should include the use of the PPBES, EPR, and other established resourcing processes. This capability can be provided through the use of a given mechanism or mix of mechanisms (contracts, matrix support, and full-time permanent (FTP) staff), but sufficient FTP staff involvement is required to ensure:

(i) Army cognizance of the analyses and decisions being made; and

(ii) Sufficient institutional knowledge of the NEPA analysis to ensure that Army NEPA responsibilities (pre-and post-decision) are met. Every person preparing, implementing, supervising, and managing projects involving NEPA analysis must be familiar with the requirements of NEPA and the provisions of this part.

(2) Ensure environmental responsibility and awareness among personnel to most effectively implement the spirit of NEPA. All personnel who are engaged in any activity or combination of activities that significantly affect the quality of the human environment will be aware of their NEPA responsibility. Only through alertness, foresight, notification through the chain of command, and training and education will NEPA goals be realized.

(f) The worldwide, transboundary, and long-range character of environmental problems will be recognized, and, where consistent with national security requirements and U.S. foreign policy, appropriate support will be given to initiatives, resolutions, and programs designed to maximize international cooperation in protecting the quality of the world human and natural environment. Consideration of the environment for Army decisions involving activities outside the United States will be accomplished pursuant to Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions, 4 January 1979), host country final governing standards, DOD Directive (DODD) 6050.7 (Environmental Effects Abroad of Major DOD Actions), DOD Instructions (DODIs), and the requirements of this part. An environmental planning and evaluation process will be incorporated into Army actions that may substantially affect the global commons, environments of other nations, or any protected natural or ecological resources of global importance.

(g) Army NEPA documentation must be periodically reviewed for adequacy and completeness in light of changes in project conditions.

(1) Supplemental NEPA documentation is required when:

(i) The Army makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.

(2) This review requires that the proponent merely initiate another ''hard look'' to ascertain the adequacy of the previous analyses and documentation in light of the conditions listed in paragraph (g)(1) of this section. If this review indicates no need for new or supplemental documentation, a REC can be produced in accordance with this part. Proponents are required to periodically review existing NEPA

analyses to ascertain the need for supplemental documentation and document this review in a REC format.

(h) Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, contractors must be selected in a manner avoiding any conflict of interest. Therefore, contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. The contractor's efforts should be closely monitored throughout the contract to ensure an adequate assessment/ statement and also avoid extensive, time-consuming, and costly analyses or revisions. Project proponents and NEPA program managers must be continuously informed and involved.

(i) When appropriate, NEPA analyses will reflect review for operations security principles and procedures, described in AR 530–1 (Operations Security (OPSEC)), on the cover sheet or signature page.

(j) Environmental analyses and associated investigations are advanced project planning, and will be funded from sources other than military construction (MILCON) funds. Operations and Maintenance Army (OMA), Operations and Maintenance, Army Reserve (OMAR), and Operations and Maintenance, Army National Guard (OMANG), RDT&E, or other operating funds are the proper sources of funds for such analysis and documentation. Alternative Environmental Compliance Achievement Program (non-ECAP) funds will be identified for NEPA documentation, monitoring, and other required studies as part of the MILCON approval process.

(k) Costs of design and construction mitigation measures required as a direct result of MILCON projects will be paid from MILCON funds, which will be included in the cost estimate and description of work on DD Form 1391, Military Construction Project Data.

(l) Response projects implemented in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) will not require separate NEPA analysis as long as the effort is conducted in a manner that incorporates NEPA requirements. If the following conditions are not met, additional or separate NEPA analyses and documentation will be required. This will require that:

(1) Prior to analysis and evaluation, full and open public participation will be facilitated to elicit views regarding alternative remedies and to frame the issues to be addressed in the analyses (the scope of the study);

(2) Proposed and alternative remedies, including the No Action alternative, will be addressed evaluating the significance of impacts, including off-site effects, resulting from alternative remediation processes; and

(3) The resulting document, such as the Feasibility Study (FS) or Engineering Evaluation/Cost Analysis (EE/CA), will be circulated for public review and comment. This review will require a minimum of 30 days and consideration of public comments prior to a decision being made. This analysis must be performed by an interdisciplinary team and must address impacts on the human and natural environment.

(m) MATDEVs, scientists and technologists, and CBTDEVs are responsible for ensuring that their programs comply with NEPA as directed in this part.

(1) Prior to assignment of a MATDEV to plan, execute, and manage a potential acquisition program, CBTDEVs will retain environmental analyses and data from requirements determination activities, and Science and Technology (S&T) organizations will develop and retain data for their technologies. These data will transition to the MATDEV upon assignment to plan, execute, and manage an acquisition program. These data (collected and produced), as well as the decisions made by the CBTDEVs, will serve as a foundation for the environment, safety, and health (ESH) evaluation of the program and the incorporation of program-specific NEPA requirements into the Acquisition Strategy. Programmatic ESH evaluation is considered during the development of the Acquisition Strategy as required by DOD 5000.2–R for all ACAT programs. Programmatic ESH evaluation is a process, not a document and is, thus, not a NEPA document. It is a planning, programming, and budgeting strategy into which the requirements of this regulation are integrated. Environmental analysis must be a continuous process throughout the materiel development program. During this continuous process, NEPA analysis and documentation may be required to support decision-making prior to any decision that will prejudice the ultimate decision or selection of alternatives (40 CFR 1506.1). In accordance with DOD 5000.2.R, the MATDEV is responsible for environmental analysis of acquisition life-cycle activities (including disposal). Planning to accomplish these responsibilities will be included in the appropriate section of the Acquisition Strategy.

(2) MATDEVs are responsible for the documentation regarding general environmental effects of all aspects of the system (including operational fielding and disposal) and the specific effects for all activities for which he/she is the proponent.

(3) MATDEVs will include, in their Acquisition Strategy, provisions for developing and supplementing their NEPA analyses and documentation, and provide data to support supplemental analyses, as required, throughout the life cycle of the system. The MATDEV will coordinate with ASA (AL&T) or MACOM proponent office, ACSIM, and ASA(I&E), identifying NEPA analyses and documentation needed to support milestone decisions. This requirement will be identified in the Acquisition Strategy and the status will be provided to the ACSIM representative prior to milestone review. The Acquisition Strategy will outline the system-specific plans for NEPA compliance, which will be reviewed and approved by the appropriate MDA and ACSIM. Compliance with this plan will be addressed at Milestone Reviews.

(n) AR 700–142 requires that environmental requirements be met to support materiel fielding. During the development of the Materiel Fielding Plan (MFP), and Materiel Fielding Agreement (MFA), the MATDEV and the materiel receiving command will identify environmental information needed to support fielding decisions. The development of generic system environmental and NEPA analyses, including military construction requirements and new equipment training issues, will be the responsibility of the MATDEV. The development of site-specific environmental analyses and NEPA documentation (EAs/EISs), using generic system environmental analyses supplied by the MATDEV, will be the responsibility of the receiving Command.

(o) Army proponents are encouraged to draw upon the special expertise available within the Office of the Surgeon General (OSG) (including the U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM)), to identify and evaluate environmental health impacts, and other agencies, such as USAEC, can be used to assess potential environmental impacts). In addition, other special expertise is available in the Army, DOD, other federal agencies, state and local agencies, tribes, and other organizations and individuals. Their participation and assistance is also encouraged.

§ 651.6 NEPA analysis staffing.

(a) NEPA analyses will be prepared by the proponent using appropriate resources (funds and manpower). The proponent, in coordination with the appropriate NEPA program manager, shall determine who, what, where, when, and how the document will be prepared. In cases where the document addresses impacts to an environment whose management is not in the proponents' chain of command (for example, installation management of a range for MATDEV testing or installation management of a fielding location), the proponent shall coordinate the analysis and preparation of the document and identify the resources needed for its preparation and staffing through the command structure of that affected activity.

(b) The approving official is responsible for approving NEPA documentation and ensuring completion of the action, including any mitigation actions needed. The approving official may be an installation commander; or, in the case of combat/materiel development, the MATDEV, MDA, or AAE.

(c) Approving officials may select a lead reviewer for NEPA analysis before approving it. The lead reviewer will determine and assemble the personnel needed for the review process. Funding needed to accomplish the review shall be negotiated with the proponent, if required. Lead reviewer may be an installation EC or a NEPA POC designated by an MDA for a combat/materiel development program.

(d) The most important document is the initial NEPA document being processed. After initial scoping, it is released to the public for review and comment (for example, a draft FNSI/EA or draft EIS). This document will be complete and accurate prior to public release. Army reviewers are accountable for ensuring thorough early review of draft NEPA analyses. Any organization that raises new concerns or comments during final staffing will explain why issues were not raised earlier. NEPA analyses requiring public release in the FR will be forwarded to ASA(I&E), through the chain of command, for review. This includes all EISs and all EAs that are of national interest or concern. The activities needed to support public release will be coordinated with ASA(I&E). Public release will not proceed without ASA(I&E) approval.

(e) Public release of NEPA analyses in the FR should be limited to EISs, or EAs that are environmentally controversial or of national interest or concern. When analyses address actions affecting numerous sites throughout the Continental United States (CONUS), the proponent will carefully evaluate the need for publishing an NOA in the FR, as this requires an extensive review process, as well as supporting documentation alerting EPA and members of Congress of the action. At a minimum, and depending on the proponent's command structure, the following reviews must be accomplished:

(1) The NEPA analysis must be reviewed by the MACOM Legal Counsel or TJAG, ACSIM, ASA(I&E), and Office of General Counsel (OGC).

(2) The supporting documentation must be reviewed by Office of the Chief of Legislative Liaison (OCLL) and Office of the Chief of Public Affairs (OCPA).

(3) Proponents must allow a minimum of 30 days to review the documentation and must allow sufficient time to address comments from these offices prior to publishing the NOA.

(4) The proponent may consider publishing the NOA in local publication resources near each site. Proponents are strongly advised to seek the assistance of the local environmental office and command structure in addressing the need for such notification.

§ 651.7 Delegation of authority for non-acquisition systems.

(a) MACOMs can request delegation authority and responsibility for an EA of national concern or an EIS from ASA(I&E). The proponent, through the appropriate chain of command, and with the concurrence of environmental offices, forwards to HQDA (ODEP) the request to propose, prepare, and finalize an EA and FNSI or EIS through the ROD stage. The request must include, at a minimum, the following:

(1) A description of the purpose and need for the action.

(2) A description of the proposed action and a preliminary list of alternatives to that proposed action, including the ''no action'' alternative. This constitutes the DOPAA.

(3) An explanation of funding requirements, including cost estimates, and how they will be met.

(4) A brief description of potential issues of concern or controversy, including any issues of potential Army-wide impact.

(5) A plan for scoping and public participation.

(6) A timeline, with milestones for the EIS action.

(b) If granted, a formal letter will be provided by ASA(I&E) outlining extent, conditions, and requirements for the NEPA action. Only the ASA(I&E) can delegate this authority and responsibility. When delegated signature authority by HQDA, the MACOM will be responsible for complying with this part and associated Army environmental policy. This delegation, at the discretion of ASA(I&E), can include specific authority and responsibility for coordination and staffing of:

(1) EAs and FNSIs, and associated transmittal packages, as specified in § 651.35(e).

(2) NOIs, Preliminary Draft EISs (PDEISs), Draft EISs (DEISs), Final EISs (FEISs), RODs and all associated transmittal packages as specified in § 651.45(a)(1), (d)(1), (d)(2), (g), and (i), respectively. Such delegation will specify requirements for coordination with ODEP and ASA(I&E).

§ 651.8 Disposition of final documents.

All NEPA documentation and supporting administrative records shall be retained by the proponent's office for a minimum of six years after signature of the FNSI/ROD or the completion of the action, whichever is greater. Copies of final EAs and EISs will be forwarded to ODEP for cataloging and retention in the Army NEPA library. The ACSIM shall retain a copy of each draft EIS (DEIS) until such time as the final EIS (FEIS) is approved. The FEIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid. The ACS(IM) shall forward copies of all FEISs to DTIC, the National Archives and Records Administration.

Subpart B—National Environmental Policy Act and the Decision Process

§ 651.9 Introduction.

(a) The NEPA process is the systematic examination of possible and probable environmental consequences of implementing a proposed action. Integration of the NEPA process with other Army projects and program planning must occur at the earliest possible time to ensure that:

(1) Planning and decision-making reflect Army environmental values, such as compliance with environmental policy, laws, and regulations; and that these values are evident in Army decisions. In addition, Army decisions must reflect consideration of other requirements such as Executive Orders and other non-statutory requirements, examples of which are enumerated in § 651.13(e).

(2) Army and DOD environmental policies and directives are implemented.

(3) Delays and potential conflicts in the process are minimized. The public should be involved as early as possible to avoid potential delays.

(b) All Army decision-making that may impact the human environment will use a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences, planning, and the environmental design arts (section 102(2)(a), Public Law 91–190, 83 Stat. 852, National Environmental Policy Act of 1969 (NEPA)). This approach allows timely identification of environmental effects and values in sufficient detail for concurrent evaluation with economic, technical, and mission-related analyses, early in the decision process.

(c) The proponent of an action or project must identify and describe all reasonable alternatives to the proposed action or project, taking a ''hard look'' at the magnitude of potential impacts of implementing the reasonable alternatives, and evaluating their significance. To assist in identifying reasonable alternatives, the proponent often consults the installation environmental office and appropriate federal, tribal, state, and local agencies, and the general public.

§ 651.10 Actions requiring environmental analysis.

The general types of proposed actions requiring environmental impact analysis under NEPA include:

(a) Policies, regulations, and procedures (for example, Army and installation regulations).

(b) New management and operational concepts and programs, including logistics; RDT&E; procurement; personnel assignment; real property and facility management; and environmental programs such as Integrated Natural Resource Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP), and Integrated Pest Management Plan.

(c) Projects involving facilities construction.

(d) Operations and activities including individual and unit training, flight operations, overall operation of installations, or facility test and evaluation programs.

(e) Requests for licenses for operations or special material use, including a Nuclear Regulatory Commission (NRC) license, an Army radiation authorization, or Federal Aviation Administration air space request (new, renewal, or amendment), in accordance with AR 95–50.

(f) Materiel development, operation and support, disposal, and/or modification as required by DOD 5000.2–R.

(g) Transfer of significant equipment or property to the ARNG or Army Reserve.

(h) Research and development including areas such as genetic engineering, laser testing, and electromagnetic pulse generation.

(i) Leases, easements, permits, licenses, or other entitlement for use, to include donation, exchange, barter, or Memorandum of Understanding (MOU). Examples include grazing leases, grants of easement for highway right-of-way, and requests by the public to use land for special events such as air shows or carnivals.

(j) Federal contracts, grants, subsidies, loans, or other forms of funding such as Government-Owned, Contractor-Operated (GOCO) industrial plants or housing and construction via third-party contracting.

(k) Request for approval to use or store materials, radiation sources, hazardous and toxic material, or wastes on Army land. If the requester is non-Army, the responsibility to prepare proper environmental documentation may rest with the non-Army requester, who will provide needed information for Army review. The Army must review and adopt all NEPA documentation before approving such requests.

(l) Projects involving chemical weapons/munitions.

(m) Actions taken in response to the Resource Conservation and Recovery Act (RCRA) or the Comprehensive Environmental Recovery and Compensation Act (CERCLA) (see § 651.5(1)).

§ 651.11 Environmental review categories.

The following are the five broad categories into which a proposed action may fall for environmental review:

(a) *Exemption by law.* The law must apply to DOD and/or the Army and must prohibit, exempt, or make impossible full compliance with the procedures of NEPA (40 CFR 1506.11). While some aspects of Army decision-making may be exempted from NEPA, other aspects of an action are still subject to NEPA analysis and documentation. The fact that Congress has directed the Army to take an action does not constitute an exemption.

(b) *Emergencies.* In the event of an emergency, the Army may need to take immediate actions that have environmental impacts, such as those to promote national defense or security or to protect life or property. In such cases, the HQDA proponent will notify the ODEP, which in turn will notify the ASA(I&E). ASA(I&E) will coordinate with the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)) and the CEQ regarding the emergency and subsequent NEPA compliance after the emergency action has been completed. These notifications apply only to actions necessary to control the immediate effects of the emergency. Other actions remain subject to NEPA review (40 CFR 1506.11). A public affairs plan should be developed to ensure open communication among the media, the public, and the installation. The Army will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this regulation or the CEQ regulations. State call-ups of ARNG during a natural disaster or other state emergency are excluded from this consultation requirement. After action reports may be required at the discretion of the ASA(I&E).

(c) *Categorical Exclusions (CXs).* These are categories of actions that normally do not require an EA or an EIS. The Army has determined that they do not individually or cumulatively have a substantial effect on the human environment. Qualification for a CX is further described in Subpart D and Appendix B of this part. Any actions that degrade the existing environment or are environmentally controversial or adversely affect environmentally sensitive resources will require an EA (see § 651.29).

(d) *Environmental Assessment.* Proposed Army actions not covered in the first three categories (§ 651.11(a) through (c)) must be analyzed to determine if they could cause significant impacts to the human or natural environment (see § 651.39). The EA determines whether possible impacts are significant, thereby warranting an EIS. This requires a ''hard look'' at the magnitude of potential impacts, evaluation of their significance, and documentation in the form of either an NOI to prepare an EIS or a FNSI. The format and requirements for this analysis are addressed in Subpart E of this part (see § 651.33 for actions normally requiring an EA). The EA is a valuable planning tool to discuss and document environmental impacts, alternatives, and controversial actions, providing public and agency participation, and identifying mitigation measures.

(e) *EIS.* When an action clearly has significant impacts or when an EA cannot be concluded by a FNSI, an EIS must be prepared. An EIS is initiated by the NOI (§ 651.22), and will examine the significant environmental effects of the

proposed action as well as accompanying measures to mitigate those impacts. This process requires formal interaction with the public, a formal ''scoping'' process, and specified timelines for public review of the documentation and the incorporation of public comments. The format and requirements for the EIS are addressed in Subpart F of this part (see § 651.42 for actions normally requiring an EIS).

§ 651.12 Determining appropriate level of NEPA analysis.

