



# Federal Register

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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

- WHEN:** Tuesday, May 22, 2001 at 9:00 a.m.
- WHERE:** Office of the Federal Register  
Conference Room  
800 North Capitol Street, NW.  
Washington, DC  
(3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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and notice of recently enacted public laws.

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Federal Register

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

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

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 382

#### 49 CFR Part 27

[OST Docket No. 1999-6159]

RIN 2105-AC81

### Nondiscrimination on the Basis of Disability in Air Travel

**AGENCY:** Office of the Secretary, Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation (DOT or Department) is amending its rules implementing the Air Carrier Access Act of 1986 (ACAA) and section 504 of the Rehabilitation Act of 1973 to require airports and air carriers to provide boarding assistance to individuals with disabilities by using ramps, mechanical lifts, or other suitable devices where level-entry boarding by loading bridge or mobile lounge is not available on any aircraft with a seating capacity of 31 or more passengers. This final rule parallels the 1996 final rule for aircraft with a seating capacity of 19 through 30 passengers.

**DATES:** This rule is effective on June 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Blane A. Workie, Office of the General Counsel, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC., 20590, 202-366-4723 (voice), (202) 755-7687 (TTY), 202-366-9313 (fax), or [blane.workie@ost.dot.gov](mailto:blane.workie@ost.dot.gov) (email). Arrangements to receive the rule in an alternative format may be made by contacting the above named individual.

## SUPPLEMENTARY INFORMATION:

### Background Information

Many airline passengers have mobility impairments and must be boarded and deplaned using a wheelchair. In 1996, the Department issued a rule to require the use of ramps, lifts or similar devices on most aircraft with 19 through 30 seats. At that time, the Department considered requiring ramps, lifts, or similar devices on all aircraft with 30 or fewer seats but the development of lift devices appeared not to have proceeded to the point where imposing regulation for the smallest aircraft (e.g., those under 19 passenger seats) would have been justified. Many believed that existing lift devices were not designed to work, or could not work, with aircraft with seating capacity of 19 or fewer passengers. The 1996 rule focused on smaller aircraft because many smaller aircraft don't use loading bridges, and in many cases mobility-impaired passengers have been boarded by being carried up aircraft stairs in a special "boarding chair." This process is undignified for the passenger, and potentially dangerous for both the passenger and those who are providing the boarding assistance.

In August 1999, recognizing that the need for level-entry boarding for passengers with mobility impairments also existed in larger aircraft, the Department of Transportation published a notice of proposed rulemaking (NPRM) proposing to extend the applicability of the 1996 final rule to aircraft with a seating capacity of 31 or more passengers. Similar to the 1996 final rule on aircraft with 19 through 30 seats, in the 1999 NPRM the Department proposed to require airports and airlines to work together to ensure the availability of lifts to provide level-entry boarding where it was not already available for passengers with disabilities traveling on aircraft with 31 or more seats. We received 27 comments from disability community organizations, individuals with disabilities, carriers, and industry associations representing airports and airlines. Of the 27 commenters, the vast majority generally supported the proposal but suggested substantive modifications in various parts of the rule.

## Discussion of Comments

### 1. Boarding Assistance Methods

*Comments:* The disability community comments had a common theme that carrying passengers up stairs by hand or in a boarding chair is a grossly offensive way of providing access, for reasons having to do with the dignity, safety, and comfort of passengers. Some disability group commenters did say, however, that using boarding chairs to carry passengers up stairs should be permitted with the consent of the passenger when a lift is inoperative or when there is an emergency. One disability group advocate, the Paralyzed Veterans of America, stressed that travelers with disabilities should be consulted about alternative arrangements (e.g. an alternative flight) when level boarding is not available.

The majority of the comments from industry also supported the use of mechanical lifts, ramps or other suitable devices in most situations where level entry-boarding bridges and accessible passenger lounges are not available. However, American Trans Air argued against the general requirement for lifts, ramps, or other suitable devices. The carrier thought that airlines should be permitted to use "reasonable efforts" to provide boarding assistance to individuals with disabilities using mechanical lifts, ramps or other suitable devices that do not require employees to lift or carry passengers up stairs.

The Air Transport Association of America (ATA) requested clarification as to when, if ever, a passenger with a disability may be carried onto an aircraft with the use of a chair or other device and when, if ever, a passenger with a disability may be physically hand carried on board. The ATA also requested clarification as to whether carrier personnel may assist a passenger transferring from an aisle chair to a seat by directly picking up the passenger's arms or legs.

*DOT Response:* The Department is not persuaded that carriers should be permitted to simply use "reasonable efforts" to provide boarding assistance using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs. It is not enough to use "reasonable efforts" to provide level-entry boarding. We will carry forward the 1996 provision and apply it here. Airline personnel will generally not be

permitted to carry passengers up stairs in a boarding chair, because it is an undignified and unsafe way of providing access for passengers and it increases risks to carrier personnel involved. The Department is requiring that, under normal circumstances, on an aircraft with 31 or more seats, carrier personnel may not lift passengers in boarding chairs up stairs as a means of effectuating the change of level needed for boarding. Hand-carrying (bodily picking up a passenger for purposes of a change of level) is only allowed when necessary for an emergency evacuation. In all other abnormal circumstances (e.g. if a lift breaks down), the carrier can use whatever means are available (including boarding chairs but not hand-carrying) as a means of effectuating the change of level needed for boarding. The use of a boarding chair to carry a passenger up or down stairs in such abnormal circumstances is conditioned on the passenger's consent (except in the case of emergency evacuations).

The Department wants it to be clear that this does not mean that boarding chairs and/or aisle chairs cannot be used in the boarding assistance process. Indeed, their use is usually necessary to get the passenger to a seat from a lift. Nor does it mean that carrier personnel are relieved of their obligation to assist passengers in transferring from their own wheelchairs to a boarding or aisle chair and then from that device to an aircraft seat.

## 2. Implementation Schedules

*Comments:* Both carriers and airports commented that the 18-month time frame for negotiating and implementing an agreement for the acquisition and use of level-entry boarding assistance devices was not sufficient to allow for the re-programming of funding, negotiations between carriers and airports, and employee training. On the other hand, disability community organizations and individuals with disabilities seemed to feel that the proposed 18-month time frame was too long and advocated for shortening the time to 12-months. These commenters argued for a shortening of time because years have passed since the ACAA regulations have been in place, lifts have been available for some time, and commenters believe that airlines and airports are capable of providing boarding assistance within the 12-month time frame.

*DOT Response:* The Department believes that existing lifts or lifts put in place in response to the 1996 small aircraft lift rule will assist in meeting the requirements of this rule. We expect that there may be many situations in

which the same boarding assistance equipment used to provide access to 19 through 30 seat aircraft can be used for larger aircraft. Further, the final rule provides an 18-month time frame to permit an orderly acquisition process for additional equipment and to avoid increasing costs through an overly abrupt start-up requirement. In choosing an 18-month schedule, the Department has tried to balance the need to provide accessibility as soon as possible and the need to give parties a reasonable amount of time to do the work. The Department continues to believe that 18 months accomplishes this objective.

## 3. Private Charters and Irregular or Emergency Operations

*Comments:* Carriers and airports argued that the requirement for airports and carriers to negotiate concerning the acquisition of boarding assistance devices should be limited to situations where the carrier is a regular, scheduled-service, or frequent user of the airport. These commenters asserted that the rule should not apply to private charters and irregular or emergency operations at airports where the carrier does not provide regular scheduled service. They also contended that the requirement for an agreement for the acquisition and use of boarding assistance devices should not apply to certain seasonal service.

*DOT Response:* The Department does not believe that it is advisable to waive its level-entry boarding assistance requirements in situations where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport. The main point of this regulation is to ensure that, in as many situations as possible, passengers with disabilities be able to travel by air, with safety and dignity. Carriers have ongoing working relationship with every airport that they fly to regardless of how infrequent the flights to that particular airport may be. For instance, carriers must pay airports take-off and landing fees. It is not persuasive to assert that the infrequency or irregularity of the relationship between a carrier and an airport should result in the Department not requiring them to negotiate with one another to acquire mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs. Given the mandate of the Air Carrier Access Act, it is reasonable to require accessibility even where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport.

## 4. Responsibility for Obtaining and Maintaining Lifts

*Comments:* Carriers and airports disagreed over who should be responsible for providing lift devices and maintaining them in proper working condition. Two airport commenters, the American Association of Airport Executives and the City of Billings Aviation and Transit Department, contended that airports must have flexibility to assess costs/charges against airlines for procurement and maintenance of lifts. These two commenters also wanted flexibility to require airlines to be responsible for the training of all employees in the use of lifts and the establishment of basic safety and insurance requirements. American Trans Air commented that under most circumstances airports and not carriers should be responsible for maintaining all lifts and other accessibility equipment in proper working condition. This commenter stated that joint responsibility between a carrier and an airport is appropriate only if a carrier is a frequent user, is responsible for more than 10% of the enplanements at the airport, or has regularly scheduled service to that point.

*DOT Response:* The Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. Airports and carriers have worked together for decades to find a basis for agreement on a wide variety of air transportation matters, so the concept of airports and air carriers negotiating to determine how accessibility will be provided is appropriate. The Department will not dictate one-size-fits-all solutions to issues that are better decided locally by the parties concerned. Carriers and airports share a joint responsibility to ensure that passengers with disabilities have the opportunity to use aircraft with 31 or more seats.

## 5. Regulatory Evaluation

*Comments:* The Regional Airline Association disputed the Department's statement in the NPRM that the incremental cost of the rule would be negligible because lifts are already in place or required to be in place by existing rules. The commenter seemed to be arguing that the cost of the rule would be more than negligible because 860 aircraft (40% of the total regional fleet) have more than 30 seats and lifts are not required by existing rules for these aircraft. American Trans Air also

disagreed with the Department's certification that the proposed rule would not have a significant impact on carriers and airports. American Trans Air stated that they fly to any airport that is certified to accept their fleet type and argued that airport operating authorities of smaller stations do not generally have the sustained traffic that would justify the capital costs of developing a lift capability.

*DOT Response:* The Department realizes that this is the first time that lifts or other suitable devices have been required to access an aircraft with 31 or more seats, but we expect that there may be many situations in which the same boarding assistance equipment that is currently required to be used to provide access to smaller aircraft can be used to provide access to aircraft with 31 or more seats. The Department believes that this rule which covers aircraft with more than 30 seats would require only minimal increase in the number of lifts already acquired by airports and air carriers because the demand for lifts is determined primarily by the size of the airport. For example, every airport needs at least one lift, and large airports, where gates are far apart and short turn-around time is important, need two or more. The frequency of lift usage by passengers with disabilities is only a secondary factor because the lifts acquired in response to the 1996 final rule on aircraft with seating capacity of 19 through 30 passengers are not used to their full potential. The Department estimates that the average use of a lift per day is less than 1 operation.

Further, the requirement to provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices apply only at airports with 10,000 or more annual enplanements, primary airports that have commercial service and where lifts would receive more use. Airports with less than 10,000 annual enplanements (small airports which often may not have regularly scheduled service) are not covered by this rule. The 10,000 enplanement threshold is also the same standard that has applied since 1996 to ramp/lift assistance for aircraft with 19 through 30 seats.

#### 6. Availability of Lifts

*Comments:* One commenter, Broward County, expressed its view that existing lifts on the market will not accommodate certain widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. This commenter explained that it represents an airport and that this airport had purchased a "Lift-A-Loft" transporter

but the "Lift-A-Loft" will reportedly not accommodate a 747 or a DC-10. Two other commenters, the Eastern Paralyzed Veterans Association and the National Association of Protection and Advocacy Systems, wrote that they were aware of two companies that manufacture lifts that service large aircraft. They stated that Lift-A-Loft Corporation manufactures at least one lift that can service aircraft as large as a 747. A second company, Wollard Airport Equipment Company, was also cited as a company that manufactures lifts that access commuter, regional and jet aircraft up to Boeing 727.

*DOT Response:* The Department is not convinced that existing lifts will not accommodate certain widebody aircraft. No carrier or carrier association voiced concerns that existing lifts on the market would not accommodate larger aircraft. Nevertheless, the final rule has a provision permitting airports and air carriers to seek a written waiver, under limited circumstances, from the requirement that they must provide boarding assistance to persons with disabilities by using ramps or mechanical lifts where level-entry boarding by loading bridge or mobile lounge is not available. A waiver will be granted only if the carrier can demonstrate that no existing lift or other suitable device on the market will accommodate the aircraft, and the carrier agrees to provide enplaning/deplaning assistance using boarding chairs as was allowed prior to the adoption of this final rule. If the use of existing models of lifts or other feasible devices to enplane a passenger would present an unacceptable risk of significant damage to the aircraft or injury to passenger or employees, then the Department would view this as meaning that there is no suitable device to accommodate the aircraft.

#### 7. Funding

*Comments:* One commenter, the City of Billings Aviation and Transit Department, requested that the Department of Transportation develop procedures establishing the number of lifts needed and how many will be eligible for Airport Improvement Program (AIP) funding.

*DOT Response:* The Department does not perceive a need to dictate procedures establishing the number of lifts needed in each airport for each carrier. The Department would prefer that the parties concerned develop their own procedures establishing the number of lifts needed in their specific situations. AIP is an option that can assist in the purchase of lifts but the

amount of AIP funding available varies each year.

#### 8. Foreign Air Carriers

*Comments:* The Air Transport Association requested clarification as to what extent this final rule will apply to foreign air carriers and U.S. airline operations wholly outside the United States.

*DOT Response:* This rule does not specifically mention foreign air carriers or U.S. airline operations wholly outside the United States because we did not propose to cover them in the notice of proposed rulemaking and it would be outside the scope of the notice to now cover foreign air carriers. Also, § 382.3(c) of the Department's Air Carrier Access Act rule states that this rule (part 382) does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions or commonwealths. However, on May 18, 2000, the Department of Transportation, through the Office of Aviation Enforcement and Proceedings, notified foreign airlines serving the United States that effective April 5, 2000, as mandated by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), they are now subject to the requirements of the Air Carrier Access Act. The Department is currently working on a separate rulemaking to make the regulations implementing the Air Carrier Access Act applicable to foreign air carriers.

#### 9. Penalties

*Comments:* The Paralyzed Veterans of America thought DOT should establish specific and automatic penalties against carriers that fail to provide level-entry boarding regardless of any alternative arrangements accepted by the disabled passenger.

*DOT Response:* The Department does not need to create a new penalty provision in order to bring an enforcement case against an airport or an airline for failure to provide level-entry boarding. If an airline fails to comply with its obligations, the enforcement procedure of 14 CFR 382.65(c) and (d) would apply. If an airport fails to comply, the procedures of 49 CFR part 27, subpart C would apply.

#### 10. Definitions

*Comments:* The ATA requested clarification on the meaning of "acquisition." The Paralyzed Veterans of America requested a change to § 382.29(a)(3) to state "passenger with a disability" rather than "handicapped passenger."

*DOT Response:* The Department uses the word "acquisition" of equipment to mean the purchase or lease of equipment. The Department assumes the disability group commenter is referring to § 382.39(a)(3) since § 382.29(a)(3) does not exist. The Department amended part 382 in 1996 to change terms containing the word "handicap" or "handicapped" to "disability." See 61 FR 56422. Most occurrences of the words "handicap" or "handicapped" were subsequently replaced by the word "disability" in the published rule. However, certain phrases that contain a version of the word "handicap" were inadvertently overlooked. We are correcting that in this final rule. These changes are editorial in nature and do not require notice and comment.

#### 11. Unrelated Issues

*Comments:* The Colorado Cross-Disability Coalition expressed frustration at the refusal of operators of small aircraft to transport or even sell a ticket to persons who cannot walk or who need in-flight medical oxygen. Another individual commenter requested a standard, industry-wide protocol for transporting of power wheelchairs and expressed anger at removal of gel batteries and damage to a chair.

*DOT Response:* Since their inception, the ACAA rules have required carriers using aircraft of all sizes to transport and provide enplaning/deplaning assistance to passengers who require it (although level-entry boarding might not be required in all cases). However, in some models of small aircraft, no existing model of lift or other device will work and the stairs that are built into the door of the aircraft are not strong enough to accommodate two or three persons at a time, as the use of a boarding chair would require. The result is that airlines may legally deny boarding to persons with mobility impairments in some limited situations. See 55 FR 8033-8034, March 6, 1990. This rulemaking does not concern small aircraft, in-flight oxygen, or the transportation of power wheelchairs and any new requirements on these topics would be outside the scope of the notice.

#### Section-By-Section Analysis

The Department has revised the format and subsequently the numbering of the rule text language in part 382 from that proposed in the August 1999 NPRM. The August 1999 NPRM placed the boarding assistance requirements for large aircraft in subpart (b) of § 382.39 which is titled "Provision of services

and equipment." The Department now realizes that it will be clearer if we simply create a new § 382.40a for boarding assistance requirements concerning large aircraft. The comments that the Department received for each individual section are discussed below under the revised section number.

#### 14 CFR 382.39

##### 1. 14 CFR 382.39(a)(2)

*Comments:* Several disability advocates were concerned about exemptions for aircraft carrying less than 19 passengers, and for float planes. They believe that it is technically feasible to provide safe and dignified access to small aircraft currently exempt from level boarding requirements. These commenters suggest widening the scope of air carrier regulations to require boarding access for all commercial airline flights regardless of aircraft size. Representatives of industry supported the current exemptions in § 382.40 for three specific 19-seat aircraft models, aircraft with fewer than 19 passengers, and float planes.

The Paralyzed of America pointed out that in the proposed § 382.39(a)(2) in the NPRM the Department mistakenly referred to paragraph (c) instead of paragraph (b).

*DOT Response:* This rulemaking concerns only aircraft with seating capacity of 31 or more passengers. In November 1996, the Department published a final rule concerning aircraft with 19 through 30 seats. In the 1996 final rule, the Department explained that it was aware of three 19-seat "problem aircraft" with which existing models of lifts do not work well, and the Department exempted the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models) from the boarding assistance requirements. The Department also exempted float planes, which often pick up passengers from docks or floating platforms, because they are incompatible with lift use. In addition, in the 1996 final rule, the Department decided to exempt all aircraft carrying fewer than 19 passengers because the existing lift devices did not appear designed to work with, or able to work with, some of the smallest aircraft. Additionally, the smallest aircraft carry a very small share of the national air traffic.

The commenter is correct in noting that in the proposed § 382.39(a)(2) in the NPRM the Department mistakenly referred to paragraph (c) instead of paragraph (b). This error has been rectified in the final rule.

#### 14 CFR 382.40a

##### 1. 14 CFR 382.40a(a)

*Comments:* The American Association of Airport Executives suggested creating two categories of aircraft (31 through 50, and greater than 50 passenger seats) and exempting airports that have no regularly scheduled operations by aircraft with more than 50 seats from having to have lifts or other boarding devices suitable for aircraft with more than 50 seats. The commenter reasoned that most existing equipment designed to facilitate boarding by disabled passengers would serve most turboprop and regional jet equipment but not aircraft with more than 50 seats.

*DOT Response:* The Department is not adopting this suggestion. Carriers have ongoing working relationships with every airport that they fly to regardless of how infrequent the flights to that particular airport may be. Further, the Department has provided carriers and airports an 18-month implementation schedule to permit an orderly acquisition process for additional equipment and to avoid increasing costs through an overly abrupt start-up requirement.

##### 2. 14 CFR 382.40a(b)

*Comments:* Many of the comments from persons with a disability and organizations representing the interests of persons with a disability supported not allowing enplaning and deplaning of passengers with disabilities through hand-carrying or the use of boarding chairs under any circumstances. These commenters felt the rule should require lifts for boarding access when there are no level entrances or loading bridges. Several of the disability group commenters supported allowing enplaning and deplaning of disabled passengers using boarding chairs in emergency situations or if a lift is temporarily not working. The Paralyzed Veterans of America (PVA) stressed that disabled travelers should be consulted about alternative arrangements (i.e. an alternative flight) when level boarding is not available and requested that the Department more thoroughly set forth and more prominently display within its rules the carrier's duties with respect to alternative arrangements.

American Trans Air wrote that it did not support the requirement to provide boarding assistance by using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs and preferred the use of "reasonable efforts to provide boarding assistance."

The Air Transport Association requested clarification as to when, if

ever, a passenger with a disability may be carried onto an aircraft with the use of a chair or other device and when, if ever, a passenger with a disability may be physically hand-carried on board. The ATA also requested clarification as to whether carrier personnel may assist a passenger transferring from an aisle chair to a seat by directly picking up the passenger's arms or legs.

*DOT Response:* The Department is not persuaded by the argument that carriers be permitted to use "reasonable efforts" to provide boarding assistance using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs in boarding chairs. It is not enough to use "reasonable efforts" to provide level-entry boarding. Airline personnel will generally not be permitted to carry passengers up stairs in a boarding chair because it is an undignified and unsafe way of providing access for passengers and it increases risks to carrier personnel involved. The Department is requiring that, under normal circumstances, on an aircraft with 31 or more seats, carrier personnel may not lift passengers in boarding chairs up stairs as a means of effectuating the change of level needed for boarding. Hand-carrying (bodily picking up passenger for purposes of a change of level) is only allowed when necessary for an emergency evacuation. In all other abnormal circumstances (e.g., if a lift breaks down), the carrier can use whatever means are available (including boarding chairs or an alternative flight, but not hand-carrying) as a means of effectuating the change of level needed for boarding. The use of a boarding chair to carry the passenger up or down stairs is conditioned on the passenger's consent (except in the case of emergency evacuations).

The Department wants it to be clear that this does not mean that boarding chairs and/or aisle chairs cannot be used in the boarding assistance process. Indeed, their use is necessary to get the passenger to a seat from a lift. Nor does it mean that carrier personnel are relieved of their obligation to assist passengers in transferring from their own wheelchairs to a boarding or aisle chair and then from that device to an aircraft seat.

The Department does not agree with the PVA's comment that there is a need for the Department to set forth in more detail and more prominently display in its rules the carrier's duties with respect to alternative arrangements. Section 382.45(a)(2) already requires the carrier to inform a passenger with a disability of any limitations on the ability of the aircraft to accommodate the passenger

whenever a passenger states he uses a wheelchair for boarding. In addition, alternative arrangements due to an inoperable lift should not be commonplace. Section 382.40a(c)(6) requires that the agreement between carriers and airports ensure that all lifts and other accessibility equipment are in proper working condition. Further, carriers on their own often ensure that a passenger with a disability is provided the option of an alternative flight when the required boarding assistance cannot be provided.

#### 3. 14 CFR 382.40a(c)(1)

*Comments:* The vast majority of comments from carriers, airports, and industry associations argued that the requirement for a carrier to negotiate in good faith with the airport operator at each airport should be limited to those situations where the carrier is a regular, scheduled-service, or frequent user of the airport. They contended that § 382.40a should not apply to private charters and irregular or emergency operations at airports where the carrier does not provide regular scheduled service. They also asserted that § 382.40a should not apply to as carriers and airports with limited seasonal-only service and regional airlines that provide seasonal service because demand is not adequate to support year-round service. In general, the industry comments declared that in these circumstances the rule should allow boarding and deplaning assistance by any means available, including hand-carrying with the express consent of the passenger.

The American Association of Airport Executives also requested an exemption for airports without regularly scheduled operations by aircraft with more than 50 seats from having lifts or other boarding devices suitable for aircraft with larger seating capacity. The same commenter requested clarification as to whether the phrase "to negotiate in good faith with each carrier serving the airport" applied to charters and non-scheduled carriers. Two other industry association commenters, the ATA and the Regional Airline Association, thought the requirement for agreements with airports was unnecessarily broad. They suggested revising § 382.40a(c)(1) to read as follows: "a carrier that does not provide passenger boarding by level-entry boarding bridges or accessible passenger lounges at an airport at which it provides regular scheduled service shall negotiate in good faith with that airport concerning the acquisition and use of boarding assistance devices."

American Trans Air commented that it supports the provision but would like

the costs to be allocated between operator and carrier based on proportionate use of facility. Two commenters representing airports argued that airports must have flexibility to: assess costs/charges for procurement and maintenance of lifts, require airlines to be responsible for training of all employees in the use of lifts, establish basic safety and insurance requirements before airlines can use lifts, and release the airports of liability if carriers do not follow these procedures.

The Paralyzed Veterans of America thought DOT should require that copies of all contracts negotiated under this rule be submitted to DOT for review and made available to the public as a means of ensuring compliance and determining the responsible party.

*DOT Response:* The Department does not believe it is necessary to require copies of all contracts negotiated under this rule be submitted to DOT for review since the written agreements between carriers and airports must be made available to DOT upon request. Also, airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding "Responsibility for Obtaining and Maintaining Lifts" for a fuller discussion of why the Department believes airports and carriers can negotiate among themselves.

The Department will adopt the suggestion of two industry commenters to narrow the requirements of § 382.40a(c)(1) by limiting the type of carrier that must negotiate in good faith to those carriers that do not provide passenger boarding by level-entry boarding bridges or accessible passenger lounges at an airport. However, the Department does not believe that it is advisable to waive its level-entry boarding assistance requirements in situations where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport. See response to comments regarding "Private Charters and Irregular or Emergency Operations" for a fuller discussion of why the Department believes it is reasonable to require accessibility even where a carrier provides seasonal service or the carrier is not a regular, scheduled-service, or frequent user of an airport.

#### 4. 14 CFR 382.40a(c)(2)

*Comments:* Most of the disability groups and persons with disabilities argued that a 12-month total time frame rather than 18-month total time frame was appropriate. They contended that a

3-month time frame for airport operators and air carriers to negotiate and sign a written agreement allocating responsibility for providing boarding assistance was sufficient and argued that a 9-month time frame to implement the agreement would be more than enough time. One person with a disability commented that 18 months is enough time to start using lifts for larger aircraft. The PVA stated that it would like for the final rule to require immediate implementation where level-entry boarding equipment is available to carriers or airports and is usable on aircraft affected by these regulations.

Representatives of industry strongly argued that more time than the Department's proposed 18-month schedule was needed to complete all actions necessary to ensure accessible boarding for passengers with disabilities. Two commenters, the American Association of Airport Executives and the City of Billings Aviation and Transit Department, requested a change to a minimum of a 24-month deadline in lieu of 18 months to allow for funding re-programming, air carrier negotiations, and employee training. The Regional Airline Association requested 36 months in lieu of 18 months due to what it perceived to be significant costs to regional airlines. American Trans Air commented that it would support the 18-month timeline only if carrier negotiation with airports is restricted to those carriers that are frequent users of airports, airports that are responsible for more than 10% of the enplanements, or carriers that have regular scheduled service at airports.

The Air Transport Association requested exemptions on a case-by-case basis for carriers and airports unable to secure lifts or other devices due to lack of availability from manufacturers and their demonstrated good faith efforts to obtain lifts, ramps, or other devices in a timely manner.

*DOT Response:* The Department believes existing lifts or lifts put in place in response to the 1996 small aircraft lift rule will assist in meeting the requirements of this rule. See response to comments regarding "Implementation Schedules" for a fuller discussion of why the Department chose an 18-month time frame. The Department notes that the rule already requires immediate implementation where level-entry boarding equipment is available to carriers and airports. Section 382.39(a)(2) states that boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are available. Otherwise, carriers shall use

ramps, lifts, or other devices for enplaning and deplaning persons with disabilities who need this kind of assistance. In sum, carriers are required to use these devices as soon as they are ready where level-entry boarding platforms are not available for a flight (i.e., a carrier cannot decline to use an available lift).

The Department believes it is unnecessary to grant waivers on a case-by-case basis for carriers and airports unable to secure lifts or other devices due to lack of availability from manufacturers and their demonstrated good faith efforts to obtain lifts, ramps, or other devices in a timely manner. Air carriers and airports have 18 months from the effective date of the rule to acquire lifts or other suitable devices. We expect that there may be many situations in which the same boarding assistance equipment used to provide access to smaller aircraft can be used to provide access to aircraft with 31 or more seats. The final rule includes a provision permitting airports and air carriers to seek a written waiver only if the carrier can demonstrate that no existing lift or other suitable device on the market will accommodate the aircraft and the carrier agrees to provide enplaning/deplaning assistance using boarding chairs as was allowed prior to adoption of this final rule. See response to comments regarding "Availability of Lifts" for a fuller discussion of when the Department will grant a waiver.

#### 5. 14 CFR 382.40a(c)(3)

*Comments:* American Trans Air commented that it supported the provision whereby a passenger requiring lift assistance may be required to check in at least one hour before the scheduled departure time.

*DOT Response:* The Department agrees with the commenter and the final rule is the same as the proposal in the NPRM.

#### 6. 14 CFR 382.40a(c)(4)

*Comments:* Broward County expressed its view that existing lifts on the market will not accommodate certain widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. The Eastern Paralyzed Veterans of America and the National Association of Protection and Advocacy Systems wrote that they were aware of two companies that manufacture lifts that service large aircraft.

*DOT Response:* The Department is not convinced that existing lifts will not accommodate widebody aircraft. Nevertheless, the final rule includes a new provision waiving the requirement

for boarding assistance to persons with disabilities by using ramps or mechanical lifts under limited circumstances. Boarding assistance by lift is not required on any widebody aircraft determined by the Department of Transportation to be unsuitable on the basis that no existing boarding assistance device on the market will accommodate the aircraft without significant risk of serious damage to the aircraft or injury to passenger or employee.

#### 7. 14 CFR 382.40a(c)(5)

*Comments:* American Trans Air commented that it supports this provision and understands that it would be able to refuse transport for passengers with disabilities without jeopardy according to § 382.31 (refusal of service) since hand-carrying is not an option. The Paralyzed Veterans of America expressed concern that the phrase "for reasons beyond the control of the parties to the agreement" in proposed § 382.40a(c)(5) seems to limit mandatory alternative boarding to situations where the air carrier or airport was not at fault for the failure to provide level-entry boarding. The PVA requested that the Department ensure that passengers have an option of alternative boarding or an alternative flight regardless of who is responsible for the failure to provide entry level boarding.

*DOT Response:* A carrier may not refuse transport on an aircraft with seating capacity of 31 or more passengers when level-entry boarding assistance through lift, ramp or other suitable device is not available. If a lift is not available, regardless of the reason, then the airline must consult with the passenger and provide boarding assistance by any available means to which the passenger consents (except hand-carrying as defined in § 382.39(a)(2)). For example, carrier personnel may carry a passenger up stairs in a boarding chair if the passenger consents. The Department is not aware of any model of aircraft with seating capacity of 31 or more seats with stairs that are built into the door of the aircraft that are not strong enough to accommodate two or three persons at a time, as the use of boarding chairs would require. If the passenger does not consent to being carried in a boarding chair, then the carrier may offer other options such as an alternative flight. The Department has removed the phrase "for reasons beyond the control of the parties to the agreement" from § 382.40a(c)(5) because it is confusing and could appear to some as limiting the situations in which alternative boarding must be provided.

## 8. 14 CFR 382.40a(c)(6)

*Comments:* American Trans Air thought that airports and not carriers should be responsible for maintaining all lifts and other accessibility equipment in proper working condition. This commenter stated that joint responsibility between a carrier and an airport is appropriate only if the carrier is a frequent user, is responsible for more than 10% of enplanements, or has regularly scheduled service. The PVA would like for the final rule to include a regular schedule for deployment and testing of lifts to ensure that any mechanical difficulties are discovered and resolved before a passenger needs the equipment to board an aircraft. This disability organization thought the final rule should require regular maintenance and testing on a schedule consistent with manufacturer instructions. If equipment cannot be repaired the same day, then the disability group commenter would like for the carrier to be required to make arrangements for replacement.

*DOT Response:* The Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding "Responsibility for Obtaining and Maintaining Lifts" for a fuller discussion of why the Department believes airports and carriers can negotiate among themselves.

Additionally, the Federal Aviation Administration (FAA) has an Advisory Circular on Lift Maintenance titled "Guide Specification for Devices Used to Board Airline Passengers With Mobility Impairments" (AC No. 150/5220-21B) as guidance on how to maintain lifts in proper working condition. Carriers and airports share a joint responsibility to ensure that passengers with disabilities have the opportunity to use aircraft with 31 or more seats.

## 9. 14 CFR 382.40a(d)(1)

*Comments:* American Trans Air requested that the Department consider requiring Fixed Base Operators (FBOs) and other contract service providers involved in the use of boarding assistance equipment to be responsible for their own training. This commenter also suggested that the Department require airports where the carrier is not a frequent user to be responsible for ensuring service/contract providers are trained/certified. A disability group advocate, the PVA, recommended that the training requirements for personnel

be stronger and suggested regular training of personnel with periodic refreshers.

*DOT Response:* Carriers and airports are ultimately responsible for ensuring that contract service providers are adequately trained in the use of boarding assistance equipment. The general part 382 requirement of training to proficiency includes refresher training, as needed, to maintain proficiency. We note that § 382.61, which applies to carriers that operate aircraft with more than 19 seats, requires refresher training as appropriate to the duties of each employee to ensure that proficiency is maintained. For example, for personnel involved in providing boarding assistance, training to proficiency would cover the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

## 49 CFR Part 27

## 1. 49 CFR 27.72(a)

*Comments:* One person with a disability expressed concern about the fact that the NPRM is limited to boarding assistance at airports with more than 10,000 annual enplanements.

*DOT Response:* The Department made the tentative decision not to apply this rule to airports with fewer than 10,000 enplanements because these airports are non-primary airports—small airports that often may not have regularly scheduled service. Airports with 10,000 or more annual enplanements are primary airports that have more commercial-service traffic and where lifts would receive more use. The 10,000 enplanement threshold is the same standard that has applied since 1996 to ramp/lift assistance for aircraft with 19 through 30 seats.

## 2. 49 CFR 27.72(b)

*Comments:* One commenter agreed that sub-section (c) of § 27.72 should apply to aircraft with a seating capacity of 19 through 30 passengers only so long as exemption for 19-seat aircraft models such as the Jetstream 31 remain.

*DOT Response:* The requirement for airports and carriers to jointly provide ramps or lifts for aircraft with 19 through 30 passenger seats does not override the existing exemption for certain aircraft such as the Jetstream 31. Indeed, the requirement as it pertains to 19 through 30 seat aircraft and the exemption for three aircraft types have been in existence since 1996. Nothing in the current proceeding affects them.

## 3. 49 CFR 27.72(c)(1)

*Comments:* American Trans Air supported the requirement that airport operators negotiate in good faith with each carrier, but would like the cost of boarding devices to be apportioned between operator and carrier based on enplanements and/or departures.

*DOT Response:* Again, the Department believes that airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for mechanical lifts or other suitable devices. Airports and carriers have worked together for decades to find a basis for agreement on a wide variety of air transportation issues, so the concept of airports and air carriers negotiating to determine how accessibility will be provided is appropriate.

## 4. 49 CFR 27.72(c)(2)

*Comments:* American Trans Air commented that Chicago Express's aircraft are currently exempt from the requirement to implement agreement within the specified time frame because its entire fleet consists of the Jetstream 31, a 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift. On behalf of Chicago Express, its affiliate/code-share partner, this carrier requested an 18-month period from the date Chicago Express acquires aircraft/equipment that is not exempt to the date that it must use mechanical lifts.

*DOT Response:* The Department will not allow an additional 18-month compliance period for carriers that choose to begin operating aircraft for which boarding assistance by lift is required. The purpose of the initial phase-in period was to enable carriers to avoid costs through an overly abrupt start-up requirement. By now all carriers should be aware of the general boarding assistance requirements for aircraft with 19 through 30 seats and realize that they must acquire lifts or other suitable devices if they operate aircraft for which boarding assistance by lift is required.

## 5. 49 CFR 27.72(c)(3)

*Comments:* Some disability advocates such as Access to Independence and Mobility were concerned about exemptions for aircraft carrying fewer than 19 passengers, and for float planes. They believe that it is technically feasible to provide safe and dignified access to small aircraft currently exempt from level boarding requirements. These commenters suggest widening the scope of air carrier regulations to require boarding access for all commercial airline flights regardless of aircraft size.

Representatives of industry supported the current exemptions in § 382.40 for three specific 19-seat aircraft models, aircraft with fewer than 19 passenger seats, and float planes. One disability group recommended replacing the word "lift" in § 27.72(c)(3)(iv) with "boarding assistance device" since not all boarding assistance devices are lifts.

*DOT Response:* The Department has replaced the word "lift" in § 27.72(c)(3)(iv) with the phrase "lifts, ramps, or other suitable boarding devices" because a lift is not the only acceptable boarding device. See response to comments regarding § 382.39(a)(2) for a discussion of why the Department has exempted small aircraft and float planes from level boarding requirements.

6. 49 CFR 27.72(c)(4)

*Comments:* American Trans Air commented that it supports this provision and understands that it would be able to refuse transport for passengers with disabilities without jeopardy according to § 382.21 (refusal of service) since hand-carrying is not an option.

*DOT Response:* See response to comments regarding § 382.40a(c)(5).

7. 49 CFR 27.72(c)(5)

*Comments:* American Trans Air commented that it supports the provision but believes the responsibility for maintaining the lifts and other accessibility equipment should be apportioned based on proportionate use of the facility.

*DOT Response:* See response to comments regarding § 382.40a(c)(6).

8. 49 CFR 27.72(d)(1)

*Comments:* One carrier commented that it supports the provision but would like the costs to be allocated between operator and carrier based on proportionate use of facility. Two commenters representing airports argued that airports must have flexibility to: assess costs/charges for procurement and maintenance of lifts, require airlines to be responsible for training of all employees in the use of lifts, establish basic safety and insurance requirements before airlines can use lifts, and release the airports of liability if carriers do not follow these procedures. The Paralyzed Veterans of America thought DOT should require copies of all contracts negotiated under this rule be submitted to DOT for review and made available to the public as a means of ensuring compliance and determining the responsible party. The American Association of Airport Executives suggested adding "where level entry boarding is not otherwise

available" to the end of the first sentence to conform the airport requirement with the air carrier requirement.

*DOT Response:* The Department will add the sentence "where level entry boarding is not otherwise available" to the end of the first sentence to conform the airport requirement with the air carrier requirement. The Department will not allocate the costs between operator and carrier based on proportionate use of facility. Airports and carriers can negotiate among themselves to determine their respective responsibilities in paying for and maintaining mechanical lifts or other suitable devices. See response to comments regarding § 382.40a(c)(1) for further detail.

9. 49 CFR 27.72(d)(2)

The comments and issues here are identical to those discussed in § 382.40a(c)(2) earlier. See that section for a discussion of comments and DOT response.

10. 49 CFR 27.72(d)(3)

*Comments:* One commenter expressed his view that existing lifts on the market will not accommodate widebody aircraft and requested that the failure of airports to have lifts for widebodies on-site not constitute non-compliance. Two commenters wrote that they were aware of two companies that manufacture lifts that service large aircraft.

*DOT Response:* See response to comments regarding § 382.40a(c)(4).

11. 49 CFR 27.72(d)(4)

The comments and issues here are identical to those discussed in § 382.40a(c)(5) earlier. See that section for a discussion of comments and DOT response.

12. 49 CFR 27.72(d)(5)

The comments and issues here are identical to those discussed in § 382.40a(c)(6) earlier. See that section for a discussion of comments and DOT response.

13. 49 CFR 27.72(e)

*Comments:* American Trans Air supported the provision that airports shall ensure that airport personnel involved in providing boarding assistance are trained. This commenter also requested that the Department impose responsibility on the airports where the carrier is not a frequent user of the airport for ensuring that service/contract providers are trained. The PVA recommended that the training requirements for personnel be stronger

and suggested regular training of personnel with periodic refreshers.

*DOT Response:* See response to comments regarding § 382.40a(d)(1).

### Regulatory Analysis and Notices

#### A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be non-significant under Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. Any costs or benefits resulting from this action would be so minimal that no further assessment is required since existing lifts, or lifts previously in place in response to the small aircraft lift rule, will be sufficient to meet the proposed requirements in many situations. The Office of the Secretary has prepared and placed in the docket a regulatory evaluation of the final rule.

#### B. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### C. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. We hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities because the overall national

annual costs are not great, few of the aircraft covered by this rule are operated by small entities, and few of commercial service airports covered by this rule could properly be regarded as small entities.

#### *E. Paperwork Reduction Act*

This rule imposes no new information reporting or record keeping necessitating clearance by the Office of Management and Budget.

#### *F. Unfunded Mandates Reform Act*

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

#### **List of Subjects**

##### *14 CFR Part 382*

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

##### *49 CFR Part 27*

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 14 CFR part 382 and 49 CFR part 27 are amended as follows:

1. The authority citation for 14 CFR part 382 is revised to read as follows:

**Authority:** 49 U.S.C. 41702, 47105, and 41712.

2. In 14 CFR Part 382, the term "handicapped person" or "handicapped passenger" is revised to read "individual with a disability" wherever it occurs. The term "handicapped persons" or "handicapped passengers" is revised to read "individuals with a disability" whenever it occurs.

3. Section 382.39(a)(2) is revised to read as follows:

#### **§ 382.39 Provision of services and equipment.**

\* \* \* \* \*

(a) \* \* \*

(2) Boarding shall be by level-entry loading bridges or accessible passenger lounges, where these means are available. Where these means are unavailable, assistance in boarding aircraft with 30 or fewer passenger seats shall be provided as set forth in § 382.40, and assistance in boarding aircraft with 31 or more seats shall be provided as set forth in § 382.40a. In no case shall carrier personnel hand-carry a passenger in order to provide boarding or deplaning assistance (i.e., directly pick up the passenger's body in the arms of one or more carrier personnel to effect a change of level that the passenger needs to enter or leave the

aircraft). Hand-carrying of passengers is permitted only for emergency evacuations.

\* \* \* \* \*

4. A new section 382.40a is added to read as follows:

#### **§ 382.40a Boarding assistance for large aircraft.**

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having a seating capacity of 31 or more passengers at airports with 10,000 or more annual enplanements, in any situation where passengers are not boarded by level-entry loading bridges or accessible passenger lounges.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c) (1) Each carrier that does not provide passenger boarding by level-entry loading bridges or accessible passenger lounges shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than March 4, 2002, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 4, 2002. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no

existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(5) When level-entry boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2).

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

5. The authority citation for Part 27 continues to read as follows:

**Authority:** Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142nt).

6. In 49 CFR part 27, § 27.72 is revised to read as follows:

#### **§ 27.72 Boarding assistance for aircraft.**

(a) Paragraphs (b)–(e) of this section apply to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. Paragraph (c) of this section applies to aircraft with a seating capacity of 19 through 30 passengers. Paragraph (d) of this section applies to aircraft with a seating capacity of 31 or more passengers.

(c) (1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 19 through 30 passengers. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or

among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998, at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999, for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 2, 2000, for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp or other suitable device on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(3) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment

are maintained in proper working condition.

(d)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 31 or more passengers where level entry boarding is not otherwise available. The airport operator and the carrier(s) shall, by no later than March 4, 2002 sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 4, 2002. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(4) When level-entry boarding assistance is not required to be provided under paragraph (d)(3) of this section, or cannot be provided as required by paragraphs (b) and (d) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) In the event that airport personnel are involved in providing boarding

assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

Issued this 27th day of April 2001 at Washington, DC.

**Norman Y. Mineta,**

*Secretary of Transportation.*

[FR Doc. 01-11201 Filed 5-1-01; 10:22 am]

BILLING CODE 4910-62-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 510, 520, 522, 524, 529, and 558**

**Animal Drugs, Feeds, and Related Products; Tylosin Tartrate for Injection, etc.; Withdrawal of Approval of NADAs**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of 13 new animal drug applications (NADAs) listed below. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADAs.

**DATES:** This rule is effective May 14, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pamela K. Esposito, Center for Veterinary Medicine (HFV-210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-5593.

**SUPPLEMENTARY INFORMATION:** The following sponsors have requested that FDA withdraw approval of the NADAs listed below because the products are no longer manufactured or marketed:

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Elanco Animal Health, A Div. of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	NADA 12-585 Tylan Injectable (tylosin tartrate) ....	522.2640b (000986)
	NADA 15-207 Hyferdex Injection (iron dextran complex).	522.1183(c) (000986)
	NADA 30-330 Tylocine Sulfa Tablets (sulfadiazine, sulfamerazine, sulfamethazine, tylosin).	not applicable

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Bioproducts, Inc., 320 Springside Dr., suite 300, Fairlawn, OH 44333-2435. Young's, Inc., Roaring Spring, PA 16673 ..... Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215. Webel Feeds, Inc., Pittsfield, IL 62363 .....	NADA 31-962 Tylan plus Neomycin Eye Powder (neomycin sulfate, tylosin).	524.2640 (000986)
	NADA 40-123 Toptic Ointment (cephalonium, flumethasone, iodochlorhydroxyquin, piperocaine hydrochloride, polymyxin B sulfate).	524.321 (000986)
	NADA 47-092 Tribodine (ticarbodine) .....	520.2460a (000986)
	NADA 47-353 Ferti-Cept (chorionic gonadotropin)	522.1081(b) (000986)
	NADA 92-602 Cephalothin Discs (cephaloridine) ..	529.360 (000986)
	NADA 96-678 Tribodine Capsules (ticarbodine) ....	520.2460b (000986)
	NADA 93-518 Tylan® 10 Plus (tylosin phosphate)	558.625(b)(2) (051359)
	NADA 96-162 Hog Grow-R-Mix-4000, Hog Grow-R-Mix-800 (tylosin phosphate).	558.625(b)(13) (035393)
	NADA 42-889 Oxytocin Injection (oxytocin) .....	522.1680(b) (000857)
	NADA 116-196 Webel Tylan Premix (tylosin phosphate).	558.625(b)(73) (035098)

Following the withdrawal of approval of these NADAs, Young's, Inc., is no longer the sponsor of any approved applications. Therefore, 21 CFR 510.600(c) is amended to remove the entries for the sponsor.

Elanco Animal Health's NADA 30-330 Tylocine Sulfa Tablets is not codified in 21 CFR part 520. Therefore, an amendment to the regulations for this withdrawal is not required.

As provided below, the animal drug regulations are amended to reflect the withdrawal of approvals.

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 Parts 520, 522, 524, and 529

Animal drugs.

##### 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, 520, 522, 524, 529, 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.

#### § 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Young's, Inc.," and in the table in paragraph (c)(2) by removing the entry "035393".

#### PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

#### § 520.2460 [Removed]

4. Section 520.2460 *Ticarbodine oral dosage forms* is removed.

#### § 520.2460a [Removed]

5. Section 520.2460a *Ticarbodine tablets* is removed.

#### § 520.2460b [Removed]

6. Section 520.2460b *Ticarbodine capsules* is removed.

#### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

7. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

#### § 522.1081 [Amended]

8. Section 522.1081 *Chorionic gonadotropin for injection; chorionic gonadotropin suspension* is amended by removing and reserving paragraph (b).

#### § 522.1183 [Amended]

9. Section 522.1183 *Iron hydrogenated dextran injection* is amended by removing and reserving paragraph (c).

#### § 522.1680 [Amended]

10. Section 522.1680 *Oxytocin injection* is amended in paragraph (b) by removing "000857,".

#### § 522.2640b [Removed]

11. Section 522.2640b *Tylosin tartrate for injection* is removed.

#### PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

12. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

#### § 524.321 [Removed]

13. Section 524.321 *Cephalonium, polymyxin B sulfate, flumethasone, iodochlorhydroxyquin, piperocaine hydrochloride topical-otic ointment* is removed.

#### § 524.2640 [Removed]

14. Section 524.2640 *Tylosin, neomycin eye powder* is removed.

#### PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

15. The authority citation for 21 CFR part 529 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

#### § 529.360 [Removed]

16. Section 529.360 *Cephalothin discs* is removed.

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

#### § 558.625 [Amended]

18. Section 558.625 *Tylosin* is amended by removing and reserving paragraphs (b)(2), (b)(13), and (b)(73).

Dated: April 23, 2001.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 01-11070 Filed 5-2-01; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 510, 522, and 558

#### Animal Drugs, Feeds, and Related Products; Technical Amendments

**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 reflect changes to previously approved new animal drug applications (NADAs). Several sponsors currently listed as sponsors of approved applications and specified in the animal drug approval regulations are incorrect. This action is being taken to improve the accuracy of the regulations.

**DATES:** This rule is effective May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** George K. Haibel, Center for Veterinary Medicine (HFV-6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301-827-4567.

**SUPPLEMENTARY INFORMATION:** FDA has found several errors in the agency's regulations concerning approval of animal drugs, feeds, and related products including the list of sponsors of approved applications. To correct those errors, FDA is amending 21 CFR 510.600(c)(1) and (c)(2) to remove 28 sponsor names and their corresponding drug labeler codes (DLCs) because the firms are no longer the holders of any approved NADAs. This document is also amending the animal drug approval regulations by correcting nonsubstantive DLC errors in 21 CFR 522.2120, 558.274, 558.625, and 558.630.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

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 522

Animal drugs.

##### 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, 522, 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.

##### § 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entries for "Albion Laboratories, Inc.," "Balfour Guthrie & Co.," "Diamond Shamrock Corp.," "DuPont Merck Pharmaceutical Co.," "Farmers Feed & Supply Co.," "Franklin Laboratories, Inc.," "Gland-O-Lac Co.," "Michael Gordon, Inc.," "Henwood Feed Additives," "Heska Corp.," "Hubbard Milling Co.," "Lemmon Co.," "Mattox & Moore, Inc.," "McClellan Laboratories, Inc.," "Nixon and Co.," "Osborn Laboratories, Inc.," "Peter Hand Foundation," "Premier Malt Products, Inc.," "Protein Blenders, Inc.," "The Rath Packing Co.," "Rhône Merieux Canada, Inc.," "Shell Chemical Co.," "Square Deal Fortification Co.," "Sterling Winthrop, Inc.," "Syntex Animal Health, Inc.," "V.P.O., Inc.," "Vet-A-Mix, Inc.," and "Westchester Veterinary Products, Inc.," and in the table in paragraph (c)(2) by removing the entries for "000033, 000056, 000693, 000934, 010290, 010290, 011461, 011485, 011789, 012190, 012487, 025001 026186, 027863, 028260, 032707, 033999, 036108, 043728, 043729, 043732, 043735, 043737, 043738, 043743, 043744, 047015, 049047, and 063604".

#### PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

##### § 522.2120 [Amended]

4. Section 522.2120 *Spectinomycin dihydrochloride injection* is amended in paragraph (b) by removing "Nos. 000033 and 059130" and adding in its place "No. 059130".

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

##### § 558.274 [Amended]

6. Section 558.274 *Hygromycin B* is amended by removing and reserving paragraph (a)(5); by removing "011790 and" in paragraph (a)(7); and by removing "026186," from the "Sponsor" column in the table in paragraphs (c)(1)(i) and (c)(1)(ii).

##### § 558.625 [Amended]

7. Section 558.625 *Tylosin* is amended by removing and reserving paragraphs (b)(16), (b)(19), and (b)(34), and in paragraph (b)(79) by removing "012286" and adding in its place "017519".

##### § 558.630 [Amended]

8. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(8) by removing "026186".

Dated: April 23, 2001.

Linda Tollefson,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 01-11158 Filed 5-2-01; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 11

##### RIN 1076-AE15

#### Law and Order on Indian Reservations

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Temporary final rule and request for comments.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is amending its regulations contained in 25 CFR Part 11 to add the

Santa Fe Indian School property (Southwest Region, New Mexico) to the listing of courts of Indian offenses. This amendment will establish a Court of Indian Offenses for a period not to exceed one year. It is necessary to establish a Court of Indian Offenses with jurisdiction over the Santa Fe Indian School property in order to protect lives and property.

**DATES:** Effective Date: This rule is effective on May 3, 2001 and expires on May 1, 2002.

**Comments Date:** Comments must be received on or before July 2, 2001.

**ADDRESSES:** Send comments on this rule to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street NW., MS 4660, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Iris A. Drew, Tribal Government Officer, Southwest Regional Office, Bureau of Indian Affairs, 615 First Street NW., Albuquerque, NM 87125-6567, at (505) 346-7592; or Ralph Gonzales, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street NW., MS 4660 Washington, DC 20240, at (202) 208-4401.

**SUPPLEMENTARY INFORMATION:** The authority to issue this rule is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillett v. Hodel*, 730 F.Supp. 381 (W.D. Okla. 1990), aff'd 931 F.2d 636 (10th Cir. 1991) *United States v. Clapox*, 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). This rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

On December 27, 2000, Congress passed the Omnibus Indian Advancement Act of 2000, Public Law 106-568, 114 Stat. 2868. Section 823(a) of that Act places the Santa Fe Indian School property and the Indian Hospital in "trust for the benefit of the 19 Pueblos of New Mexico," which establishes federal Indian criminal jurisdiction over the Santa Fe Indian School and Indian Hospital grounds to wit:

In general—The land described in this subsection is the tract of land, located in the city and county of Santa Fe, New Mexico, upon which the Santa Fe Indian School is located and more particularly described as all that certain real property, excluding the tracts described in paragraph (2), as shown in the United States General Land Office Plat of the United States Indian School Tract dated March 19, 1937, and recorded at Book 363, Page 024, Office of the Clerk, Santa Fe County, New Mexico, containing a total acreage of 131.43 acres, more or less.

(2) Exclusions—The excluded tracts described in this paragraph are all portions of any tracts heretofore conveyed by the deeds recorded in the Office of the Clerk, Santa Fe County, New Mexico, at—

- (A) Book 114, Page 106, containing 0.518 acres, more or less;
- (B) Book 122, Page 45, containing 0.238 acres, more or less;
- (C) Book 123, Page 228, containing 14.95, more or less; and
- (D) Book 130, Page 84, containing 0.227 acres, more or less,

leaving, as the net acreage to be included in the land described in paragraph (1) and taken into trust pursuant to subsection (a), a tract containing 115.5 acres, more or less.

**Limitations and Conditions—**The land taken into trust pursuant to subsection (a) shall remain subject to—

- (1) Any existing encumbrances, rights of way, restrictions, or easements of record;
- (2) The right of the Indian Health Service to continue use and occupancy of 10.23 acres of such land which are currently occupied by the Santa Fe Indian Hospital and its parking facilities as more fully described as Parcel "A" in legal description No. Pd-K-51-06-01 and recorded as Document No. 059-3-778, Bureau of Indian Affairs Land Title & Records Office, Albuquerque, New Mexico; and
- (3) The right of the United States to use, without cost, additional portions of land transferred pursuant to this section, which are contiguous to the land described in paragraph (2), for purposes of the Indian Health Service.

*Id.* at §§ 823(b)–(c).

A provisional Court of Indian Offenses must be established for the Santa Fe Indian School and Indian Hospital to protect the lives, persons, and property of people residing at and attending or visiting the school and hospital, until the 19 Pueblos establish a tribal court or otherwise request a CFR Court to exercise criminal jurisdiction. This court shall function for a period not to exceed one year. Judges of the Court of Indian Offenses shall be authorized to exercise all the authority provided under 25 CFR part 11 including: Subpart D—Criminal Offenses; Subpart H—Appellate Proceedings; Subpart J—Juvenile Offender Procedure; issuance of arrest and search warrants pursuant to 25 CFR 11.302 and 11.305 and the Indian Law Enforcement Reform Act, 25 U.S.C. 2803(2) (1998). BIA officials had already begun to set up a provisional Court of Indian Offenses pursuant to 25 CFR 11.100(a) for the Southwest Region to address this law enforcement need. This final rule is intended to establish a provisional Court of Indian Offenses. This court will not be exercising the following authority under 25 CFR part 11: Subpart E—Civil Actions; Subpart F—Domestic Relations; Subpart G—

Probate Proceedings; Subpart I—Children's Court; and Subpart K—Minor-in-Need-of-Care Procedure.

#### Determination To Issue a Final Rule

The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply because of the good cause exception under 5 U.S.C. 553(b)(3)(B), which allows the agency to suspend the notice and public procedure when the agency finds for good cause that those requirements are impractical, unnecessary and contrary to the public interest. This amendment will establish a provisional Court of Indian Offenses for the Santa Fe Indian School property and Indian Hospital, New Mexico, that was placed in trust for the benefit of the 19 Pueblos. If this provisional court is not established, there is a potential risk to public safety and a further risk of significant financial liability to the Federal Government from a lawsuit for failure to execute diligently its trust responsibility and provide adequate law enforcement on trust land. Delaying this rule to solicit public comment through the proposed rulemaking process would thus be contrary to the public interest.

#### Determination To Make Rule Effective Immediately

We are making the rule effective on the date of publication in the **Federal Register** as allowed under the good cause exception in 5 USC 553(d)(3). Delaying the effective date of this rule is unnecessary and contrary to the public interest because there is a critical need to expedite establishment of this Court of Indian Offenses. There is now a void in law enforcement at the Santa Fe Indian School and Indian Hospital and an increase in visitors to the grounds of these facilities is imminent. For these reasons, an immediate effective date is in the public interest and in the interest of the Pueblos. Accordingly, this amendment is issued as a final rule effective immediately.

We invite comments on any aspect of this rule and we will revise the rule if comments warrant. Send comments on this rule to the address in the **ADDRESSES** section.

#### Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector,

productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The establishment of this Court of Indian Offenses is estimated to cost less than \$200,000 annually to operate. The cost associated with the operation of this court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and Indian Health Service.

b. This rule will not create inconsistencies with other agencies' actions. The Department of the Interior through the Bureau of Indian Affairs has the sole responsibility and authority to establish Courts of Indian Offenses on Indian reservations.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The establishment of this Court of Indian Offenses will not affect any program rights of the nineteen Pueblos. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. The court's jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

d. This rule will not raise novel legal or policy issues. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D.Ore. 1888).

#### **Regulatory Flexibility Act**

The Department of the Interior, BIA, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR part 11.100(a) will establish a Court of Indian Offences with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico. Accordingly, there will be no impact on any small entities.

#### **Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more. The establishment of this Court of Indian Offenses is estimated to cost less than \$200,000 annually to operate. The cost associated with the operation of this court will be shared among the Office of Indian Education, the Bureau of Indian Affairs, and Indian Health Service.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico and will not have any cost or price impact on any other entities in the geographical region.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This is a court established specifically for the administration of misdemeanor justice for Indians located within the boundaries of the Santa Fe Indian School, New Mexico, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### **Unfunded Mandates Reform Act**

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The establishment of this Court of Indian Offences will not have jurisdiction to affect any rights of the small governments. Its primary function will be to administer justice for misdemeanor offenses within the Santa Fe Indian School grounds. Its jurisdiction will be limited to criminal offense provided in 25 CFR part 11.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

#### **Takings Implication Assessment (Executive Order 12630)**

In accordance with Executive Order 12630, the rule does not have significant

takings implications. A takings implication assessment is not required. The amendment to 25 CFR part 11.100(a) will establish a Court of Indian Offences with limited criminal jurisdiction over Indians within a limited geographical area at Santa Fe, New Mexico. Accordingly, there will be no jurisdictional basis for to adversely affect any property interest because the court's jurisdiction is solely personal jurisdiction over Indians.

#### **Federalism (Executive Order 13132)**

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D.Ore. 1888).

#### **Civil Justice Reform (Executive Order 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Solicitor analyzed and upheld the Department of the Interior's authority to establish Courts of Indian Offenses in a memorandum dated February 28, 1935. The Solicitor found that authority to rest principally in the statutes placing supervision of the Indians in the Secretary of the Interior, 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." The United States Supreme Court recognized the authority of the Secretary to promulgate regulations with respect to Courts of Indian Offenses in *United States v. Clapox*, 35 F. 575 (D.Ore. 1888). Part 11 also requires the establishment of an appeals court; hence the judicial system defined in Executive Order 12988 will not normally be involved in this judicial process.

#### **Paperwork Reduction Act**

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB form 83-I has not been prepared and has not been approved by the Office of Policy Analysis. No information is being collected as a result of this court

exercising its limited criminal misdemeanor jurisdiction over Indians within the exterior boundaries of the Santa Fe Indian School, New Mexico.

### National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. The establishment of this Court of Indian Offenses conveys personal jurisdiction over the criminal misdemeanor actions of Indians with the exterior boundaries of the Santa Fe Indian School and does not have any impact of the environment.

### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The amendment to 25 CFR part 11.100(a) does not apply to any of the 558 federally recognized tribes, except the 19 Pueblos in New Mexico that have requested the establishment of the provisional Court of Indian Offences until they establish a tribal court to provide for a law and order code and judicial system to deal with law and order on the trust land at Santa Fe Indian School. The Department of the Interior, in establishing this provisional court, is fulfilling its trust responsibility and complying with the unique government-to-government relationship that exists between the Federal Government and Indian tribes.

### List of Subjects in 25 CFR Part 11

Courts, Indians-Law, Law enforcement, Penalties.

For the reasons stated in the preamble, we are amending part 11, chapter I of title 25 of the Code of Federal Regulations, as set forth below. This amendment is effective from May 3, 2001 to May 1, 2002.

### PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

1. The authority citation for part 11 continues to read as follows:

**Authority:** R.S. 463; 25 U.S.C. 2, 38 Stat. 586; 25 U.S.C. 200, unless otherwise noted.

2. Section 11.100 is amended by adding new paragraph (a)(14) to read as follows:

#### § 11.100 Listing of Courts of Indian Offenses.

(a) \* \* \*

(14) Santa Fe Indian School Property, including the Santa Fe Indian Health Hospital (land in trust for the 19 Pueblos of New Mexico).

\* \* \* \* \*

Dated: April 27, 2001.

**James H. McDivitt,**

*Deputy Assistant Secretary—Indian Affairs (Management).*

[FR Doc. 01-11086 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-02-P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD07-01-033]

RIN 2115-AA97

#### Security Zone; Vicinity of Atlantic Fleet Weapons Training Facility, Vieques, PR and Adjacent Territorial Sea

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** At the request of the U.S. Navy, the Coast Guard is establishing a temporary security zone covering the area of territorial sea and land adjacent to the bombing and gunnery range (Impact Area) at the naval installation on the eastern end of Vieques Island, Puerto Rico. The security zone is needed to protect the bombing and gunnery range, and adjacent land and waters at the Navy's Atlantic Fleet Weapons Training Facility on Vieques Island, PR, to ensure against destruction, injury, or loss of uninterrupted use. Only authorized vessels are permitted to enter or remain within the security zone.

**DATES:** This rule is effective from 3 p.m., April 26, 2001 until 11:59 p.m., April 30, 2001.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD07-01-033] and are available for inspection or copying at the Seventh Coast Guard District office, 909 S.E. First Avenue, Room 918, Miami, FL, 33131, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Brian DeVries at (305) 415-6950.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

In order to protect the interests of national security, and in accordance with the Presidential Directive of Jan 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, PR. Immediate action is needed to ensure the uninterrupted use by the U.S. Navy of the Training Facility on Vieques, including the adjacent land and waters, and to protect that facility from destruction or injury. The Coast Guard is promulgating the security zone regulations to prevent interference with the duration of the security zone. As a result, the enforcement of the security zone is a function directly involved in, and necessary to, the Navy training exercise. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Even if the requirements of 5 U.S.C. 553 would otherwise be applicable, the Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to the public interest. There is an imminent need to use the naval installation bombing and gunnery range and the adjacent waters for ongoing scheduled exercises by the Navy which further the national security interests of the United States. Opportunity for notice and public comment or advance publication of the zone was impracticable since the Navy did not request the establishment of the zone until April 26, 2001. This regulation is geographically and temporally tailored to meet the needs of national security with a minimal burden on the public.

### Background and Purpose

The Atlantic Fleet Weapons Training Facility is located on the eastern end of Vieques Island, PR. Use of this naval installation is important to achieving acceptable levels of military readiness in accordance with established training standards and requires training exercises conducted with inert ordnance. Such training exercises cannot be safely or effectively conducted if there are unauthorized persons inside the training areas or if the installation is damaged or personnel are injured. The U.S. Army Corps of Engineers has established a danger zone in the vicinity of the bombing and

gunnery target area, 33 CFR 334.1470, that is in effect during these training exercises. The Army Corps has also established a restricted area off the coast of the naval facility, 33 CFR 334.1480.

In order to further the interests of national security, and in accordance with the Presidential directive of January 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, Puerto Rico. During the current exercises, the restricted area and danger zone have not provided the degree of security required for the naval facility. These operations cannot be conducted if unauthorized personnel or vessels are present inside the security zone. Therefore, to ensure against the destruction, injury or loss of uninterrupted use of the naval installation at Vieques, including the adjacent land and waters, the Coast Guard is establishing this security zone.

The Coast Guard previously established a similar security zone (65 FR 25489) around the Atlantic Fleet Weapons Training Facility, Vieques, PR. Based on the Coast Guard's experience implementing that security zone and discussions with the U.S. Navy, the coordinates of the security zone being implemented by this regulation have been slightly modified. The coordinates of the security zone being implemented by this regulation have been altered so that the zone no longer encompasses commonly used transit paths between Vieques, PR and traditional fishing areas.

This security zone is established pursuant to the authority of subpart D of part 165 of Title 33 of the Code of Federal Regulations and the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations. See E.O. 10173, as amended. The security zone is needed to protect the bombing and gunnery range, and the adjacent facilities and water, at Vieques Island, PR against destruction, injury, or loss of uninterrupted use. Pursuant to this regulation, no vessel or person will be allowed to enter or remain in the security zone unless specifically authorized to do so by the District Commander or his designated representatives. The District Commander or his designated representatives may grant permission for a vessel to enter or remain within the security zone when operations permit and may condition that permission as appropriate. As operations permit, all efforts will be made to honor any requests to enter.

Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than \$250,000, and imprisonment for not more than 10 years.

#### 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).

Although the security zone covers an area out to three miles from shore, the zone will be in effect for a limited amount of time. The vessel traffic in the area normally consists of a small number of commercial fishing vessels and other vessels transiting the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 33 CFR 334.1480). These vessels can redirect their transit around the zone with only minor delays in time and distance.

#### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule 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 vicinity of the Naval installation at Vieques, PR and fishing vessels which normally fish the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 334.1480). This security zone will not have a significant economic impact on a substantial number of these small entities. Although the security zone will cover an area out to three miles from

shore, the zone will be in effect only for a limited amount of time.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we will assist small entities in understanding this rule and how it affects them. Small entities may call the person identified in **FOR FURTHER INFORMATION CONTACT**.

#### 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 unfunded mandate 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 E.O. 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 E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

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

#### Environment

The Coast Guard anticipates this temporary rule will be categorically excluded from further environmental

documentation under figure 2-1, paragraph 34(g) of Commandant Instruction M16475.IC. The environmental analysis checklist and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary security zone, and will be available in the docket. This temporary rule only ensures the protection of Naval assets and the uninterrupted use of the area for scheduled Naval operations. Standard Coast Guard manatee and turtle watch measures will be in effect during Coast Guard patrols of the security zone. Deep-water routes will be used where practical. Lookouts will be posted to avoid collision with turtles and manatees. If a collision occurs, notification will be made to the U.S. Fish & Wildlife Service at Boqueron, Puerto Rico (787-851-7297). The Categorical Exclusion Determination will be available in the docket for inspection or copying where indicated under **ADDRESSES**.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### List of Subjects in 33 CFR Part 165

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

Temporary 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. A new temporary § 165.T07-033 is added to read as follows:

#### § 165.T07-033 Security Zone; Vieques Island, PR.

(a) *Location.* The following area is established as a Security Zone: An area of water and land measured from the mean high water line off the naval reservation, along the east end of Vieques Island extending from Cabellos Colorados (18°-09.82' N, 065°-23.45' W)

due northeast 4 nautical miles to position 18°-12.0' N, 065°-20.0' W, then easterly around Vieques Island, remaining 3 nautical miles from the coast, to a point 3 nautical miles south of Cayo Jalovita (18°-06.83' N, 065°-21.25' W) at 18°-03.6' N, 065°-20.33' W then northwest to a baseline position of 18°-05.42' N, 065°-26.0' W at Puerto Mosquito, including the rocks, cays, and small islands within.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part:

(i) No person or vessel may enter or remain in this zone without the permission of the District Commander or designated representatives,

(ii) All persons within this zone shall obey any direction or order of the District Commander or designated representatives,

(iii) The District Commander or designated representatives may take possession and control of any vessel in this zone,

(iv) The District Commander or designated representatives may remove any person, vessel, article or thing from this zone,

(v) No person may board, or take or place any article or thing on board, any vessel in this zone without the permission of the District Commander or designated representatives; and,

(vi) No person may take or place any article or thing upon any waterfront facility in this security zone without the permission of the District Commander or designated representatives.

(2) The District Commander or designated representatives may grant permission for individual vessels to enter or remain within this security zone when permitted by operational conditions and may place conditions upon that permission. Vessels permitted to enter or remain in this zone must radio the patrol commander upon entering and departing the zone.

(c) *Enforcement.* Vessels or persons violating this section are subject to the penalties set out in 50 U.S.C. 192 and 18 U.S.C. 3571:

(1) Seizure and forfeiture of the vessel;

(2) A monetary penalty of not more than \$250,000; and

(3) Imprisonment for not more than 10 years.

(d) *Dates.* This section is effective from 3 p.m., April 26, 2001 until 11:59 p.m. April 30, 2001.

(e) *Authority.* In addition to the authority in part 165, this section is also authorized under authority of Executive Order 10173, as amended.

Dated: April 26, 2001.

**G.W. Sutton,**

*Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.*

[FR Doc. 01-11153 Filed 5-2-01; 8:45 am]

**BILLING CODE 4910-15-U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[PA143-4115a; FRL-6973-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is removing the conditional status of its approval of the Commonwealth of Pennsylvania State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT). Pennsylvania has satisfied the condition imposed in EPA's conditional limited approval published on March 23, 1998 (63 FR 13789). The intended effect of this action is to remove the conditional nature of EPA's approval of Pennsylvania's VOC and NO<sub>x</sub> RACT Regulation. The regulation retains its limited approval status. Conversion of the Pennsylvania VOC and NO<sub>x</sub> RACT Regulation from limited to full approval will occur when EPA has approved the case-by-case RACT determinations submitted by Pennsylvania.

**DATES:** This rule is effective on June 18, 2001 without further notice, unless EPA receives adverse written comment by June 4, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Wentworth, (215) 814-2034, at the EPA Region III address above, or by e-mail at wentworth.ellen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 23, 1998 (63 FR 13789), EPA granted a conditional limited approval of the Pennsylvania SIP that established and required all major sources of VOCs and NO<sub>x</sub> to implement RACT. This approval was granted on the condition that Pennsylvania must, by no later than April 22, 1999, certify that (1) it had submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to the Pennsylvania Department of Environmental Protection (PADEP), or (2) demonstrate that the emissions from any remaining subject sources represented a de minimis level of emissions as defined in the rulemaking document.

On April 22, 1999, the PADEP submitted a letter certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO<sub>x</sub> RACT regulations by submitting 485 case by case VOC/NO<sub>x</sub> RACT determinations as SIP revisions. EPA concurs that Pennsylvania's April 22, 1999 certification satisfies the condition imposed in its conditional limited approval published on March 23, 1998. EPA is, therefore, removing the conditional status of its approval of Pennsylvania's VOC and NO<sub>x</sub> RACT regulation. The regulation retains its limited approval status. Conversion to full approval will occur when EPA has approved the case-by-case RACT determinations submitted by PADEP.