(a) The flow chart shown in Figure 1 summarizes the process for determining documentation requirements, as follows:

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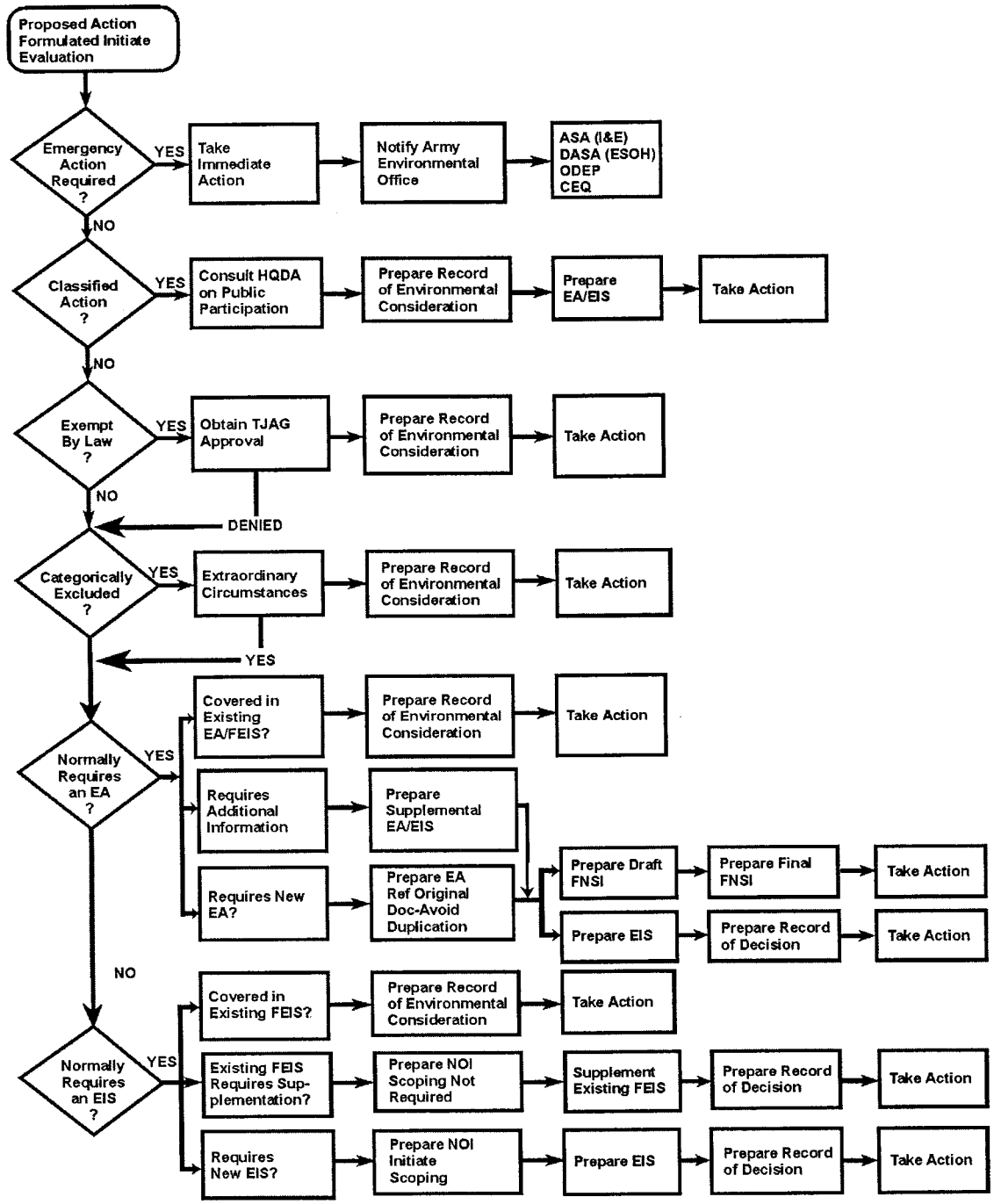

Figure 1. Flow chart summarizing process for determination of document requirements.

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(1) If the proposed action qualifies as a CX (Subpart D of this part), and the screening criteria are met (§ 651.29), the action can proceed. Some CXs require a REC.

(2) If the proposed action is adequately covered within an existing EA or EIS, a REC is prepared to that effect. The REC should state the applicable EA or EIS title and date, and identify where it may be reviewed (§ 651.19). The REC is then attached to the proponent's record copy of that EA or EIS.

(3) If the proposed action is within the general scope of an existing EA or EIS, but requires additional information, a supplement is prepared, considering the new, modified, or missing information. Existing documents are incorporated by reference and conclusions are published as either a FNSI or NOI to supplement the EIS.

(4) If the proposed action is not covered adequately in any existing EA or EIS, or is of a significantly larger scope than that described in the existing document, an EA is prepared, followed by either a FNSI or NOI to prepare an EIS. Initiation of an EIS may proceed without first preparing an EA, if deemed appropriate by the proponent.

(5) If the proposed action is not within the scope of any existing EA or EIS, then the proponent must begin the preparation of a new EA or EIS, as appropriate.

(b) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will retain record keeping for RECs and RODs.

§ 651.13 Classified actions.

(a) For proposed actions and NEPA analyses involving classified information, AR 380–5 (Department of the Army Information Security Program) will be followed.

(b) Classification does not relieve a proponent of the requirement to assess and document the environmental effects of a proposed action.

(c) When classified information can be reasonably separated from other information and a meaningful environmental analysis produced, unclassified documents will be prepared and processed in accordance with this regulation. Classified portions will be kept separate and provided to reviewers and decision makers in accordance with AR 380–5.

(d) When classified information is such an integral part of the analysis of a proposal that a meaningful unclassified NEPA analysis cannot be produced, the proponent, in consultation with the appropriate security and environmental offices, will form a team to review classified NEPA analysis. This interdisciplinary team will include environmental professionals to ensure that the consideration of environmental effects will be consistent with the letter and intent of NEPA, including public participation requirements.

§ 651.14 Integration with Army planning.

(a) *Early integration.* The Army goal is to concurrently integrate environmental reviews with other Army planning and decision-making actions, thereby avoiding delays in mission accomplishment. To achieve this goal, proponents shall plan for completing NEPA analysis to support any recommendation or report to decision makers prior to the decision. Early planning (inclusion in Installation Master Plans, INRMPs, ICRMPs, Acquisition Strategies, strategic plans, etc.) will allow efficient program or project execution later in the process.

(1) The planning process will identify issues that are likely to have an effect on the environment, or to be controversial. In most cases, local citizens and/or existing advisory groups should assist in identifying potentially controversial issues during the planning process. The planning process also identifies minor issues that have little or no measurable environmental effect, and it is sound NEPA practice to reduce discussion of minor issues to help focus analyses.

(2) Decision makers will be informed of and consider the environmental consequences at the same time as other factors such as mission requirements, schedule, and cost. If permits or coordination are required (for example, Section 404 of the Clean Water Act, Endangered Species Act consultation, Section 106 of the National Historic Preservation Act (NHPA), etc.), they should be initiated at the scoping phase of the process and should run parallel to the NEPA process, not sequential to it. This practice is in accordance with the recommendations presented in the CEQ publication entitled ''The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years.''

(3) NEPA documentation will accompany the proposal through the Army review and decision-making processes. These documents will be forwarded to the planners, designers, and/or implementers, ensuring that the recommendations and mitigations upon which the decision was based are being carried out. The implementation process will provide necessary feedback for adaptive environmental management; responding to inaccuracies or uncertainties in the Army's ability to accurately predict impacts, changing field conditions, or unexpected results from monitoring. The integration of NEPA into the ongoing planning activities of the Army can produce considerable savings to the Army.[1]

(b) *Time limits.* The timing of the preparation, circulation, submission, and public availability of NEPA documentation is important to ensure that environmental values are integrated into Army planning and decisions.

(1) *Categorical exclusions.* When a proposed action is categorically excluded from further environmental review (Subpart D and Appendix B of this part), the proponent may proceed immediately with that action upon receipt of all necessary approvals, (including environmental office confirmation that the CX applies to the proposal) and the preparation of a REC, if required.

(2) *Findings of no significant impact.* (i) A proponent will make an EA and draft FNSI available to the public for review and comment for a minimum of 30 days prior to making a final decision and proceeding with an action. If the proposed action is one of national concern, is unprecedented, or normally requires an EIS, the FNSI must be published in the FR. Otherwise, the FNSI must be published in local newspapers and be made widely available. The FNSI must articulate the deadline for receipt of comments, availability of the EA for review, and steps required to obtain the EA. This can include a POC, address, and phone number; a location; a reference to a website; or some equivalent mechanism. (In no cases will the only coordination mechanism be a website.) At the conclusion of the appropriate comment period, as specified in Figure 2, the proponent may sign the FNSI and take immediate action, unless sufficient public comments are received to

[1] For example, a well-executed EA or EIS on an Installation Master Plan can eliminate the need for many case-by-case analyses and documentation for construction projects. After the approval of an adequate comprehensive plan which adequately addresses the potential for environmental effects), subsequent projects can tier off the Master Plan NEPA analysis (AR 210–20). Other integration of the NEPA process and broad-level planning can lead to the ''tiering'' of NEPA, allowing the proponent to minimize the effort spent on individual projects. and ''incorporating by reference'' the broader level environmental considerations. This tiering allows the development of program level (programmatic) EAs and EISs, which can introduce greate economies of scale. These assessments are addressed in more detail in § 651.14(c).

warrant more time for their resolution.
Figure 2 follows:

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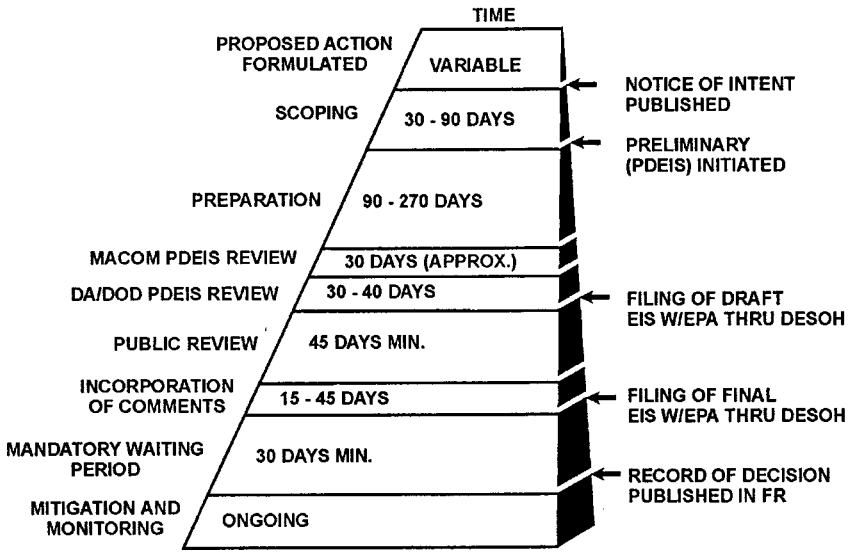

Figure 2. Time involved for preparing and processing an environmental impact statement.

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(ii) A news release is required to publicize the availability of the EA and draft FNSI, and a simultaneous announcement that includes publication in the FR must be made by HQDA, if warranted (see § 651.14(a)). The 30-day waiting period begins at the time that the draft FNSI is publicized (40 CFR 1506.6(b)).

(iii) In cases where the 30-day comment period jeopardizes the project and the full comment period would provide no public benefit, the period may be shortened with appropriate approval by a higher decision authority (such as a MACOM). In no circumstances should the public comment period for an EA/draft FNSI be less than 15 days. A deadline and POC for receipt of comments must be included for receipt of comments in the draft FNSI and the news release.

(3) *EIS.* The EPA publishes a weekly notice in the FR of the EISs filed during the preceding week. This notice usually occurs each Friday. An NOA reaching EPA on a Friday will be published in the following Friday issue of the FR. Failure to deliver an NOA to EPA by close of business on Friday will result in an additional one-week delay. A news release publicizing the action will be made in conjunction with the notice in the FR. The following time periods calculated from the publication date of the EPA notice will be observed:

(i) Not less than 45 days for public comment on DEISs (40 CFR 1506.10(c)).

(ii) Not less than 15 days for public availability of DEISs prior to any public hearing on the DEIS (40 CFR 1506.(c)(2)).

(iii) Not less than 90 days from filing the DEIS prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10(b) and (c)).

(iv) The time periods prescribed here may be extended or reduced in accordance with 40 CFR 1506.10(b)(2) and 1506.10(d).

(v) When variations to these time limits are set, the Army agency should consider the factors in 40 CFR 1501.8(b)(1).

(vi) The proponent may also set time limits for other procedures or decisions related to DEISs and FEISs as listed in 40 CFR 1501.8(b)(2).

(vii) Because the entire EIS process could require more than one year (Figure 2 in paragraph (b)(2)(i) of this section), the process must begin as soon as the project is sufficiently mature to allow analysis of alternatives and the proponent must coordinate with all staff elements with a role to play in the NEPA process. DEIS preparation and response to comments constitute the largest portion of time to prepare an FEIS.

(viii) A public affairs plan should be developed that provides for periodic interaction with the community. There is a minimum public review time of 90 days between the publication of the DEIS and the announcement of the ROD. Army EISs are not normally processed in so short a time due to the internal staffing required for this type of action. After the availability of the ROD is announced, the action may proceed. This announcement must be made through the FR for those EISs for which HQDA signs the ROD. For other EISs, announcements in the local press are adequate. Figure 2 in paragraph b(2)(i) of this section indicates typical and required time periods for EISs.

(c) *Programmatic environmental review (tiering).* (1) Army agencies are encouraged to analyze actions at a programmatic level for those programs that are similar in nature or broad in scope (40 CFR 1502.4(c), 1502.20, and 1508.23). This level of analysis will eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad programmatic EA or EIS has been prepared, any subsequent EIS or EA on an action included within the entire program or policy (particularly a site-specific action) need only summarize issues discussed in the broader statement and concentrate on the issues specific to the subsequent action.[2] This subsequent document will state where the earlier document is available.

(2) Army proponents are normally required to prepare many types of management plans that must include or be accompanied by appropriate NEPA analysis. NEPA analysis for these types of plans can often be accomplished with a programmatic approach, creating an analysis that covers a number of smaller projects or activities. In cases where such activities are adequately assessed as part of these normal planning activities, a REC can be prepared for smaller actions that cite the document in which the activities were previously assessed. Care must be taken to ensure that site-specific or case-specific conditions are adequately addressed in the existing programmatic document before a REC can be used, and the REC must reflect this consideration. If additional analyses are required, they can ''tier'' off the original analyses, eliminating duplication. Tiering, in this manner, is often applicable to Army actions that are long-term, multi-faceted, or multi-site.

(d) *Scoping.* (1) When the planning for an Army project or action indicates a need for an EIS, the proponent initiates the scoping process (see Subpart G of this part for procedures and actions). This process determines the scope of issues to address in the EIS and identifies the significant issues related to the proposed action. During the scoping, process participants identify the range of actions, alternatives, and impacts to consider in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other NEPA documents. The scoping phase of the NEPA process, as part of project planning, will identify aspects of the proposal that are likely to have an effect or be controversial; and will ensure that the NEPA analyses are useful for a decision maker. For example, the early identification and initiation of permit or coordination actions can facilitate problem resolution, and, similarly, cumulative effects can be addressed early in the process and at the appropriate spatial and temporal scales.

(2) The extent of the scoping process, including public involvement, will depend on several factors. These factors include:

(i) The size and type of the proposed action.

(ii) Whether the proposed action is of regional or national interest.

(iii) Degree of any associated environmental controversy.

(iv) Size of the affected environmental parameters.

(v) Significance of any effects on them.

(vi) Extent of prior environmental review.

(vii) Involvement of any substantive time limits.

(viii) Requirements by other laws for environmental review.

(ix) Cumulative impacts.

(3) Through scoping, many future controversies can be eliminated, and public involvement can be used to narrow the scope of the study, concentrating on those aspects of the analysis that are truly important.

(4) The proponent may incorporate scoping as part of the EA process, as well. If the proponent chooses a public involvement strategy, the extent of scoping incorporated is at the proponent's discretion.

(e) *Analyses and documentation.* Several statutes, regulations, and Executive Orders require analyses,

[2] As an example, an appropriate way to address diverse weapon system deployments would be to produce site-specific EAs or EISs for each major deployment installation, using the generic environmental effects of the weapon system identified in a programmatic EA or EIS prepared by the MATDEV.

consultation, documentation, and coordination, which duplicate various elements and/or analyses required by NEPA and the CEQ regulations; often leading to confusion, duplication of effort, omission, and, ultimately, unnecessary cost and delay. Therefore, Army proponents are encouraged to identify, early in the NEPA process, opportunities for integrating those requirements into proposed Army programs, policies, and projects. Environmental analyses required by this part will be integrated as much as practicable with other environmental reviews, laws, and Executive Orders (40 CFR 1502.25). Incorporation of these processes must ensure that the individual requirements are met, in addition to those required by NEPA. The NEPA process does not replace the procedural or substantive requirements of other environmental statutes and regulations. Rather, it addresses them in one place so the decision maker has a concise and comprehensive view of the major environmental issues and understands the interrelationships and potential conflicts among the environmental components. NEPA is the ''umbrella'' that facilitates such coordination by integrating processes that might otherwise proceed independently. Prime candidates for such integration include, but are not limited to, the following:

(1) Clean Air Act, as amended (General Conformity Rule, 40 CFR parts 51 and 93).

(2) Endangered Species Act.

(3) NHPA, sections 106 and 110.

(4) NAGPRA (Public Law 101–601, 104 Stat. 3048).

(5) Clean Water Act, including Section 404(b)(1).

(6) American Indian Religious Freedom Act.

(7) Fish and Wildlife Coordination Act.

(8) Comprehensive Environmental Response, Compensation, and Liability Act.

(9) Resource Conservation and Recovery Act.

(10) Pollution Prevention Act.

(11) The Sikes Act, Public Law 86–797, 74 Stat. 1052.

(12) Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements (Executive Order 12856, 3 CFR, 1993 Comp., p. 616).

(13) Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898, 3 CFR, 1994 Comp., p. 859).

(14) Indian Sacred Sites (Executive Order 13007, 3 CFR, 1996 Comp., p. 196).

(15) Protection of Children From Environmental Health Risks and Safety Risks (Executive Order 13045, 3 CFR, 1997 Comp., p. 198).

(16) Federal Support of Community Efforts Along American Heritage Rivers (Executive Order 13061, 3 CFR, 1997 Comp., p. 221).

(17) Floodplain Management (Executive Order 11988, 3 CFR, 1977 Comp., p.117).

(18) Protection of Wetlands (Executive Order 11990, 3 CFR, 1977 Comp., p. 121).

(19) Environmental Effects Abroad of Major Federal Actions (Executive Order 12114, 3 CFR, 1979 Comp., p. 356).

(20) Invasive Species (Executive Order 13112, 3 CFR, 1999 Comp., p. 159).

(21) DODD 4700.4, Natural Resources Management Program, Integrated Natural Resources Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP).

(22) AR 200–3, Natural Resources—Land, Forest, and Wildlife Management.

(23) Environmental analysis and documentation required by various state laws.

(24) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(25) Any permitting and licensing procedures required by federal and state law.

(26) Any installation and Army master planning functions and plans.

(27) Any installation management plans, particularly those that deal directly with the environment.

(28) Any stationing and installation planning, force development planning, and materiel acquisition planning.

(29) Environmental Noise Management Program.

(30) Hazardous waste management plans.

(31) Integrated Cultural Resource Management Plan as required by AR 200–4.

(32) Asbestos Management Plans.

(33) Integrated Natural Resource Management Plans.

(34) Environmental Baseline Surveys.

(35) Programmatic Environment, Safety, and Health Evaluation (PESHE) as required by DOD 5000.2–R and DA Pamphlet 70–3, Army Acquisition Procedures, supporting AR 70–1, Acquisition Policy.

(36) The DOD MOU to Foster the Ecosystem Approach signed by CEQ, and DOD, on 15 December 1995; establishing the importance of ''non-listed,'' ''non-game,'' and ''non-protected'' species.

(37) Other requirements (such as health risk assessments), when efficiencies in the overall Army environmental program will result.