### II. EPA Action

EPA is removing the conditional status of its approval of Pennsylvania's VOC and NO<sub>x</sub> RACT Regulation. The regulation will retain limited approval status until EPA has approved the case-by-case RACT SIP revisions proposals submitted by PADEP. This action is being published without prior proposal because we view this as a noncontroversial amendment and because we anticipate no adverse comments. In a separate document in the "Proposed Rules" section of this **Federal Register** publication, we are proposing to remove the conditional

status of the approval of the Pennsylvania's VOC and NO<sub>x</sub> RACT Regulation. This action will be effective without further notice unless we receive relevant adverse comment by June 4, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. Any parties interested in commenting must do so at this time. If no such comments are received by June 4, 2001, you are advised that this section will be effective on June 18, 2001.

### III. Administrative Requirements

#### A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2001. Filing a petition for reconsideration by the Administrator of the removal of the conditional status of EPA's approval of Pennsylvania's VOC and NO<sub>x</sub> RACT

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

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and record keeping requirements.

Dated: April 24, 2001.

**William C. Early,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart NN—Pennsylvania

##### § 52.2026 [Amended]

2. In § 52.2026, paragraph (f) is removed and reserved.

[FR Doc. 01-10984 Filed 5-2-01; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[TN 240-1-200103a; FRL-6974-6]

#### Clean Air Act Approval and Promulgation of the Redesignation of Shelby County, Tennessee, to Attainment for Lead

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the request to redesignate Shelby County, Tennessee, from nonattainment to attainment for the lead primary national ambient air quality standard (NAAQS). The request was submitted on February 15, 2001, by the Memphis and Shelby County Health Department (MSCHD) through the Tennessee Department of Environment and Conservation (TDEC).

**DATES:** This direct final rule is effective July 2, 2001 without further notice, unless EPA receives adverse comment by June 4, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** All comments should be addressed to: Kimberly Bingham at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

- Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

- Tennessee Air Pollution Control Board, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531.

- Memphis and Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105.

#### FOR FURTHER INFORMATION CONTACT:

Kimberly Bingham, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The telephone number is (404)562-9038. Ms. Bingham can also be reached via electronic mail at [bingham.kimberly@epa.gov](mailto:bingham.kimberly@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 107(d)(5) of the Clean Air Act (CAA) provides for areas to be designated as attainment, nonattainment, or unclassifiable with respect to the lead NAAQS. Governors are required to submit recommended designations for areas within their states. When an area is designated nonattainment, the state must prepare and submit a SIP that meets the requirements of sections 110(a)(2) and 172(c) of the CAA demonstrating how the area will be brought into attainment. The EPA designated the portion of Memphis in Shelby County, Tennessee, around the Refined Metals, Inc., secondary lead smelter as a lead nonattainment area on January 6, 1992. This nonattainment designation was based on lead NAAQS violations recorded by monitors near the Refined Metals Corporation facility in 1990 and 1991.

During the second quarter of 1998, another violation of the lead NAAQS occurred in the Shelby County nonattainment area. Subsequently, the MSCHD issued a notice of violation giving Refined Metals, Inc., options to surrender all of its permits or pay a fine and conduct extensive remodeling of the facility. Refined Metals, Inc., chose to surrender all of its permits and shutdown permanently on December 22,

1998. Since the facility permanently closed, there has not been any violation of the lead NAAQS. On February 15, 2001, MSCHD through the State of Tennessee submitted a request to redesignate the Shelby County area to attainment for lead.

#### II. Analysis of the Redesignation Request

Section 107(d)(3)(E) of the CAA, as amended in 1990, sets forth the requirements that must be met for a nonattainment area to be redesignated to attainment. It states that an area can be redesignated to attainment if the following conditions are met.

1. The EPA has determined that the lead NAAQS has been attained.

2. The State has met all applicable requirements for the area under section 110 and part D, and the implementation plan has been fully approved by EPA under section 110(k).

3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

The following is a description of how each requirement has been achieved.

##### 1. Attainment of the Lead NAAQS

To demonstrate that the Shelby County area is in attainment with the lead NAAQS, MSCHD submitted air quality data from the third quarter of 1998 through 2000. There has not been any violation of the lead standard since Refined Metals, Inc. shutdown on December 22, 1998. This amount of monitoring data (more than eight consecutive quarters at the present time) without a violation of the lead standard is adequate to demonstrate attainment of the lead NAAQS. Modeling may also be required to redesignate an area to attainment. The EPA believes that because there are no lead sources in the area since Refined Metals, Inc., shut down, a modeling analysis is not needed.

##### 2. The State Has Met All Applicable Requirements for the Area Under Section 110 and Part D, and the Implementation Plan Has Been Fully Approved by EPA Under Section 110(k).

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of sections 110(k), 110(a)(2), and part D of the CAA. The EPA has determined that the lead SIP for the Shelby County area that was approved on September 20, 2000, meets

the requirements of sections 110(k), 110(a)(2), and part D of the CAA. For a more detailed description of how these requirements were met see the document published on September 20, 2000, in the **Federal Register**, (65 FR 56794).

### 3. *Permanent and Enforceable Improvement in Air Quality*

Since the Refined Metals facility, the sole source of lead emissions in the Shelby County nonattainment area surrendered its permits and ceased operations, there are no permitted process emissions from the facility or in the nonattainment area. The Refined Metals facility has been completely decontaminated and demolished. Any future request to operate a secondary lead smelter on this site or in Shelby County will have to be approved by MSCHD and will be subject to prevention of significant deterioration (PSD) permit requirements. The PSD requirements ensure that a new facility will not cause any adverse effects to the air quality in an attainment area. Consequently, EPA has determined that the emission reductions in the Shelby County area are permanent and enforceable.

### 4. *Maintenance Plan*

Section 175(A) of the CAA requires states that submit a redesignation request for a nonattainment area under section 107(d) to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard that occurs after redesignation. The contingency provisions are to include a requirement that the state will implement all measures for controlling the air pollutant of concern that were contained in the SIP prior to redesignation.

The MSCHD submitted a maintenance plan to ensure that the lead NAAQS is maintained. The maintenance plan for the Shelby County area, contains the part C PSD program, a monitoring network to verify continued attainment, and a contingency plan.

### A. Part C PSD Program

As previously mentioned earlier in this document, the MSCHD has a fully approved PSD program. Owners of all new major sources seeking to relocate in the Shelby County area must demonstrate that the proposed new emissions from those sources will be in compliance with the lead NAAQS.

### B. Monitoring Network

To ensure that the lead NAAQS is maintained, the MSCHD will continue to operate two lead monitors located in the Shelby County area. If future review of the monitoring site operation results in a recommendation to alter the current monitoring network, MSCHD must obtain EPA approval of the recommendation.

### C. Contingency Plan

With respect to the requirement of section 175(A) that the contingency provisions of a maintenance plan include all control measures previously contained in the SIP, EPA believes that the requirement is satisfied in that the State is carrying forward contingency measures previously approved in the lead SIP for Shelby County. In addition, the EPA does not believe any additional contingency measures are needed. Contingency measures would serve no useful purpose in light of the permanent closure and dismantling of the Refined Metals facility and the revocation of its permit. Moreover, any attempt to reopen a facility on the same site would trigger MSCHD's PSD permitting requirements.

The EPA is approving the redesignation request and maintenance plan because it satisfies the requirements of section 175(A) of the CAA requirements.

### III. Final Action

EPA is approving the request to redesignate Shelby County to a lead attainment area and the maintenance plan submitted on February 15, 2001, by the MSCHD through the State of Tennessee. The EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should the Agency receive adverse comments. This rule will be effective July 2, 2001 without further notice unless the Agency receives adverse comments by June 4, 2001.

If the EPA receives such comments, then EPA will publish a document

withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 2, 2001 and no further action will be taken on the proposed rule.

### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Lead, Intergovernmental relation, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 18, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

**PART 52—[AMENDED]**

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

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

**Subpart RR—Tennessee**

2. Section 52.2220(c) is amended by revising the entries for Section 1200-3-22-.03 to read as follows:

**§ 52.52220 Identification of plan.**

\* \* \* \* \*

(c) EPA approved regulations.

**EPA APPROVED TENNESSEE REGULATIONS**

State citation	Title/subject	Adoption date	EPA approval date	Federal Register Notice
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Section 1200-3-22-.03	Maintenance Plan for Shelby County, Tennessee	02/14/01	July 2, 2001 .....	66 FR 22127
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7671q.

**Subpart C—Section 107 Attainment Status Designations**

2. In § 81.343, the attainment status table for lead is amended by revising the

designation type and date entry for Shelby County (part).

**§ 81.343 Tennessee.**

\* \* \* \* \*

TENNESSEE-LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
Shelby County (part): Area encompassed by a circle with a 3/4 mile radius with center being the intersection of Castex and Mallory Avenue, Memphis, TN.	July 2, 2001 .....	Attainment .....	.....	.....
*	*	*	*	*

[FR Doc. 01-11090 Filed 5-2-01; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[OPP-301119; FRL-6778-9]

RIN 2070-AB78

**Sucroglycerides; Exemption From the Requirement of a Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of sucroglycerides when used as an inert ingredient in or on growing crops or when applied to raw agricultural commodities after harvest. Rhodia Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sucroglycerides.

**DATES:** This regulation is effective May 3, 2001. Objections and requests for hearings, identified by docket control number OPP-301119, must be received by EPA on or before July 2, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301119 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: 703-305-6304; and e-mail address: boyle.kathryn@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly

to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301119. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

**II. Background and Statutory Findings**

In the **Federal Register** of July 7, 1998 (63 FR 36681) (FRL-5795-6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104-170) announcing the filing of a pesticide petition (PP) 6E4714 by Rhodia Inc., CN 7500, Cranbury, NJ 08512-7500. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c), be amended by establishing an exemption from the requirement of a tolerance for residues of sucroglycerides.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe."

Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

### III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

### IV. Sucroglycerides

Sucroglycerides are a mixture of substances, primarily of mono-, di-, and tri-glycerides and mono- and di-sucrose esters of fatty acids. The product is produced through a process of transesterification of an edible fat or oil with sucrose. Thus, sucroglycerides are composed of and basically produced from sugar and oil.

Sucroglycerides have self-affirmed GRAS (generally recognized as safe) status. A GRAS substance is one that is generally recognized, among experts

qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures to be safe under the conditions of its intended use.

Under the FFDCA, there is no requirement that GRAS status can be determined only by the Food and Drug Administration (FDA). The GRAS determination may also be made by a company providing that the quantity and quality of data would be the same as if the data were submitted to FDA for review and evaluation.

The sucroglycerides Independent Safety Determination was affirmed by an expert panel in 1991 which examined only sucroglycerides manufactured from palm oil. The same expert panel re-convened in 1994 to evaluate sucroglycerides manufactured from edible fats and oils. This addendum to the Independent Safety Determination differed only in that the starting materials could be any edible fat or oil as opposed to palm oil only as originally evaluated in 1991. The panel concluded that sucroglycerides are GRAS for use in the food applications considered when used in accordance with good manufacturing practices.

The intended food applications evaluated as part of the Independent Safety Determination included use as a texturizer in biscuit mixes, and as an emulsifier in baked goods and baking mixes, dairy product analogs, frozen dairy desserts and mixes, and whipped milk products. The maximum estimated content of sucroglycerides in these anticipated food uses is 1.5%. Under 21 CFR 172.859, a related mixture, sucrose fatty acid esters, can be used as direct food additives as emulsifiers in various baked goods and baking mixes, dairy and dairy analog products, chewing gum, confections and frostings, and coffee and tea beverages with added dairy or dairy analog products, as texturizers in chewing gum, confections and frostings, and surimi-based fabricated seafood products, and as components of protective coatings applied to fresh fruit to retard ripening and spoiling. Under 21 CFR 184.1505, mono- and di-glycerides prepared from fats or oils are GRAS.

### V. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major

identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sucroglycerides are discussed in this unit.

The submission to the Agency consisted of two studies (subchronic and chronic toxicity/carcinogenicity) that contained individual animal data. These two studies were reviewed as guideline studies, that is, studies that meet the Agency's criteria for a well-conducted study that supplies the necessary information. The other submissions consisted of toxicology study summaries. The summaries varied in the amount of information presented. Some were literature reports and partial translations of studies conducted in France. Thus, these summaries provided useful information to the Agency which was used during the weight-of-the-evidence evaluation.

1. *Acute*. The summary reported an acute toxicity study in which no adverse effects were reported. The LD<sub>50</sub> was estimated to be greater than 30 gram/kilogram body weight (g/kg bwt).

2. *Subchronic toxicity*. In a 13-week dog feeding study sucroglycerides were administered to 5 pure bred Beagle dogs/sex/dose in the diet at dose levels of 0, 5, 10, or 20% (control, 1.19, 2.59, or 5.61 gram/kilogram/day (g/kg/day) for males and control, 1.31, 2.57, or 4.7 g/kg/day for females). Three animals/sex/dose were sacrificed after 13 weeks, and the remaining two animals/sex/dose continued on for an additional 8 weeks of observation on control diets, and were then sacrificed.

No animals died on study and there was no overt toxicity. The decreased cholesterol levels, increased SGPT (serum glutamic pyruvic transaminase) values, ad hepatic pathology are effects that are comparable to those seen as a result of a high fat dietary intake. The grossly high doses of this fatty compound were over the limit dose and effects seen cannot readily be distinguished from those observed with a high fat diet. The NOAEL (no observed adverse effect level) was at the 10% level (2.6 g/kg/day for males and females). The LOAEL (lowest-observed adverse effect level) was determined to be at the 20% level (5.6 g/kg/day for males and 4.7 g/kg/day for females). This study is classified as acceptable and satisfies the guideline requirement for a subchronic oral study in dogs.

In a different study, the summary reported that administration of sucroglycerides to rats for 100 days at concentrations up to 10% in the diet resulted in increased body weight gain and increased hepatic, total lipids and

lipid fractions with normal plasma lipid levels.

3. *Combined chronic toxicity/carcinogenicity 2-year rat study.* In this study sucroglycerides were administered via the diet to 50 rats/sex/group at dose levels of 0, 5, 10, or 20% (control, 1.59, 3.37, or 7.70 g/kg/day in males and control, 1.86, 4.01, or 9.25 g/kg/day in females for up to 108 weeks). No adverse effects were observed in mortality, hematology, blood chemistry, ophthalmoscopy, organ weights, or gross pathology parameters for either sex at any treatment level. The NOAEL for this combined chronic/carcinogenicity rat feeding study is 5% (3.37 g/kg/day for males and 4.01 g/kg/day for females). The LOAEL is 10% (7.70 g/kg/day for males and 9.25 g/kg/day for females) based on decreased food efficiency in males.

Under the conditions of this study, dosing is considered adequate to assess the carcinogenic potential of sucroglycerides based on the fact that the compound was administered at doses above the limit dose, food efficiency was reduced at 10% in males, and body weight and body weight gain, along with food efficiency was increased at 20% in both sexes. The administration of sucroglycerides to rats up to 20% in the diet did not result in an overall treatment-related increase in incidence of tumor formation. This study is classified as acceptable and satisfies the guideline requirement for a chronic toxicity/carcinogenicity oral study in rats.

In a different study, the summary reported that in a 25 to 28-month rat study, food efficiency was decreased at 10% lard sucroglyceride in the diet. No other effects were noted.

Summaries of another two long-term rat studies with 5 g/kg bw sucroglycerides in the diet were submitted. These also demonstrated no adverse effects and no evidence of carcinogenicity.

4. *Mutagenicity.* No mutagenicity studies were submitted to the Agency. However, none of the components of sucroglycerides are known mutagens. Given this information and since the combined chronic toxicity/carcinogenicity study did not result in an overall treatment-related increase in incidence of tumor formation, mutagenicity studies will not be required.

5. *Developmental/reproductive toxicity.* No developmental or reproductive toxicity guideline studies were submitted to the Agency, although summaries of two chronic toxicity/2-generation reproductive studies were submitted. Both summaries were partial

translations of French studies. Both summaries reported no adverse effects.

In a 1987 article in open literature describing a 2-generation reproductive and developmental toxicity study of a related compound, sucrose polyester (a mixture of hexa-, hepta-, and octa-esters of edible grade fatty acids with sucrose), was fed to rats at up to 10% of the diet. There were no adverse effects on reproductive function, on the development of the fetus, or on the viability or growth of the offspring into adult life.

Given the observed lack of developmental and reproductive effects, and the fact the mono- and di-glycerides are not known developmental toxicants, guideline developmental and reproductive studies will not be required.

6. *Dermal toxicity.* No dermal studies were submitted to the Agency. Sucrose esters of fatty acids and mono- and di-glycerides are unlikely to be absorbed through the skin in sufficient amounts to cause toxicity.

7. *Neurotoxicity.* No neurotoxicity studies were submitted to the Agency. However, no neurotoxicity was observed in the oral guideline studies.

The submitted toxicity studies demonstrate the low toxicity of sucroglycerides. For sucroglycerides, in several studies minimal effects occurred at doses that were expressed as grams of sucroglycerides per kilogram of animal body weight per day. For many chemicals, the Agency has reviewed data that demonstrate significant effects at doses that are expressed in milligrams per kilogram of animal body weight per day. Thus, the minimal toxicity that occurred with consumption of sucroglycerides, occurred at higher dose levels than normally used in testing.

## VI. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert

ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

### A. Dietary Exposure

For the purposes of assessing potential exposure under this exemption, EPA considered that sucroglycerides could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible.

1. *Food.* As previously stated, sucroglycerides have self-affirmed GRAS status. EPA will regulate only the use of sucroglycerides as an inert ingredient in pesticide formulations. Thus, the amount of sucroglycerides that can be applied to food as a result of their use in a pesticide product as an inert ingredient would not significantly increase the amount of sucroglycerides in the food supply above those amounts permitted by FDA.

2. *Drinking water exposure.* The solubility of sucroglycerides in water is very low, less than 1 part per billion. Given this low solubility in water and the low toxicity, both of which were demonstrated in testing, the Agency has determined that exposure for all human population groups through drinking water would be extremely low.

### B. Other Non-Occupational Exposure

Currently, there are no residential uses of sucroglycerides. Given that sucroglycerides are unlikely to be absorbed through the skin in sufficient amounts to cause toxicity, even if residential uses of sucroglycerides were to occur, toxicity would not occur.

## VII. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." Sucroglycerides have a demonstrated lack of toxicity, and thus are unlikely to share a common mechanism of toxicity with any other substances.

### VIII. Determination of Safety for U.S. Population

Given the available toxicity information indicating minimal effects, there should be no concerns for human health, whether the exposure is acute, subchronic, or chronic. Thus, based on the low toxicity of sucroglycerides and the low potential for exposure from the EPA regulated uses of sucroglycerides, the Agency has determined that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of sucroglycerides and that a tolerance is not necessary.

### IX. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of sucroglycerides, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary. The Agency has determined that there is a reasonable certainty of no harm to infants and children from aggregate exposure to residues of sucroglycerides and that a tolerance is not necessary.

### X. Other Considerations

#### A. Endocrine Disruptors

There is no available evidence that sucroglycerides are an endocrine disruptor.

#### B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

#### C. Existing Exemptions

There are no existing exemptions for sucroglycerides.

#### D. International Tolerances

The Agency is not aware of any country requiring a tolerance for sucroglycerides nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

### XI. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of

sucroglycerides. Accordingly, EPA finds that exempting sucroglycerides from the requirement of a tolerance will be safe.

### XII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

#### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-301119 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 2, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP-301119, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or

ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

**XIII. Regulatory Assessment Requirements**

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section

12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal

government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**XIV. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 13, 2001.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001, the table in paragraph (c) is amended by adding alphabetically the following inert ingredient to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

\* \* \* \* \*  
(c) \* \* \*

Inert ingredients	Limits	Uses
Glycerides, edible fats and oils derived from plants and animals, reaction products with sucrose (CAS Reg. Nos. 100403-38-1, 100403-41-6, 100403-39-2, 100403-40-5)	*	emulsifier, dispersing agent.

[FR Doc. 01-11093 Filed 5-2-01; 8:45 am]  
BILLING CODE 6560-50-S

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket No. 96-45; FCC 01-120]

#### Federal-State Joint Board on Universal Service: Children's Internet Protection Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, correction.

**SUMMARY:** This document corrects errors in the final rule portion regarding implementation of the Children's Internet Protection Act (CIPA) published in the *Federal Register* on April 16, 2001.

**DATES:** Effective May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Secrest or Narda Jones, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** This summary contains corrections to the rule portion of the Commission's Report and Order, CC Docket No. 96-45; FCC 01-120, 66 FR 19394 (April 16, 2001). The full text of the Commission's Report and Order is available for public

inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

#### Correction

1. On page 19396, in the third column, "Subpart H—Administration" is corrected to read "Subpart F—Universal Service Support for Schools and Libraries".

2. On page 19396, in the third column, in paragraph 2, "subpart H" is corrected to read "subpart F".

3. In § 54.20, on page 19397, in the third column, in paragraphs (c)(2)(iii)(A), (c)(2)(iii)(B), and (c)(2)(iii)(C), the phrase "for which you have requested or received Funding Commitments" is corrected to read "on this Form 486."

4. In § 54.520, on page 19397, in the third column, paragraph (c)(3)(i) is corrected by inserting after the phrase "paragraph (a)(3) of this section," the following phrase "other than one requesting only discounts on telecommunications services for consortium members."

5. In § 54.520, on page 19398, in the first column, in paragraph (c)(3)(ii) the phrase "duly completed and signed certifications" is corrected to read "duly completed and signed Forms 479," and the phrase "received under the universal service support mechanism by" is corrected to read "that I have

been approved for discounts under the universal service support mechanism on behalf of," and by inserting opening quotation marks after the phrase "or I certify".

6. In § 54.520, on page 19398, in the third column, in paragraph (f), "December 21, 2000" is corrected to read "April 20, 2001" and by inserting the phrase "or library" after the phrase "in which the school".

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01-11063 Filed 5-2-01; 8:45 am]

BILLING CODE 6712-01-U

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

#### Regulations Governing the Taking and Importing of Marine Mammals

##### *CFR Correction*

In Title 50 of the Code of Federal Regulations, parts 200 to 599, revised as of October 1, 2000, Part 216 is corrected by removing Subpart N (§§ 216.151 through 216.157).

[FR Doc. 01-55515 Filed 5-2-01; 8:45 am]

BILLING CODE 1505-01-D

# Proposed Rules

Federal Register

Vol. 66, No. 86

Thursday, May 3, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

#### Reducing Unnecessary Regulatory Burden While Maintaining Safety Workshop and Comments

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of public workshop and request for comments.

**SUMMARY:** Consistent with the Nuclear Regulatory Commission (NRC) Strategic Plan and the Energy and Water Appropriations Bill, 2000, the Commission has directed the staff to maintain plant safety and improve public confidence, but reduce unnecessary regulatory burden. Within this context, unnecessary regulatory burden is defined as regulatory requirements that do not aid the Commission in its mission to protect public health and safety. A workshop will be held to inform and solicit stakeholder input on activities associated with reducing unnecessary regulatory burden. Comments can be provided orally at the workshop, or in writing within 30 days following the workshop. The workshop will be a facilitated round table format with participants representing the broad spectrum of affected interests. There will also be opportunities for audience comments and questions. Although unnecessary burden reduction initiatives are ongoing agency-wide, this workshop will primarily focus on three areas: Risk informing portions of 10 CFR Part 50, reforming outdated or paperwork oriented regulations, reviewing other regulatory requirements (e.g., technical specifications) for burden reduction opportunities. Depending on comments and discussions received during or following this workshop, other workshops may follow. This workshop will also entertain new technologies or techniques that could be used to reduce unnecessary regulatory burden and will

provide the status of the licensing action information collection initiative. The NRC hopes to gain widespread participation from (but not limited to) representatives from non-governmental organizations, industry, Federal agencies, State governments, local governments, international organizations, and private citizens. Following the workshop, the NRC staff plans to prepare a staff paper to the Commission to articulate stakeholder's interest, comments, and recommendations regarding this initiative.

**DATES:** The workshop will be held on May 31, 2001—8:30 a.m. to 5:00 p.m. The comment period expires July 2, 2001.

**ADDRESSES:** The workshop will be held at NRC Headquarter Offices, Two White Flint, Auditorium, 11545 Rockville Pike, Rockville, Maryland, 20555-0001. Written comments may be sent to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Mail Stop T-06 D59, Washington, D.C., 20555-0001. Comments may be hand delivered to 11545 Rockville Pike, Rockville, Maryland, 20555-0001.

**FOR FURTHER INFORMATION CONTACT:** Francis X. Cameron, the facilitator of this workshop, Mail Stop O-15 D21, telephone (301) 415-1642; Internet: FXC@nrc.gov; or William S. Raughley regarding comments, telephone (301) 415-7577; Internet: WSR@nrc.gov, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For material related to the meeting, please contact U.S. NRC Public Affairs Office (301) 415-8200.

#### SUPPLEMENTARY INFORMATION:

##### Background

Consistent with the NRC Strategic Plan and the Energy and Water Appropriations Bill, 2000, NRC has several initiatives planned to reduce unnecessary regulatory burden on licensees. Although unnecessary burden reduction initiatives are agency-wide, this workshop will primarily focus on initiatives associated with the following three areas: (1) Risk informing portions of 10 CFR Part 50, (2) reforming outdated or paperwork oriented regulations, and (3) seeking unnecessary burden reduction in other regulatory requirements (e.g., technical specifications). The workshop will also

entertain new technologies or techniques which could be used to reduce unnecessary regulatory burden and provide a status on the information collection initiative for licensing actions.

To elaborate, the NRC Strategic Plan, Fiscal Year 2000-Fiscal Year 2005 (Volume 2, Part I) and the companion document Strategic Plan Appendix (Volume 2, Part 2) explain NRC performance goals to: (1) Maintain safety, protection of the environment, and common defense and security; (2) increase public confidence; (3) make NRC activities and decisions more effective, efficient, and realistic; (4) reduce unnecessary regulatory burden on licensees. Stakeholders generally include the public, licensees, other Federal Agencies, States, local governments, industry, the international community, non-government organizations and others. (The referenced documents and ADAMS references are available through the NRC website "www.nrc.gov/NRC/PUBLIC/meet.html" under "Nuclear Regulatory Research" or "RES.") The Energy and Water Appropriations Bill, 2000, states in part that:

\* \* \* The Committee directs the Commission to examine reforms to the scope of power reactor regulations that will promote a higher level of confidence that the revised regulations, when issued, are consistent with the fundamental accountability of the Commission and that regulations which do not contribute to adequate protection are eliminated. The Committee directs that these efforts be completed no later than December 31, 2000.

In addition, the committee directs the Commission to review existing regulations to reform those that are outdated or paperwork oriented to a set of regulations that are performance based by 2004.

The NRC Strategic Plan and the Energy and Water Appropriations Bill, 2000 provide the framework for NRC initiatives to reduce the unnecessary regulatory burden on licensees. The NRC Strategic Plan defines the unnecessary regulatory burden for NRC licensees as requirements that go beyond what is necessary and sufficient for providing reasonable assurance that public health and safety, the environment, and the common defense and security will be protected. Consistent with the NRC Strategic Plan, the NRC is seeking stakeholder input to identify and discuss opportunities for

reducing unnecessary regulatory burden while maintaining safety. By reducing unnecessary regulatory burden, both the NRC and licensee resources may be made available to more effectively focus on maintaining safety. During the past 30 years, an ever-increasing body of technical knowledge and operating experience has been accumulated that may allow for refinements and enhancement in NRC requirements that can reduce the unnecessary regulatory burden while assuring maintenance of safety. Not all the NRC requirements may have been updated to take into account these advances. The NRC believes that for some areas of NRC regulations and practices, the burden is not commensurate with the safety benefit.

### Discussion

From the NRC's perspective the initiatives described below for reducing the unnecessary regulatory burden have common attributes: (1) The NRC Strategic Plan and the Energy and Water Appropriations Bill, 2000 provide the incentive and framework for these initiatives; (2) each initiative is planned to result in revisions to regulatory documents or plant technical specifications; (3) while each initiative is expected to result in the reduction of unnecessary regulatory burden, expected levels of safety will be maintained; and (4) the plans to reduce the unnecessary regulatory burden while maintaining safety need greater stakeholder involvement in, and understanding of, the goals of the overall initiative; the relative priorities of the initiatives including those initiatives that will result in the burden reductions with no safety impact; and the identification and prioritization of candidate changes within each initiative. Removal of unnecessary regulatory burden can only be to the extent it is feasible and cost effective. In addition, having involved the stakeholders, the overall plans, the milestones we intend to meet, and status should be communicated to the Commission periodically and made publicly available.

The staff plans to (1) hold a workshop to communicate to and obtain feedback from stakeholders regarding NRC plans for reducing unnecessary regulatory burden while maintaining safety and (2) provide an opportunity for written feedback after the meeting.

The enclosed workshop agenda is designed to provide the opportunity for meaningful stakeholder interaction and involvement and provide stakeholders with a foundation to provide written comments. The specific objectives are

to: (1) Provide an NRC management perspective of efforts to reduce unnecessary burden including the relationship between the individual efforts and the input needed from the stakeholders; (2) explain the NRC plans in the areas of risk informing 10 CFR Part 50, reforming outdated and paperwork requirements, and reviewing other regulatory requirements; (3) share inputs received to date from stakeholders; (4) obtain broader participation and stakeholder input regarding the scope and relative priorities of these initiatives including new technologies; (5) provide context for identifying unrecognized opportunities and exploring concerns associated with unnecessary regulatory burden reductions; and (6) provide a foundation for stakeholders to provide detailed written comments on the agency's unnecessary burden reduction initiatives and specific questions.

The following summarizes unnecessary burden reduction initiatives that will be discussed at the workshop.

#### *Risk Informing the Regulations*

The staff has under way two initiatives for risk-informing 10 CFR Part 50, first described, and options defined in SECY-98-300, "Options for Risk-informed Revisions to 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities," dated December 23, 1998. In the first initiative (SECY-98-300, "Option 2") the staff is addressing risk-informed changes to the regulatory scope for structures, systems, and components in need of special treatment (e.g., quality assurance, environmental qualification). This initiative does not address changing the technical content of the special treatment requirements, the design of the plant or the design-basis accidents. In the second initiative (SECY-98-300, "Option 3") the staff is assessing the risk-significance of technical requirements associated with the special treatment requirements in 10 CFR Part 50. This work is closely linked and integrated with the effort under Option 2.

In SECY-99-264, "Proposed Staff Plan for Risk-Informing Technical Requirements in 10 CFR Part 50," dated November 8, 1999, the staff provided the original plan and schedule for its work to risk-inform the technical requirements of 10 CFR Part 50 (Option 3). In SECY-00-0086, "Status Report on Risk-Informing the Technical Requirements of 10 CFR Part 50 (Option 3)," April 12, 2000, the staff provided a status report on Option 3 activities, including an initial version of the

"framework" document (a document the staff is using to guide Option 3 activities). In SECY-00-0086, based on meetings with stakeholders and input from industry, 10 CFR 50.44 "Standards For Combustible Gas Control System In Light-Water-Cooled Power Reactors," and 10 CFR 50.46, "Acceptance Criteria For Emergency Cooling Systems For Light-Water Reactors," were listed as a high priority candidate regulations for evaluation under Option 3.

In SECY-00-0198, "Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR Part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.44 (Combustible Gas Control)," September 14, 2000, the staff provided a status report focusing on the results of its feasibility study and recommendations to risk-inform 10 CFR 50.44, an updated framework document, and a short status of other Option 3 work underway. In SECY-00-0198, the staff indicated that work had been initiated to develop risk-informed alternatives to the current 10 CFR 50.46. More recently, the status of this work has been described noting the need for more stakeholder involvement in a memorandum to the Commission dated February 5, 2001 (Adams Accession Number ML010260032).

Risk-informed changes to 10 CFR 50.61, "Fracture Toughness Requirements for Protection Against PTS Events," are also under evaluation. The status and schedule for this work were reported in SECY-00-0140, "Reevaluation of the Pressurized Thermal Shock Rule (10 CFR 50.61) Screening Criterion," June 23, 2000.

The staff requested public comment on SECY-00-213, "Risk-Informed Regulation Implementation Plan," October 26, 2000, in a **Federal Register** Notice (65 FR 80473) on December 21, 2000. Input received from stakeholders and work done to date on Option 3 by the staff are being considered in determining which regulations from 10 CFR Part 50 are candidates to be risk-informed. The staff-identified candidates identified to date are listed in Table A-2 in Attachment 1 to SECY-00-0198.

#### *Unnecessary Burden Reduction While Maintaining Safety*

A trip report (Adams Accession Number ML003725832) summarizes a public meeting on June 14, 2000, between the NRC Office of Nuclear Regulatory Research (RES) and Commonwealth Edison (Com-Ed) to understand concerns with some regulations that it perceives to impose unnecessary regulatory burden. The trip report attachments include a list of

items they consider to be unnecessary regulatory burden. Com-Ed explained that the list was illustrative but not exhaustive.

The NRC reviewed the list, and it appeared the items fell into four categories: (1) Items that seem to be simple revisions to outdated or paperwork requirements of apparently little or no safety benefit; these items could be further grouped into outdated, redundant, collection, reporting, or paperwork-oriented-type regulations and are candidates to satisfy the Congressional request; (2) complex technical changes needing NRC resources and prioritizing in the budget and planning process; some of these items can be integrated into ongoing or planned initiatives such as risk informing 10 CFR 50.46; (3) items that are unlikely to be considered as part of current staff initiatives; (4) items already being processed for rulemaking.

Subsequently, the Industry Licensing Action Task Force provided a list of outdated or paperwork requirements it considered to be unnecessary regulatory burden that was similar to items in the Com-Ed list.

Resources have been assigned to develop a plan to evaluate outdated or paperwork requirements. However, rather than evaluating individual lists, the NRC believes that it would be efficient to obtain an exhaustive list of candidate outdated or paperwork requirements considered to be unnecessary regulatory burden before evaluating changes to outdated or paperwork requirements. In addition, the NRC would like to hear from other stakeholders regarding the possible reduction of outdated and paperwork requirements.

#### *Reviewing Other Regulatory Requirements*

In addition to reviewing NRC regulations, the NRC staff is involved in various activities to assess other regulatory requirements and administrative processes to identify possible improvements in efficiency or reductions in unnecessary regulatory burden. The staff is currently reviewing its internal procedures and processes, various reporting or administrative requirements imposed on power reactor licensees, and is continuing with initiatives related to the content of technical specifications. Specific types of activities underway are discussed in "Summary of Meeting Held on February 7, 2001, Between the NRC Staff and Industry Licensing Action Task Force," dated March 29, 2001 (Adams Accession Number ML010890109).