(f) *Integration into Army acquisition.* The Army acquisition community will integrate environmental analyses into decision-making, as required in this part ensuring that environmental considerations become an integral part of total program planning and budgeting, PEOs, and Program, Product, and Project Managers integrate the NEPA process early, and acquisition planning and decisions reflect national and Army environmental values and considerations. By integrating pollution prevention and other aspects of any environmental analysis early into the materiel acquisition process, the PEO and PM facilitate the identification of environmental cost drivers at a time when they can be most effectively controlled. NEPA program coordinators should refer to DA Pamphlet 70–3, Army Acquisition Procedures, and the Defense Acquisition Deskbook (DAD) for current specific implementation guidance, procedures, and POCs.

(g) *Relations with local, state, regional, and tribal agencies.* (1) Army installation, agency, or activity environmental officers or planners should establish a continuing relationship with other agencies, including the staffs of adjacent local, state, regional, and tribal governments and agencies. This relationship will promote cooperation and resolution of mutual land use and environment-related problems, and promote the concept of regional ecosystem management as well as general cooperative problem solving. Many of these ''partners'' will have specialized expertise and access to environmental baseline data, which will assist the Army in day-to-day planning as well as NEPA-related issues. MOUs are encouraged to identify areas of mutual interest, establish POCs, identify lines of communication between agencies, and specify procedures to follow in conflict resolution. Additional coordination is available from state and area-wide planning and development agencies. Through this process, the proponent may gain insights on other agencies' approaches to EAs, surveys, and studies applicable to the current proposal. These other agencies would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

(2) In some cases, local, state, regional, or tribal governments or agencies will have sufficient jurisdiction by law or special expertise with respect to reasonable alternatives or significant environmental, social, or economic impacts associated with a proposed

action. When appropriate, proponents of an action should determine whether these entities have an interest in becoming a cooperating agency (§ 651.45(b) and 40 CFR 1501.6). If cooperating agency status is established, a memorandum of agreement is required to document specific expectations, roles, and responsibilities, including analyses to be performed, time schedules, availability of pre-decisional information, and other issues. Cooperating agencies may use their own funds, and the designation of cooperating agency status neither enlarges nor diminishes the decision-making status of any federal or non-federal entities (see CEQ Memorandum for Heads of Federal Agencies entitled ''Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act'' dated 28 July 1999, available from the President's Council on Environmental Quality (CEQ), Executive Office of the President of the U.S.). In determining sufficient jurisdiction or expertise, CEQ regulations can be used as guidance.

(h) *The Army as a cooperating agency.* Often, other agencies take actions that can negatively impact the Army mission. In such cases, the Army may have some special or unique expertise or jurisdiction.

(1) The Army may be a cooperating agency (40 CFR 1501.6) in order to:

(i) Provide information or technical expertise to a lead agency.

(ii) Approve portions of a proposed action.

(iii) Ensure the Army has an opportunity to be involved in an action of another federal agency that will affect the Army.

(iv) Provide review and approval of EISs and RODs.

(2) Adequacy of an EIS is primarily the responsibility of the lead agency. However, as a cooperating agency with approval authority over portions of a proposal, the Army may adopt an EIS if review concludes the EIS adequately satisfies the Army's comments and suggestions.

(3) If the Army is a major approval authority for the proposed action, the appropriate Army official may sign the ROD prepared by the lead agency, or prepare a separate, more focused ROD. If the Army's approval authority is only a minor aspect of the overall proposal, such as issuing a temporary use permit, the Army need not sign the lead agency's ROD or prepare a separate ROD.

(4) The magnitude of the Army's involvement in the proposal will determine the appropriate level and scope of Army review of NEPA documents. If the Army is a major approval authority or may be severely impacted by the proposal or an alternative, the Army should undertake the same level of review as if it were the lead agency. If the involvement is limited, the review may be substantially less. The lead agency is responsible for overall supervision of the EIS, and the Army will attempt to meet all reasonable time frames imposed by the lead agency.

(5) If an installation (or other Army organization) should become aware of an EIS being prepared by another federal agency in which they may be involved within the discussion of the document, they should notify ASA(I&E) through the chain of command. ASA(I&E) will advise regarding appropriate Army participation as a cooperating agency, which may simply involve local coordination.

§ 651.15 Mitigation and monitoring.

(a) Throughout the environmental analysis process, the proponent will consider mitigation measures to avoid or minimize environmental harm. Mitigation measures include:

(1) Avoiding the impact altogether, by eliminating the action or parts of the action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(3) Rectifying the impact; by repairing, rehabilitating, or restoring the adverse effect on the environment.

(4) Reducing or eliminating the impact over time, by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact, by replacing or providing substitute resources or environments. (Examples and further clarification are presented in Appendix C of this part.)

(b) When the analysis proceeds to an EA or EIS, mitigation measures will be clearly assessed and those selected for implementation will be identified in the FNSI or the ROD. The proponent must implement those identified mitigations, because they are commitments made as part of the Army decision. The proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process. The mitigation shall become a line item in the proponent's budget or other funding document, if appropriate, or included in the legal document implementing the action (for example, contracts, leases, or grants). Only those practical mitigation measures that can reasonably be accomplished as part of a proposed alternative will be identified. Any mitigation measures selected by the proponent will be clearly outlined in the NEPA decision document, will be budgeted and funded (or funding arranged) by the proponent, and will be identified, with the appropriate fund code, in the EPR (AR 200–1). Mitigations will be monitored through environmental compliance reporting, such as the ISR (AR 200–1) or the Environmental Quality Report. Mitigation measures are identified and funded in accordance with applicable laws, regulations, or other media area requirements.

(c) Based upon the analysis and selection of mitigations that reduce impacts until they are no longer significant, an EA may result in a FNSI. If a proponent uses mitigations in such a manner, the FNSI must identify these mitigating measures, and they become legally binding and must be accomplished as the project is implemented. If these identified mitigations do not occur, potentially significant environmental effects are implied, and the proponent must publish an NOI and prepare an EIS.

(d) Mitigation measures that appear practical, but unobtainable within expected resources, or that some other agency (including non-Army agencies) should perform, will be identified in the NEPA analysis. A number of factors determine what is practical, including military mission, manpower restrictions, cost, institutional barriers, technical feasibility, and public acceptance. Practicality does not necessarily ensure resolution of conflicts among these items, rather it is the degree of conflict that determines practicality. Although mission conflicts are inevitable, they are not necessarily insurmountable; and the proponent should be cautious about declaring all mitigations impractical and carefully consider any manpower requirements. The key point concerning both the manpower and cost constraints is that, unless money is actually budgeted and manpower assigned, the mitigation does not exist. Coordination by the proponent early in the process will be required to allow ample time to get the mitigation activities into the budget cycle. The project cannot be undertaken until all required mitigation efforts are fully resourced, or until the lack of funding and resultant effects, are fully addressed in the NEPA analysis.

(e) Mitigations determined to be impractical must still be considered, including those to be accomplished by other agencies. The proponent must

coordinate with these agencies so that they can plan to obtain the necessary manpower and funds. Mitigations that were considered but rejected must be discussed, along with the reason for the rejection, within the EA or EIS. If they occur in an EA, their rejection may lead to an EIS, if the resultant unmitigated impacts are significant.

(f) Proponents may request assistance with mitigation from cooperating non-Army agencies, when appropriate. Such assistance is appropriate when the requested agency was a cooperating agency during preparation of a NEPA document, or has the technology, expertise, time, funds, or familiarity with the project or the local ecology necessary to implement the mitigation measure more effectively than the lead agency.

(g) The proponent agency or other appropriate cooperating agency will implement mitigations and other conditions established in the EA or EIS, or commitments made in the FNSI or ROD. Legal documents implementing the action (such as contracts, permits, grants) will specify mitigation measures to be performed. Penalties against the contractor for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(h) A monitoring and enforcement program for any mitigation will be adopted and summarized in the NEPA documentation (see Appendix C of this part for guidelines on implementing such a program). Whether adoption of a monitoring and enforcement program is applicable (40 CFR 1505.2c) and whether the specific adopted action requires monitoring (40 CFR 1505.3) may depend on the following:

(1) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited);

(2) The outcome of the mitigation measure is uncertain (for example, new technology);

(3) Major environmental controversy remains associated with the selected alternative; or

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in a failure to meet achievement of requirements (such as adverse effects on federal or state listed endangered or threatened species, important historic or archaeological sites that are either listed or eligible for nomination to the National Register of Historic Places, wilderness areas, wild and scenic rivers, or other public or private protected resources). Proponents must follow local installation environmental office procedures to coordinate with appropriate federal, tribal, state, or local agencies responsible for a particular program to determine what would constitute ''adverse effects.''

(i) Monitoring is an integral part of any mitigation system.

(1) Enforcement monitoring ensures that mitigation is being performed as described in the NEPA documentation, mitigation requirements and penalty clauses are written into any contracts, and required provisions are enforced. The development of an enforcement monitoring program is governed by who will actually perform the mitigation: a contractor, a cooperating agency, or an in-house (Army) lead agency. Detailed guidance is contained in Appendix C of this part. The proponent is ultimately responsible for performing any mitigation activities. All monitoring results will be sent to the installation Environmental Office; in the case of the Army Reserves, the Regional Support Commands (RSCs); and, in the case of the National Guard, the NGB.

(2) Effectiveness monitoring measures the success of the mitigation effort and/or the environmental effect. While quantitative measurements are desired, qualitative measures may be required. The objective is to obtain enough information to judge the effect of the mitigation. In establishing the monitoring system, the responsible agent should coordinate the monitoring with the Environmental Office. Specific steps and guidelines are included in Appendix C of this part.

(j) The monitoring program, in most cases, should be established well before the action begins, particularly when biological variables are being measured and investigated. At this stage, any necessary contracts, funding, and manpower assignments must be initiated. Technical results from the analysis should be summarized by the proponent and coordinated with the installation Environmental Office. Subsequent coordination with the concerned public and other agencies, as arranged through development of the mitigation plan, will be handled through the Environmental Office.

(k) If the mitigations are effective, the monitoring should be continued. If the mitigations are ineffective, the proponent and the responsible group should re-examine the mitigation measures, in consultation with the Environmental Office and appropriate experts, and resolve the inadequacies of the mitigation or monitoring. Professionals with specialized and recognized expertise in the topic or issue, as well as concerned citizens, are essential to the credibility of this review. If a different program is required, then a new system must be established. If ineffective mitigations are identified which were required to reduce impact below significance levels (§ 651.35(g)), the proponent may be required to publish an NOI and prepare an EIS (§ 651.15(b)).

(l) Environmental monitoring report. An environmental monitoring report is prepared at one or more points after program or action execution. Its purpose is to determine the accuracy of impact predictions. It can serve as the basis for adjustments in mitigation programs and to adjust impact predictions in future projects. Further guidance and clarification are included in Appendix C of this part.

§ 651.16 Cumulative impacts.

(a) NEPA analyses must assess cumulative effects, which are the impact on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Actions by federal, non-federal agencies, and private parties must be considered (40 CFR 1508.7).

(b) The scoping process should be used to identify possible cumulative impacts. The proponent should also contact appropriate off-post officials, such as tribal, state, county, or local planning officials, to identify other actions that should be considered in the cumulative effects analysis.

(c) A suggested cumulative effects approach is as follows:

(1) Identify the boundary of each resource category. Boundaries may be geographic or temporal. For example, the Air Quality Control Region (AQCR) might be the appropriate boundary for the air quality analysis, while a watershed could be the boundary for the water quality analysis. Depending upon the circumstances, these boundaries could be different and could extend off the installation.

(2) Describe the threshold level of significance for that resource category. For example, a violation of air quality standards within the AQCR would be an appropriate threshold level.

(3) Determine the environmental consequence of the action. The analysis should identify the cause and effect relationships, determine the magnitude and significance of cumulative effects, and identify possible mitigation measures.

§ 651.17 Environmental justice.

(a) Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and

Low-Income Populations, February 11, 1994, 3 CFR, 1994 Comp., p. 859) requires the proponent to determine whether the proposed action will have a disproportionate impact on minority or low-income communities, both off-post and on-post.

(b) The Executive Order requires the proponent to:

(1) Identify minority populations and low-income populations or communities.

(2) Assess effects the proposed action may have on these populations and communities. This assessment should include input from local citizens (for example, existing advisory groups, community groups and leaders, etc.).

(3) Determine if these impacts are disproportionate.

(c) If a disproportionate impact is detected, the proponent will identify possible mitigation measures.

(d) Affected low income communities and minority communities must be included in the public participation aspects of NEPA, including scoping. In such cases, proactive efforts must be made to incorporate minority or low-income populations into the public participation requirements of NEPA. Environmental Justice (EJ) considerations must be considered in all Army EAs and EISs.

Subpart C—Records and Documents

§ 651.18 Introduction.

NEPA documentation will be prepared and published double-sided on recycled paper. The recycled paper symbol should be presented on the inside of document covers. The following records and documents are required:

§ 651.19 Record of Environmental Consideration.

A Record of Environmental Consideration (REC) is a signed statement submitted with project documentation that briefly documents that an Army action has received environmental review. RECs are prepared for CXs that require them, and for actions covered by existing or previous NEPA documentation. A REC briefly describes the proposed action and timeframe, identifies the proponent and approving official(s), and clearly shows how an action qualifies for a CX, or is already covered in an existing EA or EIS. When used to support a CX, the REC must address the use of screening criteria to ensure that no extraordinary circumstances or situations exist. A REC has no prescribed format, as long as the above information is included. To reduce paperwork, a REC can reference such documents as real estate Environmental Baseline Studies (EBSs) and other documents, as long as they are readily available for review. While a REC may document compliance with the requirements of NEPA, it does not fulfill the requirements of other environmental laws and regulations. Figure 3 illustrates a possible format for the REC as follows:

BILLING CODE 3710–08–P

Record of Environmental Consideration (REC)

To: (Environmental Officer)
From: (Proponent)
Project title:
Breif description:

Anticipated date and/or duration of proposed action: (Month/year)

Reason for using record of environmental consideration (choose one):

a. Adequantely covered in an (EA, EIS) entitled _____, dated _____,

The EA/EIS may be reviewed at _____, (location)

OR,

b. Is categorically excluded under the provisions of CX _____, AR 200-2, appendix A, (and no extraordinary circumstances exist as defined in paragraph 4-3), because

_____

_____

_____

Date Project Proponent

_____

Date Installation Environmental Coordinator

Variation from this format is acceptable provided basic information and approvals are included in any modified document.

Figure 3. Suggested format for Record of Environmental Consideration.

BILLING CODE 3710-08-C

§ 651.20 Environmental Assessment.

An Environmental Assessment (EA) is intended to assist agency planning and decision-making. It:

(a) Briefly provides the decision maker with sufficient evidence and analysis for determining whether a FNSI or an EIS should be prepared.

(b) Assures compliance with NEPA, if an EIS is not required and a CX is inappropriate.

(c) Facilitates preparation of an EIS, if required.

(d) Includes brief discussions of the need for the proposed action, alternatives to the proposed action (NEPA, section 102(2)(e)), environmental impacts, and a listing of persons and agencies consulted (see Subpart E of this part for requirements).

(e) The EA provides the proponent, the public, and the decision maker with sufficient evidence and analysis for determining whether environmental impacts of a proposed action are potentially significant. An EA is substantially less rigorous and costly than an EIS, but requires sufficient detail to identify and ascertain the significance of expected impacts associated with the proposed action and its alternatives. The EA can often provide the required ''hard look'' at the potential environmental effects of an action, program, or policy within no more than 20 pages, depending upon the nature of the action and project-specific conditions.

§ 651.21 Finding of No Significant Impact.

A Finding of No Significant Impact (FNSI) is a document that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, that an EIS will not be prepared. The FNSI includes a summary of the EA and notes any related NEPA documentation. If the EA is attached, the FNSI need not repeat any of the EA discussion, but may incorporate it by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action, except in special circumstances when the public comment period is reduced to 15 days, as discussed in § 651.14(b)(2)(iii). Following the comment period and review of public comments, the proponent forwards a decision package that includes a comparison of environmental impacts associated with reasonable alternatives, summary of public concerns, revised FNSI (if necessary), and recommendations for the decision maker. The decision maker reviews the package, makes a decision, and signs the FNSI or the NOI (if the FNSI no longer applies). If a FNSI is signed by the decision maker, the action can proceed immediately.

§ 651.22 Notice of Intent.

A Notice of Intent (NOI) is a public notice that an EIS will be prepared. The NOI will briefly:

(a) Describe the proposed and alternative actions.

(b) Describe the proposed scoping process, including when and where any public meetings will be held.

(c) State the name and address of the POC who can answer questions on the proposed action and the EIS (see § 651.45(a) and § 651.49 for application).

§ 651.23 Environmental Impact Statement.

An Environmental Impact Statement (EIS) is a detailed written statement required by NEPA for major federal actions significantly affecting the quality of the human environment (42 U.S.C. 4321). A more complete discussion of EIS requirements is presented in Subpart F of this part.

§ 651.24 Supplemental EAs and supplemental EISs.

As detailed in § 651.5 and in 40 CFR 1502.9(c), proposed actions may require review of existing NEPA documentation. If conditions warrant a supplemental document, these documents are processed in the same way as an original EA or EIS. No new scoping is required for a supplemental EIS filed within one year of the filing of the original ROD. If the review indicates no need for a supplement, that determination will be documented in a REC.

§ 651.25 Notice of Availability.

The Notice of Availability (NOA) is published by the Army to inform the public and others that a NEPA document is available for review. A NOA will be published in the FR, coordinating with EPA for draft and final EISs (including supplements), for RODs, and for EAs and FNSIs which are of national concern, are unprecedented, or normally require an EIS. EAs and FNSIs of local concern will be made available in accordance with § 651.36. This agency NOA should not be confused with the EPA's notice of availability of weekly receipts (NWR) [3] of EISs.

§ 651.26 Record of Decision.

The Record of Decision (ROD) is a concise public document summarizing the findings in the EIS and the basis for the decision. A public ROD is required under the provisions of 40 CFR 1505.2 after completion of an EIS (see § 651.45(i)) for application). The ROD must identify mitigations which were important in supporting decisions and ensure that appropriate monitoring procedures are implemented (see § 651.15 for application).

§ 651.27 Programmatic NEPA analyses.

Programmatic NEPA analyses, in the form of an EA or EIS, are useful to examine impacts of actions that are similar in nature or broad in scope. These documents allow the ''tiering'' of future NEPA documentation in cases where future decisions or unknown future conditions preclude complete NEPA analyses in one step. These documents are discussed further in § 651.14(c).

Subpart D—Categorical Exclusions

§ 651.28 Introduction.

Categorical Exclusions (CX) are categories of actions with no individual or cumulative effect on the human or natural environment, and for which neither an EA nor an EIS is required. The use of a CX is intended to reduce paperwork and eliminate delays in the initiation and completion of proposed actions that have no significant impact.

§ 651.29 Determining when to use a CX (screening criteria).

(a) To use a CX, the proponent must satisfy the following three screening conditions:

(1) The action has not been segmented. Determine that the action has not been segmented to meet the definition of a CX. Segmentation can occur when an action is broken down into small parts in order to avoid the appearance of significance of the total action. An action can be too narrowly defined, minimizing potential impacts in an effort to avoid a higher level of NEPA documentation. The scope of an action must include the consideration of connected, cumulative, and similar actions (see § 651.51(a)).

(2) No exceptional circumstances exist. Determine if the action involves extraordinary circumstances that would preclude the use of a CX (see paragraphs (b)(1) through (14) of this section).

(3) One (or more) CX encompasses the proposed action. Identify a CX (or multiple CXs) that potentially encompasses the proposed action (Appendix B of this part). If no CX is appropriate, and the project is not exempted by statute or emergency provisions, an EA or an EIS must be

[3] This notice is published by the EPA and officially begins the public review period. The NWR is published each Friday, and lists the EISs that were filed the previous week.

prepared, before a proposed action may proceed.

(b) Extraordinary circumstances that preclude the use of a CX are:

(1) Potential to adversely affect public health, safety, or the environment.

(2) Possible substantial, direct, indirect, or cumulative impacts.

(3) Imposition of uncertain or unique environmental risks.

(4) Greater scope or size than is normal for this category of action.

(5) Reportable releases of hazardous or toxic substances as specified in 40 CFR part 302, Designation, Reportable Quantities, and Notification.

(6) Discharge of petroleum, oils, and lubricants (POL) except from a properly functioning engine or vehicle, application of pesticides and herbicides, or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan.

(7) When a Record of Non-applicability (RONA) determination shows air emissions exceed de minimis levels leading to a formal Clean Air Act conformity determination.

(8) Potential to violate any federal, state, or local law or requirements imposed for the protection of the environment.

(9) Unresolved effect on environmentally sensitive resources, as defined in § 651.29(c).

(10) Involving effects on the quality of the environment that are likely to be highly controversial.

(11) Involving effects on the environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial.

(12) Establishes precedence (or makes decisions in principle) for future or subsequent actions that may have a future significant effect.

(13) Potential for degradation, while slight, of already existing poor environmental conditions. Also, initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(14) Introduction/employment of unproven technology.

(c) If a proposed action may impact ''environmentally sensitive'' resources, a CX cannot be used. Environmentally sensitive resources include:

(1) Proposed federally listed, threatened, or endangered species or their designated critical habitats.

(2) Properties listed or eligible for listing on the National Register of Historic Places (AR 200–4).

(3) Areas having special designation or recognition such as prime or unique agricultural lands; coastal zones; designated wilderness or wilderness study areas; wild and scenic rivers; National Historic Landmarks (designated by the Secretary of the Interior); 100-year floodplains; wetlands; sole source aquifers (potential sources of drinking water); National Wildlife Refuges; National Parks; areas of critical environmental concern; or other areas of high environmental sensitivity.

(4) Cultural Resources as defined in AR 200–4.

(d) The use of a CX does not relieve the proponent from compliance with other statutes, such as RCRA, or consultations under the Endangered Species Act or the NHPA. Such consultations may be required to determine the applicability of the CX screening criteria.

(e) For those CXs that require a REC, a brief (one to two sentence) presentation of conclusions reached during screening is required in the REC. This determination can be made using current information and expertise, if available and adequate, or can be derived through conversation, as long as the basis for the determination is included in the REC. Copies of appropriate interagency correspondence can be attaced to the REC. Example conclusions regarding screening criteria are as follows:

(1) ''USFWS concurred in informal coordination that E/T species will not be affected''

(2) ''Corps of Engineers determined action is covered by nationwide permit''

(3) ''SHPO concurred with action''

(4) ''State Department of Natural Resources concurred that no effect to state sensitive species is expected.''

§ 651.30 CX actions.

Types of actions that normally qualify for CX are listed in Appendix B of this part.

§ 651.31 Modification of the CX list.

The Army list of CXs is subject to continual review and modification, in consultation with CEQ. Additional modifications can be implemented through submission, through channels, to ASA (I&E) for consideration and consultation. Subordinate Army headquarters may not modify the CX list through supplements to this regulation. Upon approval, proposed modifications to the list of CXs will be published in the **Federal Register**, providing an opportunity for public review and comment.

Subpart E—Environmental Assessment

§ 651.32 Introduction.

(a) An EA is intended to facilitate agency planning and informed decision-making, helping proponents and other decision makers understand the potential extent of environmental impacts of a proposed action and its alternatives, and whether those impacts (or cumulative impacts) are significant. The EA can aid in Army compliance with NEPA when no EIS is necessary. An EA will be prepared if a proposed action:

(1) Is not an emergency (§ 651.11(b))

(2) Is not exempt from (or an exception to) NEPA (§ 651.11(a))

(3) Does not qualify as a CX (§ 651.11(c))

(4) Is not adequately covered by existing NEPA analysis and documentation (§ 651.19)

(5) Does not normally require an EIS (§ 651.42).

(b) EAs as short as 20 pages may be adequate to meet the requirements of this regulation, depending upon site-specific circumstances and conditions. Any analysis that exceeds 25 pages in length should be evaluated to consider whether the action and its effects are complex enough to warrant an EIS.

§ 651.33 Actions normally requiring an EA.

The following Army actions normally require an EA, unless they qualify for the use of a CX:

(a) Special field training exercises or test activities in excess of five acres on Army land of a nature or magnitude not within the annual installation training cycle or installation master plan.

(b) Military construction that exceeds five contiguous acres, including contracts for off-post construction.

(c) Changes to established installation land use that generate impacts on the environment.

(d) Alteration projects affecting historically significant structures, archaeological sites, or places listed or eligible for listing on the National Register of Historic Places.

(e) Actions that could cause significant increase in soil erosion, or affect prime or unique farmland (off Army property), wetlands, floodplains, coastal zones, wilderness areas, aquifers or other water supplies, prime or unique wildlife habitat, or wild and scenic rivers.

(f) Actions proposed during the life cycle of a weapon system if the action produces a new hazardous or toxic material or results in a new hazardous or toxic waste, and the action is not adequately addressed by existing NEPA

documentation. Examples of actions normally requiring an EA during the life cycle include, but are not limited to, testing, production, fielding, and training involving natural resources, and disposal/demilitarization. System design, development, and production actions may require an EA, if such decisions establish precedence (or make decisions, in principle) for future actions with potential environmental effects. Such actions should be carefully considered in cooperation with the development or production contractor or government agency, and NEPA analysis may be required.

(g) Development and approval of installation master plans.

(h) Development and implementation of Integrated Natural Resources Management Plans (INRMPs) (land, forest, fish, and wildlife) and Integrated Cultural Resources Management Plans (ICRMPs).

(i) Actions that take place in, or adversely affect, important wildlife habitats, including wildlife refuges.

(j) Field activities on land not controlled by the military, except those that do not alter land use to substantially change the environment (for example, patrolling activities in a forest). This includes firing of weapons, missiles, or lasers over navigable waters of the United States, or extending 45 meters or more above ground level into the national airspace. It also includes joint air attack training that may require participating aircraft to exceed 250 knots at altitudes below 3000 feet above ground level, and helicopters, at any speed, below 500 feet above ground level.

(k) An action with substantial adverse local or regional effects on energy or water availability. Such impacts can only be adequately identified with input from local agencies and/or citizens.

(l) Production of hazardous or toxic materials.

(m) Changes to established airspace use that generate impacts on the environment or socioeconomic systems, or create a hazard to non-participants.

(n) An installation pesticide, fungicide, herbicide, insecticide, and rodenticide-use program/plan.

(o) Acquisition, construction, or alteration of (or space for) a laboratory that will use hazardous chemicals, drugs, or biological or radioactive materials.

(p) An activity that affects a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(q) Substantial proposed changes in Army-wide doctrine or policy that potentially have an adverse effect on the environment (40 CFR 1508.18(b)(1)).

(r) An action that may threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment.

(s) The construction and operation of major new fixed facilities or the substantial commitment of natural resources supporting new materiel.

§ 651.34 EA components.

EAs should be no longer than 25 pages in length, and will include:

(a) Signature (Review and Approval) page.

(b) Purpose and need for the action.

(c) Description of the proposed action.

(d) *Alternatives considered.* The alternatives considered, including appropriate consideration of the ''No Action'' alternative, the ''Proposed Action,'' and all other appropriate and reasonable alternatives that can be realistically accomplished. In the discussion of alternatives, any criteria for screening alternatives from full consideration should be presented, and the final disposition of any alternatives that were initially identified should be discussed.

(e) *Affected environment.* This section must address the general conditions and nature of the affected environment and establish the environmental setting against which environmental effects are evaluated. This should include any relevant general baseline conditions focusing on specific aspects of the environment that may be impacted by the alternatives. EBSs and similar real estate or construction environmental baseline documents, or their equivalent, may be incorporated and/or referenced.

(f) *Environmental consequences.* Environmental consequences of the proposed action and the alternatives. The document must state and assess the effects (direct, indirect, and cumulative) of the proposed action and its alternatives on the environment, and what practical mitigation is available to minimize these impacts. Discussion and comparison of impacts should provide sufficient analysis to reach a conclusion regarding the significance of the impacts, and is not merely a quantification of facts.

(g) *Conclusions regarding the impacts of the proposed action.* A clear statement will be provided regarding whether or not the described impacts are significant. If the EA identifies potential significant impacts associated with the proposed action, the conclusion should clearly state that an EIS will be prepared before the proposed action is implemented. If no significant impacts are associated with the project, the conclusion should state that a FNSI will be prepared. Any mitigations that reduce adverse impacts must be clearly presented. If the EA depends upon mitigations to support a resultant FNSI, these mitigations must be clearly identified as a subsection of the Conclusions.

(h) *Listing of preparers, and agencies and persons consulted.* Copies of correspondence to and from agencies and persons contacted during the preparation of the EA will be available in the administrative record and may be included in the EA as appendices. In addition, the list of analysts/preparers will be presented.

(i) *References.* These provide bibliographic information for cited sources. Draft documents should not be cited as references without the expressed permission of the proponent of the draft material.

§ 651.35 Decision process.

(a) An EA results in either a FNSI or an NOI to prepare an EIS. Initiation of an NOI to prepare an EIS should occur at any time in the decision process when it is determined that significant effects may occur as a result of the proposed action. The proponent should notify the decision maker of any such determination as soon as possible.

(b) The FNSI is a document (40 CFR 1508.13) that briefly states why an action (not otherwise excluded) will not significantly affect the environment, and, therefore, an EIS will not be prepared. It summarizes the EA, noting any NEPA documents that are related to, but are not part of, the scope of the EA under consideration. If the EA is attached, the FNSI may incorporate the EA's discussion by reference. The draft FNSI will be made available to the public for review and comment for 30 days prior to the initiation of an action (see § 651.14(b)(2)(iii) for an exception). Following the comment period, the decision maker signs the FNSI, and the action can proceed. It is important that the final FNSI reflect the decision made, the response to public comments, and the basis for the final decision.

(c) The FNSI (Figure 3 in § 651.9) must contain the following:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The facts and conclusions that have led to the FNSI.

(5) A deadline and POC for further information or receipt of public comments (see § 651.47).

(d) The FNSI is normally no more than two typewritten pages in length.

(e) The draft FNSI will be made available to the public prior to initiation of the proposed action, unless it is a classified action (see § 651.13 for security exclusions). Draft FNSIs that have national interest should be submitted with the proposed press release, along with a Questions and Answers (Q&A) package, through command channels to ASA(I&E) for approval and subsequent publication in the FR. Draft FNSIs having national interest will be coordinated with OCPA. Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(f) For actions of only regional or local interest, the draft FNSI will be publicized in accordance with § 651.14(b)(2). Distribution of the draft FNSI should include any agencies, organizations, and individuals that have expressed interest in the project, those who may be affected, and others deemed appropriate.

(g) Some FNSIs will require the implementation of mitigation measures to reduce potential impacts below significance levels, thereby eliminating the requirement for an EIS. In such instances, the following steps must be taken:

(1) The EA must be made readily available to the public for review through traditional publication and distribution, and through the World Wide Web (WWW) or similar technology. This distribution must be planned to ensure that all appropriate entities and stakeholders have easy access to the material. Ensuring this availability may necessitate the distribution of printed information at locations that are readily accessible and frequented by those who are affected or interested.

(2) Any identified mitigations must be tracked to ensure implementation, similar to those specified in an EIS and ROD.

(3) The EA analysis procedures must be sufficiently rigorous to identify and analyze impacts that are individually or cumulatively significant.

(h) The proponent is responsible for funding the preparation, staffing, and distribution of the draft FNSI and EA package, and the incorporation of public/agency review and comment. The proponent shall also ensure appropriate public and agency meetings, which may be required to facilitate the NEPA process in completing the EA. The decision maker, or his designee will approve and sign the EA and FNSI documents.

(i) The proponent should ensure that the decision maker is continuously informed of key findings during the EA process, particularly with respect to potential impacts and controversy related to the proposed action.

§ 651.36 Public involvement.

(a) The involvement of other agencies, organizations, and individuals in the development of EAs and EISs enhances collaborative issue identification and problem solving. Such involvement demonstrates that the Army is committed to open decision-making and builds the necessary community trust that sustains the Army in the long term. Public involvement is mandatory for EISs (see § 651.47 and Appendix D of this part for information on public involvement requirements).

(b) Environmental agencies and the public will be involved to the extent practicable in the preparation of an EA. If the proponent elects to involve the public in the development of an EA, § 651.47 and Appendix D of this part may be used as guidance. When considering the extent practicable of public interaction (40 CFR 1501.4(b)), factors to be weighed include:

(1) Magnitude of the proposed project/action.

(2) Extent of anticipated public interest, based on experience with similar proposals.

(3) Urgency of the proposal.

(4) National security classification.

(5) The presence of minority or economically-disadvantaged populations.

(c) Public involvement must begin early in the proposal development stage, and during preparation of an EA. The direct involvement of agencies with jurisdiction or special expertise is an integral part of impact analysis, and provides information and conclusions for incorporation into EAs. Unclassified documents incorporated by reference into the EA or FNSI are public documents.

(d) Copies of public notices, ''scoping'' letters, EAs, draft FNSIs, FNSIs, and other documents routinely sent to the public will be sent directly to appropriate congressional, state, and district offices.

(e) To ensure early incorporation of the public into the process, a plan to include all interested or affected parties should be developed at the beginning of the analysis and documentation process. Open communication with the public is encouraged as a matter of Army policy, and the degree of public involvement varies. Appropriate public notice of the availability of the completed EA/draft FNSI shall be made (see § 651.34) (see also AR 360–5 (Public Information)). The plan will include the following:

(1) Dissemination of information to local and installation communities.

(2) Invitation and incorporation of public comments on Army actions.

(3) Consultation with appropriate persons and agencies.

(f) Further guidance on public participation requirements (to potentially be used for EAs and EISs, depending on circumstances) is presented in Appendix D of this part.

§ 651.37 Public availability.

Documents incorporated into the EA or FNSI by reference will be available for public review. Where possible, use of public libraries and a list of POCs for supportive documents is encouraged. A depository should be chosen which is open beyond normal business hours. To the extent possible, the WWW should also be used to increase public availability of documents.

§ 651.38 Existing environmental assessments.

EAs are dynamic documents. To ensure that the described setting, actions, and effects remain substantially accurate, the proponent or installation Environmental Officer is encouraged to periodically review existing documentation. If an action is not yet completed, substantial changes in the proposed action may require supplementation, as specified in § 651.5(g).

§ 651.39 Significance.

(a) If the proposed action may or will result in significant impacts to the environment, an EIS is prepared to provide more comprehensive analyses and conclusions about the impacts. Significant impacts of socioeconomic consequence alone do not merit an EIS.

(b) Significance of impacts is determined by examining both the context and intensity of the proposed action (40 CFR 1508.27). The analysis should establish, by resource category, the threshold at which significance is reached. For example, an action that would violate existing pollution standards; cause water, air, noise, soil, or underground pollution; impair visibility for substantial periods; or cause irreparable harm to animal or plant life could be determined significant. Significant beneficial effects also occur and must be addressed, if applicable.

(c) The proponent should use appropriate methods to identify and ascertain the ''significance'' of impacts. The use of simple analytical tools, which are subject to independent peer review, fully documented, and available

to the public, is encouraged.[4] In particular, where impacts are unknown or are suspected to be of public interest, public involvement should be initiated early in the EA (scoping) process.

Subpart F—Environmental Impact Statement

§ 651.40 Introduction.

(a) An EIS is a public document designed to ensure that NEPA policies and goals are incorporated early into the programs and actions of federal agencies. An EIS is intended to provide a full, open, and balanced discussion of significant environmental impacts that may result from a proposed action and alternatives, allowing public review and comment on the proposal and providing a basis for informed decision-making.

(b) The NEPA process should support sound, informed, and timely (early) decision-making; not produce encyclopedic documents. CEQ guidance (40 CFR 1502.7) should be followed, establishing a page limit of 150 pages (300 pages for complex projects). To the extent practicable, EISs will ''incorporate by reference'' any material that is reasonably available for inspection by potentially interested persons within the time allowed for comment. The incorporated material shall be cited in the EIS and its content will be briefly described. Material based on proprietary data, that is itself not available for review and comment, shall not be incorporated by reference.

§ 651.41 Conditions requiring an EIS.

An EIS is required when a proponent, preparer, or approving authority determines that the proposed action has the potential to:

(a) Significantly affect environmental quality, or public health or safety.

(b) Significantly affect historic (listed or eligible for listing in the National Register of Historic Places, maintained by the National Park Service, Department of Interior), or cultural, archaeological, or scientific resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, or aquifers.

(c) Significantly impact prime and unique farmlands located off-post, wetlands, floodplains, coastal zones, or ecologically important areas, or other areas of unique or critical environmental sensitivity.

(d) Result in significant or uncertain environmental effects, or unique or unknown environmental risks.

(e) Significantly affect a federally listed threatened or endangered plant or animal species, a federal candidate species, a species proposed for federal listing, or critical habitat.

(f) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(g) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(h) Involve the production, storage, transportation, use, treatment, and disposal of hazardous or toxic materials that may have significant environmental impact.

(i) Be highly controversial from an environmental standpoint.

(j) Cause loss or destruction of significant scientific, cultural, or historical resources.

§ 651.42 Actions normally requiring an EIS.

The following actions normally require an EIS:

(a) Significant expansion of a military facility or installation.

(b) Construction of facilities that have a significant effect on wetlands, coastal zones, or other areas of critical environmental concern.

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances that have the potential to cause significant environmental impact.

(d) Land acquisition, leasing, or other actions that may lead to significant changes in land use.

(e) Realignment or stationing of a brigade or larger table of organization equipment (TOE) unit during peacetime (except where the only significant impacts are socioeconomic, with no significant biophysical environmental impact).

(f) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(g) Major changes in the mission or facilities either affecting environmentally sensitive resources (see § 651.29(c)) or causing significant environmental impact (see § 651.39).

§ 651.43 Format of the EIS.

The EIS should not exceed 150 pages in length (300 pages for very complex proposals), and must contain the following (detailed content is discussed in Appendix E of this part):

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for the action.

(e) Alternatives considered, including proposed action and no-action alternative.

(f) Affected environment (baseline conditions) that may be impacted.

(g) Environmental and socioeconomic consequences.

(h) List of preparers.

(i) Distribution list.

(j) Index.

(k) Appendices (as appropriate).

§ 651.44 Incomplete information.

When the proposed action will have significant adverse effects on the human environment, and there is incomplete or unavailable information, the proponent will ensure that the EIS addresses the issue as follows:

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the Army will include the information in the EIS.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known (for example, the means for obtaining it are beyond the state of the art), the proponent will include in the EIS:

(1) A statement that such information is incomplete or unavailable.

(2) A statement of the relevance of the incomplete or unavailable information to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(3) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(4) An evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

§ 651.45 Steps in preparing and processing an EIS.