#### *Proposed Information Collection Initiative*

A **Federal Register** Notice (Adams Accession Number ML003771785) soliciting public comments on the proposed information collection was published on December 7, 2000. The purpose of the information collection initiative is to gather information from licensees regarding the impact of the NRC activities. As discussed in the **Federal Register** notice (FRN), the information gathered from the proposal would assist the Office of Nuclear Reactor Regulation (NRR) staff in allocating staff resources and measuring how the work the NRR staff completes contributes to the agency goals and meets the Government Performance and Results Act (GPRA). Five different groups commented on the proposed initiative (Tennessee Valley Authority, Illinois Department of Nuclear Safety, Winston and Strawn, Hopkins and Sutter, and the Nuclear Energy Institute). Comments received from the public were generally not in favor of the proposed initiative. Based on the public comments, the staff believes that to proceed with the initiative as it was originally proposed in the FRN is not feasible and is not an effective use of NRC resources. Thus, the staff has explored other means of achieving the objectives and identified the following two options that will be discussed at the workshop:

*Option 1*—The NRR Project Manager would indicate whether the amendment reduces: radiation dose, risk, outage time, increases safety, or is administrative. Criteria/guidance would be developed to categorize the various amendments. At the end of the fiscal year, the staff would determine how many of the licensing actions fell into each category and make a rough estimate regarding cost savings.

*Option 2*—Criteria would be developed to determine whether an amendment was a low, medium, or high savings to the licensee. The licensee would indicate which category the amendment falls into. The staff would need input from the industry to develop the criteria and would need individual licensees to categorize amendments upon submittal to the NRC.

#### *New Technologies or Techniques*

Advances in computational capability and data permit more realistic modeling of reactor behavior and may provide opportunities for reducing unnecessary burden while maintaining safety. Recent examples include revised source terms and current efforts to risk inform 10 CFR 50.44, 10 CFR 50.46, and 10 CFR 50.61.

The NRC is interested in other opportunities.

#### *Obtaining Broad Stakeholder Input*

We are interested in stakeholder feedback on the priority of the candidates, to recommend what additional work should be in the scope of unnecessary burden reduction initiatives and to obtain general concerns. The feedback should consider factors such as potential safety benefit and stakeholder interest, as well as the agency's four performance goals. The stakeholders are encouraged to participate in the workshop discussion sessions and provide written comment. The following questions will help to start each workshop discussion session as well as provide a format for comments:

1. What aspects of these initiatives interfere with the NRC ability to maintain safety or increase public confidence?
2. Will implementation of these initiatives improve regulatory efficiency, effectiveness, and realism?
3. Beyond this meeting and the request for comments, how can stakeholder participation in these initiatives be enhanced?
4. Which areas being pursued will not likely be fruitful to stakeholders, or otherwise have a negative impact on stakeholder needs?
5. Are ongoing and future activities to reduce unnecessary burden appropriately prioritized? Which activities should receive the highest priority and why?
6. Are there any other opportunities that have not been recognized or being pursued at this time. Identify: (a) The regulation or portion thereof that should be evaluated; (b) possible improvements to the regulations; (c) the basis for the proposed reduction including the potential impact on safety, public confidence, regulatory effectiveness and efficiency; and (d) the estimate dollar cost saving per year.
7. What advancements in technology would help NRC better meet its performance goal of reducing unnecessary burden on stakeholders?
8. What new areas of regulatory research may be warranted to advance technology that could better serve these initiatives?

Dated at Rockville, Maryland, this 27th day of April 2001.

For the Nuclear Regulatory Commission.

**Farouk Eltawila,**

*Acting Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

**Tentative Agenda—Reducing Unnecessary Regulatory Burden While Maintaining Safety Workshop**

- 8:30–8:45 Welcome and Introduction  
 8:45–9:00 Meeting Objectives, Structure and Groundrules  
 9:00–9:15 Overview of NRC Initiative to Reduce Unnecessary Regulatory Burden  
 9:15–10:30 Risk Informing 10 CFR Part 50 Participants Discussion  
 10:30–10:45 Break  
 10:45–11:45 Paperwork Reduction and Obsolete Regulations Participants Discussion  
 11:45–1:00 Lunch Break  
 1:00–1:45 Licensing Actions to Reduce Unnecessary Burden Participants Discussion  
 1:45–3:15 Other NRC Initiatives Related to Unnecessary Burden Reduction Participants Discussion  
 3:15–3:30 Break  
 3:30–4:30 Open discussion  
 4:30–4:45 Summary and Closure

[FR Doc. 01–11108 Filed 5–2–01; 8:45 am]

BILLING CODE 7590–01–P

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 151**

[USCG–2000–7442]

RIN 2115–AD23

**Permits for the Transportation of Municipal and Commercial Waste**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of intent with request for comments.

**SUMMARY:** The Coast Guard is advising the public of its intent to finalize regulations previously published as an Interim Rule (IR) in the **Federal Register** (54 FR 22546) on May 24, 1989. These regulations have been codified at 33 CFR Part 151. The IR was published to implement the permitting and numbering requirements of the Shore Protection Act (SPA), but was never published as a Final Rule. Because of the lapse in time since the IR publication, the Coast Guard is seeking comments from the public before finalizing the IR.

**DATES:** Comments must be received on or before August 1, 2001.

**ADDRESSES:** You may submit your written comments and related material by one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–2000–7442), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket for this notice on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this reopened comment period, contact Ensign William Sportsman, Office of Operating & Environmental Standards (G–MSO–2), U.S. Coast Guard Headquarters, telephone 202–267–0226. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages you to participate in this rulemaking by submitting your comments and related material. To do so, please include your name and address, identify the docket number for this notice (USCG–2000–7442), indicate the specific section of the Interim Rule that you are commenting on, and give the reason for each comment. You may submit your written comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please do not submit the same comment or material by more than one means. Do not submit comments on the Interim Rule that have already been made part of the CGD 89–014 docket. If you submit them by mail or hand, submit them in

an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period. All comments, including those previously submitted under the CGD 89–014 docket, may be viewed at <http://dms.got.gov>.

**Background and Purpose**

On May 24, 1989, the Coast Guard published in the **Federal Register** (54 FR 22546), an Interim Rule with request for comments (docket number CGD 89–014), implementing the permitting and numbering requirements of the Shore Protection Act (33 U.S.C. § 2601 *et seq.*). In response, the Coast Guard received six comments. After it was determined that the procedures outlined in the Interim Rule were operating successfully, the Coast Guard published a Notice of Withdrawal in the **Federal Register** (60 FR 64001) on December 13, 1995, to discontinue the rulemaking. The intent was to close the rulemaking project. However, due to an oversight, the Interim Rule was never finalized.

The Interim Rule has been in place for the past 11 years, and the Coast Guard believes these procedures have been operating in a satisfactory manner. Therefore, the Coast Guard intends to finalize the Interim Rule as published, and the first step in this process is to reopen the comment period for the Interim Rule.

**Discussion of Comments and Changes**

The Coast Guard received six letters commenting on the Interim Rule. In the following paragraphs, the Coast Guard discusses the comments received, and explains any changes made to the regulations. The Coast Guard first discusses general comments, and secondly discusses comments regarding specific sections of the regulations.

**General Comments**

One comment suggested that the rule require the same waste handling practices as stipulated in section 4103 of SPA. The comment also suggested the Coast Guard consider an operator's record of compliance with the required practices when deciding to approve or deny a permit.

The requirements for waste handling practices are outside the scope of this rulemaking. The Environmental Protection Agency (EPA) is responsible for implementing section 4103 of SPA.

One comment asked why the Interim Rule did not include regulations

implementing sections 4104 through 4109 of SPA. This section of SPA concerns suspensions and revocations, enforcement, subpoena authority, and permit fees and penalties. The comment asked the Coast Guard to explain how it will implement these requirements.

As stated in the preamble to the Interim Rule, the Coast Guard will initiate two regulatory projects to implement the responsibilities delegated under SPA. This document finalizes the first regulatory project covering the issuing of permits and the numbering of vessels. Regulations implementing the other provisions of SPA may be proposed under a separate rulemaking in the future.

### Comments Regarding Specific Sections

#### *Applicability (§ 151.1003)*

Three comments stated that numerous crew, work, supply, and service vessels engaged in support of oil or gas operations in the Outer Continental Shelf occasionally transport commercial waste and garbage. This waste is generated on offshore platforms and mobile offshore drilling units and is considered minor and incidental cargo. The comments stated that these vessels should be exempt from the requirements of the Interim Rule because they are not dedicated to nor designed for the transport of commercial waste. One of the comments also suggested that lightering and other small vessels should be exempt from the regulations because they transport plastics and other wastes ashore from vessels in port. These vessels are prohibited from discharging waste into the ocean under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78, Annex V).

The Coast Guard agrees with these comments. This rule only applies to owners and operators of vessels whose primary purpose is the transportation of municipal or commercial waste. The Coast Guard recognizes that there are vessels that transport waste incidental to the primary purpose or business of the vessel. While the owners and operators of these vessels must take appropriate precautions to ensure that they do not deposit waste into the waters of the United States during transport, the Coast Guard does not intend for this rule to apply to these vessels. As stated in the Interim Rule, an owner or operator will only be required to hold a permit if the vessel is hired to transport municipal or commercial waste for a specific voyage or for a specific time. Therefore, the Coast

Guard intends to make no revisions based on these comments.

Three comments opposed applying the Interim Rule to vessels carrying non-hazardous oil field waste. These vessels are required to obtain a Certificate of Inspection (COI), meet route and cargo restrictions, construction standards, and stability standards under rules promulgated in the Coast Guard's Navigation and Vessel Inspection Circular (NVIC) Number 7-87, "Guidance on Waterborne Transport of Oil Field Wastes." The comments argued that vessels under the NVIC 7-87 already meet a higher degree of scrutiny than is mandated by SPA.

The Coast Guard agrees with these comments. To reduce the regulatory burden, vessels operating under the NVIC 7-87 program already meet regulatory standards similar to these regulations and are exempt from having to obtain a permit. Thus, vessels engaged in transporting non-hazardous oil field waste were never intended to be included in the application of the Interim Rule. This is evidenced by the fact that they were never specifically listed in 33 CFR 151.1003, Applicability, or 33 CFR 151.1006, Definitions.

#### *Issuing or Denying the Issuance of a Conditional Permit (§ 151.1015)*

The Coast Guard received four comments regarding the permit issuance procedures and policies. Two comments wanted the Officer in Charge, Marine Inspection (OCMI) or the Captain of the Port (COTP) where the vessel will operate to participate in the issuance procedures. One comment stated that it would be appropriate and convenient for the OCMI or COTP to approve (or deny) the application. The comment noted that the OCMI or COTP "will surely be involved in verifying information, investigating complaints, and monitoring compliance in any case." Another comment suggested that the Coast Guard send a copy of the issued permit to the OCMI or COTP.

The Coast Guard does not agree with these comments. It will be more efficient to issue the permits from a central location because vessels subject to these regulations may operate in more than one COTP or OCMI zone of responsibility. The owner or operator is required to maintain the permit onboard the vessel. Therefore, a copy of the permit will be available for the COTP or OCMI to examine whenever necessary. The Coast Guard will not make any changes to § 151.1015 based on these comments.

For vessels requiring a COI, one comment suggested the Coast Guard

withhold issuance of a permit if the COI is invalid.

The Coast Guard does not agree with this comment. Vessels holding a COI are currently inspected on regularly scheduled intervals. If the COI is invalid, the vessel is not expected to be operating on the navigable waters of the United States.

Another comment requested that the Coast Guard include a statement in § 151.1015(b)(2)(ii)(A) that clarifies that if there is a change of vessel operator or owner, the permit is no longer valid. In the Interim Rule, § 151.1015(b)(2)(ii)(A) states that a permit will only be terminated if the vessel is sold or if subpart B no longer applies to the vessel.

The Coast Guard does not agree with this comment. We believe the current language of the Interim Rule is sufficient to enable compliance.

Two comments stated that although § 151.1015 details the denial of a permit, it unnecessarily focuses on completeness and accuracy of the forms instead of substantive information such as the history of the operator or the condition of the vessel.

The Coast Guard understands that permit applicants can be frustrated with the level of accuracy required in the forms; however, this information is a necessary step in ensuring that permit applicants are capable of meeting the requirements for a permit.

#### *Withdrawal of a Conditional Permit (§ 151.1018)*

Three comments questioned whether § 151.1018 is consistent with SPA. SPA allows the Coast Guard to issue or deny a permit after consulting with the EPA. However, the Interim Rule does not include the consultation with EPA before issuance of a permit. SPA also allows the Coast Guard to deny a permit if the owner or operator of the vessel has a pattern of serious violations. However, the Interim Rule only allows the Coast Guard to withdraw a permit at the request of EPA. The comments stated that SPA gives the Coast Guard the authority to withdraw a permit, but the Coast Guard has excluded its own authority in the Interim Rule.

The Coast Guard implemented the application procedures in the Interim Rule to eliminate unnecessary delays for vessel owner/operators seeking to continue an ongoing business. Conversely, the Coast Guard wanted to ensure that any decision to revoke a permit was substantiated by an agency that could act as a neutral agent.

One comment stated that it believes that the Coast Guard would initiate withdrawal of a permit for various

reasons, such as improper vessel conditions. The comment asked the Coast Guard to include provisions for these withdrawals and cite the penalty provisions for a violation of §§ 151.1009 and 151.1018(c) in the Interim Rule.

The Interim Rule listed conditions that would lead to the withdrawal of a permit, citing a record or pattern of violations of five environmental protection acts. Permit withdrawal proceedings would be restricted to the conditions authorized by the act. Civil and criminal penalties for violations of the Shore Protection Act are outlined in 33 USC § 2608 and § 2609.

#### *Display of Number (§ 151.1024)*

Two comments objected to the requirement that vessel numbers displayed have to be at least 44 centimeters (18 inches) in height. One comment noted that the requirement for marking a tank vessel (found in 46 CFR 32.05-10 and 32.05-15) allows a vessel to be marked with figures that are 15 centimeters (6 inches) high.

The Coast Guard disagrees with these comments. Personnel involved with enforcement of these regulations must be able to easily identify a vessel's permit numbers from great distances or altitudes including while a vessel is at sea. Because of this, permit numbers need to be easily distinguishable from other markings displayed on a vessel.

One comment noted that there is an incorrect section citation in the Interim Rule. Paragraph (b) of § 151.1009 references § 151.104, which does not exist. The correct reference is § 151.1024, pertaining to permit numbers. The Coast Guard amended § 151.1009(b) to reflect the correct reference in a correction notice published in the **Federal Register** on June 5, 1989 (54 FR 24078).

Dated: March 16, 2001.

#### **Joseph J. Angelo,**

*Director of Standards, Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 01-10970 Filed 5-2-01; 8:45 am]

**BILLING CODE 4910-15-P**

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 201

[Docket No. 2001-2]

#### Notice of Termination

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office is proposing amendments to its regulation governing notices of termination of transfers and licenses covering the extended renewal term. The current regulation is limited to notices of terminations made under section 304(c) of the copyright law. The Sonny Bono Copyright Term Extension Act created a separate termination right under section 304(d). Under the proposed regulation, procedures governing notices of termination of the extended renewal term would cover notices made under either section 304(c) or 304(d).

**DATES:** Comments should be in writing and received on or before June 18, 2001.

**ADDRESSES:** If sent By Mail, ten copies of written comments should be addressed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20540. If Hand Delivered, ten copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-403, First and Independence Avenue, SE., Washington, DC.

#### **FOR FURTHER INFORMATION CONTACT:**

David O. Carson, General Counsel, or Kent Dunlap, Principal Legal Advisor for the General Counsel. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** Under the 1909 copyright law, which was in effect until January 1, 1978, works were subject to a renewal system in which the term of copyright was divided into two consecutive terms. Under the system initially established by the 1909 legislation, the duration of copyright protection was an initial copyright term of 28 years and a renewal term of an additional 28 years. The Copyright Act of 1976, Pub. L. 94-554, retained the renewal system for works that had subsisting copyrights on January 1, 1978. However, under section 304 of the copyright law (17 U.S.C. 304), the renewal term was extended to 47 years, creating a total potential term of protection of 75 years.

Besides generally extending the renewal term to 47 years, Congress also provided a termination procedure authorizing the termination of transfers or licenses during the extended renewal term. Established under section 304(c) of the copyright law, this provision created a means for authors and their surviving spouses and offspring to secure the benefits of the additional 19 years added to the renewal term. In 1977, the Copyright Office adopted a regulation establishing the procedures for exercising the termination right. 37 CFR 201.10

On October 27, 1998, President Clinton signed into law the Sonny Bono Copyright Term Extension Act, ("the Act"), Pub. L. 105-298, 112 Stat. 2827 (1998). The Act amended the copyright law, title 17 United States Code, to extend for an additional 20 years, the term of copyright protection in the United States. For works in which the duration of protection was determined under section 304 of title 17, the renewal term was extended from 47 years to 67 years. Like the Copyright Act of 1976, the Sonny Bono Copyright Term Extension Act also contained a termination provision covering the newly extended part of the extended renewal term (i.e., the last twenty years). Established under section 304(d) of the copyright law, this new right of termination was limited to authors and other successors-in-interest specified in the statute who had not previously terminated under section 304(c).

The termination provision created by section 304(d) largely incorporates by reference the standards established by section 304(c). Since notices of termination may be served up to ten years before the termination is to take effect, the right to serve termination notices under section 304(d) vested immediately upon the enactment of the Sonny Bono Copyright Term Extension Act. Although the Copyright Office has not put in place final regulations governing notices of termination issued under section 304(d), the Copyright Office Documents Section has already received a number of such notices for recordation. The Copyright Office has proceeded with recording these notices under its existing provisions for recordation of notices of termination pursuant to section 304. However, it is desirable that the Office's regulations on notices of termination be amended to provide expressly for notices of termination pursuant to section 304(d).

The Copyright Office has concluded that, with a few adjustments, § 201.10 can be adapted to cover terminations under either section 304(c) or section 304(d). The proposed regulation begins by adding introductory text clarifying that the scope of the regulation covers terminations under either sections 304(c) or 304(d). In provisions where the current regulation refers to section 304(c), the proposed regulation has been modified to add an alternative reference to section 304(d). Finally, a reference to section 304(d) has been added to § 201.4(a)(v) regarding recordation of transfers and certain other documents.

Paragraph (b) relating to contents of the notice would add two substantive changes not in the current regulation. Section (b)(i) of the proposed regulation

requires that if the termination is made under section 304(d), the notice should provide a statement to that effect. Most of the notices of termination made under section 304(d) which have been received in this Office already contain such a statement. Inclusion of this requirement in the regulation appears to be a logical addition and would provide clarity to the notice. No corresponding requirement has been imposed in notices of termination issued under section 304(c) because such a requirement would upset established practices in issuing notices under that section.

The second substantive change adds a new § 201.10(b)(vi) requiring notices issued under section 304(d) to contain a statement "that the rights in the extended renewal term which are being terminated have not been subject to a previous termination." This is a statutory requirement imposed in section 304(d). Incorporating the requirement as part of the contents helps ensure that second notices of termination covering the same rights already terminated by a previous notice will not be served and recorded. This provision is not intended to preclude one joint author who has not previously exercised his termination right from terminating, even in cases where other joint authors have exercised such rights. Section 304(c) permits joint authors to exercise their termination rights separately. H.R. Rep. No. 94-1476, at 141 (1976).

The Copyright Office seeks public comment on these two proposed substantive additions to the required content of the notice of termination. The Copyright Office does not propose that the two new requirements be applied to notices already issued or to those issued before the proposed regulation is adopted in final form. If the two requirements are adopted in the final regulation, they are intended to be treated as requirements only after the effective date of the final regulation.

List of Subjects in 37 CFR Part 201

Copyright.

Proposed Regulations

In consideration of the foregoing, the Copyright Office proposes to amend part 201 of 37 CFR, chapter II in the manner set forth below:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702; § 201.10 is also issued under 17 U.S.C. 304.

§ 201.4 [Amended]

2. Amend § 201.4(a)(1)(v) by adding "and (d)" after "304(c)".

3. Section 201.10 is amended as follows:

- a. by adding introductory text before paragraph (a);
b. by revising paragraphs (c)(2), (d)(2), (d)(4) and (e);
c. by redesignating paragraphs (b)(1)(i) through (v) as (b)(1)(ii) through (v) and (vii), respectively; and
d. by adding new paragraphs (b)(1)(i) and (b)(1)(vi). The revisions and additions to § 201.10 read as follows:

§ 201.10 Notices of termination of transfers and licenses covering extended renewal term.

This section covers notices of termination of transfers and licenses covering the extended renewal term under sections 304(c) and 304(d) of title 17, U.S.C.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) If the termination is made under section 304(d), a statement to that effect;

\* \* \* \* \*

(vi) If termination is made under section 304(d), a statement that the rights which are being terminated have not been subject to a previous termination pursuant to section 304; and

\* \* \* \* \*

(c) \* \* \*

(2) In the case of a termination of a grant executed by one or more of the authors of the work, the notice as to any one author's share shall be signed by that author or by his or her duly authorized agent. If that author is dead, the notice shall be signed by the number and proportion of the owners of that author's termination interest required under section 304(c) or section 304(d), whichever applies, of title 17, U.S.C., or by their duly authorized agents, and shall contain a brief statement of their relationship or relationships to that author.

\* \* \* \* \*

(d) \* \* \*

(2) The service provision of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, will be satisfied if, before the notice of termination is served, a reasonable investigation is made by the person or persons executing the notice as to the current ownership of the rights being terminated, and based on such investigation:

(i) If there is no reason to believe that such rights have been transferred by the grantee to a successor in title, the notice is served on the grantee; or

(ii) If there is reason to believe that such rights have been transferred by the grantee to a particular successor in title, the notice is served on such successor in title.

\* \* \* \* \*

(4) Compliance with the provisions of paragraphs (d)(2) and (3) of this section will satisfy the service requirements of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies. However, as long as the statutory requirements have been met, the failure to comply with the regulatory provisions of paragraph (d)(2) or (d)(3) of this section will not affect the validity of the service.

(e) Harmless errors. (1) Harmless errors in a notice that do not materially affect the adequacy of the information required to serve the purposes of either section 304(c) or section 304(d) of title 17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii) of this section, or in complying with the provisions of paragraph (b)(1)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

\* \* \* \* \*

4. Amend the new § 201.10(b)(1)(vii) by removing "paragraph (v)" and adding "paragraph (vii)".

Dated: April 26, 2001.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 01-11152 Filed 5-2-01; 8:45 am]

BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA143-4115b; FRL-6973-5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Reasonably Available Control Technology Requirements for Volatile Organic Compounds and Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing to remove the conditional status of its approval of the Commonwealth of Pennsylvania State Implementation Plan (SIP) revision that requires all major sources of volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) to implement reasonably available control technology (RACT). In the "Rules and Regulations" section of this **Federal Register**, EPA is removing the conditional nature of its approval of the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for removing the conditional status of EPA's approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by June 4, 2001.

**ADDRESSES:** Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth, (215) 814-2034, at the EPA Region III address above, or by e-mail at wentworth.ellen@epa.gov.

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action with the same title that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 24, 2001.

**William C. Early,**

*Acting Regional Administrator, Region III.*  
[FR Doc. 01-10985 Filed 5-2-01; 8:45 am]

**BILLING CODE 6560-50-U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[TN 241-1-2000103b; FRL-6974-5]

#### Clean Air Act Approval and Promulgation of the Redesignation of Shelby County, TN, to Attainment for Lead

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve the State Implementation Plan submitted on February 15, 2001, by the Memphis and Shelby County Health Department through the Tennessee Department of Environment and Conservation for the purpose of redesignating Shelby County from nonattainment to attainment for the lead national ambient air quality standard. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before June 4, 2001.

**ADDRESSES:** Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations.

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303-3104.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562-9038 and at the above address.

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

Dated: April 19, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 01-11091 Filed 5-2-01; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AH83

#### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Robust Spineflower; Correction

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed Rule; technical corrections.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, published a proposed rule to establish critical habitat for the robust spineflower (*Chorizanthe robusta* var. *robusta*) in the **Federal Register** on February 15, 2001. The proposed rule contained several errors in the map and legal description for the Freedom mapping unit (Unit D). This document contains corrections to the proposed rule to designate critical habitat for *Chorizanthe robusta* var. *robusta* for this proposed critical habitat unit.

**DATES:** We will accept comments until the close of business on June 4, 2001. Requests for public hearings must be received by May 23, 2001.

**ADDRESSES:** Comment submission: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2394 Portola Road, Suite B, Ventura, California 93003. You may also hand-deliver written comments to our Ventura Fish and Wildlife Office at the address given above.

2. You may send comments by electronic mail (e-mail) to: robustsf@fws.gov See the Public Comments Solicited section below for file format and other information on electronic filing.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection,

by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

**FOR FURTHER INFORMATION CONTACT:**

Diane Noda, Field Supervisor, at the address above (telephone 805/644-1766; facsimile 805/644-3958).

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 15, 2001, we proposed critical habitat for the robust spineflower (*Chorizanthe robusta* var. *robusta*), pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) (66 FR 10419). A total of approximately 660 hectares (ha) (1,635 acres (ac)) of land fall within the boundaries of the proposed critical habitat designation, all in Santa Cruz County, California.

The proposed rulemaking contained errors in the mapping and legal description for the Freedom mapping unit (Unit D). In the proposed rule, we inadvertently mapped this unit to the north and east of the correct location. We are providing a corrected Geographic Information System (GIS) map and a corrected legal description of the mapping unit. The GIS map is provided to help the public understand the general location of the proposed critical habitat. A corrected version of Table 5 is also provided; this table provides approximate areas of proposed critical habitat for *Chorizanthe robusta* var. *robusta* by land ownership. The corrected table indicates that for the

Freedom Unit, approximately 3.8 ha (9.5 ac) are on private lands and 0.2 ha (0.5 ac) are on lands under local jurisdiction.

**Public Comments Solicited**

We intend that any final action resulting from this technical clarification be as accurate as possible. Comments and suggestions from the public, concerned governmental entities, private interests, or any other interested party are solicited. Comments are invited specifically concerning:

- (1) Biological data concerning any threat (or lack thereof) to *Chorizanthe robusta* var. *robusta*;
- (2) The location of any additional populations of the species, and the reasons why any habitat in should or should not be designated as critical habitat, as provided by section 4 of the Act;
- (3) Additional information concerning the range, distribution, and population size of *Chorizanthe robusta* var. *robusta*; and
- (4) Current or planned activities within the proposed critical habitat units and their possible impacts on the species.

**National Environmental Policy Act**

We have determined that environmental assessments and environmental impact statements, as defined in 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).

**Paperwork Reduction Act**

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. 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 control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62 and 17.63.

**Author(s)**

The primary authors of this proposed rule is Connie Rutherford (see **ADDRESSES** section), and Barbara Behan, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232 (telephone 503/231-6131).

**Authority**

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

In proposed rule FR Doc. 01-1837, published February 15, 2001 (66 FR 10419), make the following corrections.

1. On page 10425, correct Table 5 to read as follows:

TABLE 5.—APPROXIMATE AREAS, IN HECTARES (HA) AND ACRES (AC),<sup>1</sup> OF PROPOSED CRITICAL HABITAT FOR CHORIZANTHE ROBUSTA VAR. ROBUSTA BY LAND OWNERSHIP

Unit name	State lands	Private lands	City and other local jurisdictions	Federal lands	Total
A. Pogonip .....	20 ha (50 ac) .....	45 ha (115 ac) .....	100 ha (250 ac) .....	.....	165 ha (410 ac).
B. Branciforte .....	.....	5 ha (10 ac) .....	.....	.....	5 ha (10 ac).
C. Aptos .....	.....	30 ha (80 ac) .....	.....	.....	30 ha (80 ac).
D. Freedom .....	.....	3.8 ha (9.5 ac) .....	0.2 ha (0.5 ac) .....	.....	4 ha (10 ac).
E. Buena Vista .....	.....	75 ha (185 ac) .....	.....	.....	75 ha (185 ac).
F. Sunset .....	55 ha (130 ac) .....	.....	.....	.....	55 ha (130 ac).
G. Former Fort Ord ....	.....	.....	.....	325 ha (805 ac) .....	325 ha (805 ac).
Total .....	75 ha (180 ac) .....	157 ha (396 ac) .....	102 ha (254 ac) .....	325 ha (805 ac) .....	659 ha (1,635 ac).

<sup>1</sup> Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest 5; hectares and acres less than or equal to 10 have been rounded to the nearest whole number. Totals are sums of units.

**§ 17.96 [Corrected]**

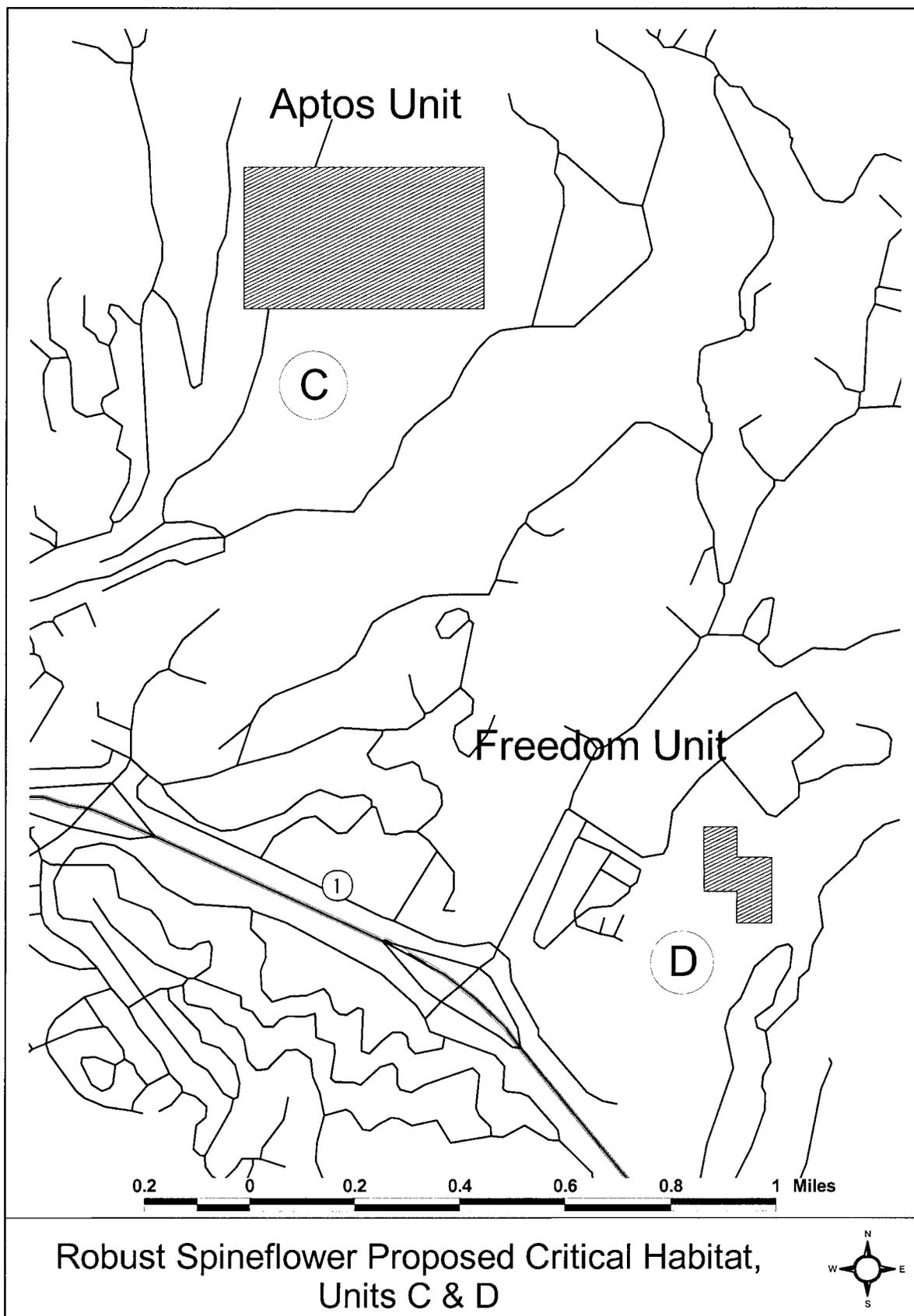
2. On page 10434, correct the legal description for Map Unit D to read as follows:

*Map Unit D (Freedom)*. Santa Cruz County, California. From USGS 7.5' quadrangle map

Watsonville West, California. The following lands within the Aptos Land Grant: T. 11 S. R.1 E., W<sup>1</sup>/<sub>2</sub> of NW<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub> of SE<sup>1</sup>/<sub>4</sub>; the NE<sup>1</sup>/<sub>4</sub> of NE<sup>1</sup>/<sub>4</sub> of NE<sup>1</sup>/<sub>4</sub> of SW<sup>1</sup>/<sub>4</sub>; and SE<sup>1</sup>/<sub>4</sub> of SE<sup>1</sup>/<sub>4</sub> of NW<sup>1</sup>/<sub>4</sub>, Mount Diablo Base Principal Meridian, sec. 16 (protracted).

3. On page 10435, correct the map for Freedom Unit (Unit D) to read as follows:

**BILLING CODE 4310-55-P**



Dated: April 25, 2001.

**Daniel Welsh,**

*Acting Manager, California/Nevada Operations.*

[FR Doc. 01-10830 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[I.D. 043001D]

#### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public hearings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold seven public hearings in May and June 2001 to gather public input regarding proposed management measures for its draft Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP).

**DATES:** The public hearings will be held in May and June 2001. Written comments must be received in the Council office by May 29, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

**ADDRESSES:** Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699, or via email to safmc@noaa.gov.

Copies of the Public Hearing Document are available from Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-571-4366.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520; email address: kim.iverson@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The South Atlantic Fishery Management Council (Council) will hold seven public hearings in May and June 2001 to gather public input regarding proposed management measures for its draft Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP). At the request of the rock shrimp industry, the Council is considering the following measures for its proposed Amendment 5: The development of a limited entry program to remove speculative interest in the fishery and to ensure the economic viability of the rock shrimp industry; shrimp trawl mesh size restrictions to reduce the harvest of small rock shrimp; a requirement for operator permits and vessel monitoring systems to ensure better compliance with the FMP's management measures; and designation of specific geographic areas within which these management measures would apply.

#### Meeting Dates and Locations

The dates and locations for the scheduled public hearings are presented below. All hearings are scheduled to begin at 6 p.m.

May 3, 2001— NC Department of Environment & Natural Resources, 127 Cardinal Drive, Wilmington, NC 28405; Telephone: 910-395-3900

May 7, 2001— Radisson Beach Resort, 2600 N. A1A, Fort Pierce, FL 34949; Telephone: 561-465-5544

May 8, 2001— Florida Fish & Wildlife Conservation Commission, Florida Marine Research Institute 100 Eighth Avenue, SE, St. Petersburg, FL 53701-5095; Telephone: 727-896-8626

May 9, 2001— Lafayette Plaza Hotel, 301 Government Street, Mobile, AL 36602; Telephone: 334-694-0101

May 15, 2001— Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; Telephone: 843-571-1000

May 24, 2001— University of Georgia, Marine Extension Service, 715 Bay Street, Brunswick, GA 31520; Telephone: 912-264-7268

May 29, 2001— Radisson Hampton, 700 Settlers Landing Road, Hampton, VA 23669, Telephone: 757/727-9700

June 19, 2001— Radisson Ponce de Leon, 4000 US Highway 1, St. Augustine, FL 32095; Phone: 904-824-2821

#### Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least five days prior to the hearing date.

Dated: May 1, 2001.

**Bruce C. Morehead,**

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

[FR Doc. 01-11273 Filed 5-1-01; 2:51 pm]

**BILLING CODE 3510-22-S**

# Notices

Federal Register

Vol. 66, No. 86

Thursday, May 3, 2001

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.