(a) *NOI.* The NOI initiates the formal scoping process and is prepared by the proponent.

(1) Prior to preparing an EIS, an NOI will be published in the FR and in newspapers with appropriate or general circulation in the areas potentially affected by the proposed action. The OCLL will be notified by the ARSTAF proponent of pending EISs so that congressional coordination may be

[4] EIFS is one such Army system for evaluating regional economic impacts under NEPA. This system is mandated, as Army policy, for use in NEPA analyses. Other similar tools may be mandated for use in the Army, and will be documented in guidance published pursuant to this part.

effected. After the NOI is published in the FR, copies of the notice may also be distributed to agencies, organizations, and individuals, as the responsible official deems appropriate.

(2) The NOI transmittal package includes the NOI, the press release, information for Members of Congress, memorandum for correspondents, and ''questions and answers'' (Q&A) package. The NOI shall clearly state the proposed action and alternatives, and state why the action may have unknown and/or significant environmental impacts.

(3) The proponent forwards the NOI and the transmittal package to the appropriate HQDA (ARSTAF) proponent for coordination and staffing prior to publication. The ARSTAF proponent will coordinate the NOI with HQDA (ODEP), OCLL, TJAG, OGC, OCPA, relevant MACOMs, and others). Only the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health (DASA(ESOH)) can authorize release of an NOI to the FR for publication, unless that authority has been delegated. A cover letter (similar to Figure 5 in § 651.46) will accompany the NOI. An example NOI is shown in Figure 6 in § 651.46.

(b) *Lead and cooperating agency determination.* As soon as possible after the decision is made to prepare an EIS, the proponent will contact appropriate federal, tribal, state, and local agencies to identify lead or cooperating agency responsibilities concerning EIS preparation. At this point, a public affairs plan must be developed. In the case of State ARNG actions that have federal funding, the NGB will be the lead agency for the purpose of federal compliance with NEPA. The State may be either a joint lead or a cooperating agency, as determined by NGB.

(c) *Scoping.* The proponent will begin the scoping process described in § 651.48. Portions of the scoping process may take place prior to publication of the NOI.

(d) *DEIS preparation and processing.* Prior to publication of a DEIS, the Army can prepare a PDEIS, allowing for internal organization and the resolution of internal Army consideration, prior to a formal request for comments.

(1) *PDEIS.* Based on information obtained and decisions made during the scoping process, the proponent will prepare the PDEIS. To expedite headquarters review, a summary document is also required to present the purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring. This summary will be forwarded, through the chain of command, to ODEP, the DASA(ESOH), and other interested offices for review and comment. If requested by these offices, a draft PDEIS can be provided following review of the summary. The PDEIS is not normally made available to the public and should be stamped ''For Internal Use Only-Deliberative Process.''

(2) *DEIS.* The Army proponent will advise the DEIS preparer of the number of copies to be forwarded for final HQDA review and those for filing with the EPA. Distribution may include interested congressional delegations and committees, governors, national environmental organizations, the DOD and federal agency headquarters, and other selected entities. The Army proponent will finalize the FR NOA, the proposed news release, and the EPA filing letter for signature of the DASA(ESOH). A revised process summary of the contents (purpose and need for the action, DOPAA, major issues, unresolved issues, major potential controversies, and required mitigations or monitoring) will accompany the DEIS to HQDA for review and comment. If the action has been delegated by the ASA(I&E), only the process summary is required, unless the DEIS is requested by HQDA.

(i) When the DEIS has been formally approved, the preparer can distribute the DEIS to the remainder of the distribution list. The DEIS must be distributed prior to, or simultaneous with, filing with EPA. The list includes federal, state, regional, and local agencies, private citizens, and local organizations. The EPA will publish the NOA in the FR. The 45-day comment period begins on the date of the EPA notice in the FR.

(ii) Following approval, the proponent will forward five copies of the DEIS to EPA for filing and notice in the FR; publication of EPA's NWR commences the public comment period. The proponent will distribute the DEIS prior to, or simultaneous with, filing with EPA. Distribution will include appropriate federal, state, regional, and local agencies; Native American tribes; and organizations and private citizens who have expressed interest in the proposed action.

(iii) For proposed actions that are environmentally controversial, or of national interest, the OCLL shall be notified of the pending action so that appropriate congressional coordination may be effected. The OCPA will coordinate public announcements through its chain of command.

(e) *Public review of DEIS.* The DEIS public comment period will be no less than 45 days. If the statement is unusually long, a summary of the DEIS may be circulated, with an attached list of locations where the entire DEIS may be reviewed (for example, local public libraries). Distribution of the complete DEIS should be accompanied by the announcement of availability in established newspapers of major circulation, and must include the following:

(1) Any federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate federal, state, or local agency authorized to develop and enforce environmental standards.

(2) The applicant, if the proposed action involves any application of proposal for the use of Army resources.

(3) Any person, organization, or agency requesting the entire DEIS.

(4) Any Indian tribes, Native Alaskan organizations, or Native Hawaiian organizations potentially impacted by the proposed action.

(5) Chairs/co-chairs of any existing citizen advisory groups (for example, Restoration Advisory Boards).

(f) *Public meetings or hearings.* Public meetings of hearings on the DEIS will be held in accordance with the criteria established in 40 CFR 1506.6(c) and (d) or for any other reason the proponent deems appropriate. News releases should be prepared and issued to publicize the meetings or hearings at least 15 days prior to the meeting.

(g) *Response to comments.* Comments will be incorporated in the DEIS by modification of the text and/or written explanation. Where possible, similar comments will be grouped for a common response. The preparer or a higher authority may make individual response, if considered desirable.

(h) *The FEIS.* If the changes to the DEIS are exclusively clarifications or minor factual corrections, a document consisting of only the DEIS comments, responses to the comments, and errata sheets may be prepared and circulated. If such an abbreviated FEIS is anticipated, the DEIS should contain a statement advising reviewers to keep the document so they will have a complete set of ''final'' documents. The final EIS to be filed with EPA will consist of a complete document containing a new cover sheet, the errata sheets, comments and responses, and the text of the draft EIS. Coordination, approval, filing, and public notice of an abbreviated FEIS are the same as for a draft DEIS. If extensive modifications are warranted, the proponent will prepare a new, complete FEIS. Preparation, coordination, approval, filing, and public notice of the FEIS are the same as the process

outlined for the DEIS. The FEIS distribution must include any person, organization, or agency that submitted substantive comments on the DEIS. One copy (electronic) of the FEIS will be forwarded to ODEP. The FEIS will clearly identify the Army's preferred alternative unless prohibited by law.

(i) *Decision.* No decision will be made on a proposed action until 30 days after EPA has published the NWR of the FEIS in the FR, or 90 days after the NWR of the DEIS, whichever is later. EPA publishes NWRs weekly. Those NWRs ready for EPA by close of business Friday are published in the next Friday's issue of the FR.

(j) *ROD.* The ROD documents the decision made and the basis for that decision.

(1) The proponent will prepare a ROD for the decision maker's signature, which will:

(i) Clearly state the decision by describing it in sufficient detail to address the significant issues and ensure necessary long-term monitoring and execution.

(ii) Identify all alternatives considered by the Army in reaching its decision, specifying the environmentally preferred alternative(s). The Army will discuss preferences among alternatives based on relevant factors including environmental, economic, and technical considerations and agency statutory missions.

(iii) Identify and discuss all such factors, including any essential considerations of national policy that were balanced by the Army in making its decision. Because economic and technical analyses are balanced with environmental analysis, the agency preferred alternative will not necessarily be the environmentally preferred alternative.

(iv) Discuss how those considerations entered into the final decision.

(v) State whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not.

(vi) Identify or incorporate by reference the mitigation measures that were incorporated into the decision.

(2) Implementation of the decision may begin immediately after approval of the ROD.

(3) The proponent will prepare an NOA to be published in the FR by the HQDA proponent, following congressional notification. Processing and approval of the NOA is the same as for an NOI.

(4) RODs will be distributed to agencies with authority or oversight over aspects of the proposal, cooperating agencies, appropriate congressional, state, and district offices, all parties that are directly affected, and others upon request.

(5) One electronic copy of the ROD will be forwarded to ODEP.

(6) A monitoring and enforcement program will be adopted and summarized for any mitigation (see Appendix C of this part).

(k) *Pre-decision referrals.* 40 CFR part 1504 specifies procedures to resolve federal agency disagreements on the environmental effects of a proposed action. Pre-decision referrals apply to interagency disagreement on a proposed action's potential unsatisfactory effects.

(l) *Changes during preparation.* If there are substantial changes in the proposed action, or significant new information relevant to environmental concerns during the proposed action's planning process, the proponent will prepare revisions or a supplement to any environmental document or prepare new documentation as necessary.

(m) *Mitigation.* All measures planned to minimize or mitigate expected significant environmental impacts will be identified in the EIS and the ROD. Implementation of the mitigation plan is the responsibility of the proponent (see Appendix C of this part). The proponent will make available to the public, upon request, the status and results of mitigation measures associated with the proposed action. For weapon system acquisition programs, the proponent will coordinate with the appropriate responsible parties before identifying potential mitigations in the EIS/ROD.

(n) *Implementing the decision.* The proponent will provide for monitoring to assure that decisions are carried out, particularly in controversial cases or environmentally sensitive areas (Appendix C of this part). Mitigation and other conditions that have been identified in the EIS, or during its review and comment period, and made part of the decision (and ROD), will be implemented by the lead agency or other appropriate consenting agency. The proponent will:

(1) Include appropriate conditions in grants, permits, or other approvals.

(2) Ensure that the proponent's project budget includes provisions for mitigations.

(3) Upon request, inform cooperating or commenting agencies on the progress in carrying out adopted mitigation measures that they have proposed and that were adopted by the agency making the decision.

(4) Upon request, make the results of relevant monitoring available to the public and Congress.

(5) Make results of relevant monitoring available to citizens advisory groups, and others that expressed such interest during the EIS process.

§ 651.46 Existing EISs.

A newly proposed action must be the subject of a separate EIS. The proponent may extract and revise the existing environmental documents in such a way as to bring them completely up to date, in light of the new proposals. Such a revised EIS will be prepared and processed entirely under the provisions of this part. If an EIS of another agency is adopted, it must be processed in accordance with 40 CFR 1506.3. Figures 4 through 8 are as follows:

BILLING CODE 3710–08–P

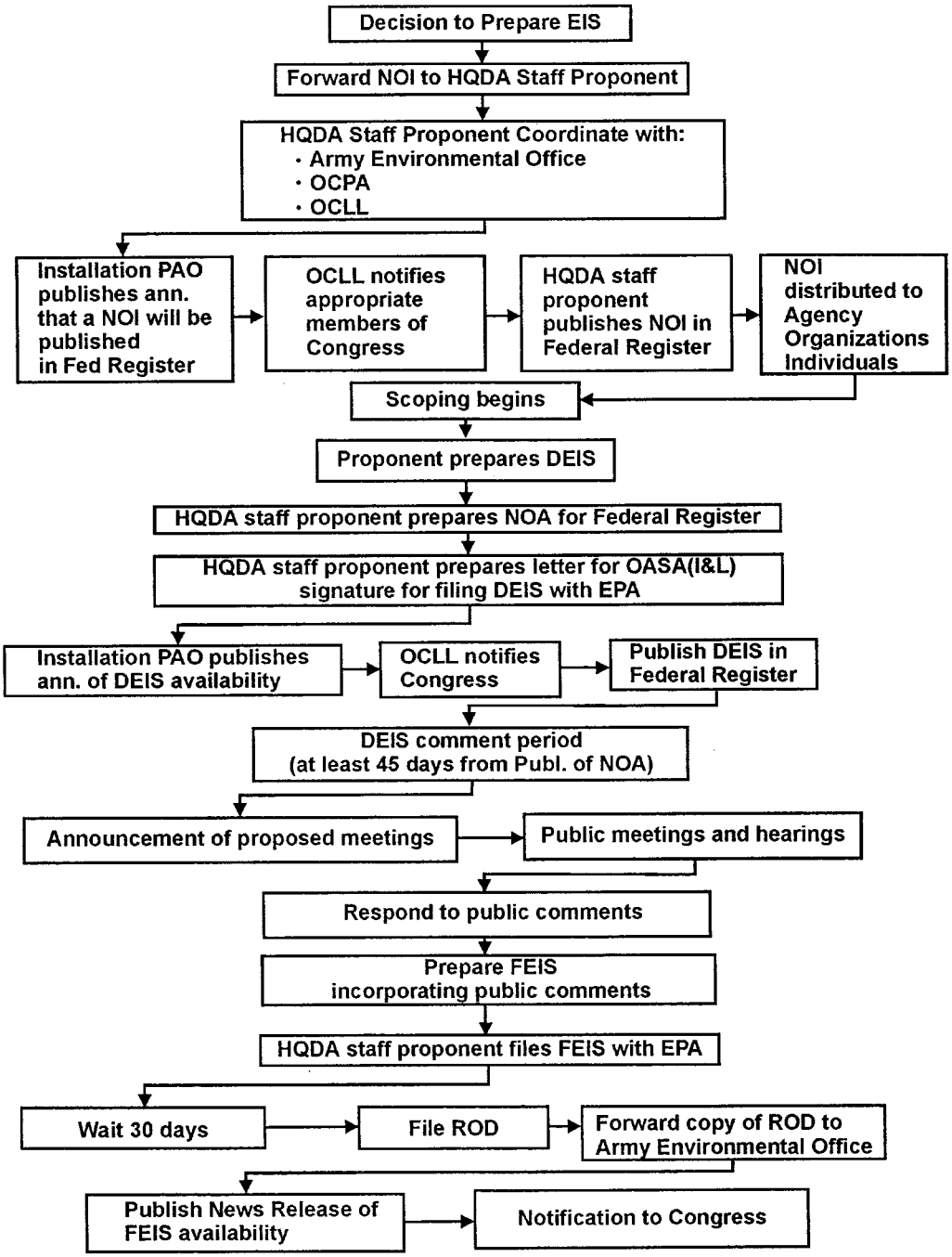

Figure 4. Steps in preparing and processing an environmental impact statement.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

January 14, 1999

Director
Office of the Federal Register
National Archives and Records
Administration
Washington, D. C. 20408

Dear Sir:

The enclosed notice of intent (NOI) to prepare an Environmental Impact Statement for the Fort Sill Real Property Master Plan is submitted for publication in the Notice section of the Federal Register.

Please publish this NOI in the earliest possible edition of the Federal Register. This notice is required for the Department of the Army to perform its military mission and to comply with the National Environmental Policy Act and the President's Council on Environmental Quality regulations.

To confirm publication date of this notice or for further information, please contact Mr. Greg Brewer at (703) 692-9220.

Please bill this to charge code 3710-08-M.

Sincerely,

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I,L&E)

Enclosure

Figure 5. Sample Notice of Intent Transmittal Letter.

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent to Prepare a Programmatic Environmental Impact Statement for the Real Property Master Plan, Fort Sill, Okla.

AGENCY: Department of the Army, DOD

ACTION: Notice of Intent

SUMMARY: This announced the intention of the U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Okla., to prepare an Environmental Impact Statement (EIS) in support of revisions to the installations' Real Property Master Plan (RPMP). The purpose is to evaluate the environmental impacts associated with the RPMP's implementation.

ADDRESSES: Written comments may be forwarded to the U.S. Army Corps of Engineers, ATTN: CESWT-PE-E (J. Randolph), P.O. Box 61, Tulsa, Okla. 74121-0061.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Kerr, Directorate of Environmental Quality, U.S. Army Field Artillery Center and Fort Sill, at (580) 442-3409.

SUPPLEMENTARY INFORMATION: The Fort Sill RPMP has the potential to significantly impact certain natural, economic, social, and cultural resources of the Fort Sill community. The study area for environmental analysis will be the entire Fort Sill installation. The objective is to provide a comprehensive and programmatic EIS that will serve as a planning tool, a public information source, and a reference for mitigation tracking.

Alternatives may consist of alternative locations for specific projects, partial implementation of the specific project, or other modifications of the specific project. The alternatives will be developed during preparation of the Draft EIS (DEIS) as a result of pubic input and of environmental analysis of the proposals within the plan.

SIGNIFICANT ISSUES: The Fort Sill reservation contains approximately 94,221 acres of land. Some of this land serves as potential habitat for protected species of wildlife. Of the areas within the installation that have been surveyed to date for cultural resources, 832 properties have been identified and recorded. Nearly all of the current and proposed RPMP projects are sited with the 6,015 acre cantonment area, where the majority of the installation's historic buildings are located.

The significant issues the EIS will analyze will include the following:

1. Development of a large deployment marshaling area near an existing railhead facility; Whereby, new railroad tracks, loading docks, switching facilities, hardstand areas, and fencing would be developed.
2. Redesignation of land use: Whereby, land use zoning would be redesignated to provide for the construction of new and expansion of existing motor pool areas.
3. Probably construction projects: Whereby, the following projects would be complete: (1) new multiple launch rocket system (MLRS) range firing points in the training areas; (2) a liquid fuel facility; (3) a unit movements facility; and (4) a contingency warehouse.

Public scoping meetings will be held in the vicinity of Fort Sill to facilitate input to the EIS process by citizens and organizations. The date and time of these meetings will be announced in general media and will be at times and locations convenient to the public. To be considered in the Draft EIS, comments and suggestions should be received no later than 15 days following the public scoping meeting.

DATED: January 14, 1999

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Figure 6. Sample of Notice of Intent.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

March 25, 1999

Director
Office of Federal Activities
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D. C. 20044

Dear Sir:

Enclosed are five copies of the Draft Environmental Impact Statement for the Disposal and Reuse of the Military Ocean Terminal, Bayonne, New Jersey.

These copies are forwarded for filing in accordance with the President's Council on Environmental Quality regulations for implementing the provisions of the national Environmental Policy Act (40 CFR, Parts 1500-1508).

The point of contact for this action is Ms. Theresa Persick-Arnold at (703) 697-0216.

Sincerely,

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Enclosures

Figure 7. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Environmental Protection Agency.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

March 25, 1999

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE
(ENVIRONMENTAL SECURITY)

SUBJECT: Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of the Military Ocean Terminal, Bayonne (MOTBY), New Jersey

In accordance with Department of Defense Instruction 4715.9, Environmental Planning and Analysis, enclosed is a copy of the NOA of the DEIS on the disposal and reuse of MOTBY.

Point of contact for this action is Ms. Theresa Persick-Arnold at 697-0216.

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Enclosure

Figure 8. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Office of the Secretary of Defense

BILLING CODE 3710-08-C

Subpart G—Public Involvement and the Scoping Process

§ 651.47 Public involvement.

(a) Public involvement is required for all EISs, and is strongly encouraged, as a matter of Army policy, for all Army actions, including EAs. The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially interested or affected parties will be involved, when practicable, whenever analyzing environmental considerations. This requirement can be met at the very beginning of the process by developing a plan to include all affected parties and implementing the plan with appropriate adjustments as it proceeds (AR 360–5). The plan will include the following:

(1) Information dissemination to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. The dissemination of this information will be based on the needs and desires of the local communities.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, tribal, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above. These two-way channels will be dynamic in nature, and should be updated regularly (at least monthly) to reflect the needs of the local community.

(4) Public affairs officers at all levels will be kept informed.

(b) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(c) Proponents will invite public involvement in the review and comment of EAs and draft FNSIs (40 CFR 1506.6).

(d) Persons and agencies to be consulted include the following:

(1) Municipal, township, and county elected and appointed officials.

(2) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(3) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(4) Members of existing citizen advisory groups, such as Restoration Advisory Boards and Citizen Advisory Commissions.

(5) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization, such as farmers and ranchers, homeowners, small business owners, minority communities and disadvantaged communities, and tribal governments in accordance with Presidential Memorandum on Government-to-Government Relations With Native American Tribal Governments (April 29, 1994).

(6) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Izaak Walton League, Sierra Club, and the Audubon Society).

(7) Any person or group that has specifically requested involvement in the specific action or similar actions.

(e) The public involvement processes and procedures through which participation may be solicited include the following:

(1) Direct individual contact. Such interaction can identify persons and their opinions and initial positions, affecting the scope of issues that the EIS must address. Such limited contact may satisfy public involvement requirements when the expected significance and controversy of environmental effects is very limited.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(4) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(f) The meetings described in paragraph (e) of this section should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent, as described in paragraph (e) of this section.

(g) Public surveys or polls may be performed to identify public opinion of a proposed action, as appropriate (AR 335–15).

§ 651.48 Scoping process.

(a) The scoping process (40 CFR 1501.7) is intended to aid in determining the scope of the analyses and significant issues related to the proposed action. The process requires appropriate public participation immediately following publication of the NOI in the FR. It is important to note that scoping is not synonymous with a public meeting. The Army policy is that EISs for legislative proposals significantly affecting the environment will go through scoping unless extenuating circumstances make it impractical. In some cases, the scoping process may be useful in the preparation of EAs and should be employed when it is useful.

(b) The scoping process identifies relevant issues related to a proposed action through the involvement of all potentially interested or affected parties (affected federal, state, and local agencies; recognized Indian tribes; interest groups, and other interested persons) in the environmental analysis and documentation. This process can:

(1) eliminate issues from detailed consideration which are not significant, or which have been covered by prior environmental review; and

(2) make the analysis and documentation more efficient by providing focus to the effort. Proper scoping identifies reasonable alternatives and the information needed for their evaluation, thereby increasing public confidence in the Army decision-making process.

(c) Scoping is a mechanism to reduce both costs and time required for an EA or EIS. This is done through the documentation of all potential impacts and the focus of detailed consideration on those aspects of the action which are potentially significant or controversial. To assist in this process the Army will use the Environmental Impact Computer System (EICS) starting in Fiscal Year (FY) 01, as appropriate. This system will serve to structure all three stages of the scoping process (§ 651.249, 651.50, and 651.51) and provide focus on those actions that are important and of interest to the public. While these discussions focus on EIS preparation and documents to support that process, the three phases also apply if scoping is used for an EA. If used in the preparation of an EA, scoping, and documents to support that process, can be modified and adopted to ensure

efficient public iteration and input to the decision-making process.

(d) When the planning for a project or action indicates the need for an EIS, the proponent initiates the scoping process to identify the range of actions, alternatives, and impacts for consideration in the EIS (40 CFR 1508.25). The extent of the scoping process (including public involvement) will depend upon:

(1) The size and type of the proposed action.

(2) Whether the proposed action is of regional or national interest.

(3) Degree of any associated environmental controversy.

(4) Importance of the affected environmental parameters.

(5) Significance of any effects on them.

(6) Extent of prior environmental review.

(7) Involvement of any substantive time limits.

(8) Requirements by other laws for environmental review.

(e) The proponent may incorporate scoping in the public involvement (or environmental review) process of other requirements, such as an EA. In such cases, the extent of incorporation is at the discretion of the proponent, working with the affected Army organization or installation. Such integration is encouraged.

(f) Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in § 651.47, § 651.40, and § 651.49 respectively.

§ 651.49 Preliminary phase.

In the preliminary phase, the proponent agency or office identifies, as early as possible, how it will accomplish scoping and with whose involvement. Key points will be identified or briefly summarized by the proponent, as appropriate, in the NOI, which will:

(a) Identify the significant issues to be analyzed in the EIS.

(b) Identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, that distinction will be made.

(c) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5–6).

(d) Identify the method by which the agency will invite participation of affected parties, and identify a tentative list of the affected parties to be notified. A key part of this preliminary identification is to solicit input regarding other parties who would be interested in the proposed project or affected by it.

(e) Identify the proposed method for accomplishing the scoping procedure.

(f) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decision-making schedule including:

(1) The scoping process itself.

(2) Collection or analysis of environmental data, including required studies.

(3) Preparation of draft and final EISs (DEISs and FEISs), and associated review periods.

(4) Filing of the ROD.

(5) Taking the action.

(6) For a programmatic EIS, preparation of a general expected schedule for future specific implementing (tiered) actions that will involve separate environmental analysis.

(g) If applicable, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

§ 651.50 Public interaction phase.

(a) During this portion of the process, the proponent will invite comments from all affected parties and respondents to the NOI to assist in developing issues for detailed discussion in the EIS. Assistance in identifying possible participants is available from the ODEP.

(b) In addition to the affected parties identified paragraph (a) of this section, participants should include the following:

(1) Technical representatives of the proponent. Such persons must be able to describe the technical aspects of the proposed action and alternatives to other participants.

(2) One or more representatives of any Army-contracted consulting firm, if one has been retained to participate in writing the EIS or providing reports that the Army will use to create substantial portions of the EIS.

(3) Experts in various environmental disciplines, in any technical area where foreseen impacts are not already represented among the other scoping participants.

(c) In all cases, the participants will be provided with information developed during the preliminary phase and with as much of the following information that may be available:

(1) A brief description of the environment at the affected location. When descriptions for a specific location are not available, general descriptions of the probable environmental effects will be provided. This will also address the extent to which the environment has been modified or affected in the past.

(2) A description of the proposed alternatives. The description will be sufficiently detailed to enable evaluation of the range of impacts that may be caused by the proposed action and alternatives. The amount of detail that is sufficient will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be familiar.

(3) A tentative identification of ''any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration'' (40 CFR 1501.7(a)(5)).

(4) Any additional scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(d) The public involvement should begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and who to contact to receive preliminary information. The scoping meeting is an informal public meeting, and initiates a continuous scoping process, allowing the Army to scope the action and the impacts of alternatives. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can be initiated.

(e) Starting with this information (paragraph (d) of this section), the person conducting the scoping process will use input from any of the involved or affected parties. This will aid in developing the conclusions. The proponent determines the final scope of the EIS. If the proponent chooses not to require detailed treatment of significant issues or factors in the EIS, in spite of relevant technical or scientific objections by any participant, the proponent will clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors.

§ 651.51 The final phase.

(a) The initial scope of the DEIS is determined by the proponent during and after the public interaction phase of the process. Detailed analysis should focus on significant issues (40 CFR 1501.7(a)(2)). To determine the appropriate scope, the proponent must consider three categories of actions, alternatives, and impacts.

(1) The three categories of actions (other than unconnected single actions) are as follows:

(i) Connected actions are those that are closely related and should be

discussed in the same impact statement. Actions are connected if they automatically trigger other actions that may require EISs, cannot or will not proceed unless other actions are previously or simultaneously taken, are interdependent parts of a larger action for their justification.

(ii) Cumulative actions are those that, when viewed with other past and proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(iii) Similar actions are those that have similarities which provide a basis for evaluating their environmental consequences together, such as common timing or geography, and may be analyzed in the EIS. Agencies should do so when the best way to assess such actions is to treat them in a single EIS.

(2) The three categories of alternatives are as follows:

(i) No action.

(ii) Other reasonable courses of action.

(iii) Mitigation measures (not in the proposed action).

(3) The three categories of impacts are as follows:

(i) Direct.

(ii) Indirect.

(iii) Cumulative.

(4) The proponent can also identify any public EAs and EISs, prepared by the Army or another federal agency, related to, but not part of, the EIS under consideration (40 CFR 1501.7(a)(5)). Assignments for the preparation of the EIS among the lead and any cooperating agencies can be identified, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)); along with the identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS (40 CFR 1501.7(a)(6)).

(b) The identification and elimination of issues that are insignificant, non-controversial, or covered by prior environmental review can narrow the analysis to remaining issues and their significance through reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(c) As part of the scoping process, the lead agency may:

(1) Set time limits, as provided in § 654.14(b), if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits for the EIS in accordance with the CEQ regulations that emphasize conciseness.

(d) All determinations reached by the proponent during the scoping process will be clearly conveyed to the preparers of the EIS in a Scope of Statement. The Scope of Statement will be made available to participants in the scoping process and to other interested parties upon request. Any scientific or technical conflicts that arise between the proponent and scoping participants, cooperating agencies, other federal agencies, or preparers will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

§ 651.52 Aids to information gathering.

The proponent may use or develop graphic or other innovative methods to aid information gathering, presentation, and transfer during the three scoping phases. These include methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and organizing determinations on scope for use during preparation of the DEIS. The use of the World Wide Web (WWW) for these purposes is encouraged. Suggested uses include the implementation of a continuous scoping process, facilitating ''virtual'' public participation, as well as the dissemination of analyses and information as they evolve.

§ 651.53 Modifications of the scoping process.

(a) If a lengthy period exists between a decision to prepare an EIS and the time of preparation, the proponent will initiate the NOI at a reasonable time in advance of preparation of the DEIS. The NOI will state any tentative conclusions regarding the scope of the EIS made prior to publication of the NOI. Reasonable time for public participation will be allowed before the proponent makes any final decisions or commitments on the EIS.

(b) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. In such cases, the proponent may use these procedures or may develop modified procedures, as needed.

Subpart H—Environmental Effects of Major Army Action Abroad

§ 651.54 Introduction.

(a) Protection of the environment is an Army priority, no matter where the Army actions are undertaken. The Army is committed to pursuing an active role in addressing environmental quality issues in Army relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This section assigns responsibilities for review of environmental effects abroad of major Army actions, as required by Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979, 3 CFR, 1979 Comp., p.356. This section applies to HQDA and Army agencies' actions that would significantly affect the quality of the human environment outside the United States.

(b) Executive Order 12114 and DODD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions (planned currently to be replaced by a DODI, Analyzing Defense Actions With the Potential for Significant Impacts Outside the United States) provide guidance for analyzing the environmental impacts of Army actions abroad and in the global commons. Army components will, consistent with diplomatic factors (including applicable Status of Forces Agreements (SOFAs) and stationing agreements), national security considerations, and difficulties of obtaining information, document the review of potential environmental impacts of Army actions abroad and in the global commons as set forth in DODD 6050.7 (or DODI upon publication). The analysis and documentation of potential environmental impacts of Army actions abroad and in the global commons should, to the maximum extent possible, be incorporated into existing decision-making processes; planning for military exercises, training plans, and military operations.

§ 651.55 Categorical exclusions.

The list of CXs in Appendix B of this part may be used in reviewing potential environmental impacts of major actions abroad and in the global commons, in accordance with DODD 6050.7 (or DODI upon publication) and Executive Order 12114, section 2–5(c).

§ 651.56 Responsibilities.

(a) The ASA(I&E) will:

(1) Serve as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintain liaison with the DUSD(ES) on matters concerning Executive Order 12114, DODD 6050.7, and this part.

(3) Coordinate actions with other Secretariat offices as appropriate.

(b) The DEP will:

(1) Serve as ARSTAF proponent for implementation of Executive Order 12114, DODD 6050.7, and this part.

(2) Apply this part when planning and executing overseas actions, where appropriate in light of applicable statutes and SOFAs.

(c) The DCSOPS will:

(1) Serve as the focal point on the ARSTAF for integrating environmental

considerations required by Executive Order 12114 into Army plans and activities. Emphasis will be placed on those actions reasonably expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consult with the Office of Foreign Military Rights Affairs of the Assistant Secretary of Defense (International Security Affairs) (ASD(ISA)) on significant or sensitive actions affecting relations with another nation.

(d) TJAG, in coordination with the OGC, will provide advice and assistance concerning the requirements of Executive Order 12114 and DODD 6050.7.

(e) The Chief of Public Affairs will provide advice and assistance on public affairs as necessary.

Appendix A to Part 651—References

Military publications and forms are accessible from a variety of sources through the use of electronic media or paper products. In most cases, electronic publications and forms that are associated with military organizations can be accessed at various address or web sites on the Internet. Since electronic addresses can frequently change, or similar web links can also be modified at several locations on the Internet, it's advisable to access those sites using a search engine that is most accommodative, yet beneficial to the user. Additionally, in an effort to facilitate the public right to information, certain publications can also be purchased through the National Technical Information Service (NTIS). Persons interested in obtaining certain types of publications can write to the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Section I—Required Publications

AR 360–5

Army Public Affairs, Public Information.

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this part.

AR 5–10

Reduction and Realignment Actions.

AR 11–27

Army Energy Program.

AR 95–50

Airspace and Special Military Operation Requirements.

AR 140–475

Real Estate Selection and Acquisition: Procedures and Criteria.

AR 200–1

Environmental Protection and Enhancement.

AR 200–3

Natural Resources—Land, Forest, and Wildlife Management.

AR 200–4

Cultural Resources Management.

AR 210–10

Administration.

AR 210–20

Master Planning for Army Installations.

AR 335–15

Management Information Control System.

AR 380–5

Department of the Army Information Security Program.

AR 385–10

Army Safety Program.

AR 530–1

Operations Security (OPSEC).

DA PAM 70–3

Army Acquisition Procedures.

Defense Acquisition Deskbook

An electronic knowledge presentation system available through the Deputy Under Secretary of Defense (Acquisition Reform) and the Office of the Under Secretary of Defense (Acquisition and Technology).

DOD 5000.2–R

Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems

DODD 4100.15

Commercial Activities Program.

DODD 4700.4

Natural Resources Management Program, Integrated Natural Resources Management Plan (INRMP), Integrated Cultural Resources Management Plan (ICRMP)

DODD 6050.1

Environmental Effects in the United States of Department of Defense Actions.

DODD 6050.7

Environmental Effects Abroad of Major Department of Defense Actions.

Executive Order 11988

Floodplain Management, 3 CFR, 1977 Comp., p. 117

Executive Order 11990

Protection of Wetlands, 3 CFR, 1977 Comp., p. 121

Executive Order 12114

Environmental Effects Abroad of Major Federal Actions, 3 CFR, 1979 Comp., p. 356

Executive Order 12778

Civil Justice Reform, 3 CFR, 1991 Comp., p. 359

Executive Order 12856

Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, 3 CFR, 1993 Comp., p. 616

Executive Order 12861

Elimination of One-Half of Executive Branch Internal Regulations, 3 CFR, 1993 Comp., p. 630

Executive Order 12866

Regulatory Planning and Review, 3 CFR, 1993 Comp., p. 638

Executive Order 12898

Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR, 1994 Comp., p. 859

Executive Order 13007

Indian Sacred Sites, 3 CFR, 1996 Comp., p. 196

Executive Order 13045

Protection of Children From Environmental Health Risks and Safety Risks, 3 CFR, 1997 Comp., p. 198

Executive Order 13061

Federal Support of Community Efforts Along American Heritage Rivers, 3 CFR 1997 Comp., p. 221

Executive Order 13083

Federalism, 3 CFR, 1998 Comp., p. 146

Public Law 86–797, 74 Stat. 1052

The Sikes Act

Public Law 91–190, 83 Stat. 852

National Environmental Policy Act of 1969

Public Law 101–601, 104 Stat. 3048

Native American Graves Protection and Repatriation Act

American Indian Religious Freedom Act

42 U.S.C. 1996

Clean Air Act

As amended (42 U.S.C. 7401, et seq.)

Clean Water Act of 1977

Public Law 95–217, 91 Stat. 1566 and Public Law 96–148, Sec. 1(a)–(c), 93 Stat. 1088

Comprehensive Environmental Response, Compensation, and Liability Act of 1980

As amended (CERCLA, Superfund) (42 U.S.C. 9601 et seq.)

Endangered Species Act of 1973

Public Law 93–205,87 Stat. 884

Fish and Wildlife Coordination Act

Public Law 85–624, Sec. 2, 72 Stat. 563 and Public Law 89–72, Sec. 6(b), 79 Stat. 216

National Historic Preservation Act

Public Law 89–665, 80 Stat. 915

Pollution Prevention Act of 1990

Public Law 101–508, Title VI, Subtitle G, 104 Stat. 13880–321

Resource Conservation and Recovery Act of 1976

Public Law 94–580, 90 Stat. 2795

Note. CFRs may be found in your legal office or law library. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20401.

36 CFR Part 800

Advisory Council on Historic Preservation

40 CFR Part 302

Designation, Reportable Quantities, and Notification.

40 CFR Parts 1500–1508

Council on Environmental Quality.

Section III—Prescribed Forms

This section contains no entries.

Section IV—Referenced Forms

DD Form 1391

Military Construction Project Data.

DA Form 2028

Recommended Changes to Publications and Blank Forms.

Appendix B to Part 651—Categorical Exclusions

Section I—Screening Criteria

Before any CXs can be used, Screening Criteria, as referenced in § 651.29 must be met.

Section II—List of CXs

(a) For convenience only, the CXs are grouped under common types of activities (for example, administration/ operation, construction/demolition, and repair and maintenance). Certain CXs require a REC, which will be completed and signed by the proponent. Concurrence on the use of a CX is required from the appropriate environmental coordinator (EC), and that signature is required on the REC. The list of CXs is subject to continual review and modification. Requests for additions or changes to the CXs (along with justification) should be sent, through channels, to the ASA(I&E). Subordinate Army headquarters may not modify the CX list through supplements to this part. Proposed modifications to the list of CXs will be published in the FR by HQDA, to provide opportunity for public comment.

(b) Administration/operation activities:

(1) Routine law and order activities performed by military/military police and physical plant protection and security personnel. This also includes civilian natural resources and environmental law officers.

(2) Emergency or disaster assistance provided to federal, state, or local entities (REC required).

(3) Preparation of regulations, procedures, manuals, and other guidance documents that implement, without substantive change, the applicable HQDA or other federal agency regulations, procedures, manuals, and other guidance documents that have been environmentally evaluated (subject to previous NEPA review).

(4) Proposed activities and operations to be conducted in an existing non-historic structure which are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharged to the environment, will not result in substantially different waste discharges from current or previous activities, and emissions will remain within established permit limits, if any (REC required).

(5) Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

(6) Routinely conducted recreation and welfare activities not involving off-road recreational vehicles.

(7) Deployment of military units on a temporary duty (TDY) or training basis where existing facilities are used for their intended purposes consistent with the scope and size of existing mission.

(8) Preparation of administrative or personnel-related studies, reports, or investigations.

(9) Approval of asbestos or lead-based paint management plans drafted in accordance with applicable laws and regulations (REC required).

(10) Non-construction activities in support of other agencies/organizations involving community participation projects and law enforcement activities.

(11) Ceremonies, funerals, and concerts. This includes events such as state funerals, to include flyovers.

(12) Reductions and realignments of civilian and/or military personnel that: fall below the thresholds for reportable actions as prescribed by statute (10 U.S.C. 2687) and do not involve related activities such as construction, renovation, or demolition activities that would otherwise require an EA or an EIS to implement (REC required). This includes reorganizations and reassignments with no changes in force structure, unit redesignations, and routine administrative reorganizations and consolidations (REC required).