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Availability of an Environmental Assessment for an Amendment to the Fishlake National Forest Land and Resource Management Plan To Change the Forage Utilization Standards

**AGENCY:** Forest Service, Agriculture.

**ACTION:** Notice of availability of an environmental assessment.

**SUMMARY:** The Fishlake National Forest proposes to amend the Forest Plan forage utilization guidelines. Supervisor Guy Pence (Responsible Official) has made available copies of the Environmental Assessment for the Proposed Amendment to the Fishlake National Forest Land and Resource Management Plan. This amendment changes the forage utilization guidelines for riparian vegetation from percent of available forage utilized to residual stubble height. The amendment also modifies the use levels in upland areas. The Environmental Assessment is available for 30-day public review and comment. The notice and comment period is expected to end on June 1, 2001. This notice is required pursuant to National Forest System Land and Resource Management Planning regulations (36 CFR 219.35(b)).

**DATES:** In February of 1998, the Fishlake National Forest initiated scoping for a proposal to revise allotment management plans and to amend the Fishlake National Forest Land and Resource Management Plan. In October of 2000, the Fishlake National Forest Supervisor decided to separate the documentation and analysis for the forest plan amendment. A new scoping notice was sent to the public on February 21, 2001. The Environmental Assessment is available for public comment beginning May 2, 2001. Comments will be accepted through

June 1, 2001. A decision is expected in June of 2001.

**ADDRESSES:** Comments on the environmental assessment can be submitted to the Forest Supervisor at: Forest Supervisor, Fishlake National Forest, 115 East 900 North St., Richfield, UT 84701.

**FOR FURTHER INFORMATION CONTACT:**

David Grider, Range Specialist, at 435-865-3700 or Responsible Official: Guy Pence, Acting Forest Supervisor, 115 East 900 North St., Richfield, UT 84701.

**SUPPLEMENTARY INFORMATION:** New guidelines are being proposed because scientific research indicates that residual stubble height offers a more accurate and more efficient measure of forage utilization. This is a non-significant amendment.

Dated: April 16, 2001.

**Guy W. Pence,**

*Acting Forest Supervisor, Fishlake National Forest.*

[FR Doc. 01-11041 Filed 5-2-01; 8:45 am]

**BILLING CODE 3410-11-M**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### April 2001 Sunset Reviews: Final Results and Revocation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of five-year ("Sunset") reviews and revocation of antidumping duty orders: polyvinyl alcohol from the People's Republic of China (A-570-842), Japan (A-588-836), and Taiwan (A-583-824).

**SUMMARY:** On April 2, 2001, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on polyvinyl alcohol from the People's Republic of China ("PRC"), Japan, and Taiwan (66 FR 17524). Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these antidumping duty orders.

**EFFECTIVE DATE:** May 14, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Martha V. Douthit or James P. Maeder, Office of Policy, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5050 or (202) 482-3330, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the "Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("Department") regulations are to 19 CFR part 351 (2000).

**Background**

On May 14, 1996, the Department issued antidumping duty orders on polyvinyl alcohol from the PRC, Japan, and Taiwan. Pursuant to section 751(c) and 19 CFR part 351 in general, the Department initiated sunset reviews of these orders by publishing a notice of the initiation in the **Federal Register**, 66 FR 17524 (April 2, 2001). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of sunset reviews of these orders.

Because the Department did not receive any domestic interested party response to the sunset review notice of initiation by the applicable deadline, April 17, 2001, the Department notified the International Trade Commission on April 19, 2001, that it intended to issue a final determination revoking these antidumping duty orders.

**Determination To Revoke**

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party filed a response to the notice of initiation, the Department finds that no domestic interested party

is participating in these reviews, and it is revoking these antidumping duty orders.

#### Effective Date of Revocations

Pursuant to sections 751(c)(3)(A) and 751(d)(2) of the Act, and 19 CFR 351.222(i)(2)(i), the Department will instruct the Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after May 14, 2001. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 27, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-11150 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-421-807]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Melissa Blackledge, Stephanie Arthur, or Robert James at (202) 482-3518, (202) 482-6312, or (202) 482-0649, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### The Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments

made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (April 2000).

#### Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

#### Case History

On December 4, 2000 the Department initiated antidumping investigations of hot-rolled steel from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. See Initiation of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 65 FR 77568 (December 12, 2000). Since the initiation of these investigations the following events have occurred.

In its initiation notice the Department set aside a period for all interested parties to raise issues regarding product coverage. See 65 FR 77568. We received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods Inc. and Truelove & MacLean, Inc. on December 18, 2000; from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HR products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus Staal and CSUSA (January 3, 2001); Iscor Limited (Isacor), respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3,

2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus Staal and CSUSA suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its letter dated December 22, 2000. With respect to Corus Staal's and CSUSA's request, the additional product characteristic suggested to distinguish prime from non-prime merchandise is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at B-7 and C-7. These fields are used in the model-match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) notified the Department that it preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by the reason of imports of the subject merchandise from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. See Hot-Rolled Steel Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 66 FR 805 (January 4, 2001).

On January 4, 2001 the Department issued an antidumping questionnaire to the Corus Group plc., the sole producer of subject hot-rolled steel in the Netherlands. We requested that Corus Staal and CSUSA respond to section A (general information, corporate structure, sales practices, and merchandise produced), section B (home market or third-country sales), section C (U.S. sales), section D (cost of production/constructed value), and, if applicable, section E (cost of further

manufacture or assembly performed in the United States).

Respondent submitted its initial response to section A of the Department's questionnaire on February 1, 2001. We received Corus Staal's and CSUSA's sections B through E responses on February 26, 2001. Petitioners filed comments regarding all portions of respondent's questionnaire response on March 6, 2001. We issued the following supplemental questionnaires to respondent: (i) Section A on February 27, 2001, (ii) sections B and C on March 13, 2001, and (iii) sections D and E on March 14, 2001. Respondent filed a response to our section A and sections B through E supplemental questionnaires on March 16, 2001 and April 4, 2001, respectively. In addition, pursuant to the Department's preliminary determination that Corus Staal and CSUSA are affiliated with Galvpro LP (Galvpro), on March 16, 2001 respondent filed a section E response reporting the cost of U.S. further manufacturing incurred by Galvpro. See Memorandum to Joseph A. Spetrini; Affiliation Issue Regarding Galvpro LP and Laura Metaal Holding, February 27, 2001 (Affiliation Memorandum); see also Letter from Robert M. James to the Corus Group, February 27, 2001. The "Affiliation" section of this notice provides further information regarding our preliminary determination with respect to affiliation issues.

#### Period of Investigation

The period of investigation (POI) is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., December 2000), and is in accordance with our regulations. See 19 CFR 351.204(b)(1).

#### Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and

without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation. Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. If steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### Affiliation

In its initiation notice, the Department identified as a respondent in this investigation the Corus Group plc. See 65 FR 77573. As indicated in respondent's February 1, 2001 questionnaire response at pages A-7 and A-8, the Corus Group plc. wholly owns Koninklijke Hoogovens NV (KHNV) which, in turn, wholly owns

Corus Staal. CSUSA is a U.S. subsidiary of KHNv and acts as an agent for Corus Staal's U.S. sales. CSUSA argues in its January 18, 2001 submission that Galvpro should not be considered an affiliated party under section 771(33) of the Tariff Act because neither Corus Staal nor CSUSA has any direct or indirect ownership of Galvpro<sup>1</sup>. In addition, Corus Staal claims in its February 1, 2001 questionnaire response that it also considers sales made to Laura Metaal Trading BV (Laura Metaal) to be unaffiliated transactions because KHNv (Corus Staal's parent and a minority shareholder in Laura Metaal) is not in a position to exercise or assert control over Laura Metaal or its subsidiaries.

However, as explained below, the Department has preliminarily determined that Corus Staal, CSUSA, Laura Metaal, and Galvpro are affiliated parties within the meaning of section 771(33)(F) of the Tariff Act because they are all under the common control of the Corus Group plc. See Affiliation Memorandum. Section 771(33)(F) of the Tariff Act defines affiliated parties to include "[t]wo or more persons directly or indirectly controlling, controlled by, or under the common control with, any person." Control, in turn, is defined by section 771(33) as one person being "legally or operationally in a position to exercise restraint or direction over the other." In determining whether control exists, the Department considers corporate or family groupings, franchise or joint venture agreements, debt financing, and close supplier relationships. See 19 CFR 351.102(b).

Galvpro is a joint venture of Corus Coatings USA, Inc., a wholly-owned subsidiary of the Corus Group plc., and Weirton Coatings LLC, a subsidiary of Weirton Steel Corporation (Weirton). The Corus Group plc. (through Corus Coatings USA) has a substantial equity interest in Galvpro. See Respondent's February 1, 2001 response at page A-10; see also Respondent's January 18, 2001 letter to the Department at page 3. In previous cases the Department has determined that control exists when one party is in a position to influence the pricing and production decisions of the affiliated entity. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Stainless Steel

Sheet and Strip in Coils From Germany, 64 FR 30710, 30721-24 (June 8, 1999). The record in this investigation indicates that the Corus Group plc. is indeed in a position to influence pricing and production decisions of Galvpro. See Affiliation Memorandum at pages 2 and 3 for more detailed information regarding this issue. In addition, a review of the record reveals other indicia of control, including debt financing of Galvpro by the Corus Group plc.. See Affiliation Memorandum at page 3; see also Petitioners' January 26, 2001 submission at Exhibit 2. Finally, the significant equity in Galvpro by the Corus Group plc. (through Corus Coatings USA) is clear evidence of the ability of Corus Group plc. to exert influence over Galvpro's production, pricing, or cost of the subject merchandise or foreign like product.

The record also indicates that the Corus Group plc. has the ability to exert control over Laura Metaal. Laura Metaal consumes subject merchandise through its manufacturing operations and acts as a reseller through its service center.<sup>2</sup> See Respondent's February 1, 2001 response at page A-3. The Corus Group plc. wholly owns KHNv, which in turn has a minority shareholder interest in Laura Metaal. In addition, KHNv nominated one of the four voting members on Laura Metaal's Board of Directors, and nominated one of two non-voting advisors to the Board, affording the Corus Group plc. substantial influence over Laura Metaal and the company's operations. See Respondent's February 1, 2001 response at page A-3.

As indicated above, the Corus Group plc. has the potential ability to exercise direction and restraint over Galvpro's and Laura Metaal's production and pricing. The Corus Group plc. has a substantial equity interest in both Galvpro and Laura Metaal and plays a substantial role in their operations and management. The Corus Group plc. is in a position, legally and operationally, to exercise direction and restraint over both Galvpro and Laura Metaal, within the meaning of section 771(33)(F) of the Tariff Act, as amended by the URAA. Because Corus Staal and CSUSA are wholly-owned subsidiaries of the Corus Group plc, Corus Group plc also is in a position legally and operationally to exercise direction and restraint over Corus Staal and CSUSA, within the meaning of section 771(33)(F) of the Act. As a result, we preliminarily find that both Galvpro and Laura Metaal are affiliated with Corus Staal and CSUSA, within the meaning of section 771(33)(F) of the Tariff Act because these four companies are all under the common control of the Corus Group plc.

For a more detailed discussion of our preliminary affiliation determination, please refer to the Affiliation Memorandum.

### Product Comparisons

Pursuant to section 771(16) of the Tariff Act, all products produced by the respondent that are within the scope of the investigation, above, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on the following eleven criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether or not painted, quality, carbon content level, yield strength, thickness, width, whether coil or cut sheet, whether or not tempered, whether or not pickled, whether mill or trimmed edge, and whether the steel is rolled with or without patterns in relief. 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 and reporting instructions listed in the Department's January 4, 2001 questionnaire.

### Fair Value Comparisons

To determine whether sales of hot-rolled steel from the Netherlands were made in the United States at less than fair value, we compared constructed export price (CEP) to normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

### Constructed Export Price

Corus Staal reported as export price (EP) transactions certain sales of subject merchandise sold to unaffiliated U.S. customers prior to importation. Corus Staal reported as CEP transactions its sales of subject merchandise sold through the Rafferty-Brown Companies, two affiliated steel service centers which further manufacture flat-rolled steel products. In addition, in accordance with our preliminary affiliation determination, Corus Staal reported as CEP transactions sales made through Galvpro.

We have preliminarily determined with respect to Corus Staal's reported EP sales that such transactions are properly classified as CEP transactions. Having reviewed the evidence on the record of this investigation regarding respondent's reported EP sales, we conclude that sales between the foreign producer (i.e., Corus Staal) and the U.S.

<sup>1</sup> Galvpro is a limited partnership, with ownership held by Weirton Coatings LLC, the Galvpro management, and Corus Group plc. (through Corus Coatings LLC). Galvpro was formed to construct and operate a manufacturing facility for the treatment of cold-rolled steel to produce galvanized steel products. See Respondent's January 18, 2001 submission at page 2.

customer were made "in the United States" by CSUSA on behalf of Corus Staal within the meaning of section 772(b) of the Tariff Act, and therefore, should be treated as CEP transactions. Specifically, although Corus Staal initially reaches the agreement with the U.S. customer on the estimated overall volume and pricing of merchandise, CSUSA provides the final written confirmation of the agreement, setting forth the agreed prices and quantities, to the U.S. customer. See Respondent's February 1, 2001 response at page A-56. The description provided by Corus Staal regarding the sales process for its alleged EP transactions indicates that, for these sales, the merchandise was "sold (or agreed to be sold)" in the United States. Therefore, we have preliminarily decided to treat Corus Staal's reported EP sales as CEP transactions. This is consistent with the Federal Circuit's decision in *AK Steel Corporation et. al. v. United States*, 226 F.3d 1361 (Fed. Cir. 2000) (*AK Steel*). See also Polyvinyl Alcohol from Japan: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 11140 (February 22, 2001), where the Department preliminarily determined that, pursuant to *AK Steel*, sales through a U.S. affiliate were made "in the United States" and were therefore classifiable as CEP transactions. For a more detailed discussion of this issue, please refer to our Preliminary Analysis Memorandum, dated April 23, 2001.

We calculated CEP in accordance with subsection 772(b) of the Tariff Act. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments for price-billing errors and early payment discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, marine insurance, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, U.S. inland insurance, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit costs and warranty expenses), and indirect selling expenses, including inventory carrying costs. We also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act.

With respect to subject merchandise to which value was added in the United States by the Rafferty Brown Companies and Galvpro prior to sale to unaffiliated

customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Tariff Act.

#### Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP the U.S. 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.<sup>3</sup>

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Tariff Act (the CEP offset provision). See, e.g., *Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

<sup>3</sup>The U.S. Court of International Trade (CIT) has held that the Department's practice of determining levels of trade for CEP transactions after CEP deductions is an impermissible interpretation of section 772(d) of the Tariff Act. See *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1241-42 (CIT 1998) (*Borden*); see also *Micron Technology v. United States*, 40 F. Supp. 2d. 481 (1999) (*Micron*). The U.S. Court of Appeals for the Federal Circuit (CAFC), however, has reversed the CIT's holdings in both *Micron* and *Borden* on the level of trade issue. The CAFC held that the statute unambiguously requires Commerce to deduct the selling expenses set forth in section 772(d) from the CEP starting price prior to performing its LOT analysis. See *Micron Technology Inc. v. United States*, Court Nos. 00-1058-1060 (Fed. Cir. March 7, 2001); see also *Borden, Inc. v. United States*, Court Nos. 99-1575-1576 (Fed. Cir. March 12, 2001) (unpublished opinion). Consequently, the Department will continue to adjust the CEP, pursuant to section 772(d) of the Tariff Act, prior to performing the LOT analysis, as articulated by the Department's regulations at 19 CFR 351.412.

In implementing these principles in this investigation, we obtained information from Corus Staal and CSUSA about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Corus Staal and CSUSA for each channel of distribution. In identifying LOTs for U.S. CEP sales we considered the selling functions reflected in the starting price after any adjustments under section 772(D) of the Tariff Act.

In the home market, Corus Staal reported two channels of distribution (sales by Corus Staal and sales through its affiliated service centers) and three customer categories (end users, steel service centers, and trading companies). For both channels of distribution in the home market, Corus Staal performed similar selling functions, including strategic and economic planning, advertising, freight and delivery arrangements, technical/warranty services, and sales logistics support. The remaining selling activities did not differ significantly by channel of distribution. See Corus Staal's February 1, 2001 response at Exhibit A-8. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each channel are sufficiently similar, we have determined that one LOT exists for Corus Staal's home market sales.

In the United States CSUSA reported two channels of distribution for sales of subject merchandise during the POI (EP sales made directly from CSUSA to U.S. customers and CEP sales made through affiliated service centers). For EP sales, CSUSA reported two customer categories (end users and steel service centers). See CSUSA's February 26, 2001 response at pages C-13 through C-15. As explained in the "Constructed Export Price" section of our notice, we have preliminarily determined that all of Corus Staal's reported EP transactions are properly classified as CEP sales. In CEP situations we do not determine the U.S. LOT on the basis of the CEP starting price. Rather, as described above, we determine the U.S. LOT on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Act.

Corus Staal and CSUSA claimed that sales made through its second channel of distribution in the home market (i.e., those through affiliated service centers) constituted a different LOT from its alleged EP sales. Corus Staal and CSUSA therefore requested a LOT adjustment to the extent that price comparisons were made between U.S. EP sales and those through home market affiliated service centers. As there are no

EP transactions in the United States, it is not necessary to address respondent's request for a LOT adjustment with respect to EP sales.

With regard to its CEP sales, respondent claims that a CEP offset for sales made through two affiliated parties, Rafferty-Brown Steel Company of Connecticut (RBC) and Rafferty-Brown Steel Company of North Carolina (RBN) (collectively, the Rafferty-Brown Companies) is appropriate because the RBC and RBN sales are made at a point in the distribution process that is less advanced than Corus Staal's home market sales. In analyzing respondent's request for a CEP offset, we reviewed information respondent provided in section A of its response regarding selling activities performed and services offered in the U.S. and foreign market. We found there to be few differences in the selling functions performed by Corus Staal on sales to its affiliated U.S. importers and those performed for sales in the home market. For example, on sales to both home market customers and to affiliated U.S. importers, Corus Staal provided similar freight and delivery services and technical/warranty assistance. See Respondent's February 1, 2001 response at pages A-19 through A-46. The Department has preliminarily determined that the record does not support Corus Staal's claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales. Accordingly, no CEP offset adjustment to NV is warranted. For a more detailed discussion regarding the basis for our LOT determination, refer to our Preliminary Determination Analysis Memorandum for the Corus Group plc., dated April 23, 2001.

## Normal Value

### *Home Market Viability*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Corus Staal's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Corus Staal's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial

quantities and in the ordinary course of trade.

### *Affiliated-Party Transactions and Arm's-Length Test*

Corus Staal's sales to affiliated home market customers for consumption which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade.<sup>4</sup> See 19 CFR 351.102(b). To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See 19 CFR 351.403(c). In instances where no price ratio could be calculated for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's-length prices and, therefore, excluded them from our LTFV analysis. See, e.g., 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); see also Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil, 63 FR 59509, 59512 (November 4, 1998). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

<sup>4</sup> On March 6, 2001 Corus Staal requested that it not be required to report downstream home market sales made through Feijen Staal service (Feijen), claiming that the cut-to-length sheet sold by this firm would have a low likelihood of matching to U.S. sales of coiled material. The Department informed Corus Staal on March 8, 2001 that it would not be required to report Feijen's downstream sales based on Corus Staal's claims, on the record, with respect to the nature of the products sold by Feijen. The Department will accordingly include in its calculation of normal value sales to Feijen from Corus Staal, provided these transactions pass our arm's-length test. Corus Staal also requested an exemption from reporting downstream sales made by Vlietjonge BV (Vlietjonge), an affiliated party involved in the processing and sale of flat products. See Corus Staal's April 4, 2001 supplemental response at page A-4. Corus Staal again claimed that the cut-to-length merchandise sold by Vlietjonge would not likely match to U.S. sales of coiled material. The Department granted Corus Staal's request on April 6, 2001.

### *Cost of Production Analysis*

Based on allegations contained in the petition, and in accordance with section 773(b)(2)(A)(i) of the Tariff Act, we found reasonable grounds to believe or suspect that sales of hot-rolled steel produced in the Netherlands were made at prices below the cost of production (COP). As a result, the Department has initiated investigations to determine whether Corus Staal made home market sales during the POI at prices below its respective COP, within the meaning of section 773(b) of the Tariff Act. We conducted the COP analysis described below.

#### A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of Corus Staal's cost of materials and fabrication for the foreign like product, plus an amount for home market SG&A expenses, interest expenses, and packing costs. We relied on the home market sales and COP information provided by Corus Staal in its original and supplemental responses. Where appropriate, we made certain adjustments to Corus Staal's reported COP. See Memorandum to the File, "Analysis of Cost-of-Production Data of Corus Group plc.," April 23, 2001, on file in room B-099 of the Main Commerce building.

#### B. Test of Home-Market Sales Prices

We compared the adjusted weighted-average COP for Corus Staal to the home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. In accordance with section 773(b)(2)(C)(i) of the Tariff Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges and other direct and indirect selling expenses.

#### C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of

that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Tariff Act. In such cases, because we compared prices to POI-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act. Therefore, we disregarded the below-cost sales.

We found that for certain models of hot-rolled steel, more than 20 percent of the home-market sales by Corus Staal were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Tariff Act. For those U.S. sales of hot-rolled steel for which there were no comparable home market sales in the ordinary course of trade, we compared EP to constructed value (CV) in accordance with section 773(a)(4) of the Tariff Act. See Price-to-CV Comparisons, below.

**D. Calculation of Constructed Value**

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of Corus Staal's cost of materials, fabrication, SG&A, interest, U.S. packing costs, and an amount for profit. We made adjustments similar to those described above for COP. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Corus Staal in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses we used the weighted-average home market selling expenses.

**Price-to-Price Comparisons**

We calculated NV based on the FOB or delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for billing adjustments, early payment discounts, and inland freight. Where appropriate, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii)

of the Tariff Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Tariff Act for differences in circumstances of sale for imputed credit expenses (offset by interest revenue) and warranties. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

**Price-to-CV Comparisons**

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. We deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses in accordance with section 773(a)(6)(C)(iii) of the Tariff Act.

**Currency Conversions**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

**Verification**

Pursuant to section 782(i) of the Tariff Act, we intend to verify all information relied upon in making our final determination.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Corus Staal BV .....	2.44
All Others .....	2.44

**ITC Notification**

In accordance with section 733(f) of the Tariff Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine

whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determinations.

**Public Comment**

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. We intend to make our final determination no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act. Since January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**  
*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10846 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-823-811]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Ukraine**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary determination in the less than fair value investigation of certain hot-rolled carbon steel flat products from Ukraine.

**SUMMARY:** On December 12, 2000, the Department of Commerce published a notice of initiation of an antidumping duty investigation of certain hot-rolled carbon steel flat products from Ukraine. This investigation covers four producers of the subject merchandise. The period of investigation is April 1, 2000 through September 30, 2000. The Department preliminarily determines that certain hot-rolled carbon steel flat products from Ukraine are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lori Ellison or Laurel LaCivita of 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) 482-4243, respectively.

**The Applicable Statute and Regulations**

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 codified at 19 CFR Part 351 (2000).

**Preliminary Determination**

We preliminarily determine that certain hot-rolled carbon steel flat products ("hot-rolled steel") from Ukraine are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

On December 4, 2000, the Department initiated an antidumping duty investigation of hot-rolled steel from Ukraine.<sup>1</sup> See *Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See Initiation Notice at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of hot-rolled carbon steel products from the Netherlands. In that investigation we received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000, from Bouffard Metal Goods Inc., and Truelove & MacLean, Inc. on December 18, 2000, from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent certain hot-rolled carbon steel flat products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: Petitioners (January 5, 2001); Corus Staal BV and Corus Steel USA Inc., collectively referred to as Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime

merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires.

For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at C-5 and C-6 (January 4, 2001).

On December 29, 2000, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Ukraine, which was published on January 4, 2001. See *Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001) ("*ITC Preliminary Determination*").

On January 4, 2001, we issued questionnaires to the Embassy of Ukraine and to all of the known producers of the subject merchandise in Ukraine: Dnepropetrovsk Comintern Steel Works ("Dnepropetrovsk"), Ilyich Iron & Steel Works, Mariupol ("Ilyich"), Krivoi Rog State Mining and Metallurgical Works ("Krivorozhstal") and Zaporozhstal Iron & Steel Works ("Zaporozhstal").

On January 22, 2001, Krivorozhstal responded that it does not manufacture any of the subject merchandise and, accordingly, could not be one of the exporters of the subject merchandise to the United States.

On January 25, 2001, the Department requested comments from interested parties regarding surrogate country selection, and information to value factors of production. On February 6, 2001, we received comments concerning

<sup>1</sup> The petitioners with respect to the investigation in Ukraine are: Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, U.S. Steel Group, a unit of USX Corporation, the United Steelworkers of America, Gallatin Steel Company, IPSCO Steel Inc., Nucor Corp., Steel Dynamics, Inc., Weirton Steel Corp., and Independent Steelworkers Union.

surrogate country selection from both the petitioners and Zaporizhstal.

On February 9, 2001, Zaporizhstal submitted its section A response, including a request for "market economy treatment to Ukraine \* \* \* or, at a minimum, market-oriented industry treatment to Zaporizhstal." On February 16, 2001, the government of Ukraine confirmed its support for these requests. See *Memorandum to the File from Lori Ellison to Edward Yang, Request for Revocation of NME Status/MOI Treatment for Zaporizhstal*, dated April 16, 2001. Also on February 16, 2001, the State Committee of Industrial Policy of Ukraine entered an appearance as an interested party to the proceeding. On February 21, 2001, Ilyich entered an appearance as a foreign producer and exporter of the subject merchandise and an interested party to the proceeding, but did not respond to the Department's questionnaire. Dnepropetrovsk similarly did not respond to the Department's questionnaire.

On February 23, 2001, the Department issued a section A supplemental questionnaire to Zaporizhstal. On February 26, 2001, the Department sent Zaporizhstal a questionnaire concerning its request for market-economy treatment for Ukraine and/or market-oriented industry ("MOI") treatment for Zaporizhstal. On February 27, 2001, Zaporizhstal submitted section C and D responses. In addition, it provided section C responses for Midland Industries Limited ("Midland Industries"), Midland Metals International, Inc. ("Midland Metals"), Midland Resources Holding Limited ("Midland Resources"), and Rudolph Robinson International, Ltd. ("Robinson"). (These companies, and Zaporizhstal, are occasionally referred to as "respondents" in this notice). Also on February 27, 2001, Zaporizhstal also submitted an unsolicited section B response (home market sales) in light of its request for market-economy treatment for Ukraine and/or market-oriented industry treatment for itself.

On March 9, 2001, respondents submitted a response to the first supplemental section A questionnaire. On March 13, 2001, Department officials met with counsel for respondents regarding this response and issued a letter to them in which the Department explained that a large number of their answers were unresponsive and grossly deficient despite explicit instructions in the original questionnaire and the supplemental questionnaire of February 23, 2001. See *Memorandum to the File from Lori Ellison to Rick Johnson; Ex-Parte Meeting*, dated March 19, 2001.

On March 14, 2001, the Department issued a supplemental section C and D questionnaire to respondents. On March 19, 2001, Zaporizhstal responded to certain issues noted in our March 13, 2001 letter regarding affiliation. In addition, on March 20, 2001, we issued a second supplemental section A questionnaire to respondents.

On March 22, 2001, certain petitioners (Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation) (hereinafter referred to as Bethlehem *et al.*) requested that the Department conduct a middleman dumping investigation of Robinson and other trading companies through whom Zaporizhstal's subject merchandise was sold to the United States.

On March 27, 2001, we issued a supplemental questionnaire to respondents concerning their claims of affiliation. On April 5, 2001, respondents submitted their second supplemental section A questionnaire response and their supplemental section C and D questionnaire responses. On April 9, 2001 respondents submitted responses to the March 27, 2001 affiliation questionnaire. On April 11, 2001 respondents submitted unsolicited information purporting to respond to selected questions from the Department's supplemental questionnaires. These responses were not filed on a timely basis.

#### Period of Investigation

The period of investigation ("POI") is April 1, 2000, through September 30, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000). See 19 CFR 351.204(b)(1).

#### Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness

not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or  
2.25 percent of silicon, or  
1.00 percent of copper, or  
0.50 percent of aluminum, or  
1.25 percent of chromium, or  
0.30 percent of cobalt, or  
0.40 percent of lead, or  
1.25 percent of nickel, or  
0.30 percent of tungsten, or  
0.10 percent of molybdenum, or  
0.10 percent of niobium, or  
0.15 percent of vanadium, or  
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.

- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

- ASTM specifications A710 and A736.

- USS abrasion-resistant steels (USS AR 400, USS AR 500).

- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90.

Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### Middleman Dumping Allegation

On March 22, 2001, Bethlehem et al. requested that the Department conduct a middleman dumping investigation of Robinson and other trading companies through whom Zaporizhstal's subject merchandise was sold to the United States. They allege that the trading companies purchased subject

merchandise from Midland Industries, and resold such merchandise into the United States at prices less than the trading companies' cost of acquisition and associated expenses. Further, Bethlehem et al. maintain that the trading companies' resale prices do not permit the recovery of these companies' total acquisition and associated costs. Because of the complexity of the issue, the Department has not yet determined the proper course of action on the petitioners' middleman dumping allegation. Accordingly, we will address the middleman dumping issue in the final determination.

#### Nonmarket-Economy Country Status

The Department has treated Ukraine as a non-market economy ("NME") country in all past antidumping investigations. See, e.g., *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from Poland, Indonesia, and Ukraine*, 66 FR 8343 (January 30, 2001) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine* ("CTL Plate from Ukraine") 62 FR 61754 (November 19, 1997). This NME designation remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act). During this investigation, Zaporizhstal requested revocation of Ukraine's NME status. Following the official endorsement of this request by the Ukrainian government, the Department issued a letter to Zaporizhstal and the Ukrainian Embassy requesting, *inter alia*, that the company and the Government of Ukraine submit evidence addressing the statutory criteria relevant to their NME status and described in section 771(18)(B) of the Act. In addition, the Department requested that Zaporizhstal submit evidence of progress regarding those factors under section 771(18)(B) which Ukraine did not satisfy in its 1996 request for revocation. See *CTL Plate from Ukraine*, 62 FR 61754. However, as of the date of this determination, we have received no response to this request for information. Given that no evidence or argumentation on the record exists regarding progress since the earlier determination, for purposes of this preliminary determination, we have continued to treat Ukraine as an NME country.

#### Market Oriented Industry

As indicated above (see "Case History"), Zaporizhstal, with the support of the Government of Ukraine, has requested market-oriented-industry

treatment for Zaporizhstal (that is, that the hot-rolled steel industry in Ukraine be treated as a market-oriented industry). Accordingly, on February 26, 2001, we issued a questionnaire concerning Zaporizhstal's market-oriented industry treatment. Specifically, we requested that Zaporizhstal and the Government of Ukraine address the following criteria: (1) For the merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (e.g., labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review. To date, we have received no response to this request for information.

Furthermore, we note that in this investigation, there are three known producers of subject merchandise: Ilyich, Dnepropetrovsk, and Zaporizhstal. Of these three, Ilyich and Dnepropetrovsk have failed to respond to the Department's questionnaire. As the Department stated in *Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41351 (August 1, 1997), "consistent with past practice, we require information on the entire industry, or virtually the entire industry, in order to make an affirmative determination that an industry is market oriented." As further noted in that determination, the Department received questionnaire responses from only a small portion of the exporters named in the petition, and data on the record in that case revealed that several exporters who did not respond to the Department's questionnaire exported the subject merchandise into the United States during the POI. Finally, we also noted in that case that "although we received a letter from the China Chamber on March 6, 1997, this letter did not adequately respond to the Department's original request for information, and did not provide the necessary information regarding the universe of PRC crawfish producers and exporters."

In this case, we likewise are faced with the fact that known exporters of Ukrainian subject merchandise have not responded to the Department's requests for information. Furthermore, we have received no information from the Government of Ukraine, despite our

explicit request. Consequently, consistent with Department practice, for purposes of this preliminary determination, we have continued to treat the hot-rolled steel industry in Ukraine as not qualified for MOI treatment.

#### **No Shipper Treatment for Krivorozhstal**

Krivorozhstal reported that it did not have any sales of hot-rolled carbon steel flat products to the United States. The Department confirmed, through a review of U.S. Customs data, the absence of shipments from Krivorozhstal to the U.S. during the POI. Therefore, in accordance with the Department's practice, we did not investigate Krivorozhstal.

#### **Ukraine-Wide Rate**

We sent questionnaires to all four companies identified as potential respondents in the petition. We did not receive responses from Ilyich and Dnepropetrovsk. As discussed below in the "Separate Rates" section of the notice, Zaporizhstal has significantly impeded this investigation. Given that we did not make a determination of a separate rate for Zaporizhstal, the Ukraine-wide rate will be applicable to it. In addition, U.S. import statistics indicate that the total quantity and value of U.S. imports of hot-rolled steel from Ukraine is greater than the total quantity and value of hot-rolled steel reported by Zaporizhstal (*see* Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Preliminary Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine*, April 23, 2001 ("FA/Corroboration Memorandum")). Accordingly, we are applying the Ukraine-wide rate to all exporters in Ukraine based on our presumption that those respondents who failed to respond to our questionnaire constitute a single enterprise under common control by the government of Ukraine. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("*Bicycles*"). Therefore, the Ukraine-wide rate applies to all entries of the subject merchandise from Ukraine.

#### **Application of 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. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider information deemed "deficient" under section 782(d) of the Act if: (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.

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See also* "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103-316, 870 ("SAA"). The statute and SAA provide that such an adverse inference may be based on secondary information, including information drawn from the petition.

In accordance with sections 776(a) and (b) of the Act, for the reasons explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to respondents Dnepropetrovsk, Ilyich, and Zaporizhstal.

#### *Ilyich and Dnepropetrovsk*

Although Ilyich entered an appearance as a foreign producer and exporter of the subject merchandise, it ultimately did not respond to any of the Department's questionnaires. Similarly, Dnepropetrovsk failed to provide any response to the Department's questionnaires. Given these companies' failure to respond, section 776(a) directs

the Department to use facts available. In selecting from among facts available, section 776(b) of the Act authorizes the Department to use adverse inference where the parties fail to cooperate to the best of their abilities. Failure to respond to the Department's questionnaires demonstrates such lack of cooperation on the part of Ilyich and Dnepropetrovsk. Therefore, for purposes of the preliminary determination, we have used adverse inference in selecting from among facts otherwise available, pursuant to section 776(b) of the Act.

#### *Zaporizhstal*

Although Zaporizhstal has responded in part to the Department's questionnaires and supplemental questionnaires over the course of this proceeding, its response is too deficient to be used as a basis for calculating a dumping margin. Specifically, it has not provided the Department with complete, documented, factors of production information. Moreover, the factors of production data which has been submitted has not been prepared in accordance with the Department's instructions, and its use would significantly distort the margin calculation. In addition, statements made in the Zaporizhstal's April 5, 2001 second supplemental section A response indicate that Zaporizhstal made sales of subject merchandise to the United States through an affiliated party, Midland Resources. However, Zaporizhstal had not previously identified this sales channel, and did not report the U.S. sales of Midland Resources. Finally, Zaporizhstal did not timely file its response to a large number of questions relating to U.S. sales of Midland Industries' (a company with which Zaporizhstal claims to be affiliated), thereby effectively denying the Department the ability to analyze significant sales information for the purposes of the preliminary determination. Accordingly, we have relied on the facts otherwise available for purposes of this preliminary determination, pursuant to section 776(a)(2)(A) and (B) of the Act. For a detailed analysis of Zaporizhstal's responses and their underlying deficiencies, *see* Memorandum to Edward C. Yang, *Facts Available Corroboration Memorandum, Preliminary Determination of Hot-Rolled Carbon Steel Flat Products from Ukraine*, April 23, 2001 ("FA/Corroboration Memorandum"). As described in the *FA/Corroboration Memorandum*, Zaporizhstal failed to provide adequate responses to the Department's supplemental questionnaires, despite the

Department's clear instructions and repeated attempts to obtain the necessary data, pursuant to section 782(d) of the Act. Moreover, we are unable, under the application of section 782(e), to use the company's information in our preliminary calculations, since the responses currently on the record are so incomplete that they cannot serve as a reliable basis for reaching the applicable determination. *See* section 782(e)(3), (4) and (5) of the Act and the *FA/Corroboration Memorandum*.