(13) Actions affecting Army property that fall under another federal agency's list of categorical exclusions when the other federal agency is the lead agency (decision maker), or joint actions on another federal agency's property that fall under that agency's list of categorical exclusions (REC required).

(14) Relocation of personnel into existing federally-owned or commercially-leased space, which does not involve a substantial change in the supporting infrastructure (for example, an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase is an example of substantial change) (REC required).

(c) Construction and demolition:

(1) Construction of an addition to an existing structure or facility, and new construction on a previously developed site or on a previously undisturbed site if the area to be disturbed has no more than 5.0 cumulative acres of new surface disturbance. This does not include construction of facilities for the transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, and hazardous waste (REC required).

(2) Demolition of non-historic buildings, structures, or other improvements and disposal of debris therefrom, or removal of a part thereof for disposal, in accordance with applicable regulations, including those regulations applying to removal of asbestos, polychlorinated biphenyls (PCBs), lead-based paint, and other special hazard items (REC required).

(3) Road or trail construction and repair on existing rights-of-ways or on previously disturbed areas.

(d) Cultural and natural resource management activities:

(1) Land regeneration activities using only native trees and vegetation, including site preparation. This does not include forestry operations (REC required).

(2) Routine maintenance of streams and ditches or other rainwater conveyance structures (in accordance with U.S. Army COE's permit authority under Section 404 of the Clean Water Act and applicable state and local permits), and erosion control and stormwater control structures (REC required).

(3) Implementation of hunting and fishing policies or regulations that are consistent with state and local regulations.

(4) Studies, data collection, monitoring and information gathering that do not involve major surface disturbance. Examples include topographic surveys, bird counts, wetland mapping, and other resources inventories (REC required).

(5) Maintenance of archaeological, historical, and endangered/threatened species avoidance markers, fencing, and signs.

(e) Procurement and contract activities:

(1) Routine procurement of goods and services (complying with applicable procedures for sustainable or ''green'' procurement) to support operations and infrastructure, including routine utility services and contracts.

(2) Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).

(3) Conversion of commercial activities under the provisions of AR 5–20. This includes only those actions that do not change the actions or the missions of the organization or alter the existing land-use patterns.

(4) Modification, product improvement, or configuration engineering design change to materiel, structure, or item that does not change the original impact of the materiel, structure, or item on the environment (REC required).

(5) Procurement, testing, use, and/or conversion of a commercially available product (for example, forklift, generator, chain saw, etc.) which does not meet the definition of a weapon system (part 15, DODI 5000.2), and does not result in any unusual disposal requirements.

(6) Acquisition or contracting for spares and spare parts, consistent with the approved Technical Data Package (TDP).

(7) Modification and adaptation of commercially available items and products for military application (for example, sportsman's products and wear such as holsters, shotguns, sidearms, protective shields, etc.), as long as modifications do not alter the normal impact to the environment (REC required).

(8) Adaptation of non-lethal munitions and restraints from law enforcement suppliers and industry (such as rubber bullets, stun grenades, smoke bombs, etc.) for military police and crowd control activities where there is no change from the original product design and there are no unusual disposal requirements. The development and use by the military of non-lethal munitions and

restraints which are similar to those used by local police forces and in which there are no unusual disposal requirements (REC required).

(f) Real estate activities:

(1) Grants or acquisitions of leases, licenses, easements, and permits for use of real property or facilities in which there is no significant change in land or facility use. Examples include, but are not limited to, Army controlled property and Army leases of civilian property to include leases of training, administrative, general use, special purpose, or warehouse space (REC required).

(2) Disposal of excess easement areas to the underlying fee owner (REC required).

(3) Transfer of real property administrative control within the Army, to another military department, or to other federal agency, including the return of public domain lands to the Department of Interior, and reporting of property as excess and surplus to the GSA for disposal (REC required).

(4) Transfer of active installation utilities to a commercial or governmental utility provider, except for those systems on property that has been declared excess and proposed for disposal (REC required).

(5) Acquisition of real property (including facilities) where the land use will not change substantially or where the land acquired will not exceed 40 acres and the use will be similar to current or ongoing Army activities on adjacent land (REC required).

(6) Disposal of real property (including facilities) by the Army where the reasonably foreseeable use will not change significantly (REC required).

(7) Acquisition of land for restoration of off-post contamination, in accordance with CERCLA (REC required).

(g) Repair and maintenance activities:

(1) Routine repair and maintenance of buildings, airfields, grounds, equipment, and other facilities. Examples include, but are not limited to: removal and disposal of asbestos-containing material (for example, roof material and floor tile) or lead-based paint in accordance with applicable regulations; removal of dead, diseased, or damaged trees; and repair of roofs, doors, windows, or fixtures (REC required for removal and disposal of asbestos-containing material and lead-based paint or work on historic structures).

(2) Routine repairs and maintenance of roads, trails, and firebreaks. Examples include, but are not limited to: grading and clearing the roadside of brush with or without the use of herbicides; resurfacing a road to its original conditions; pruning vegetation, removal of dead, diseased, or damaged trees and cleaning culverts; and minor soil stabilization activities.

(3) Routine repair and maintenance of equipment and vehicles (for example, autos, tractors, lawn equipment, military vehicles, etc.) except depot maintenance of military equipment, which is substantially the same as that routinely performed by private sector owners and operators of similar equipment and vehicles.

(h) Hazardous materials/hazardous waste management and operations:

(1) Use of gauging devices, analytical instruments, and other devices containing sealed radiological sources; use of industrial radiography; use of radioactive material in medical and veterinary practices; possession of radioactive material incident to performing services such as installation, maintenance, leak tests, and calibration; use of uranium as shielding material in containers or devices; and radioactive tracers (REC required).

(2) Immediate responses in accordance with emergency response plans (for example, Spill Prevention Control and Countermeasure Plan (SPCCP)/Installation Spill Contingency Plan (ISCP), and Chemical Accident and Incident Response Plan) for release or discharge of oil or hazardous materials/substances; or emergency actions taken by Explosive Ordnance Demolition (EOD) detachment or Technical Escort Unit.

(3) Sampling, surveying, well drilling and installation, analytical testing, site preparation, and intrusive testing to determine if hazardous wastes, contaminants, pollutants, or special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance) are present (REC required).

(4) Routine management, to include transportation, distribution, use, storage, treatment, and disposal of solid waste, medical waste, radiological and special hazards (for example, asbestos, PCBs, lead-based paint, or unexploded ordnance), and/or hazardous waste that complies with EPA, Army, or other regulatory agency requirements. This CX is not applicable to new construction of facilities for such management purposes.

(5) Research, testing, and operations conducted at existing enclosed facilities consistent with previously established safety levels and in compliance with applicable federal, state, and local standards. For facilities without existing NEPA analysis, including contractor-operated facilities, if the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.

(6) Reutilization, marketing, distribution, donation, and resale of items, equipment, or materiel; normal transfer of items to the Defense Logistics Agency. Items, equipment, or materiel that have been contaminated with hazardous materials or wastes will be adequately cleaned and will conform to the applicable regulatory agency's requirements.

(i) Training and testing:

(1) Simulated war games (classroom setting) and on-post tactical and logistical exercises involving units of battalion size or smaller, and where tracked vehicles will not be used (REC required to demonstrate coordination with installation range control and environmental office).

(2) Training entirely of an administrative or classroom nature.

(3) Intermittent on-post training activities that involve no live fire or vehicles off established roads or trails. Uses include, but are not limited to, land navigation, physical training, Federal Aviation Administration (FAA) approved aerial overflights, and small unit level training.

(4) Development/operational testing and demonstrations of new equipment at a government or commercial facility where the tests are conducted in conjunction with normal development or operational activities that have been previously assessed in an Army document pertaining to those operations.

(j) Aircraft and airfield activities:

(1) Infrequent, temporary (less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate (REC required).

(2) Flying activities in compliance with Federal Aviation Administration Regulations and in accordance with normal flight patterns and elevations for that facility, where the flight patterns/elevations have been addressed in an installation master plan or other planning document that has been subject to NEPA public review.

(3) Installation, repair, or upgrade of airfield equipment (for example, runway visual range equipment, visual approach slope indicators).

(4) Army participation in established air shows sponsored or conducted by non-Army entities on other than Army property.

Appendix C to Part 651—Mitigation and Monitoring

(a) The CEQ regulations recognize the following five means of mitigating an environmental impact. These five approaches to mitigation are presented in order of desirability.

(1) Avoiding the impact altogether by not taking a certain action or parts of an action. This method avoids environmental impact by eliminating certain activities in certain areas. As an example, the Army's Integrated Training Area Management (ITAM) program accounts for training requirements and activities while considering natural and cultural resource conditions on ranges and training land. This program allows informed management decisions associated with the use of these lands, and has mitigated potential impacts by limiting activities to areas that are compatible with Army training needs. Sensitive habitats and other resources are thus protected, while the mission requirements are still met.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation. Limiting the degree or magnitude of the action can reduce the extent of an impact. For example, changing the firing time or the number of rounds fired on artillery ranges will reduce the noise impact on nearby residents. Using the previous ITAM example, the conditions of ranges can be monitored, and, when the conditions on the land warrant, the intensity or magnitude of the training on that parcel can be modified through a variety of decisions.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the effect on the environment. This method restores the environment to its previous condition or better. Movement of troops and vehicles across vegetated areas often destroys vegetation. Either reseeding or replanting the areas with native plants after the exercise can mitigate this impact.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. This method designs the action so as to reduce

adverse environmental effects. Examples include maintaining erosion control structures, using air pollution control devices, and encouraging car pools in order to reduce transportation effects such as air pollution, energy consumption, and traffic congestion.

(5) Compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20). This method replaces the resource or environment that will be impacted by the action. Replacement can occur in-kind or otherwise; for example, deer habitat in the project area can be replaced with deer habitat in another area; an in-kind replacement at a different location. This replacement can occur either on the impact site or at another location. This type of mitigation is often used in water resources projects.

(b) The identification and evaluation of mitigations involves the use of experts familiar with the predicted environmental impacts. Many potential sources of information are available for assistance. These include sources within the Army such as the USACHPPM, the USAEC, MACOM environmental office, the ODEP, COE research laboratories, Huntsville Division, military assistance offices in certain COE districts, and the Department of Defense (DoD) Regional Support Centers. State agencies are another potential source of information, and the appropriate POC within these agencies may be obtained from the installation environmental office. Local interest groups may also be able to help identify potential mitigation measures. Other suggested sources of assistance include:

(1) Aesthetics:

(i) Installation Landscape Architect.

(ii) COE District Landscape Architects.

(2) Air Quality:

(i) Installation Environmental Specialist.

(ii) Installation Preventive Medicine Officer.

(3) Airspace:

(i) Installation Air Traffic and Airspace Officers.

(ii) DA Regional Representative to the FAA.

(iii) DA Aeronautical Services.

(iv) Military Airspace Management System Office.

(v) Installation Range Control Officer.

(4) Earth Science:

(i) Installation Environmental Specialist.

(ii) COE District Geotechnical Staff.

(5) Ecology:

(i) Installation Environmental Specialist.

(ii) Installation Wildlife Officer.

(iii) Installation Forester.

(iv) Installation Natural Resource Committee.

(v) COE District Environmental Staff.

(6) Energy/Resource Conservation:

Installation Environmental Specialist.

(7) Health and Safety:

(i) Installation Preventive Medicine Officer.

(ii) Installation Safety Officer.

(iii) Installation Hospital.

(iv) Installation Mental Hygiene or Psychiatry Officer.

(v) Chaplain's Office.

(8) Historic/Archaeological Resources:

(i) Installation Environmental Specialist.

(ii) Installation Historian or Architect.

(iii) COE District Archaeologist.

(9) Land Use Impacts:

(i) Installation Master Planner.

(ii) COE District Community Planners.

(10) Socioeconomics:

(i) Personnel Office.

(ii) Public Information Officer.

(iii) COE District Economic Planning Staff.

(11) Water Quality:

(i) Installation Environmental Specialist.

(ii) Installation Preventive Medicine Officer.

(iii) COE District Environmental Staff.

(12) Noise:

(i) Preventive Medicine Officer.

(ii) Directorate of Public Works.

(iii) Installation Master Planner.

(13) Training Impacts:

Installation Director of Plans, Training, and Mobilization:

(c) Several different mitigation techniques have been used on military installations for a number of years. The following examples illustrate the variety of possible measures:

(1) There are maneuver restrictions in areas used extensively for tracked vehicle training. These restrictions are not designed to infringe on the military mission, but rather to reduce the amount of damage to the training area.

(2) Aerial seeding has been done on some installations to reduce erosion problems.

(3) Changing the time and/or frequency of operations has been used. This may involve changing the season of the year, the time of day, or even day of the week for various activities. These changes avoid noise impacts as well as aesthetic, transportation, and some ecological problems.

(4) Reducing the effects of construction has involved using techniques that keep heavy equipment away from protected trees and quickly re-seeding areas after construction.

(d) Monitoring and enforcement programs are applicable (40 CFR 1505.2(c)) and the specific adopted action is an important case (40 CFR 1505.3) if:

(1) There is a change in environmental conditions or project activities that were assumed in the EIS, such that original predictions of the extent of adverse environmental impacts may be too limited.

(2) The outcome of the mitigation measure is uncertain, such as in the case of the application of new technology.

(3) Major environmental controversy remains associated with the selected alternative.

(4) Failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to federal- or state-listed endangered or threatened species; important historic or archaeological sites that are either on, or meet eligibility requirements for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. Evaluation and determination of what constitutes serious harm must be made in coordination with the appropriate federal, state, or local agency responsible for each particular program.

(e) Five basic considerations affect the establishment of monitoring programs:

(1) *Legal requirements.* Permits for some actions will require that a monitoring system be established (for example, dredge and fill permits from the COE). These permits will generally require both enforcement and effectiveness monitoring programs.

(2) *Protected resources.* These include federal- or state-listed endangered or threatened species, important historic or archaeological sites (whether or not these are listed or eligible for listing on the National Register of Historic Places), wilderness areas, wild and scenic rivers, and other public or private protected resources. Private protected resources include areas such as Audubon Society Refuges, Nature Conservancy lands, or any other land that would be protected by law if it were under government ownership, but is privately owned. If any of these resources are affected, an effectiveness and enforcement-monitoring program must be undertaken in conjunction with the federal, state, or local agency that manages the type of resource.

(3) *Major environmental controversy.* If a controversy remains regarding the effect of an action or the effectiveness of a mitigation, an enforcement and effectiveness monitoring program must be undertaken. Controversy includes not only scientific disagreement about the mitigation's effectiveness, but also public interest or debate.

(4) *Mitigation outcome.* The probability of the mitigation's success must be carefully considered. The proponent must know if the mitigation has been successful elsewhere. The validity of the outcome should be confirmed by expert opinion. However, the proponent should note that a certain technique, such as artificial seeding with the natural vegetation, which may have worked successfully in one area, may not work in another.

(5) *Changed conditions.* The final consideration is whether any condition, such as the environmental setting, has changed (for example, a change in local land use around the area, or a change in project activities, such as increased amount of acreage being used or an increased movement of troops). Such changes will require preparation of a supplemental document (see § 651.5(g) and 651.24) and additional monitoring. If none of these conditions are met (that is, requirement by law, protected resources, no major controversy is involved, effectiveness of the mitigation is known, and the environmental or project conditions have not changed), then only an enforcement monitoring program is needed. Otherwise, both an enforcement and effectiveness monitoring program will be required.

(f) *Enforcement monitoring program.* The development of an enforcement monitoring program is governed by who will actually perform the mitigation; a contractor, a cooperating agency, or an in-house (Army) lead agency. The lead agency is ultimately responsible for performing any mitigation activities.

(1) *Contract performance.* Several provisions must be made in work to be performed by contract. The lead agency must ensure that contract provisions include the performance of the mitigation activity and that penalty clauses are written into the contracts. It must provide for timely inspection of the mitigation measures and is

responsible for enforcing all contract provision.

(2) *Cooperating agency performance.* The lead agency must ensure that, if a cooperating agency performs the work, it understands its role in the mitigation. The lead agency must determine and agree upon how the mitigation measures will be funded. It must also ensure that any necessary formal paperwork such as cooperating agreements is complete.

(3) *Lead agency performance.* If the lead agency performs the mitigation, the proponent must ensure that needed tasks are performed, provide appropriate funding in the project budget, arrange for necessary manpower allocations, and make any necessary changes in the agency (installation) regulations (such as environmental or range regulations).

(g) *Effectiveness monitoring.* Effectiveness monitoring is often difficult to establish. The first step is to determine what must be monitored, based on criteria discussed during the establishment of the system; for example, the legal requirements, protected resources, area of controversy, known effectiveness, or changed conditions. Initially, this can be a very broad statement, such as reduction of impacts on a particular stream by a combination of replanting, erosion control devices, and range regulations. The next step is finding the expertise necessary to establish the monitoring system. The expertise may be available on-post or may be obtained from an outside source. After a source of expertise is located, the program can be established using the following criteria:

(1) Any technical parameters used must be measurable; for example, the monitoring program must be quantitative and statistically sound.

(2) A baseline study must be completed before the monitoring begins in order to identify the actual state of the system prior to any disturbance.

(3) The monitoring system must have a control, so that it can isolate the effects of the mitigation procedures from effects originating outside the action.

(4) The system's parameters and means of measuring them must be replicable.

(5) Parameter results must be available in a timely manner so that the decision maker can take any necessary corrective action before the effects are irreversible.

(6) Not every mitigation has to be monitored separately. The effectiveness of several mitigation actions can be determined by one measurable parameter. For example, the turbidity measurement from a stream can include the combined effectiveness of mitigation actions such as reseeding, maneuver restrictions, and erosion control devices. However, if a method combines several parameters and a critical change is noted, each mitigation measurement must be examined to determine the problem.

Appendix D to Part 651—Public Participation Plan

The objective of the plan will be to encourage the full and open discussion of issues related to Army actions. Some NEPA actions will be very limited in scope, and may not require full public participation and involvement. Other NEPA actions will obviously be of interest, not only to the local community, but to others across the country as well.

(a) To accomplish this objective, the plan will require:

(1) Dissemination of information to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters. Such information may be subject to Freedom of Information Act and operations security review.

(2) The invitation of public comments through two-way communication channels that will be kept open through various means.

(3) The use of fully informed public affairs officers at all levels.

(4) Preparation of EAs which incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(5) Consultation of persons and agencies such as:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service) or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Native Americans.

(v) Members and officials of those identifiable interest groups of local or national scope that may have an interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(b) Public involvement should be solicited using the following processes and procedures:

(1) Direct individual contact. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of very limited scope. This contract should identify:

(i) Persons expected to express an opinion and later participate.

(ii) Preliminary positions of such persons on the scope of issues that the analysis must address.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues, inviting the public to express views on the proposed courses of action. Public suggestions or additional alternative courses of action may be expressed at these gatherings which need not be formal public hearings.

(4) Any other processes and procedures to accomplish the appropriate level of public involvement.

(c) *Scoping Guidance.* All affected parties must be included in the scoping process (AR 360–5). The plan must include the following:

(1) Information disseminated to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. Such information may be subject to Freedom of Information Act and operations security review.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, and federal government agencies.

(3) Public comments will be invited and two-way communication channels will be kept open through various means as stated above.

(4) Public affairs officers at all levels will be kept informed.

(5) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(6) Preparation of EAs will incorporate public involvement processes whenever appropriate (40 CFR 1506.6).