We also find that the application of adverse inferences in this case is appropriate, pursuant to section 776(b) of the Act. As discussed above, despite the Department's clear directions in both the original and supplemental questionnaires, Zaporizhstal failed to provide critical information which was readily at the company's disposal. Specifically, it failed to provide a description of its calculation methodology for each of its factors of production, or worksheets demonstrating how each factor was determined, despite the Department's explicit requests. Furthermore, the data that was provided was in a distortive format that did not permit the comparison of U.S. sales and factors of production based on the product matching characteristics identified in the Department's questionnaire, or on any other reasonable basis. Zaporizhstal's most recent response to the Department's supplemental questionnaire reveals that the company made sales of subject merchandise through an affiliated party, but had not previously disclosed either this sales channel or the U.S. sales of that affiliate. In addition, the company failed to answer a significant number of questions concerning the sales of Midland Industries, in a timely manner, thereby depriving the Department of reasonable use of the information for the purposes of the preliminary determination. For these reasons, we find that the company did not cooperate to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act when selecting facts available. *See e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000).

#### **Selection and Corroboration of Facts Available**

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the

petition. *See* also SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

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).

In order to determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based, as adjusted by the Department for the purposes of initiation. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent, for the most part, with the POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition.

For EP we re-examined the calculations from the petition. Given that the EP was based on POI-wide average unit imports values taken from publicly available information, and no adjustments to EP were made, no further corroboration was necessary.

For NV, we re-examined the data petitioners relied upon in constructing the NV, as adjusted by the Department. We reviewed the financial data used in the petition, which is derived from publicly-available data (*i.e.*, 1997 financial statements from PT Krakatau Steel, an Indonesian producer of comparable merchandise), and therefore requires no further corroboration. With regard to the usage factors provided by petitioners, we find that the petition information is corroborated based on a comparison of the usage rates reported by Zaporizhstal to those that we used in our initiation of this investigation.

Zaporizhstal is an integrated steel producer with the typical coking, sintering and hot-metal production facilities. The factors of production information provided in the petition was based on a similarly integrated steel producer. We examined these factors and found that, although the usage factors information reported by Zaporizhstal are grossly deficient, and therefore unusable for the purposes of calculating a margin, evidence shows that the usage rates for significant factors of production in the petition are nevertheless lower than those reported by Zaporizhstal. As such, we find that the data we used in the petition, with adjustments, was conservative. Thus, we conclude that the 89.49 percent margin, the highest rate from the petition, has probative value.

#### **Separate Rates**

It is the Department's policy to assign all exporters of merchandise subject to investigation in a NME country a single rate, unless an exporter can demonstrate that it is sufficiently independent from government control so as to be entitled to a separate rate. In this case, the single responding company, Zaporizhstal, has claimed to be sufficiently independent to warrant a separate rate. However, given that Zaporizhstal failed to cooperate in this investigation to the best of its ability, we have not made a determination as to whether Zaporizhstal merits a separate rate, and are assigning a single country-wide rate for all exporters of subject merchandise from Ukraine for purposes of our preliminary determination.

#### **Verification**

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination, provided that necessary information is submitted in a timely manner and in the form requested by the Department.

#### **Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The

weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percent
Ukraine-Wide .....	89.49

### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. See 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the

hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10847 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-820]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Hot-Rolled Carbon Steel Flat Products From India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Nithya Nagarajan, Timothy Finn, or John Conniff at (202) 482-5253, (202) 482-0065, and (202) 482-1009, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

#### Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat

products (HRS) from India are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

#### Case History

This investigation was initiated on December 4, 2000. See *Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*).<sup>1</sup> Since the initiation of these investigations, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice*, at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of HRS from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods, Inc.; and Truelove & Maclean, Inc., on December 18, 2000; and from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively referred to as Corus); and Thomas Steel Strip Corporation on December 26, 2000, and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to all interested parties in each of the concurrent certain hot-rolled carbon steel flat products antidumping investigations,<sup>2</sup> providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus, a respondent in the concurrent Netherlands HRS investigation (January 3, 2001); Iscor Limited, a respondent in

<sup>1</sup> The petitioners in these investigations are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelmakers of America (collectively the petitioners). However, Weirton Steel Corporation is not a petitioner in the investigation involving the Netherlands.

<sup>2</sup> See *Initiation Notice* for a complete list of all the countries being investigated concurrently.

the concurrent South Africa HRS investigation (January 3, 2001); and Zaporizhstal, a respondent in the concurrent Ukraine HRS investigation (January 3, 2001). No other interested party submitted comments. Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that were not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000, letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2. "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at B-7 and C-7. These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, are materially injuring an industry in the United States producing the domestic like product. See *Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001).

The Department issued antidumping questionnaires to the two mandatory respondents in India on January 11, 2001.<sup>3</sup> See *Selection of Respondents*

<sup>3</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in

section below. We received responses to our questionnaire from both mandatory respondents, Ispat Industries Ltd. (Ispat) and Essar Steel Ltd. (Essar). We issued supplemental questionnaires, pertaining to sections A, B, C, and D of the antidumping questionnaire, to Ispat and Essar in March 2001. Ispat and Essar responded to these supplemental questionnaires in April 2001.

Ispat requested that it not be required to report certain information requested in the questionnaires. Specifically Ispat requested that it be permitted to exclude sales of HRS by its cold-rolling division. These sales were the result of internal transfers between Ispat's HRS facility and its cold-rolling production facility. On February 1, 2001, Ispat reported that its hot-rolling division transferred a small quantity of HRS to its cold-rolling division which primarily further processed the HRS into non-subject merchandise. However, the cold-rolling division sold a small percentage of HRS to unaffiliated home market customers during the period of investigation (POI). Also, Ispat reported that its cold-rolling division purchased HRS on the open market during the POI and does not maintain information that would enable it to track whether it sold HRS produced by Ispat's hot-rolling division or HRS purchased from unaffiliated suppliers. Therefore, according to Ispat, it would be extremely difficult for Ispat to identify and report the sales of HRS, by its cold-rolling division. In addition, Ispat claimed that the sales at issue involve products with characteristics unique to the home market, and thus it is unlikely that these sales would match its U.S. sales. As a result, Ispat requested that it be allowed to exclude these sales from its overall home market sales database.

On March 16, 2001, the Department issued a supplemental questionnaire to Ispat concerning this exclusion request. We received Ispat's response on March 22, 2001. The information contained in this response, in addition to information contained in Ispat's responses to the antidumping questionnaire, indicate that the sales covered by these exclusion requests are not representative of normal selling behavior, were made in such small volumes that they would

which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

have an insignificant effect on our analysis, and, if not excluded, would unduly complicate the Department's analysis. Therefore, we granted the exclusion request discussed above. See Letter from Thomas F. Futtner, Acting Office Director, to Ispat, dated April 16, 2001.

#### *Postponement of the Final Determination*

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 13, 2001, Ispat and Essar requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Ispat and Essar also included a request to extend the provisional measures to not more than 135 days after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting parties account for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination.

#### *Period of Investigation*

The period of investigation (POI) for this investigation is October 1, 1999, through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

#### *Scope of Investigation*

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not

painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical

elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs

purposes, the written description of the merchandise under investigation is dispositive.

#### *Selection of Respondents*

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the POI, which we obtained from the American Embassy in New Delhi, India, we found that four Indian exporters shipped HRS to the United States during the POI. Due to limited resources we determined that we could investigate only the two largest producers/exporters, accounting for more than 60 percent of total exports to the United States. See Memorandum from Timothy Finn to Holly A. Kuga, *Selection of Respondents*, dated January 10, 2001. Therefore, we designated Ispat and Essar as mandatory respondents and sent them the antidumping questionnaire.

#### *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 India during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied upon the following product characteristics to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product or CV: painted or not painted; quality; carbon content; yield strength; thickness; width; cut-to-length or coil; tempered or not tempered; pickled or not pickled; edge trim; and with or without patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

#### *Fair Value Comparisons*

To determine whether sales of HRS from India were made in the United States at LTFV, we compared the export

price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs. We compared these to weighted-average home market prices.

#### *Date of Sale*

For home market and U.S. sales, Ispat and Essar both reported the date of invoice/shipment, as the most appropriate date of sale. Essar and Ispat both stated that the invoice/shipment date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. Petitioners, however, have alleged that the sales documentation provided by respondents indicates that the order confirmation date appears to be the date when the material terms of sale are set for a majority of these respondents' sales of HRS. On March 2, 2001, the Department requested respondents to provide additional information concerning the choice of date of invoice/shipment as the date of sale. On March 16, 2001, Ispat and Essar reiterated that invoice/shipment date is the most appropriate date of sale and requested that they not have to report sales based on any alternative date of sale.

The Department is preliminarily using the dates of sale reported by each respondent (*i.e.*, date of invoice/shipment), as this is our preferred methodology. The Department uses invoice date under section 351.401(i) unless there is sufficient evidence that material terms of sale initially set at some earlier date were not subject to change. This methodology has recently been affirmed by the Court of International Trade. *See SEAH Steel Corp. Ltd. v. United States*, Slip. Op. 01-20 (Ct. Int'l. Trade) (February 23, 2001) (ruling that the Department's choice of date of invoice as the date of sale was appropriate and in accordance with the Department's practice). However, we intend to fully examine establishment of material terms of sale at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. Due to the complexity of this issue, we invite all interested parties to submit comments on this issue in accordance with the schedule for comments set forth in this notice.

#### *Export Price*

For the price to the United States, we used EP, in accordance with section

772(a) of the Act, because Ispat and Essar sold the merchandise directly to unaffiliated U.S. customers or sold the merchandise to unaffiliated trading companies, with knowledge that these companies in turn sold the merchandise to U.S. customers, and constructed export price was not otherwise warranted. For both Ispat and Essar, we calculated EP using the packed prices charged to the first unaffiliated customer in the United States (the starting price).

We deducted from the starting price, where applicable, amounts for discounts and rebates, and movement expenses in accordance with section 772(c)(2)(A) of the Act. In this case, movement expenses include foreign inland freight, international freight, foreign and U.S. brokerage and handling charges, insurance, U.S. duties and U.S. inland freight.

#### *Duty Drawback*

In the instant investigation, Ispat and Essar have claimed a duty drawback adjustment for the Government of India's Duty Entitlement Passbook Scheme ("DEPB"). Under the DEPB program, exporters are granted a credit which is equivalent to 14 percent of the FOB value of exports. The exporters then use this credit to offset the customs duty payment on imported inputs used to manufacture exported products.

In addition, Essar has claimed a duty drawback adjustment for the Advance License program. The Advance License program allows exporters to import specified inputs duty-free to utilize in production of a finished product. According to the information on the record, there is a quantitative limit on the duty-free imports for each of the specified input materials. These limited inputs are exempt from customs duties, and upon exportation of the finished merchandise, the duties collected on imported inputs are refunded to the exporter.

The petitioners, in their comments for our preliminary determination, filed on April 11, 2001, argue that neither Ispat nor Essar qualify for a duty drawback adjustment for the DEPB program; and in addition, that Essar does not qualify for the Advance License program, because the respondents have failed to show that the duty drawback received conformed to the Department's requirements for granting the adjustment.

The Department applies a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment pursuant to section 772(c)(1)(B) of the Act. Specifically, the

Department grants a duty drawback adjustment if it finds that: (1) Import duties and rebates are directly linked to and are dependent upon one another, and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

The Department has repeatedly rejected the claim for duty drawback under the DEPB, based on the fact that the applicants received a drawback for the full amount of dutiable imports although there is no direct linkage between the material actually imported and the refunded amount. *See Final Determination: Stainless Steel Round Wire from India*, 64 FR 17319, 17320 (April 9, 1999). The record evidence in this investigation demonstrates that neither Essar nor Ispat was able to "link" the import duties paid on the input, and then rebated upon exportation. Rather the evidence on the record demonstrates that the DEPB program is a refund of duties calculated on an aggregated basis rather than on an input-specific basis. *See Essar: Supplemental Questionnaire Response*, dated April 6, 2001, at 48-50; *see also Ispat: Supplemental Questionnaire Response*, dated April 6, 2001, at SC-18-19. After a review of the documentation on the record, we found that neither Ispat nor Essar was able to (1) demonstrate that import duties and rebates for the DEPB program are directly linked to and dependent upon one another; or (2) demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on exports of the finished product. *See Final Results of Administrative Review: Silicon Metal from Brazil*, 64 F.R. 6305, 6318 (February 9, 1999) (denying a duty drawback adjustment when the respondent had not met the burden of demonstrating that it was entitled to the adjustment). Based on this information, we preliminarily find that Ispat and Essar have failed to meet both prongs of the Department's test with regard to the DEPB duty drawback adjustment. As a result, we have not made an adjustment to U.S. price for DEPB duty drawback in the preliminary determination.

With regard to the Advance License program, we further find that Essar has not met its burden. Essar failed demonstrated that in order to obtain a refund from the Government of India under the Advance License Program, that it was able to link the value of

imports eligible for refund to the actual quantity of inputs imported and then used in the production and export of subject merchandise. Essar states that it provides the following information to the Government of India: (1) The quantity of exports; (2) the quantity of imports; and (3) "whether the company imported inputs in proportion to the quantitative norms set by the government." See *Essar: Supplemental Questionnaire Response*, at 49–50. However, based upon an examination of the information on the record, the Department is unable to find that Essar's records indicate that the calculated amount of exempted import duties were applied to the import quantities of input materials actually utilized (as opposed to the total aggregate quantity of imports eligible), and then reconciled to the quantity of merchandise exported to derive the reported per unit duty drawback amount. See *id.* at 50. Therefore, we preliminarily find that Essar was unable to (1) demonstrate that import duties and rebates for the Advance License program are directly linked to and dependent upon one another; and (2) demonstrate that there were sufficient imports of raw materials to account for the duty drawback received on exports of the finished product. Therefore, we preliminarily find that Essar has not met both prongs of the Department's test with regard to the Advance License duty drawback adjustment. As a result, we have not made an adjustment to Essar's U.S. price for Advance License duty drawback in the preliminary determination.

#### Normal Value

##### A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or has sufficient aggregate value, if quantity is inappropriate) and that there is no particular market situation in the home market that prevents a proper comparison with the EP transaction. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

For this investigation, we found that Ispat and Essar each had a viable home market for HRS. Thus, the home market is the appropriate comparison market in this investigation, and we used the respondents' submitted home market sales data for purposes of calculating NV.

In deriving NV, we made adjustments as detailed in the *Calculation of NV Based on Home Market Prices and Calculation of NV Based on CV*, sections below.

##### B. Affiliated-Party Transactions and Arm's-Length Test

Essar reported that it only sold HRS in the home market to unaffiliated customers. Therefore, the Department's arm's-length test is inapplicable with regard to Essar's home market sales.

Ispat reported that it made home market sales to other affiliated companies. We applied the arm's-length test to sales from Ispat to these affiliated companies by comparing them to sales of identical merchandise from Ispat to unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. See 19 CFR 351.403(c) and 62 FR at 27355, *Preamble—Department's Final Antidumping Regulations* (May 19, 1997).

##### A. COP Analysis

Concurrent with the filing of the original petition, the petitioners alleged that sales of HRS in the home market of India were made at prices below the fully absorbed COP, and accordingly, requested that the Department conduct a country-wide sales-below-COP investigation. Based upon the comparison of the adjusted prices from the petition for the foreign like product to its COP, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of HRS manufactured in India were made at prices below the COP. See *Initiation Notice* at 77572. As a result, the Department has conducted an investigation to determine whether Ispat and Essar made sales in the home market at prices below their respective COPs during the POI within the

meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. *Calculation of COP.* In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for each respondent based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market general and administrative (G&A) expenses and interest expenses.

We relied on the COP data submitted by Ispat and Essar in their cost questionnaire responses, except, as noted below, in specific instances where Ispat's submitted costs were not appropriately quantified or valued.

a. *Changes to Ispat's Cost of Production.* Based on the information on the record, it appears that Ispat reached commercial levels of production prior to the POI. Therefore, we disallowed the start-up adjustment claimed by Ispat. We adjusted the reported costs to include depreciation expenses and certain raw material costs that were omitted. We recalculated Ispat's G&A expense ratio using its company-wide G&A costs from its fiscal year 2000 audited financial statements. We adjusted Ispat's financial expense ratio to include the net exchange rate difference and loss on cancellation of forward contract per its audited financial statements.

See *Calculation Memorandum* from Michael P. Harrison to Neal Halper, dated April 23, 2001, for a discussion of the above-referenced adjustments.

2. *Test of Home Market Sales Prices.* On a model-specific basis, we compared the revised COP to the home market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing. We then compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

3. *Results of the COP Test.* Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such

sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that, for certain models of HRS, more than 20 percent of the home market sales by Ispat and Essar were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D. Calculation of NV Based on Home Market Prices

We based home market prices on the packed prices to unaffiliated purchasers in India. We adjusted, where applicable, the starting price for discounts and rebates. We made adjustments for any differences in packing, in accordance with section 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses and domestic brokerage and handling, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act (movement expenses (foreign inland freight and warehousing)). We also made COS adjustments, where applicable, by deducting direct selling expenses incurred for home market sales (credit expense and warranty) and adding U.S. direct selling expenses. We also made adjustments, pursuant to 19 CFR 351.410(e), for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). No other adjustments to NV were claimed or allowed.

#### E. Calculation of NV Based on CV

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those models of HRS for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

#### F. Level of Trade (LOT)/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 comparison market at the same LOT as the U.S. transaction (in this case EP transactions). The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP transactions, 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.

In implementing these principles in this investigation, we obtained information from the respondents about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. In this investigation, neither Ispat nor Essar requested a LOT adjustment.

*Ispat.* Ispat reported that it sold subject merchandise to three different types of customers (end users, service centers, and trading companies through three separate channels of distribution) in the home market. Further, Ispat indicated that, for each of the reported channels of distribution, it provided the same types of selling functions (market research, sales calls, interactions with customers, inventory maintenance, freight, and technical advice) at the same levels of intensity. Since all three types of Ispat's customers received the same selling functions, at the same levels of intensity, we determine that there is a single LOT in the home market with respect to Ispat.

Ispat also reported that it made EP sales of subject merchandise to a single type of customer (trading companies) through a single channel of distribution in the U.S. market. Further, Ispat

indicated that it performed certain types of selling functions (pre- and post-sale customer visits, order processing, inventory maintenance, technical advice, freight arrangements, warranty services, and advertising) for the U.S. customers. As a result, we preliminarily determine that there is a single level of trade with respect to Ispat's EP sales. We then compared the LOT for Ispat's EP sales to the home market LOT and found that its EP sales are provided at the same LOT as its home market sales. Thus, no LOT adjustment is warranted, and we have not made a LOT adjustment for Ispat's sales.

*Essar.* Essar reported that it sold subject merchandise to two different types of customers (end users and service centers through two separate channels of distribution) in the home market. Further, it indicated that, for each of the reported channels of distribution, it provided the same types of selling functions (price negotiation, sales calls, interactions with customers, inventory maintenance, freight, and warranty services) at the same levels of intensity. Since both types of Essar's customers received the same selling functions, at the same levels of intensity, we determine that there is a single LOT in the home market with respect to Essar.

Essar further reported that it made EP sales of subject merchandise to a single type of customer (trading companies) through a single channel of distribution in the U.S. market. Further, Essar indicated that it provided certain types of selling functions (price negotiation, processing orders, freight and delivery arrangements, inventory maintenance, sales calls and visits, credit and payment collection, and warranty services) for the U.S. customers. As a result, we preliminarily determine that there is a single level of trade for U.S. EP sales. We then compared the LOT for EP sales to the home market LOT and found that Essar's EP sales are provided at the same LOT as its home market sales. Thus, no LOT adjustment is warranted, and we have not made a LOT adjustment for Essar's sales.

#### Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

#### Verification

In accordance with section 782(i) of the Act, we intend to verify all

information relied upon in making our final determination.

#### All Others Rate

Recognizing the impracticality of examining all producers and exporters in all cases, section 735(c)(5)(A) of the Act provides for the use of an "all others" rate, which is applied to non-investigated firms. See SAA at 873. This section states that the all others rate shall generally be an amount equal to the weighted average of the weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins based entirely upon the facts available. Therefore, we have preliminarily assigned to all other exporters of Indian HRS, an "all others" margin that is the weighted average of the margins calculated for Ispat and Essar.

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (Customs Service) to suspend liquidation of all entries of HRS from India that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which NV exceeds EP, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Ispat Industries Ltd .....	39.36
Essar Steel Ltd .....	34.55
All Others .....	34.75

#### Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV determination. If our final antidumping determination is

affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

#### Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. 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.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued within 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10848 Filed 5-2-01; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-560-812]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Manning or Nova Daly at (202) 482-3936 and (202) 482-0989, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000).

#### Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HRS) from Indonesia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

#### Case History

This investigation was initiated on December 4, 2000. See *Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12,

2000) (*Initiation Notice*).<sup>1</sup> Since the initiation of these investigations, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice* at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of HRS from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000; from Energizer Battery Co., Inc. on December 15, 2000; from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000; from Corus Staal BV and Corus Steel U.S.A., Inc., (collectively referred to as "Corus") and Thomas Steel Strip Corporation on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HRS antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product

characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at B-7 and C-7 (January 4, 2001). These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On January 4, 2001, the Department issued an antidumping questionnaire to Krakatau, the mandatory respondent in Indonesia.<sup>2</sup> See January 3, 2001 respondent selection memo. On January 15, 2001, we received a faxed letter from Krakatau requesting an extension of time to respond to section A of the Department's questionnaire. On January 18, 2001, we received Krakatau's official, mailed section A extension request. On January 23, 2001, the Department granted Krakatau an extension of time to respond to section A of the questionnaire and notified Krakatau that submitting documents to the record of this proceeding via fax is not an acceptable method of submission and that such documents would not be accepted on an official basis. In the January 23, 2001 letter to Krakatau, we provided detailed information concerning the appropriate manner of submitting information or requests to the record, including a discussion of the regulations guiding the official submission of information.

On February 5, 2001, we received Krakatau's response to section A of the Department's questionnaire. Also on February 5, 2001, the Department received a faxed letter from Krakatau requesting an extension of time to respond to sections B, C, and D of the questionnaire. On February 8, 2001, the Department sent a letter to Krakatau granting its request for an extension of

the deadline. In the letter, we again instructed Krakatau to follow the proper procedures for submitting requests to the record.

On February 23, 2001, the Department received a letter from Krakatau requesting a further extension of time to respond to sections B, C, and D of the questionnaire. The Department subsequently sent a letter, dated February 23, 2001, denying Krakatau's request for a further extension due to the limited time available in this investigation and the impending preliminary determination. On February 28, 2001, fifty-five days after issuing the antidumping questionnaire, the Department received Krakatau's response to sections B, C, and D of the questionnaire and non-functional sales databases.

On March 1, 2001, the Department sent Krakatau a request for supplemental information regarding section A of the Department's questionnaire. On March 2, 2001, the Department received a letter from the petitioners notifying the Department that Krakatau had failed to serve them a computer diskette containing the sales and cost databases, which was due February 28, 2001. On March 5, 2001, the Department sent a letter to Krakatau notifying it that the sales databases it submitted to the Department on February 28, 2001 were not functional and provided instructions on the proper format for submitting computer data. In addition, this letter instructed Krakatau to send copies of the revised home and U.S. market sales databases to the petitioners. Sixty-four days after issuing the questionnaire, the Department received, on March 9, 2001, the revised sales databases, in addition to the cost reconciliation package and an unsolicited addendum to the February 28, 2001 section D response. However, Krakatau submitted only three copies of the proprietary version of its response, rather than the six copies required by the Department's regulations. In addition, Krakatau failed to submit a public version of these documents.

On March 12, 2001, the Department received Krakatau's response to the Department's supplemental section A questionnaire. On March 14, 2001, the Department sent Krakatau a supplemental questionnaire regarding section D of the Department's questionnaire. On March 15, 2001, the Department sent a letter to Krakatau stating that its March 9, 2001 submission did not contain the correct number of proprietary and public copies. In that letter, we again provided Krakatau with the same detailed information concerning the correct

<sup>1</sup> The petitioners in these investigations are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America (collectively the petitioners). Weirton Steel Corporation is not a petitioner in the investigation involving hot-rolled steel from the Netherlands.

<sup>2</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

procedures for submitting information as was originally provided on January 23, 2001. On March 16, 2001, the Department sent Krakatau a request for supplemental information covering sections B and C of the questionnaire. The Department issued a second supplemental section D questionnaire on March 23, 2001. Shortly thereafter, on March 30, 2001, the Department received Krakatau's supplemental response to section D of the questionnaire. On April 2, 2001, the Department received Krakatau's supplemental response to sections B and C of the Department's questionnaire. However, the software program Krakatau used to compress the size of its supplemental data and the inconsistent use of different date formats in the home market invoice date field, caused the Department a significant delay in accessing the supplemental data for our analysis. In addition, one of the petitioners notified the Department that Krakatau failed to serve it with a diskette containing the supplemental sales databases, which was due April 2, 2001. Since the date of the Department's preliminary determination was approximately three weeks away, we provided this petitioner with a copy of the supplemental data we received from Krakatau. See Memorandum to the File, dated April 2, 2001. On April 16, 2001, the Department issued Krakatau a second supplemental questionnaire covering sections B and C, with a due date of April 26, 2001. Since this due date is after the preliminary determination (*i.e.*, April 23, 2001), the information received in this response will be taken into account for the final determination.

#### *Period of Investigation*

The POI for this investigation is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

#### **Scope of Investigation**

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on

four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

- Ball bearing steels, as defined in the HTSUS.

- Tool steels, as defined in the HTSUS.

- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

- ASTM specifications A710 and A736.

- USS abrasion-resistant steels (USS AR 400, USS AR 500).

- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS under the following tariff classification numbers: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff classification numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS tariff classification numbers are provided for convenience and U.S. Customs Service (Customs) purposes, the written description of the merchandise under investigation is dispositive.

### Facts Available

#### 1. Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e) of the Act, 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.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). Finally, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

For the reasons discussed below, the Department determines that, in accordance with sections 776(a)(2)(B) and 776(b) of the Act, the use of adverse facts available is appropriate for the preliminary determination for Krakatau. The evidence on the record establishes that the use of total facts available for Krakatau is warranted because Krakatau failed to provide complete sales and cost questionnaire responses within the meaning of section 776(a)(2)(B) of the Act. In its initial and supplemental responses, Krakatau failed to provide the information in the manner requested in the Department's January 4, 2001 antidumping questionnaire, the March 16, 2001 sections B and C supplemental questionnaire, and the March 14 and 23,

2001 supplemental section D questionnaires.

We also note that at no time did Krakatau notify the Department, pursuant to section 782(c)(1) of the Act, that it was unable to submit the information requested in the requested form and manner, nor did it suggest alternative forms in which it would be able to submit the requested information. Throughout the course of this antidumping investigation, the Department gave Krakatau, a pro se company, assistance and opportunities to comply with the Department's requests for information. Specifically, taking into consideration the fact that the respondent is a pro se company, the Department provided Krakatau detailed information and guidance on how to properly calculate and report sales and cost data and adjustments, granted Krakatau extensions to reply to requests for information, and provided an opportunity to explain and correct the deficiencies in its responses. However, at no point in the investigation did Krakatau notify the Department that it had any difficulties in submitting the information in the form and manner requested, seek guidance on alternative reporting requirements, or propose an alternate form for submitting the required data, as contemplated in section 782(c)(1) of the Act. Despite the efforts at assistance on the part of the Department, Krakatau failed to provide information reliable enough that it can serve as a basis for reaching the applicable determination.

Pursuant to section 782(e)(3) of the Act, the sales information Krakatau provided in its initial and supplemental responses was deficient such that the Department cannot consider it as a reliable basis for reaching the applicable determination. Our analysis of Krakatau's sales response found deficiencies that prohibit us from conducting an accurate model match, which prevents us from ensuring that products sold in the U.S. market are accurately matched to identical or most similar products sold in the home market. Without properly matching products sold in the U.S. and home markets, we cannot accurately identify similar matches and, as appropriate, calculate an accurate difference in merchandise (DIFMER) adjustment to account for the differences in the products being matched. In addition, we found that Krakatau's deficiencies in reporting multiple home and U.S. market sales adjustments prevent us from calculating fully adjusted home and U.S. market prices. Without fully adjusted home and U.S. market prices,

we are unable to calculate an accurate dumping margin.

Since these functions are essential elements to a dumping analysis, we find that Krakatau's responses cannot serve as a reliable basis for this preliminary determination. Specifically, Krakatau failed to provide: (1) Accurate quality classifications for sales in the home and U.S. market; (2) minimum specified yield strength classifications for sales in the home and U.S. market; (3) a method for identifying sales of non-foreign like product in its home market sales database; and (4) an explanation and appropriate supporting documents for how it calculated brokerage and handling, short-term interests rates (which are used in the calculation of imputed credit expenses), advertising, technical service, indirect selling expenses, inventory carrying costs, and packing. *See* March 16, 2001 sales supplemental questionnaire and April 2, 2001 sales supplemental response. *See also* Memorandum from Holly A. Kuga to Bernard T. Carreau, *Certain Hot-Rolled Carbon Steel Flat Products from Indonesia: Preliminary Determination of Sales at Less Than Fair Value: The Use of Facts Available for PT Krakatau Steel and Corroboration of Secondary Information*, dated April 23, 2001 (*Krakatau Facts Available Memorandum*).

Regarding Krakatau's cost response, our analysis found deficiencies in the initial and supplemental responses that prohibit us from accurately determining Krakatau's COP for each of the control numbers (CONNUMs) reported in its home and U.S. sales databases. The primary problem is that Krakatau calculated a company-wide average cost, and then to obtain individual product costs, applied this average cost to the cumulative yield for each individual production process each product (by CONNUM) passed through, rather than calculating product-specific costs. Without product-specific costs, the Department is unable to accurately determine whether home markets sales were sold at prices above, or below, the COP. Without a proper cost test, the Department is unable to calculate the proper NV in price-to-price comparisons.<sup>3</sup> In addition, the absence of product-specific costs prevents us from calculating a valid DIFMER (assuming that the correct sales were selected for comparison). Lastly, we note that Krakatau failed to provide a COP for certain of its reported home

<sup>3</sup> Without a proper cost test, it is impossible to determine whether 20 percent or more of the home market sales are below cost and hence, would be excluded from the calculation of NV.

market CONNUMs and failed to provide a CV for certain of its reported U.S. market CONNUMs. For home market sales without a COP, we cannot perform the cost test to determine whether these sales were sold above their COP. For U.S. sales without a reported CV, we have no means of determining NV if there are no home market sales matches.

Because of Krakatau's failure to provide product-specific costs that account for the physical characteristics of unique products, we find that Krakatau's cost responses cannot serve as a reliable basis for this preliminary determination. Specifically, Krakatau failed to provide: (1) Costs that account for differences in quality, carbon, strength, thickness, width, pickling, edge trim, and pattern; (2) costs that account for differences in the chemistry or alloy content of specific grades of steel; (3) costs that account for differences in individual production processes; (4) the financial statements of its affiliates or of its parent corporation; (5) an explanation or supporting documents for the adjustments it made to the calculation of the scrap credit and direct material cost for "Sponge Iron Consumption;" (6) an explanation of why it did not incorporate the daily time utilization reports in its cost methodology; (7) a COP for multiple CONNUMs contained in the home market sales database; and (8) a CV for multiple CONNUMs contained in the U.S. market sales database. As a result, the information on the record is insufficient for purposes of calculating a dumping margin. See March 14 and March 23, 2001 cost supplemental questionnaires. See also *Krakatau Facts Available Memorandum*.

Of the many deficiencies in Krakatau's cost response, the most problematic deficiency is that Krakatau calculated one company-wide average cost and then, to obtain individual product costs, applied this average cost to the cumulative yield for the individual path each product (by CONNUM) passed through. The cumulative yield of subsequent cost centers through which a product passes will account for the losses that occur at those cost centers. However, this methodology does not account for processing differences within each cost center. For example, within the hot rolling mill, products with different thicknesses are not differentiated in terms of cost based on their rolling times. In another example, the costs associated with the pickling process are not assigned to products based on whether or not the product was pickled, but rather only by applying the yield loss associated with the pickling cost

center to the average cost of hot rolling. As discussed above, the failure to provide product-specific costs makes it impossible to (1) conduct the sales below cost test, (2) calculate the 20% comparability test used in the DIFMER adjustment, and (3) calculate CV.

Moreover, we find that the cumulative effect of these errors is to erode our confidence in Krakatau's response as a whole. Therefore, pursuant to section 782(e)(3) of the Act, the Department finds that the information on the record, as discussed above, is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination.

We also find that the application of an adverse inference in this case is appropriate. Krakatau failed to act to the best of its ability to comply with the Department's requests for information when it failed to provide: (1) Accurate quality and yield strength characteristics (which prevents the Department from conducting an accurate model match), (2) a method for identifying sales of non-foreign like product in its home market sales database, (3) an explanation and appropriate supporting documents for how it calculated certain sales expense adjustments, and (4) product-specific costs. Despite the Department's directions in the original and supplemental questionnaires, and the extensions granted, Krakatau made no effort to provide any explanation or propose an alternate form of submitting the data. See *Krakatau Facts Available Memorandum*.

Furthermore, the information cannot be obtained elsewhere. Without this critical information, the Department cannot accurately determine the dumping margin for Krakatau. In addition, as outlined in the *Case History* section above, the company's failure to properly submit information and data to the record of this proceeding delayed the Department in making critical decisions involving the calculation of Krakatau's dumping margin. The company was put on notice by Department's extension letters and other correspondence that failure to properly submit information and data to the Department constituted a deficiency which could result in the use of facts available. See the Department's letters to Krakatau dated January 23, February 8, March 5, and March 15, 2001.

Krakatau's submission of information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Its failure to comply with the Department's procedures for submitting information and data to the record of this proceeding, and its repeated failure to

provide information to the Department which could not be obtained elsewhere, demonstrate a consistent pattern of unresponsiveness and a failure to cooperate to the best of its ability with the Department's requests for information. Despite the Department's directions in the questionnaires and the letters granting extensions, Krakatau did not provide the information requested by the Department, made no effort to explain any difficulties it was having in supplying the information, and did not propose an alternate form of submitting the information. For these reasons, we find that Krakatau did not act to the best of its ability in responding to the Department's requests for information, see, e.g., *Circular Stainless Steel Hollow Products*, and that, consequently, an adverse inference is warranted under section 776(b) of the Act. See *Krakatau Facts Available Memorandum*.

Pursuant to section 776(b) of the Act, the Department is basing Krakatau's margin on adverse facts available for purposes of the preliminary determination. Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. As adverse facts available, we are applying the margin for Indonesia published in the Department's notice of initiation, which is 59.25 percent. See *Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*HRS Initiation Notice*).

## 2. Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. See also SAA at 829-831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

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).

In order to determine the probative value of the margin in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent with the relevant POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value.

Accordingly, in selecting adverse facts available with respect to Krakatau, the Department determined to apply a margin rate of 59.25 percent, the margin published in the Department's notice of initiation.

*All Others Rate*

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than facts available margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-CV dumping margin, which the Department adjusted for purposes of initiation, there are no additional estimated margins available with which to create the "all others" rate. Therefore, we applied the published margin of 59.25 percent as the "all others" rate.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of HRS from Indonesia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to require a cash deposit or the posting of a bond equal to the amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
PT Krakatau Steel .....	59.25
All Others .....	59.25

*Disclosure*

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our sales at LTFV determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

*Public Comment*

Case briefs must be submitted no later than 35 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made

in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination in this investigation no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**  
*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 01-10849 Filed 5-2-01; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-834-806]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Kazakhstan**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary determination in the less than fair value investigation of certain hot-rolled carbon steel flat products from Kazakhstan.

**SUMMARY:** On December 12, 2000, the Department of Commerce published a notice of initiation of an antidumping duty investigation of certain hot-rolled carbon steel flat products from Kazakhstan. This investigation covers one producer of the subject

merchandise. The period of investigation is April 1, 2000 through September 30, 2000. The Department preliminarily determines that certain hot-rolled carbon steel flat products from Kazakhstan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Juanita H. Chen at 202-482-0409, or Rick Johnson at 202-482-3818, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

**Applicable Statute and Regulations**

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 (2000).

**Preliminary Determination**

The Department of Commerce ("Department") preliminarily determines that certain hot-rolled carbon steel flat products ("hot-rolled steel") from Kazakhstan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice, *infra*.

**Case History**

On December 4, 2000, the Department initiated an antidumping duty investigation of hot-rolled steel from Kazakhstan. See Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 65 FR 77568 (December 12, 2000) ("Notice of Initiation"). The Department set aside a period for all interested parties to raise issues regarding product coverage. See Notice of Initiation, at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of hot-rolled steel from the

Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000, from Energizer on December 15, 2000, from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000, from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively "Corus"), and Thomas Steel Strip on December 26, 2000, and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent hot-rolled steel investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and the Independent Steelworkers Union (hereinafter collectively referred to as "petitioners"); Corus, respondents in the Netherlands investigation; Iscor Limited ("Iscor"), respondent in the South Africa investigation; and Zaporizhstal, respondent in the Ukraine investigation. The petitioners agreed with the Department's proposed characteristics and hierarchy. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics or the hierarchy but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or hierarchy from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at C-5 (January 4, 2001).

On December 29, 2000, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is

a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise from Kazakhstan, which was published on January 4, 2001. See Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, 66 FR 805 (January 4, 2001) ("ITC Preliminary Determination").

On January 4, 2001, the Department issued its antidumping duty questionnaire to the Embassy of Kazakhstan and to the only known producer of subject merchandise, OJSC Ispat Karmet ("Ispat Karmet"). The Department received confirmation from the U.S. Embassy in Kazakhstan that Ispat Karmet is the sole company in Kazakhstan that produces or exports hot-rolled carbon steel to the United States. On January 23, 2001, the Department requested comments from interested parties regarding surrogate country selection, and information to value factors of production. On February 6, 2001, we received the petitioners' comments for surrogate country selection. The Embassy of Kazakhstan and Ispat Karmet submitted no comments on surrogate country selection. On March 23 and April 6, 2001, we received comments from the petitioners regarding valuing factors of production. On April 18, 2001, we received comments from Ispat Karmet in opposition to some of the petitioners' suggested values for factors of production.

On February 1, 2001, we received Ispat Karmet's Section A response to the Department's questionnaire ("Section A response"). On February 14, March 12, and April 4, 2001, we issued Section A supplemental questions, Sections C and D supplemental questions, and Sections A, C and D second supplemental questions to Ispat Karmet, respectively. We received Ispat Karmet's Sections C and D response ("Section C/D response") on February 26, 2001, its Section A supplemental response ("Supp. A response") on March 7, 2001, its Sections C and D supplemental response ("Supp. C/D response") on April 2, 2001, and its Sections A, C and D second supplemental response ("2d Supp. response") on April 13, 2001.

On March 16, 2001, certain petitioners (Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group) (hereinafter collectively "Bethlehem, *et al.*") requested that the Department initiate a middleman dumping investigation. On March 30, 2001, Ispat Karmet submitted comments on the middleman dumping request,

arguing that the allegation is legally defective because Bethlehem *et al.* have not provided specific evidence that a trading company is dumping. On April 6, 2001, Bethlehem, *et al.* submitted a letter further asserting that they have demonstrated that a middleman dumping investigation is warranted, and that Ispat Karmet's opposition is baseless. On April 10, 2001, Ispat Karmet submitted a letter pointing out alleged flaws in the middleman dumping allegation. Because of the complexity of the issue, the Department has not yet determined the proper course of action on the middleman dumping allegation. Accordingly, we will address the middleman dumping issue in the final determination.

On March 21, 2001, Ispat Karmet requested that the Department determine that the hot-rolled steel industry in Kazakhstan is a market-oriented industry ("MOI"), and submitted basic information on the hot-rolled steel industry in Kazakhstan. On March 27, 2001, the petitioners submitted comments on Ispat Karmet's MOI request, arguing that Ispat Karmet failed to meet the conditions necessary for establishing MOI status. On March 30, 2001, the Department issued a supplemental questionnaire to Ispat Karmet, requesting further information on the hot-rolled steel industry in Kazakhstan. That additional information is due to be filed on April 30, 2001. Consequently, we do not yet have adequate information necessary to analyze the issue for the preliminary determination. As a result, we are unable to make a determination on Ispat Karmet's MOI request for this preliminary determination. We will address the MOI issue in the final determination.

#### Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness

not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials ("ASTM") specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers ("SAE")/American Iron & Steel Institute ("AISI") grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.

- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### Period of Investigation

The period of investigation ("POI") is April 1, 2000 through September 30, 2000.

#### Nonmarket Economy Country

The Department has treated Kazakhstan as a non-market economy ("NME") country in all past

antidumping investigations and administrative reviews. *See, e.g.*, Titanium Sponge From the Republic of Kazakhstan, 64 FR 66169 (November 24, 1999) (final admin. review); Ferrosilicon From Kazakhstan and Ukraine, 58 FR 13050 (March 9, 1993) (final determination); and Uranium From Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan, 57 FR 23380 (June 3, 1992) (prelim. determination). A designation as a NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Act. No party has requested a revocation of Kazakhstan's NME status. Therefore, for this preliminary determination, the Department is continuing to treat Kazakhstan as a NME country.

When the Department is investigating imports from a NME country, normal value ("NV") is based on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise, pursuant to section 773(c)(1) and (4) of the Act. The sources of individual factor values are discussed in the "Normal Value" section of this notice, *infra*.

#### Separate Rates

In a NME proceeding, the Department presumes that all companies within the country are subject to governmental control. Thus, it is the Department's policy to assign all producers of subject merchandise in a NME country a single rate, unless a producer can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

Ispat Karmet is wholly foreign-owned. Ispat Karmet reported that 100 percent of its shares are held by Ispat Karmet Holdings BV, which is located in the Netherlands. Further, there is no Kazakhstan ownership of Ispat Karmet. Thus, because we have no evidence indicating that it is under the control of the Republic of Kazakhstan, a separate rates analysis is not necessary to determine whether it is independent from government control. *See* Brake Rotors from the People's Republic of China, 66 FR 1303, 1306 (January 8, 2001) (prelim. results); Creatine Monohydrate from the People's Republic of China, 64 FR 71104, 71105 (December 20, 1999) (final determ.).

Accordingly, we preliminarily have determined a separate rate for Ispat Karmet.

#### Kazakhstan-Wide Rate

As discussed, *supra*, in a NME proceeding, the Department presumes that all companies within the country are subject to governmental control. The

Department assigns a single NME rate unless a producer can demonstrate eligibility for a separate rate. Ispat Karmet has preliminarily qualified for a separate rate. Furthermore, the information on the record indicates that Ispat Karmet accounted for all imports of subject merchandise during the POI. Since Ispat Karmet, the only known Kazakhstan producer, responded to the Department's questionnaire, and we have no evidence of any other Kazakhstan producers of subject merchandise during the POI, we have calculated a Kazakhstan-wide rate for this investigation based on the weighted-average margin determined for Ispat Karmet. This Kazakhstan-wide rate applies to all entries of subject merchandise except for entries of subject merchandise exported by Ispat Karmet.

#### Date of Sale

In reporting its U.S. sales, Ispat Karmet stated that it "understands that the Department's current practice is to rely on the invoice date as the date of sale." *See* Section C response, at 8. Ispat Karmet initially stated that the "date of invoice is the date on which all essential terms of sale are finalized, *i.e.*, quantity, unit price, and product mix, and is the date on which Ispat Karmet transfers title to the customer." *See* Section A response, at A-9. Yet in elaborating on its sales process, Ispat Karmet stated that it "negotiates each sale individually and concludes the sale by signing an addendum to an annual sales agreement with an international trader. The addendum establishes the basic terms for individual transactions, but Ispat Karmet does not transfer title to the purchaser until the date shown on the invoice. Ispat Karmet, therefore, reports the invoice date as the date of sale \* \* \*." *See* Section C response, at 8.

As stated in 19 CFR 351.401(i), the Department will normally use the date of invoice as the date of sale. However, as also stated in that regulatory provision, the Department may use a date other than the date of invoice if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

In response to the Department's questionnaire regarding the types of changes after the initial agreement, Ispat Karmet explained that "(o)n occasion, the delivery date may be extended beyond the date specified in the original addendum. However, we do not normally experience any changes once an addendum is finalized, other than changes in quantity within the tolerance

limit." *Id.* at A-9 and A-10. Ispat Karmet stated that after initially negotiating the annual contract, "Ispat Karmet and the trader subsequently negotiate an addendum for subsequent shipments of merchandise, generally covering the quantity to be shipped over a one-or two-month period and establishing the specific terms of those shipments, such as quantity, technical specifications, delivery, and packing." *See* Supp. C/D response, at 2. However, Ispat Karmet maintained that the "addendum is the preparatory document for a sale, while the invoice reflects the actual shipment of the merchandise and the completion of the sale." *Id.*

From Ispat Karmet's own response, it appears that the material terms of the sale are established with the addendum. The information on the record indicates a lack of any changes in the material terms of sale between addendum and invoice, aside from "variations within a permissible tolerance range." *Id.* at 3. There appear to be no changes in price or in quantity, outside of the contractually agreed upon tolerances, after the addendum is finalized. This serves to confirm that the parties agree to the material terms of sale at the addendum stage. Therefore, for this preliminary determination, the Department is using the date of the addendum as the date of sale, as it better reflects the date on which the material terms of the sale were established. We intend to fully examine this issue at verification and will incorporate our findings, as appropriate, in our final determination.

#### Fair Value Comparisons

To determine whether sales of hot-rolled steel products from Kazakhstan were made in the United States at LTFV, we compared EP to a normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice, *infra*.

#### Export Price

We used EP methodology for this preliminary determination, in accordance with section 772(a) of the Act. Section 772(a) of the Act defines EP as the "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 to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States \* \* \*." Constructed export price ("CEP") methodology, in accordance with section 772(b) of the Act, was not otherwise warranted based on the facts

on the record. All sales activities, including negotiations, paperwork processing and receipt of payment, appear to be conducted in Kazakhstan. See Section A response, at A-9 and A-10; Supp. A response, at 5-6. Ispat Karmet did report that when it "receives a complaint from a customer, a member of Ispat Karmet's technical staff may travel to the customer's location to inspect the product." See Section C/D response, at 4. However, this appears to occur after importation to the United States. Ispat Karmet identified Ispat North America, Inc. as providing "general marketing services in the United States to all steel plants in the Ispat group, including Ispat Karmet." See Section A response, at A-8. However, Ispat Karmet reported that "(n) either Ispat North America nor any other related party had any role in U.S. sales during the period of investigation." See Section C/D response, at 7. Ispat Karmet also stated that all of its "sales to the U.S. market during the POI were concluded directly with its trading company customers." See Section C response, at 7.

None of the customers to whom Ispat Karmet sold subject merchandise to during the POI were listed as affiliated companies. See Supp. A response, at Exhibit 3. Furthermore, Ispat Karmet indicated that it knew that its reported sales of subject merchandise were destined for the United States at the time of sale because in negotiating with an international trader, Ispat Karmet seeks "details of the end-customer and the intended end application. Because of this, Ispat Karmet's sales have clearly identified destinations." See Section A response, at A-9. Accordingly, pursuant to section 772(a) of the Act, because subject merchandise was sold to an unaffiliated purchaser by Ispat Karmet outside of the United States, with the knowledge that the final destination of subject merchandise was the United States, we have determined these sales to be EP transactions for purposes of this preliminary determination.

In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NVs based on factors of production. See Memorandum to Edward C. Yang from Juanita H. Chen: Factor Valuation Memorandum (April 13, 2001) ("Factor Valuation Memo"). We calculated EP based on the Free Carrier At ("FCA") rail prices charged to unaffiliated customers. See Section C response, at 10. We also made adjustments from the starting price to account for foreign inland freight. See Memorandum to the File, from Juanita H. Chen, Case Analyst: Preliminary

Determination Analysis for OJSC Ispat Karmet (April 23, 2001) ("Prelim. Analysis Memo").

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs, including depreciation. We calculated NV based on factors of production reported by Ispat Karmet. See Factor Valuation Memo; see also Prelim. Analysis Memo. We valued all the input factors using publicly available information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice, *infra*.

#### A. Surrogate Country

When the Department investigates imports from a NME, section 773(c) of the Act provides for the Department, in most circumstances, to base NV on the NME producers' factors of production, valued in a surrogate market economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4), the Department, in valuing factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of individual factor values are discussed, *infra*.

The Department's Office of Policy has determined that Algeria, Ecuador, Egypt, Morocco, and the Philippines are countries comparable to Kazakhstan in terms of overall economic development. See Memorandum to the File, from Juanita H. Chen, Case Analyst: Selection of Surrogate Country (March 26, 2001) ("Surrogate Country Memo"), at Attachment I (policy memorandum from Jeffrey May, dated January 12, 2001). According to the available information on the record, we have determined that Egypt is an appropriate surrogate country because it is at a comparable level of economic development and is a significant producer of comparable merchandise. Furthermore, there is a

wide array of publicly available information for Egypt. Therefore, we have relied, where possible, on Egyptian information in calculating NV by using Egyptian prices to value Ispat Karmet's factors of production, when available and where appropriate. We have obtained and relied upon public information wherever possible. See Factor Valuation Memo. Where no Egyptian values were available, we used information from the Philippines, another country chosen by the Department's Office of Policy as comparable to Kazakhstan in terms of overall economic development. *Id*.

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

#### B. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Ispat Karmet for the POI. See Factor Valuation Memo. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available surrogate values from Egypt or, where necessary, the Philippines.

In selecting surrogate values, we considered the specificity, quality and contemporaneity of the data. We adjusted import prices by including the cost of freight so that the import prices were delivered prices. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using producer price indices, as appropriate, published in the International Monetary Fund, International Financial Statistics (March 2001) ("IMF").

We valued raw material inputs, energy inputs, by-products and packing materials using values from the appropriate HTSUS category, and from the World Bank website. See Factor Valuation Memo, at 4-8. Pursuant to section 351.408(c)(1) of our regulations, where it was possible to discern from the record that a factor was purchased from a market economy supplier and paid for in a market economy currency, we used the price paid to the market economy supplier. See Factor Valuation Memo, at 7; see also *Lasko Metal Products v. United States*, 43 F.3d 1442, 1445-46 (Fed. Cir. 1994). To value labor, we used regression-based wage rates, in accordance with section 351.408(c)(3) of the Department's regulations. See Factor Valuation Memo,

at 8. We based the value of freight by rail on public information used in the August 31, 1999 analysis memorandum for the preliminary results of the 1997–1998 administrative review of titanium sponge from Kazakhstan. *Id.*; see also Titanium Sponge From the Republic of Kazakhstan, 64 FR 48793, 48795 (September 8, 1999) (prelim. results). To value overhead, selling, general and administrative expenses, and profit, we used public information reported in the 1998 financial statements of Alexandria National Iron & Steel Co. (“ANS Steel”), an Egyptian producer of hot-rolled steel. See Factor Valuation Memo, at 8–9. While we could not determine a complete value for overhead using ANS Steel’s financial statements, we could determine a value for depreciation, a part of overhead, and have used this value for overhead.

For each of the surrogate values selected for use in the Department’s calculations, we adjusted the values for inflation using appropriate price index inflators when those values were not from a period concurrent with the POI. See Factor Valuation Memo, at 2.

**Verification**

As provided in section 782(i)(1) of the Act, we will verify all appropriate information relied upon in making our final determination.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (“Customs”) to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percent
OJSC Ispat Karmet .....	239.57
Kazakhstan-Wide .....	239.57

**Disclosure**

The Department will disclose calculations performed, within five days of the date of publication of this notice, to the parties in this investigation, in

accordance with section 351.224(b) of the Department’s regulations.

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our affirmative determination of sales at LTFV. As our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether imports of hot-rolled steel from Kazakhstan are materially injuring, or threaten material injury to, the U.S. industry.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the time limit for filing the case brief, pursuant to section 351.309(c) and (d) of the Department’s regulations. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in the case or rebuttal briefs. Tentatively, any hearing will be held 57 days after publication of this notice at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice, pursuant to section 351.310(c) of the Department’s regulations. Requests should contain: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party’s case brief, and may make rebuttal presentations only on arguments included in that party’s rebuttal brief, pursuant to section

351.310(c) of the Department’s regulations.

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination (*i.e.* July 9, 2001).

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01–10850 Filed 5–2–01; 8:45 am]

**BILLING CODE 3510–DS–P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A–791–809]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Doug Campau or Maureen Flannery at (202) 482–1395 or (202) 482–3020, respectively; Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2000).

**Preliminary Determination**

We preliminarily determine that certain hot-rolled carbon steel flat products (HR products) from South Africa are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the

“Suspension of Liquidation” section of this notice.

### Case History

On December 4, 2000, the Department initiated antidumping investigations of HR products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*). The petitioners in this investigation are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and the Independent Steelworkers Union (petitioners). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (*see Initiation Notice* at 77568). We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of HR products from the Netherlands. In that investigation, we received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods Inc. and Truelove & MacLean, Inc. on December 18, 2000; from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HR products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by petitioners (January 5, 2001); Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited (Iscor), respondent in the South Africa investigation (January 3, 2001); and Zaporozhstal Iron & Steel Works (Zaporozhstal), respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the

Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporozhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics, but provided information relating to their own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2, “Prime vs. Secondary Merchandise.” See the Department's Antidumping Duty Questionnaire, at B-7 and C-7 (January 4, 2001).

On December 28, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. On January 4, 2001, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the merchandise under investigation from these countries. *See ITC Preliminary Notice of Determination for Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805, 802 (January 4, 2001).

On January 4, 2001, the Department issued sections A–E of its antidumping duty questionnaire<sup>1</sup> to Highveld Steel

and Vanadium Corporation Limited (Highveld), Saldanha Steel Limited (Saldanha), and Iscor. On January 25, 2001, Saldanha and Iscor submitted letters to the Department indicating that they would not be responding to the Department's questionnaires. On January 26, 2001—one day after the due date of January 25, 2001—the Department received Highveld's response to Section A of its antidumping duty questionnaire. Highveld's section A response was not appropriately filed with the Department's Central Records Unit, did not include relevant case information in the upper right-hand corner of the first page as prescribed by section 351.303(d)(2) of the Department's regulations, and did not contain a request for proprietary treatment of business proprietary information, though certain information was bracketed. Furthermore, no public version was submitted, and neither version was served on the petitioners. On February 2, 2001, the Department sent a letter to Highveld addressing these deficiencies, asking Highveld to re-file its section A response—revised to comply with the Department's requirements—by no later than February 6, 2001, and warning Highveld that its failure to comply could result in rejection of its section A response. This letter was accompanied by a copy of the Department's regulations for the submission of documents to the record. Also on February 2, 2001, at Highveld's request, the Department approved an extension of the deadline for submitting the section B, C, and D questionnaire responses to February 26, 2001.

On February 6, 2001—twelve days after the original due date of January 25, 2001—the Department received the public version of Highveld's response to Section A of its antidumping duty questionnaire, along with the revised proprietary version. There was substantial improper use of bracketing in both the proprietary and public versions of this response (*e.g.*, single brackets around public information, double brackets used inappropriately numerous times, triple brackets used numerous times, and bracketed information not summarized or ranged in the public version). On February 9, 2001, the Department held a teleconference with Highveld to address

<sup>1</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country

market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

these issues, and asked Highveld to refile the entire narrative portion of its submissions—revised to comply with the Department's requirements—along with any revised exhibits (see *Memorandum to the File, "Telephone Conference with Highveld Official,"* dated February 12, 2001). In this teleconference, the Department again warned Highveld that its failure to comply could result in the rejection of its submissions. On February 12, 2001, the Department sent Highveld a letter reiterating what was discussed in the February 9, 2001 teleconference. On February 16, 2001, the Department faxed to Highveld a copy of those portions of its regulations addressing the procedures for proper bracketing, filing and treatment of proprietary information subject to administrative protective order (APO). Also on February 16, 2001, at Highveld's request, the Department approved an extension of the deadline for submitting the second revised version of the section A questionnaire response to February 21, 2001.

On February 23, 2001—two days after the due date of February 21, 2001—the Department received the second revised versions of Highveld's public and proprietary responses to the Section A antidumping duty questionnaire. The second revised public version still did not contain a request for proprietary treatment of business proprietary information as required by the Department's APO regulations.

On February 26, 2001, the Department received the narrative portions of Highveld's responses for sections B, C, and D. Highveld again failed to serve the petitioners with copies of its submission to the Department. Highveld also failed to properly submit any of the required home market sales, U.S. sales, or cost of production data to either the Department or to the petitioners. Highveld submitted a floppy diskette containing no files of any kind, and then sent its sales and cost data sets—to the Department only—via electronic mail (see *Memorandum to the File, "Compilation of Electronic Mail Correspondence with Highveld Officials,"* dated April 23, 2001). In analyzing these data sets, the Department discovered that Highveld failed to report any data for twelve different types of expenses for the majority of its U.S. sales. The fields for which this data was not reported were international freight (INTNFRU), marine insurance (MARNINU), U.S. inland freight from port to warehouse (INLFPWU), U.S. warehousing expense (USWAREHU), U.S. inland freight from warehouse to unaffiliated customer

(INLFWCU), U.S. inland insurance (USINSURU), other U.S. transportation expense (USOTHTRU), U.S. customs duty (USDUTYU), commissions (COMMU), indirect selling expenses incurred in country of manufacture (INDIRSU), inventory carrying costs incurred in the United States (INVCARU), and U.S. repacking cost (REPACKU). In the narrative responses for each of the twelve missing sales expenses, Highveld simply stated that the subject data had to be supplied by an affiliated U.S. reseller. Highveld also failed to provide unique product costs that account for cost differences related to the physical characteristics defined by the Department. In the narrative response related to CONNUM-specific costs, Highveld merely stated that it does not account for costs in this manner.

On February 27, 2001, the Department sent a letter to Highveld, via electronic mail, asking Highveld to confirm that it has served the sections B, C, and D submissions on all parties to the proceeding. Highveld responded, via electronic mail, that because the shipment to the petitioners was so large, it would take extra time to arrive via express mail. The Department subsequently learned—through its own inquiries with the involved express mail company—that the sections B, C, and D submissions were shipped late.

On March 8, 2001, the Department issued a supplemental questionnaire for Highveld's Section A response. On March 12, 2001, petitioners submitted comments on Highveld's sections B, C, and D responses. On March 15, 2001, the Department issued a supplemental questionnaire for Highveld's sections B, C, and D responses, along with several additional questions for Highveld's section A response. In this questionnaire, we asked Highveld to report data for the twelve expenses missing from the majority of its U.S. sales observations. We also repeated our instruction to Highveld to report CONNUM-specific cost information that accounts for cost differences for each of the physical characteristics defined by the Department. These instructions directed Highveld to rely not only on its existing financial and cost accounting records, but on any other information which would allow it to calculate a reasonable allocation of its costs. On March 16, 2001—eighteen days after the original due date of February 26, 2001—the Department finally received a properly submitted copy of Highveld's required home market sales, U.S. sales, and COP data.

On March 26, 2001, at Highveld's request, the Department approved an

extension of the deadline for submitting the supplemental questionnaire response for sections B and C to March 29, 2001. Also on March 26, 2001, the Department received Highveld's response to the Department's section A supplemental questionnaire, issued on March 8, 2001. Again, Highveld failed to timely serve either proprietary or public versions of its response on the petitioners. The public version of this submission was withheld from the record as a consequence of the following APO deficiencies: (1) it contained bracketed information that had not been blacked out; (2) bracketed information was not summarized or ranged; and (3) relevant case information was not included in the upper right-hand corner of the first page as prescribed by section 351.303(d)(2) of the Department's regulations. On March 29, 2001, the Department issued a second supplemental questionnaire for sections B and C. On March 30, 2001, the Department sent a letter to Highveld addressing the deficiencies of Highveld's supplemental section A questionnaire response submitted on March 26, 2001, asking Highveld to refile its supplemental section A response—revised to comply with the Department's requirements—by no later than April 3, 2001. This letter also warned Highveld that if it failed to provide accurately the information requested within the time provided, the Department might be required to base its findings on the facts available, and that if Highveld failed to cooperate with the Department by not acting to the best of its ability to comply with a request for information, the Department could use information adverse to Highveld's interest in conducting its analysis.

Also on March 30, 2001—one day after the due date of March 29, 2001—the Department received the narrative portions of Highveld's response to the section B and C portions of the supplemental questionnaire issued on March 15, 2001. Highveld again failed to submit the required home market or U.S. sales data to either the Department or the petitioners. On April 2, 2001—three days after the due date of March 30, 2001—the Department received the narrative portions of Highveld's response to the section D portion of the supplemental questionnaire issued on March 15, 2001 (Supplemental D response). Highveld again failed to submit the required cost of production data to either the Department or the petitioners. Furthermore, in its narrative response, Highveld indicated that its cost of production data set would not include the unique product costs

requested in the Department's March 15, 2001 supplemental questionnaire. The only explanation offered by Highveld was that it does not account for cost in this manner. Highveld failed to offer any explanation as to why it did not calculate appropriate cost differences for the physical characteristics defined by the Department as instructed in the Department's supplemental questionnaire.

On April 2, 2001, the Department contacted Highveld's staff person by telephone to inquire as to the location of the revised data sets which should have accompanied Highveld's narrative responses to the supplemental questionnaire for sections B, C, and D. Highveld's staff person indicated that the revised data sets would be submitted with its response to the Department's second supplemental questionnaire for sections B and C issued on March 29, 2001 (*see Memorandum to the File, "Telephone Conference with Highveld Official,"* dated April 3, 2001).

On April 6—three days after the due date of April 3, 2001—the Department received the revised portions of Highveld's response to the section A supplemental questionnaire issued on March 8, 2001. Also on April 6, the Department received Highveld's revised data sets which should have accompanied Highveld's narrative responses to the supplemental questionnaire for sections B, C, and D, originally due on March 29 (sections B and C) and 30 (section D), 2001. Both the sales and cost of production data sets contained major deficiencies which the Department—in its March 29, 2001 supplemental questionnaire—had specifically asked Highveld to remedy. Specifically, Highveld again failed to report data for the twelve expenses missing from the majority of its U.S. sales observations, and failed to assign a control number for each unique product in the sales data sets, as requested in the Department's March 15, 2001 supplemental questionnaire. Furthermore, Highveld's COP data set did not include the unique product costs requested in the Department's March 15, 2001 supplemental questionnaire. Finally, on April 6—one day after the due date of April 5, 2001—the Department received Highveld's response to the Department's second supplemental questionnaire for sections B and C issued on March 29, 2001. In this response, Highveld indicated that the data for the twelve expenses missing from the majority of its U.S. sales had to be supplied by an affiliated U.S. reseller, and that they would be made available during verification.

On April 10, 2001, we sent a second supplemental questionnaire to Highveld asking it to resubmit its cost data in accordance with the Department's instructions by April 24, 2001. On April 17, 2001, we sent Highveld a letter requiring that it submit, by April 27, 2001, certain information that was missing from its sections B & C response.

#### Period of Investigation

The Period of Investigation (POI) is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., November 2000), and is in accordance with our regulations. *See* section 351.204(b)(1) of the Department's regulations.

#### Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation. Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron

predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or  
2.25 percent of silicon, or  
1.00 percent of copper, or  
0.50 percent of aluminum, or  
1.25 percent of chromium, or  
0.30 percent of cobalt, or  
0.40 percent of lead, or  
1.25 percent of nickel, or  
0.30 percent of tungsten, or  
0.10 percent of molybdenum, or  
0.10 percent of niobium, or  
0.15 percent of vanadium, or  
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90,

7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### Facts Available (FA)

##### *Highveld*

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 and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In this case, Highveld failed, within the meaning of section 776(a)(2)(B) of the Act, to provide requested information in the form and manner requested. Notably, Highveld failed, in its original section C response, to report any data for international freight (INTNFRU), marine insurance (MARNINU), U.S. inland freight from port to warehouse (INLFPWU), U.S. warehousing expense (USWAREHU), U.S. inland freight from warehouse to unaffiliated customer (INLFWCU), U.S. inland insurance (USINSURU), other U.S. transportation expense (USOTHTRU), U.S. customs duty

(USDUTYU), commissions (COMMU), indirect selling expenses incurred in country of manufacture (INDIRSU), inventory carrying costs incurred in the United States (INVCARU), and U.S. repacking cost (REPACKU), for the majority of its U.S. sales. These expenses are essential to the Department's calculation of U.S. price. Depending on the type, these expenses are used to adjust the reported starting sale price for each observation in the U.S. sales data set. Without data for these expenses, it is impossible for the Department to calculate U.S. prices from starting sales prices. We issued Highveld a supplemental questionnaire requesting that it correct these deficiencies, but it failed to do so. Highveld responded that it did not have this information, that such information must be supplied by an affiliated reseller in the United States, and that the information would be provided at verification. Highveld offered no reason as to why the data was not being provided within the deadlines provided by the Department, nor did it offer or suggest any alternative format for providing the needed information. Furthermore, Highveld failed to report the sales price from its U.S. affiliate to the first unaffiliated customer for these sales. As this data is missing from the majority of Highveld's reported U.S. sales, it is impossible for the Department to calculate U.S. prices for the majority of Highveld's U.S. sales. Highveld's failure to provide the requested sales data thus renders its U.S. sales response unusable for this preliminary determination.

Highveld also failed, in its original and supplemental section D responses, to provide unique product costs that account for cost differences related to the physical characteristics defined by the Department. Highveld instead reported its costs by steel grade, differentiating those costs only by grade. That methodology does not provide product-specific COP information, nor does it provide the Department with information to calculate a difference in merchandise (DIFMER) adjustment to account for differences in physical characteristics beyond product grade when comparing sales of similar merchandise. Without product-specific COPs, we are unable to determine whether sales of the subject merchandise were made at less than COP as directed by section 773(b)(1) of the Act. As a result, we have no way of knowing whether to disregard certain sales from the calculation of normal value (NV) for falling below COP or whether to disregard all sales of the

subject merchandise and base NV on CV. Furthermore, in accordance with section 773(a)(6)(C)(ii) of the Act, when comparing United States sales with home market sales, we may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the home market and that those differences have an effect on prices. In such instances, we are required to make reasonable allowances for these differences ("DIFMER") in calculating NV. Without the ability to make the appropriate DIFMER adjustment, it is impossible for us to appropriately calculate NV. Thus, without product-specific COP information, and information necessary for calculating a DIFMER adjustment, we are unable to determine the appropriate basis for NV or to calculate NV. As noted in the *Case History* section above, we issued Highveld a supplemental questionnaire on March 15, 2001, requesting that it correct these deficiencies, but it failed to do so. Instead, Highveld stated simply that it does not account for cost in this manner. Highveld's failure to provide the requested data renders its cost response unusable for this preliminary determination.

As also noted in detail in the *Case History* section above, Highveld failed, within the meaning of section 776(a)(2)(B) of the Act, to provide requested information prior to several deadlines for the submission of such information, or in the form and manner requested. Highveld's questionnaire responses were often fraught with APO formatting deficiencies, including improper bracketing of proprietary information, improper labeling of documents containing proprietary information, and missing language concerning the release of proprietary information under APO. Furthermore, the majority of Highveld's questionnaire responses were submitted after the applicable deadlines. In such cases, the Department received Highveld's submissions anywhere from one to eighteen days late. Notably, Highveld's sales and cost data sets—which are absolutely crucial for the Department's analysis—were submitted eighteen days late for the initial sections B, C, & D response, eight days late for the supplemental sections B & C response, and seven days late for the supplemental section D response. These responses and accompanying data were similarly served late on the petitioners.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so

inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulty.

As noted above, Highveld failed, on numerous occasions, to provide its questionnaire responses to the Department or other parties to this proceeding by the applicable deadlines, in the form and manner requested. As noted in the *Case History* section above, the Department provided Highveld with numerous opportunities to remedy or explain major deficiencies in its submissions. To this end, the Department issued several supplemental questionnaires, allowed Highveld several chances to revise and resubmit documents in order that such documents might comply with the Department's regulations governing formatting and filing requirements, sent Highveld multiple letters, facsimiles, and electronic mail explaining and re-explaining the Department's concerns over the deficiencies in Highveld's submissions, held a teleconference to explain the Department's concerns over the deficiencies in Highveld's submissions, sent Highveld copies of relevant regulations and guidelines for the submission of documents to the record, and granted Highveld several extensions to deadlines for its submissions. Despite all of this, Highveld has continued to submit its responses after applicable deadlines. This pattern has significantly impeded the Department's ability to conduct a timely analysis, limiting the Department's ability to issue supplemental questionnaires to address questions and deficiencies related to Highveld's submissions. It has also made it virtually impossible for the petitioners or other interested parties to submit comments on Highveld's

responses in a timely manner, so that such comments might be given appropriate consideration in the Department's analyses. Moreover, as discussed above, Highveld has also failed to remedy the major substantive deficiencies in its U.S. sales and COP data sets, leaving the data sets so incomplete that they cannot be used to calculate a preliminary margin for Highveld. Consequently, we are disregarding Highveld's sales and COP data in our analysis.

In light of Highveld's failure to provide requested information necessary to calculate dumping margins in this case, in accordance with section 776(a) of the Act, we are forced to resort to total facts available for this preliminary determination.

According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997) (Final Rule).

In this case, we have determined that Highveld has not acted to the best of its ability in responding to the Department's request for complete U.S. sales data, including data for the twelve expenses missing from the majority of Highveld's U.S. sales observations. As noted in the *Case History* section above, we repeated our request for such data in a supplemental questionnaire, but Highveld failed to provide it. Highveld's explanation was that it did not have this information, that such information must be supplied by an affiliated reseller in the United States, and that the information would be provided at verification. It is Highveld's responsibility to ensure that all information essential to the Department's analyses of Highveld's U.S. sales is provided to the Department, regardless of whether such information must be supplied by an affiliated reseller in the United States. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless*

*Steel Sheet and Strip from Mexico*, 64 FR 30790, 30803 (June 8, 1999). It is also Highveld's responsibility to notify the Department, in writing, within fourteen days if it expects to have difficulties in submitting such information in accordance with section 782(c)(1) of the Act, and to suggest alternative forms in which it could submit the information. Highveld made no such notification, nor suggested any alternative reporting methodologies.