(7) Persons and agencies to be consulted include the following:

(i) Municipal, township, and county elected and appointed officials.

(ii) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(iii) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action, (for example, the GSA).

(iv) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization such as farmers and ranchers, homeowners, small business owners, and Indian tribes.

(v) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Isaak Walton League, Sierra Club, and the Audubon Society).

(vi) Any person or group that has specifically requested involvement in the specific action or similar actions.

(8) The public involvement processes and procedures by which participation may be solicited include the following:

(i) The direct individual contact process identifies persons expected to express an

opinion and participate in later public meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues that the EIS will address. Such limited contact may suffice for all required public involvement, when the expected environmental effect is of very limited scope.

(ii) Small workshops or discussion groups.

(iii) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(iv) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(9) The meetings described above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent of paragraph (a) of this appendix.

(10) Public surveys or polls to identify public opinion of a proposed action will be performed (AR 335–15, chapter 10).

(d) *Preparing the Notice of Intent.* In preparing the NOI, the proponent will:

(1) In the NOI, identify the significant issues to be analyzed in the EIS.

(2) In the NOI, identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, make that distinction.

(3) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5–6).

(4) Identify the method by which the agency will invite participation of affected parties; and identify a tentative list of the affected parties to be notified.

(5) Identify the proposed method for accomplishing the scoping procedure.

(6) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decision-making schedule including:

(i) The scoping process itself.

(ii) Collecting or analyzing environmental data, including studies required of cooperating agencies.

(iii) Preparation of DEISs and FEISs.

(iv) Filing of the ROD.

(v) Taking the action.

(7) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions that will involve separate environmental analysis.

(8) If applicable, in the NOI, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

Appendix E to Part 651—Content of the Environmental Impact Statement

(a) EISs will:

(1) Be analytic rather than encyclopedic. Impacts will be discussed in proportion to their significance; and insignificant impacts will only be briefly discussed, sufficient to show why more analysis is not warranted.

(2) Be kept concise and no longer than absolutely necessary to comply with NEPA, CEQ regulations, and this regulation. Length should be determined by potential environmental issues, not project size. The EIS should be no longer than 200 pages.

(3) Describe the criteria for selecting alternatives, and discuss those alternatives, including the ''no action'' alternative, to be considered by the ultimate decision maker.

(4) Serve as a means to assess environmental impacts of proposed military actions, rather than justifying decisions.

(b) The EIS will consist of the following:

(1) *Cover sheet.* The cover sheet will not exceed one page (40 CFR 1502.11) and will be accompanied by a signature page for the proponent, designated as preparer; the installation environmental office (or other source of NEPA expertise), designated as reviewer; and Installation Commander (or other Activity Commander), designated as approver. It will include:

(i) The following statement: ''The material contained in the attached (final or draft) EIS is for internal coordination use only and may not be released to non-Department of Defense agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority.'' This sheet will be removed prior to filing the document with the EPA.

(ii) A list of responsible agencies including the lead agency and any cooperating agency.

(iii) The title of the proposed action that is the subject of the statement and, if appropriate, the titles of related cooperating agency actions, together with state and county (or other jurisdiction as applicable) where the action is located.

(iv) The name, address, and telephone number of the person at the agency who can supply further information, and, as appropriate, the name and title of the major approval authority in the command channel through HQDA staff proponent.

(v) A designation of the statement as a draft, final, or draft or final supplement.

(vi) A one-paragraph abstract of the statement that describes only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

(vii) The date by which comments must be received, computed in cooperation with the EPA.

(2) *Summary.* The summary will stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. The summary presentation will focus on the scope of the EIS, including issues that will not be evaluated in detail. It should list all federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other federal environmental protection laws will be included (40 CFR 1502.25). To simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with the narrative. The EIS summary should be written at the standard middle school reading level. This summary should not exceed 15 pages. An additional summary document will be prepared for separate submission to the DEP and the ASA(I&E). This will identify progress ''to the date,'' in addition to the standard EIS summary which:

(i) Summarizes the content of the document (from an oversight perspective).

(ii) Outlines mitigation requirements (to improve mitigation tracking and the programming of funds).

(iii) Identifies major and unresolved issues and potential controversies.

(iv) For EIS actions that have been delegated by the ASA(I&E), this document will also include status of requirements and conditions established by the delegation letter.

(3) *Table of contents.* This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

(4) *Purpose of and need for the action.* This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section will briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives. This section is designed specifically to call attention to the benefits of the proposed action. If a cost-benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here.

(5) *Alternatives considered, including proposed action and no action alternative.* This section presents all reasonable alternatives and their likely environmental impacts, written in simple, nontechnical language for the lay reader. A no action alternative must be included (40 CFR 1502.14(d)). A preferred alternative need not be identified in the DEIS; although a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)). The environmental impacts of the alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decision maker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of graphics and tabular or matrix format is encouraged to provide the reviewer with an at-a-glance review. In summary, the following points are required:

(i) A description of all reasonable alternatives, including the preferred action, alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the no action alternative.

(ii) A comparative presentation of the environmental consequences of all reasonable alternative actions, including the preferred alternative.

(iii) A description of the mitigation measures and/or monitoring procedures (§ 651.15) nominated for incorporation into the proposed action and alternatives, as well as mitigation measures that are available but not incorporated and/or monitoring procedures (§ 651.15).

(iv) Listing of any alternatives that were eliminated from detailed study. A brief

discussion of the reasons for which each alternative was eliminated.

(6) *Affected environment (baseline conditions) that may be impacted.* This section will contain information about existing conditions in the affected areas in sufficient detail to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Affected elements could include, for example, biophysical characteristics (ecology and water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form, or referenced.

(7) *Environmental and socioeconomic consequences.* This section forms the scientific and analytic basis for the comparison of impacts. It should discuss:

(i) Direct effects and their significance.

(ii) Indirect effects and their significance.

(iii) Possible conflicts between the proposed action and existing land use plans, policies, and controls.

(iv) Environmental effects of the alternatives, including the proposed action and the no action alternative.

(v) Energy requirements and conservation potential of various alternatives and mitigation measures.

(vi) Irreversible and irretrievable commitments of resources associated with the proposed action.

(vii) Relationship between short-term use of the environment and maintenance and enhancement of long-term productivity.

(viii) Urban quality, historic, and cultural resources, and design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(ix) Cumulative effects of the proposed action in light of other past, present, and foreseeable actions.

(x) Means to mitigate or monitor adverse environmental impacts.

(xi) Any probable adverse environmental effects that cannot be avoided.

(8) *List of preparers.* The EIS will list the names of its preparers, together with their qualifications (expertise, experience, and professional disciplines) (40 CFR 1502.17), including those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, and basic components of the statement. When possible, the people who are responsible for a particular analysis, as well as an analysis of background papers, will be identified. If some or all of the preparers are contractors' employees, they must be identified as such. Identification of the firm that prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, this list will not exceed two pages. Contractors will execute disclosure statements specifying that they have no financial or other interest in the outcome of the project. These statements will be referenced in this section of the EIS.

(9) *Distribution list.* For the DEIS, a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or organizations. The distribution of the DEIS and FEIS will include the CBTDEVs from whom comments were requested, irrespective of whether they provided comments.

(10) *Index.* The index will be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

(11) *Appendices (as appropriate).* If an agency prepares an appendix to an EIS, the appendix will consist of material prepared in connection with an EIS (distinct from material not so prepared and incorporated by reference), consist only of material that substantiates any analysis fundamental to an impact statement, be analytic and relevant to the decision to be made, and be circulated with the EIS or readily available.

Appendix F to Part 651—Glossary

Section 1—Abbreviations

AAE

Army Acquisition Executive

AAPPSO

Army Acquisition Pollution Prevention Support Office

ACAT

Acquisition Category

ACSIM

Assistant Chief of Staff for Installation Management

ADNL

A-weighted day-night levels

AQCR

Air Quality Control Region

AR

Army Regulation

ARNG

Army National Guard

ARSTAF

Army Staff

ASA(AL&T)

Assistant Secretary of the Army (Acquisition, Logistics, and Technology)

ASA(FM)

Assistant Secretary of the Army for Financial Management

ASA(I&E)

Assistant Secretary of the Army (Installations and Environment)

ASD(ISA)

Assistant Secretary of Defense (International Security Affairs)

CBTDEV

Combat Developer

CDNL

C-Weighted Day-Night Levels

CEQ

Council on Environmental Quality

CERCLA

Comprehensive Environmental Response Compensation and Liability Act

CFR

Code of Federal Regulations

COE

Corps of Engineers

CONUS

Continental United States

CX

Categorical Exclusion

DA

Department of the Army

DAD

Defense Acquisition Deskbook

DASA (ESOH)

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health)

DCSLOG

Deputy Chief of Staff for Logistics

DCSOPS

Deputy Chief of Staff for Operations and Plans

DEIS

Draft Environmental Impact Statement

DEP

Director of Environmental Programs

DOD

Department of Defense

DOPAA

Description of Proposed Action and Alternatives

DTIC

Defense Technical Information Center

DTLOMS

Doctrine, Training, Leader Development, Organization, Materiel, and Soldier

DUSD(ES)

Deputy Under Secretary of Defense for Environmental Security

EA

Environmental Assessment

EBS

Environmental Baseline Studies

EC

Environmental Coordinator

ECAP

Environmental Compliance Achievement Program

ECAS

Environmental Compliance Assessment System

EE/CA

Engineering Evaluation/Cost Analysis

EICS

Environmental Impact Computer System

EIFS

Economic Impact Forecast System

EIS
Environmental Impact Statement
EJ
Environmental Justice
EOD
Explosive Ordnance Demolition
EPA
Environmental Protection Agency
EPR
Environmental Program Requirements
EQCC
Environmental Quality Control Committee
ESH
Environment, Safety, and Health
FAA
Federal Aviation Administration
FEIS
Final Environmental Impact Statement
FNSI
Finding of No Significant Impact
FR
Federal Register
FS
Feasibility Study
FTP
Full-Time Permanent
GC
General Counsel
GOCO
Government-Owned, Contractor-Operated
GSA
General Services Administration
HQDA
Headquarters, Department of the Army
ICRMP
Integrated Cultural Resources Management Plan
ICT
Integrated Concept Team
INRMP
Integrated Natural Resources Management Plan
IPT
Integrated Process Team
ISCP
Installation Spill Contingency Plan
ISR
Installation Status Report
ITAM
Integrated Training Area Management
LCED
Life Cycle Environmental Documentation
MACOM
Major Army Command
MATDEV
Materiel Developer
MDA
Milestone Decision Authority
MFA
Materiel Fielding Agreement
MFP
Materiel Fielding Plan
MILCON
Military Construction
MNS
Mission Needs Statement
MOA
Memorandum of Agreement
MOU
Memorandum of Understanding
NAGPRA
Native American Graves Protection and Repatriation Act
NEPA
National Environmental Policy Act
NGB
National Guard Bureau
NHPA
National Historic Preservation Act
NOA
Notice of Availability
NOI
Notice of Intent
NPR
National Performance Review
NRC
Nuclear Regulatory Commission
NWR
Notice of Availability of Weekly Receipts (EPA)
OASD(PA)
Office of the Assistant Secretary of Defense for Public Affairs
OCLL
Office of the Chief of Legislative Liaison
OCPA
Office of the Chief of Public Affairs
ODEP
Office of the Director of Environmental Programs
OFS
Officer Foundation Standards
OGC
Office of General Counsel
OIPT
Overarching Integrated Process Team
OMA
Operations and Maintenance Army
OMANG
Operations and Maintenance Army National Guard
OMAR
Operations and Maintenance Army Reserve
OOTW
Operations Other Than War
OPSEC
Operations Security
ORD
Operating Requirements Document
OSD
Office of the Secretary of Defense
OSG
Office of the Surgeon General
PAO
Public Affairs Officer
PCB
Polychlorinated Biphenyls
PDEIS
Preliminary Draft Environmental Impact Statement
PEO
Program Executive Officer
PM
Program Manager
POC
Point of Contact
POL
Petroleum, Oils, and Lubricants
PPBES
Program Planning and Budget Execution System
RCRA
Resource Conservation and Recovery Act
RDT&E
Research, Development, Test, and Evaluation
REC
Record of Environmental Consideration
ROD
Record of Decision
RONA
Record of Non-Applicability
RSC
Regional Support Command
S&T
Science and Technology
SA
Secretary of the Army
SARA
Superfund Amendments and Reauthorization Act
SASO
Stability and Support Operations
SOFA
Status of Forces Agreement
SPCCP
Spill Prevention Control and Countermeasure Plan
TDP
Technical Data Package
TDY
Temporary Duty
TEMP
Test and Evaluation Master Plan
TJAG
The Judge Advocate General

TOE

Table of Organization Equipment

TRADOC

U.S. Army Training and Doctrine Command

USACHPPM

U.S. Army Center for Health Promotion and Preventive Medicine

USAEC

U.S. Army Environmental Center

U.S.C.

United States Code

Section II—Terms

Categorical Exclusion

A category of actions that do not require an EA or an EIS because Department of the Army (DA) has determined that the actions do not have an individual or cumulative impact on the environment.

Environmental (or National Environmental Policy Act) Analysis

This term, as used in this part, will include all documentation necessary to coordinate and staff analyses or present the results of the analyses to the public or decision maker.

Foreign Government

A government, regardless of recognition by the United States, political factions, and organizations, that exercises governmental power outside the United States.

Foreign Nations

Any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments. It also refers to any area under military occupation by the United States alone or jointly with any other foreign government. Includes any area that is the responsibility of an international organization of governments; also includes contiguous zones and fisheries zones of foreign nations.

Global Commons

Geographical areas outside the jurisdiction of any nation. They include the oceans outside territorial limits and Antarctica. They do not include contiguous zones and fisheries zones of foreign nations.

Headquarters, Department of the Army Proponent

As the principal planner, implementer, and decision authority for a proposed action, the HQDA proponent is responsible for the substantive review of the environmental documentation and its thorough consideration in the decision-making process.

Major Federal Action

Reinforces, but does not have a meaning independent of, ''significantly affecting the environment,'' and will be interpreted in that context. A federal proposal with ''significant effects'' requires an EIS, whether it is ''major'' or not. Conversely, a ''major federal action'' without ''significant effects'' does not necessarily require an EIS.

Preparers

Personnel from a variety of disciplines who write environmental documentation in clear and analytical prose. They are primarily responsible for the accuracy of the document.

Proponent

Proponent identification depends on the nature and scope of a proposed action as follows:

(1) Any Army structure may be a proponent. For instance, the installation/activity Facility Engineer (FE)/Director of Public Works becomes the proponent of installation-wide Military Construction Army (MCA) and Operations and Maintenance (O&M) Activity; Commanding General, TRADOC becomes the proponent of a change in initial entry training. The proponent may or may not be the preparer.

(2) In general, the proponent is the lowest level decision maker. It is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. The proponent has the responsibility to prepare and/or secure funding for preparation of the environmental documentation.

Significantly Affecting the Environment

An action, program, or project that would violate existing pollution standards; cause water, air, noise, soil, or underground pollution; impair visibility for substantial periods of any day; cause interference with the reasonable peaceful enjoyment of property or use of property; create an interference with visual or auditory amenities; limit multiple use management programs for an area; cause danger to the health, safety, or welfare of human life; or cause irreparable harm to animal or plant life in an area. Significant beneficial effects also do occur and must be addressed if applicable. (See 40 CFR 1508.27.)

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Thursday,
September 7, 2000

Part III

Department of Education

Competitive Preference to Certain Grant Competitions for Fiscal Year 2001 and Subsequent Fiscal Years; Notice

DEPARTMENT OF EDUCATION

Competitive Preference to Certain Grant Competitions for Fiscal Year 2001 and Subsequent Fiscal Years

AGENCY: Department of Education.

ACTION: Notice of proposed competitive preference for fiscal year 2001 and subsequent fiscal years.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes adding a competitive preference to certain grant competitions for fiscal year 2001 and subsequent fiscal years. This notice describes the proposed competitive preference, lists the programs to which it would apply, and requests comments on it.

DATES: We must receive your comments on or before October 10, 2000.

ADDRESSES: Address your comments about the proposed competitive preference to Ann Queen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. If you prefer to send your comments through the Internet, use the following address: ann_queen@ed.gov.

FOR FURTHER INFORMATION CONTACT: Ann Queen. Telephone: (202) 205–8285. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. You may also request further information through the Internet at the following address: ann_queen@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed competitive preference. We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed competitive preference. Please let us know of any further opportunities that we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about this proposed competitive preference in room 3317, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed competitive preference. If you want to schedule an appointment for this type of aid, you may call (202) 205–8207. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

This proposed competitive preference supports the National Education Goal that calls for every American to possess the skills necessary to compete in a global economy.

Note: This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use this competitive preference, we will invite applications through a notice in the **Federal Register**.

This notice contains proposed language for adding a competitive preference to competitions under 11 programs. Information on how we evaluate applications for each of these programs follows in parentheses:

84.128G—Migrant and Seasonal Farmworkers Program (34 CFR 75.200).
84.128J—Recreational Program (34 CFR 75.200).
84.132—Centers for Independent Living (34 CFR 366.26).
84.133A—Disability and Rehabilitation Research Projects and Centers Program (34 CFR 350.53).
84.133B—Rehabilitation Research and Training Centers (34 CFR 350.53).
84.133D—Knowledge Dissemination and Utilization (34 CFR 350.53).
84.133E—Rehabilitation Engineering Research Centers (34 CFR 350.53).
84.133N—Special Projects and Demonstrations for Spinal Cord Injuries (34 CFR 359.30).
84.234—Projects With Industry (34 CFR 379.30).
84.235—Special Demonstration Programs (34 CFR 75.200).
84.250—Vocational Rehabilitation Service Projects for American Indians with Disabilities (34 CFR 75.200).

Proposed Competitive Preference

Under 34 CFR 75.105(c)(2)(i) the Assistant Secretary proposes to add a competitive preference to applications that are otherwise eligible for funding under the 11 previously mentioned programs.

The maximum score under the selection criteria for each of these programs is 100 points; however, we will also use the following competitive preference so that up to an additional 10 points may be earned by an applicant for a total possible score of 110 points.

Up to 10 points may be earned based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities as project employees in projects awarded under these programs. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Therefore, within this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria noted previously in parentheses after each program. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

We will publish a notice of final competitive preference in the **Federal Register** after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

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Applicable Program Regulations: 34 CFR parts 350, 359, 366, 371, and 379.

Program Authority: 29 U.S.C. 709(c), 741, 764, 773, 774, 775, 795 and 796f–796f–5;

(Catalog of Federal Domestic Assistance Numbers: 84.128G—Migrant and Seasonal Farmworkers Program; 84.128J—Recreational Programs; 84.132—Centers for Independent Living; 84.133A—Disability and Rehabilitation Research Projects and Centers Program; 84.133B—Rehabilitation Research and Training Centers; 84.133D—Knowledge Dissemination and Utilization; 84.133E—Rehabilitation Engineering Research Centers; 84.133N—Special Projects and Demonstrations for Spinal Cord Injuries; 84.234—Projects With Industry; 84.235—Special Demonstration Programs; and 84.250—Vocational Rehabilitation Service Projects for American Indians with Disabilities.)

Dated: September 1, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–22953 Filed 9–6–00; 8:45 am]

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