We have also determined that Highveld has not acted to the best of its ability in responding to the Department's request for product-specific cost information that takes into account physical differences between the products. As noted in the *Case History* section above, in our supplemental questionnaire, dated March 15, 2001, we repeated our instruction to Highveld to report product-specific cost information that accounts for cost differences for each of the physical characteristics. These instructions directed Highveld to rely not only on its existing financial and cost accounting records, but on any other information which would allow it to calculate a reasonable allocation of its costs. It is standard procedure for the Department to request product-specific cost data and we routinely receive such information from respondents. In the Department's experience, companies have information which allows them to calculate a reasonable estimate of the costs to make a given product, as such cost information is necessary to determine whether it is profitable to make the product. Even if a company does not identify product-specific costs in its normal financial and cost accounting records, it should be able to make reasonable allocations of its costs among distinct products through the use of other product and production information. Highveld failed to offer any explanation as to why it did not make such reasonable allocations.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." In response to our requests for product-specific cost data, Highveld simply stated that it does not account for cost in this manner. (See Supplemental D response.) Cooperation in an antidumping investigation requires more than a simple statement that a respondent cannot provide certain information from its previously prepared records; the burden to establish that it has acted to the best of its ability rests upon the respondent. As

noted above, to meet that burden a respondent must explain what steps it has taken to comply with the information request, and propose alternative methodologies for getting the necessary information. See *Allied-Signal Aerospace v. United States*, 996 F.2d 1185, 1192 (Fed. Cir. 1993). Highveld has failed to do either.

Moreover, we find that Highveld's claim that it is unable to provide cost information in the manner requested by the Department to be inconsistent with its other statements and information on the record of this case. For example, Highveld closely tracks actual production for yield purposes and for purposes of identifying particular coils for warehouse identification, as is evidenced by the yield information maintained by the company and the identifying tags affixed to each finished product. Highveld also has budgets, manufacturing standards, and engineering standards for specific products listed in the company's product brochure. Highveld likely develops production plans involving the identification of certain products as produced from certain raw materials on certain production lines using specific engineering standards. Further, to maintain International Organization for Standardization (ISO) certification, we believe that Highveld must maintain contemporaneous records of production and processes to insure the quality of the products it produces. While certain of Highveld's records do not contain the information requested on separate product costs, the company could have developed a reasonable allocation methodology to allocate costs to products on a control number (CONNUM)-specific basis using the company's normal cost accounting records as a starting point. The Department requested that Highveld look beyond its financial and cost accounting records and select from a variety of available data using, for example, engineering standards, direct labor hours, machine hours, or budgeting systems for allocating costs to products on a CONNUM-specific basis. Highveld failed to develop any system to allocate costs according to these criteria.

Given (i) Highveld's repeated failure to provide data for twelve expenses for the majority of its U.S. sales observations; and (ii) Highveld's repeated failure to provide product-specific cost data that takes into account physical differences in the product or to provide any meaningful explanation of why such data could not be provided, we preliminarily determine that Highveld did not cooperate to the best

of its ability. Accordingly, we have used an adverse inference in selecting the facts available to determine Highveld's margin.

#### *Iscor/Saldanha*

In this proceeding, Saldanha and Iscor declined to respond to the Department's antidumping questionnaire. Because Saldanha and Iscor provided no information, sections 782(d) and (e) of the Act are not relevant, and the Department must resort to the use of facts available for these respondents, in accordance with 776(a) of the Act.

Furthermore, as Iscor and Saldanha declined to respond to the Department's antidumping questionnaire, we preliminarily determine that both companies failed to cooperate to the best of their abilities within the meaning of section 776(b) of the Act.

Accordingly, we have used an adverse inference in selecting the facts available to determine the appropriate margin for Iscor and Saldanha.

#### **Corroboration**

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. (1994), states that "corroborate" means to determine that the information used has probative value. See SAA at 870. In this proceeding, we considered the petition as the most appropriate information on the record upon which to base the dumping calculation. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information (e.g., import statistics, cost data and foreign market research reports) was available for this purpose. See *Initiation Notice*, at 77571. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. To the extent practicable, we reexamined the export price, home market price, and CV data provided for the margin calculations in the petition in light of information obtained during the investigation, and found that it has probative value (see *Memorandum to the File*, "Corroboration of Secondary Information," dated April 23, 2001). As adverse facts available, we have preliminarily assigned Highveld, Iscor

and Saldanha the rate of 9.28 percent—the margin calculated from the petition and used for initiation.

#### **Affiliation**

In accordance with section 771(33)(E) of the Act, the Department considers affiliated any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization. In the contemporaneous countervailing duty investigation of HR products from South Africa, the Department noted that respondent Iscor controls 50 percent of the voting ownership in respondent Saldanha. See *Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 20261 (April 20, 2001). Consequently, and in accordance with section 771(33)(E) of the Act, we conclude that these companies are affiliated for purposes of this proceeding.

#### **Collapsing**

Section 351.401(f)(1) of the Department's regulations provides that two or more affiliated producers will be treated as a single entity in an antidumping proceeding if: (i) the 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 (ii) the Department concludes that there is a significant potential for the manipulation of price or production. Section 351.401(f)(2) of the Department's regulations provides that in identifying a significant potential for the manipulation of price or production, the factors the Department may consider include: (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; and (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.

We have analyzed these criteria with respect to Iscor and Saldanha. According to information available on the public record of the contemporaneous countervailing duty investigation of HR products from South Africa, Iscor is a 50 percent shareholder in Saldanha, and is in a position to

exercise control of Saldanha's assets. Furthermore, both companies produce the subject merchandise. See the public version of *Memo to File, "Cross-Ownership of Iscor, Ltd., in Saldanha Steel Ltd."*, dated April 13, 2001 (case number C-791-810), which has been placed on the record of this investigation. In light of these facts, and because Iscor's and Saldanha's refusal to cooperate in this investigation has impeded our analysis of this issue, the Department infers that there is significant potential for the manipulation of prices or production between these two companies within the meaning of section 351.401(f)(2) of the Department's regulations. Thus, we preliminarily determine, in accordance with 351.401(f)(1) of the Department's regulations, that Saldanha and Iscor should be treated as a single entity for purposes of this antidumping proceeding, and have determined one dumping margin for this single entity.

#### Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

#### All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than facts available margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-CV dumping margin, which the Department adjusted for purposes of initiation, there are no additional estimated margins available with which to create the "all others" rate. Therefore, we applied the published margin of 9.28 percent as the "all others" rate.

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct the Customs Service to suspend liquidation of all entries of HR products from South Africa that are entered, or withdrawn from warehouse, for consumption on or after the date of

publication in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The preliminary weighted-average dumping margins are as follows:

	Margin (percent)
Exporter/Manufacturer:	
Highveld .....	9.28
Iscor/Saldanha .....	9.28
All Others .....	9.28

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several HR products cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests

should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10851 Filed 5-2-01; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-357-814]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Argentina

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Constance Handley or Charles Riggall at (202) 482-0631 and (202) 482-0650, respectively; AD/CVD, Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

#### Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HRS) from Argentina are being, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of

the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

#### Case History

On November 13, 2000, the Department received a petition on hot-rolled carbon steel flat products from Argentina filed in proper form by Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, and Independent Steelworkers Union. On November 16, 2000, the United Steel Workers of America joined as co-petitioners in this case.

This investigation was initiated on December 4, 2000. See *Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*). Since the initiation of these investigations, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice* at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the concurrent investigation of HRS products from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000, from Energizer on December 15, 2000, from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000, from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively referred to as Corus), from Thomas Steel Strip Corporation on December 27, 2000, and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HRS antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: The petitioners (January 5, 2001); Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001).

Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to the either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at B-7 and C-7 (January 4, 2001). These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise. After careful review of the comments received, we made no changes to the model matching characteristics and hierarchy proposed in the Department's letter.

On December 28, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are threatening or materially injuring an industry in the United States producing the domestic like product. See *Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, the Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001).

On January 4, 2001, the Department issued an antidumping questionnaire to Acindar Industria Argentina de Aceros SA (Acindar) and Siderar Saic (Siderar), the mandatory respondents in this case. On January 16, 2001, Siderar notified the Department that it would not be responding to the Department's questionnaire due to the burdens involved in submitting a response. It provided no further elaboration, nor did it suggest alternatives to the

Department's requirements pursuant to section 782 (c) of the Act. On January 17, 2001, the Government of Argentina also notified the Department that Siderar would not be participating in the investigation. On January 17, 2001, Acindar informed the Department that it did not sell the subject merchandise to the United States during the period of investigation (POI) and, therefore, had no sales to report. Upon reviewing U.S. Customs data, the Department confirmed that Acindar did not sell the subject merchandise to the United States during the POI and as such any future exports from Acindar will be subject to the "all-others" rate.

#### Period of Investigation

The POI for this investigation is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

#### Scope of the Investigation

For purposes of this investigation, the products covered are certain HRS of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of

definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 2.25 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60,

7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.90, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel may also enter under the following tariff classification numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### Facts Available

##### 1. Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that 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) of the Act, 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.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the

Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). Finally, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

In accordance with section 776(a)(2)(A) of the Act, for the reasons explained below, because Siderar failed to respond to our questionnaire, we preliminarily determine that the use of total adverse facts available is warranted with respect to Siderar. *See* the April 23, 2001 memorandum Application of Facts Available for Siderar Saic on file in the Central Records Unit, Room B–099 of the main Commerce Department Building.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994) (SAA). Failure by Siderar to respond to the Department's antidumping questionnaire constitutes a failure to act to the best of its ability to comply with a request for information, within the meaning of section 776 of the Act. Because Siderar failed to act to the best of its ability, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted in selecting the facts available for this company. Consistent with Department practice, we assigned Siderar the highest margin alleged in the amendment to the petition, *i.e.*, 44.59 percent. *See Initiation Notice*.

##### 2. Selection and Corroboration of Facts Available

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

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).

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See Import Administration AD Investigation Initiation Checklist*, dated December 4, 2000, for a discussion of the margin calculation in the petition. In addition, in order to determine the probative value of the margin in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based. Our review of the EP and NV calculation indicated that the information in the petition has probative value, as certain information (*e.g.*, international freight and customs duties) included in the margin calculation in the petition is from public sources concurrent, for the most part, with the POI.

We compared the export prices contained in the petition with U.S. Census values for the same HTS category and found the export prices suggested in the petition to be reasonable and, therefore, corroborated for purposes of calculating a facts available margin. With respect to the NV data included in the margin calculations of the petition, we were able to corroborate the reasonableness of these data through the use of multiple sources. *See* the April 23 memorandum titled *Application of Facts Available for Siderar Saic*.

#### *All-Others Rate*

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all-others" rate for exporters

and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "all-others" rate, the simple average of the margins in the petition. We have done so in this case.

#### *Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing Customs to suspend liquidation of all entries of HRS from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct Customs to require a cash deposit or the posting of a bond equal to the amount by which the NV exceeds the EP, as indicated in the chart below. We will adjust the deposit requirements to account for any export subsidies found in the companion countervailing duty investigation. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer/exporter	Margin (percent)
Siderar Saic (Siderar) .....	44.59
All Others .....	40.60

#### *ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

#### *Public Comment*

Case briefs must be submitted no later than 35 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a

hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination in this investigation no later than 75 days after the date of this preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10852 Filed 5-2-01; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-865]

#### **Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand, Carrie Blozy, or Doreen Chen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3207, (202) 482-0165, and (202) 482-0193, respectively.

### The Applicable Statute and Regulations

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 codified at 19 CFR Part 351 (2000).

### Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

### Case History

This investigation was initiated on December 4, 2000. See *Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12, 2000). The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Notice of Initiation*, at 77569. We received comments regarding product coverage as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods Inc. and Truelove & MacLean, Inc. on December 18, 2000; from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001. Since the initiation of this investigation the following events have occurred.

On December 20, 2000, the Department of Commerce ("the Department") requested information from the U.S. Embassy in the PRC to identify producers/exporters of the subject merchandise and received a response in January 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent certain hot-rolled carbon steel flat products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching

characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus Staal BV and Corus Steel USA Inc., collectively referred to as Corus, respondent in the Netherlands investigation (January 3, 2001); Iscor Limited, respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime merchandise from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at C-5 (January 4, 2001).

On December 29, 2000, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from the PRC, which was published on January 4, 2001. See *Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001) ("ITC Preliminary Determination").

On January 4, 2001, the Department issued its antidumping questionnaire to the Chinese Ministry of Foreign Trade & Economic Cooperation with a letter requesting that it forward the questionnaire to all Chinese exporters of certain hot-rolled carbon steel flat products who had shipments during the

period of investigation ("POI"). We also sent courtesy copies of the antidumping questionnaire to the following possible producers/exporters of subject merchandise named in the petition: Anshan Iron & Steel (Group) Co., Anyang Iron and Steel Group, Shanghai Baosteel Group Corp., Benxi Iron and Steel Group Co., Laiwu Iron and Steel Group, and Wuhan Iron and Steel Group Co.

On January 25 and 26, 2001, the following Chinese producers/exporters of certain hot-rolled carbon steel flat products submitted information on the quantity and value of their shipments of subject merchandise to the United States during the POI: Angang Group International Trade Corporation, New Iron & Steel Co., Ltd., and Angang Group Hong Kong Co., Ltd. (collectively "Angang"), Shanghai Baosteel Group Corporation, Baoshan Iron and Steel Co., Ltd., and Baosteel Group International Trade Corporation (collectively "Baosteel Group"), Benxi Iron & Steel Group International Economic & Trade Co., Ltd., Bengang Steel Plates Co., Ltd., and Benxi Iron & Steel Group Co., Ltd. (collectively "Benxi"), Pangang Group International Economic & Trading Corporation and Panzhihua Iron & Steel (Group) Company (collectively "Panzhihua"), Wuhan Iron & Steel (Group) Corporation and International Economic and Trading Corp. Wugang Group (collectively "WISCO"), and Shanghai Yi Chang Steel Strip Co., Ltd. ("Yi Chang").

On February 6, 2001, we selected Angang, Baosteel Group, Benxi, and Yi Chang as the mandatory respondents (see "Selection of Respondents" below). We received complete Section A responses from Angang, Baosteel Group, Benxi, Panzhihua, WISCO, and Yi Chang on February 8, 2001.

On February 16, 2001, the Department issued a supplemental questionnaire to Yi Chang concerning the relationship between Baosteel Group and Yi Chang. Also, on February 16, 2001, the Department issued a letter to Baosteel Group concerning the submission of Section D questionnaire responses for certain wholly-owned firms of Baosteel Group, which during some or all of the POI produced merchandise meeting the physical description of the merchandise described in Appendix III to the Department's January 4, 2001 antidumping questionnaire (see "Baosteel Group-Wholly Owned Suppliers of Hot-Rolled Carbon Steel Flat Products," below, for further discussion of this issue). On February 22, 2001, the Department issued section A supplemental questionnaires to Angang, Benxi, Baosteel Group, and Yi

Chang and received responses on March 8, 2001. On February 26, 2001, respondents submitted their responses to sections C and D to the Department's antidumping questionnaire. On February 28, 2001, the Department issued a letter to Yi Chang requesting that Yi Chang identify all unique products or models produced by Yi Chang during the POI that meet the physical description of the merchandise described in Appendix III to the Departments' January 4, 2001 antidumping questionnaire. Yi Chang submitted this information on March 7, 2001. On March 12, 2001, the Department issued supplemental questionnaires to Angang, Benxi, Baosteel Group, and Yi Chang and received responses to these questionnaires on April 2, 2001. On March 12, 2001, Baosteel Group submitted section D questionnaire responses for certain wholly-owned firms of the Baosteel Group, which during part or all of the POI produced merchandise meeting the physical description of the merchandise described in Appendix III to the Department's January 4, 2001 antidumping questionnaire. On March 27, 2001, the Department issued a supplemental section D questionnaire to Baosteel Group, following its March 12, 2001 section D response, and received a response on April 10, 2001. Petitioners filed comments on respondents' submissions in March 2001.

On January 31, 2001, we requested publicly-available information for valuing the factors of production and comments on surrogate country selection. On February 14, 2001, we received comments from petitioners on the appropriate surrogate country. On March 23, 2001, Baosteel Group submitted information concerning surrogate values to be used for valuing the factors of production. On March 26 and March 30, 2001, petitioners and respondents Angang and Benxi, respectively, submitted information concerning surrogate values for use in valuing the factors of production. On April 5 and 6, petitioners and respondents Baosteel Group and Yi Chang, respectively, submitted rebuttal comments on surrogate values.

#### *Period of Investigation*

The POI is April 1, 2000 through September 30, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (November 13, 2000). 19 CFR 351.204(b)(1).

#### *Scope of Investigation*

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or  
2.25 percent of silicon, or  
1.00 percent of copper, or  
0.50 percent of aluminum, or  
1.25 percent of chromium, or  
0.30 percent of cobalt, or  
0.40 percent of lead, or  
1.25 percent of nickel, or  
0.30 percent of tungsten, or  
0.10 percent of molybdenum, or  
0.10 percent of niobium, or  
0.15 percent of vanadium, or  
0.15 percent of zirconium.

All products that meet the physical and chemical description provided

above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AIS) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00,

7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### *Selection of Respondents*

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to the Department, we determined that it was not practicable in this investigation to examine the six known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate four Chinese producers/exporters. Angang, Baosteel Group, Benxi, and Yi Chang accounted for almost all exports of the subject merchandise from the PRC during the POI, as reported by the six producers/exporters at the time we made our respondent selection, and we selected them as mandatory respondents. See *Memorandum from Edward Yang to Joseph A. Spetrini Re: Selection of Respondents*, February 6, 2001.

#### *Yi Chang—Country of Origin*

In its original section A questionnaire response, dated February 8, 2001, Yi Chang stated that “it produced and sold the subject merchandise directly and did not purchase from an unaffiliated supplier.” However, subsequent responses from Yi Chang on February 26, 2001, March 8, 2001, and April 2, 2001, made clear the following facts: first, “during the POI, Yi Chang was engaged only in the pickling of subject

merchandise”—it therefore did not melt steel and as a result, purchased hot-rolled carbon steel coils as the input for its pickling process; second, Yi Chang purchased its hot-rolled carbon steel coils from Chinese and third country suppliers; and third, “all of the subject merchandise exported to the United States during the POI was produced from imported hot-rolled coils.” Finally, in response to a supplemental question from the Department concerning the country of origin markings on the hot-rolled carbon steel flat products sold by Yi Chang to the United States, Yi Chang stated that because it added value to the finished product after pickling the hot-rolled coils, Yi Chang declared the product as originating in China. See Yi Chang April 2, 2001 supplemental response at page 10.

In determining whether substantial transformation has occurred for the purposes of establishing the country of origin for Yi Chang’s hot-rolled carbon steel flat products exported to the United States in this dumping investigation, we examine whether the degree of processing or manufacturing in the PRC resulted in a new and distinct or different article from the hot-rolled steel coils imported from third country market economy suppliers. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from India (“Butt-Weld Pipe Fittings from India”)*, 60 FR 10545, 10546 (February 27, 1995) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan (“Cold-Rolled Steel from Taiwan”)*, 65 FR 34658 (May 31, 2000). The Department has also stated in prior determinations that it is not bound by the country-of-origin and substantial transformation determinations made by other agencies of the U.S. government. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37065 (July 9, 1993). Rather, our determination is made on the basis of reviewing the totality of the circumstances presented to the Department solely for the purpose of the antidumping proceeding. When an input from country A is further processed in country B, without any change in the class or kind of merchandise taking place, the Department normally will consider the product exported to the United States as originating in country A. See, e.g., *Butt-Weld Pipe Fittings from India and Cold-Rolled Steel from Taiwan*. In this case, the manufacturing process undertaken

by Yi Chang in the PRC did not result in a change in the class or kind of merchandise between the third country hot-rolled steel coils and Yi Chang’s pickled hot-rolled steel coils. In addition, although Yi Chang does perform some processing on the imported hot-rolled coils (*i.e.*, trimming and pickling), that further processing does not result in a substantial transformation within the context of this antidumping investigation. The data on the record indicate that the degree of transformation in this case is less than that found in cases in which the product was deemed to have been transformed sufficiently to change the origin of the item. Consequently, for the preliminary determination, we have denied Yi Chang’s claims that the country of origin of the merchandise sold by Yi Chang is properly the PRC. Because none of the hot-rolled carbon steel flat products sold by Yi Chang in the United States during the POI was of Chinese origin, we preliminarily find that Yi Chang is not eligible for an antidumping duty margin calculation in this investigation of hot-rolled carbon steel flat products from the PRC. Also, we note that we are not addressing the issue of Yi Chang’s relationship with the Baosteel Group, as Yi Chang did not produce any merchandise which was the same as that exported to the United States by the Baosteel Group.

#### *Baosteel Group—Wholly Owned Suppliers of Hot-Rolled Carbon Steel Flat Products*

In its questionnaire responses Baosteel Group explained that the subject merchandise it sold to the United States was exported by Baosteel Group International Trade Corporation (“Baosteel International”), a part of the Baosteel Group, and was produced by Baoshan Iron and Steel Co., Ltd. (“Baoshan Co., Ltd.”), also a part of the Baosteel Group, and Baosteel Group itself. For Baosteel Group’s ownership percentages in these companies, see *Analysis for the Preliminary Determination of Certain Hot-Rolled Carbon Steel Flat Products from the People’s Republic of China: Shanghai Baosteel Group Corporation (“Baosteel Group”)*, (“*Baosteel Group Analysis Memorandum*”), dated April 23, 2001. Additionally, in its section A questionnaire response Baosteel Group identified three other wholly-owned Baosteel Group steel companies that produced hot-rolled steel products within the scope of this investigation during the POI, but stated that they did not export these products to the United States. Because the name of these firms is proprietary, we are referring to these

companies as Firm A, Firm B, and Firm C. On February 16, 2001, the Department issued a letter to Baosteel Group requesting it to "ensure that when providing your Section D information, you submit full Section D information for all wholly-owned facilities of the Baosteel Group, which during some or all of the POI produced merchandise meeting the physical description of the merchandise described in Appendix III to the Department's January 4, 2001 antidumping questionnaire to Baosteel." Although objecting to this request, Baosteel Group nevertheless submitted section D responses for Firm A and Firm B on March 12, 2001, and supplemental responses on April 10, 2001. (In its March 12, 2001 response, Baosteel Group stated that Firm C did not produce or sell any merchandise that meets the physical description of the merchandise described in Appendix III to the Department's questionnaire.)

The Department requested this information primarily because the questionnaire responses for Baosteel Group have been filed on behalf of Shanghai Baosteel Group Corporation, Baoshan Co., Ltd., and Baosteel International. As noted above, both Baoshan Co., Ltd., which produces the subject merchandise sold to the United States, and Baosteel International, the trading company which sells the subject merchandise to the United States, are part of the Shanghai Baosteel Group Corporation. Moreover, both Firm A and Firm B are wholly-owned subsidiaries of the Shanghai Baosteel Group Corporation. For purposes of its separate rate analysis, the Department considers these companies to be one entity. Because it is the Shanghai Baosteel Group Corporation as a whole to which the Department has preliminarily granted a separate rate (see "Separate Rates," below), which will apply to each of its constituent entities, the Shanghai Baosteel Group Corporation is the respondent. Consequently, in order to accurately calculate the Corporation's normal value for any given model of subject merchandise, the Department necessarily requires for every model or product type reported by Shanghai Baosteel Group Corporation in the U.S. market sales listing, one weighted-average set of factors of production data based on POI-specific factors of production data for all members of the single entity Shanghai Baosteel Group Corporation. Therefore, for the preliminary determination, for all models of subject merchandise sold by Shanghai Baosteel Group Corporation during the POI we have calculated a

single weighted-average normal value based on the factors of production for all of the firms (Baoshan Co., Ltd./Baosteel Group, Firm A and Firm B) that produced these models during the POI.

#### *Nonmarket Economy Country Status*

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping investigations (see, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000) (*Apple Juice*)). A designation as an NME remains in effect until it is revoked by the Department (see section 771(18)(C) of the Act). The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME country. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value ("NV") on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

Furthermore, no interested party has requested that the hot-rolled carbon steel flat products industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the hot-rolled carbon steel flat products industry in the PRC as a market-oriented industry in this investigation.

#### *Separate Rates*

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate, unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The six companies that have submitted section A responses have provided the requested company-specific separate rates information and have stated that, for each company, there is no element of government ownership or control. All

six companies have requested a separate company-specific rate.<sup>1</sup>

Angang reported that it is owned by all the people and that Angang and its affiliates have no corporate relationship with any level of the PRC government. Angang stated that Angang Group International Trade Corporation has complete independence with respect to its export activities.

Baosteel Group reported that Baosteel Group is a company owned by all the people. Baosteel Group claimed that Baosteel Group, Baoshan Iron and Steel Co., Ltd., and Baosteel International Trade Corporation operate independently from the national, provincial and local governments with respect to all significant export activities.

Benxi reported that it is owned by all the people. Benxi stated that all exports of the subject merchandise were produced by Bengang Steel, of which Benxi Group has majority ownership. Benxi claimed that Benxi Trading and its affiliates have no corporate relationship with any level of the PRC government.

Panzhuhua reported that Pangang Group International Economic & Trading Corporation ("Pangang International") and its parent company, Panzhuhua Iron & Steel (Group) Company (Panzhuhua Group), are owned by all the people. Panzhuhua claimed that Pangang International, Panzhuhua Group, and Panzhuhua Steel operate independently from the national, provincial and local governments with respect to all significant export activities.

WISCO reported that International Economic and Trading Corp. Wugang Group ("IETC"), and its parent company and supplier, Wuhan Iron & Steel (Group) Corporation, are owned by all the people. WISCO claimed that Wuhan Iron & Steel (Group) Corporation and IETC operate independently from the national, provincial and local governments with respect to all significant export activities.

Based on these claims, we considered whether each respondent is eligible for a separate rate. The Department's separate rate test to determine whether the exporters are independent from government control is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test

<sup>1</sup> As noted above, Yi Chang is not eligible for a separate rate because it made no exports of the subject merchandise to the United States during the POI.

focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in the *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*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. The respondents have placed on the record a number of documents to demonstrate absence of *de jure* control, including the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China." In prior cases, the Department has analyzed these laws and found that they establish an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding

which would cause us to reconsider this determination.

#### 2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The respondents asserted the following: (1) They establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, using profits according to their business needs. Additionally, none of the respondents' questionnaire responses suggest pricing is coordinated among exporters. Furthermore, our analysis of the respondents' questionnaire responses reveals no other information indicating government control. As stated in the *Silicon Carbide*, 59 FR at 22587, ownership of the company by a state-owned enterprise does not require the application of a single rate. Based on the information provided, we preliminarily determine that there is an absence of *de facto* governmental control of the respondents' export functions. Consequently, we preliminarily determine that Angang, Baosteel Group, Benxi, Panzhihua, and WISCO have met the criteria for the application of a separate rate.

#### *The People's Republic of China-Wide Rate*

All exporters were given the opportunity to respond to the Department's questionnaire. As

explained above, we received timely Section A responses from Angang, Baosteel Group, Benxi, Panzhihua, WISCO, and Yi Chang.<sup>2</sup> Our review of U.S. import statistics from the PRC, however, reveals that Angang, Baosteel Group, Benxi, Panzhihua, and WISCO did not account for all imports of subject merchandise into the United States from the PRC, even after adjusting for the merchandise Yi Chang said it had entered as being of Chinese origin. For this reason, we preliminarily determine that some PRC exporters of certain hot-rolled carbon steel flat products failed to respond to our questionnaire. Consequently, we are applying a single antidumping rate—the China-wide rate—to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000) ("*Synthetic Indigo*"). The China-wide rate applies to all entries of subject merchandise except for entries from Angang, Baosteel Group, Benxi, Panzhihua, and WISCO.

#### *Use of Facts Otherwise 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) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department provided that 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)

<sup>2</sup> As explained above, for the preliminary determination we have found that Yi Chang did not have any exports of the subject merchandise to the United States during the POI.

the information can be used without undue difficulties.

Section 776(a)(2)(B) of the Act requires the Department to use facts available when a party does not provide the Department with information by the established deadline or in the form and manner requested by the Department. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

#### A. China Wide Rate

In the case of the single Chinese enterprise, as explained above, some exporters of the single enterprise failed to respond to the Department's request for information. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the China-wide rate because certain entities did not respond. Also, because some exporters of the single enterprise failed to respond to the Department's requests for information, the Department has found that the single enterprise failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate. For our preliminary determination, as adverse facts available, we have used the highest rate calculated for a respondent, *i.e.*, the rate calculated for Benxi. In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, the Department will consider information reasonably at its disposal as to whether there are circumstances that would indicate that using that rate is appropriate. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this investigation, there is no indication that the highest calculated margin is inappropriate to use as adverse facts available.

Accordingly, for the preliminary determination, the China-wide rate is 67.44 percent. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final China-wide margin.

#### B. Angang and Benxi

Angang and Benxi failed to report freight information for all of their reported inputs. This information was requested twice by the Department, first in the original questionnaire dated January 4, 2001, and again in a supplemental questionnaire dated March 12, 2001. Because Angang and Benxi failed to provide this information, the Department, in accordance with section 776(a) of the Act, is basing its freight expense calculation on the facts otherwise available. This information is important because the Department needs it to calculate the freight expense component of the cost of Angang's and Benxi's factors of production. Because we find that Angang and Benxi failed to cooperate by not acting to the best of their ability to comply with our request that they provide the freight expense data, we are making, pursuant to section 776(b) of the Act, an adverse inference in selecting from the facts otherwise available. Therefore, as facts available, we applied the highest freight expense calculated for each respondent's inputs to those inputs for which freight information was not reported.

#### C. Baosteel Group, Firm A of Baosteel Group, and Firm B of Baosteel Group

Respondent Baosteel Group reported that it sold 63 unique models of hot-rolled products to the United States during the POI; however, Baosteel Group calculated unique factors of production costs for only seven product categories. Similarly, Firm A and Firm B of the Baosteel Group also did not report unique factors of production for every model of hot-rolled steel sold to the United States during the POI by Baosteel Group. In our supplemental questionnaires to Baosteel Group, Firm A of the Baosteel Group, and Firm B of the Baosteel Group, we requested that they revise their response to calculate a unique set of FOP data for each control number produced and sold in the United States market, taking into account the physical characteristics that distinguish each product. In their April 2, 2001 response and April 10, 2001 response, Baosteel Group and Firm A of Baosteel Group, respectively, maintained that because they produce a relatively narrow size range of hot-rolled products and do not keep the

record of the processing time for different size of products for the cost accounting purpose, they are not able to allocate their cost among the products based upon the physical characteristics, such as width and thickness. In its April 2, 2001 response, Firm B of the Baosteel Group claimed that as it produced generally low-alloy hot-rolled products with a small range of carbon content, the yield rate of raw materials at the rolling process does not vary according to different slab and hot-rolled sheet. Furthermore, Firm B maintained that the cost of hot-rolled coils is only separately recorded and assigned to major categories of products at the rolling process (*e.g.*, hot-rolled strips, checkered steel sheet, medium and small size thick hot-rolled coils).

In their April 13, 2001 response, petitioners argued that because Baosteel Group failed to submit factors of production data which account for differences in cost related to products of varying thicknesses, the Department should apply adverse facts available. However, based on the claims of Baosteel Group and the data it submitted, we preliminarily determine that respondents assigned factor usages to products to the level of specificity permitted by their cost accounting systems. As Baosteel Group appears to have responded to the best of its ability, it is not appropriate to draw an adverse inference in applying facts available as advocated by petitioners in their April 12, 2001 submission. Additionally, although the reported factors of production were not on a model-specific basis, there is no data on the record to suggest that the reported factor amounts did not accurately reflect the factor amounts associated with all subject merchandise. Finally, we are unable to adjust the reported factors of production due to the broad basis on which the costs were accumulated and the lack of information on the record on how to appropriately adjust these costs. Consequently, we have determined to use their data for the preliminary determination. We intend to fully examine this issue at verification and for the final determination.

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to

the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka and the Philippines are countries comparable to the PRC in terms of economic development. See *Memorandum from Jeffrey May to Edward Yang: Antidumping Duty Investigation on Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, dated January 11, 2001. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise.

We used India as the primary surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producers' factors of production, when available and appropriate. See *Surrogate Country Selection Memorandum to The File from Catherine Bertrand, Case Analyst*, dated April 23, 2001, ("*Surrogate Country Memorandum*"). We have obtained and relied upon publicly available information wherever possible. See *Factor Valuation Memorandum to The File from Case Analysts*, dated April 23, 2001 ("*Factor Valuation Memorandum*").

In accordance with section 351.301(c)(3)(i) of the Department's regulations, for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

#### *Fair Value Comparisons*

To determine whether sales of certain hot-rolled carbon steel flat products to the United States by Angang, Benxi, and Baosteel Group were made at less than fair value, we compared export price ("EP") or constructed export price ("CEP"), as appropriate, to NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs or CEPs.

#### *Export Price and Constructed Export Price*

In accordance with section 772(a) of the Act, for respondents Angang and Benxi we used EP because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated. As explained below, for Baosteel Group we used CEP. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs or CEPs to the NVs.

We calculated EP based on prices to unaffiliated purchasers in the United States. For Angang we made deductions, where appropriate, for foreign inland freight, insurance, and ocean freight. Because certain domestic charges, such as those for foreign inland freight, insurance, and ocean freight, were provided by NME companies, we valued those charges based on surrogate rates from India. See *Factor Valuation Memorandum*. For Benxi, we made deductions, where appropriate, for foreign inland freight and brokerage and handling. Because these factors were provided by NME companies, we based them on surrogate rates from India. See *Factor Valuation Memorandum*.

Baosteel Group classified all of its sales of the subject merchandise in the United States as EP sales in its questionnaire response. All of Baosteel Group's U.S. sales of subject merchandise were made prior to importation through Baosteel America Inc. ("Baosteel America"), a U.S. based affiliated reseller.

We examined the facts surrounding the U.S. sales process. The initial point of contact for all customer inquiries is Baosteel Group International Trade Corporation ("Baosteel International"), the trading company owned by Baosteel Group and exporter of all of Baosteel Group's sales of the subject merchandise. Subsequent contacts with the customer may go through Baosteel America since due to the time difference between the United States and the PRC, Baosteel America serves as a more convenient communication link to Baosteel International. According to Baosteel Group, Baosteel International and the U.S. customer negotiate the prices, quantities and other sales terms directly, or through Baosteel America as a corresponding intermediary. After settling sales quantity, price, time of shipment and other terms of contract, Baosteel International will instruct Baosteel America to sign a contract with the designated U.S. customer. Because the terms of sale for all U.S. sales of subject merchandise are FOB Shanghai,

neither Baosteel International nor Baosteel America incurs any movement expenses. Baosteel Group explained that three invoices are issued for each U.S. sales transaction. The first invoice is issued by Baoshan Co., Ltd. to Baosteel International after the goods are shipped out. The second invoice is issued by Baosteel International to Baosteel America upon shipment to the port. The third invoice is issued by Baosteel America to the unaffiliated U.S. customer after receiving the invoice from Baosteel International. Baosteel Group maintains that title does not transfer to Baosteel America and the goods do not enter Baosteel America's inventory. The U.S. customer pays Baosteel America, which then makes payment to Baosteel International. Baosteel International pays Baoshan Co., Ltd. after receiving payment from Baosteel America. The U.S. customer may request technical service or make warranty claims through Baosteel America, although according to Baosteel Group, Baosteel International must authorize approval for all claims. See Section A Questionnaire Response (February 8, 2001), Sections C and D Questionnaire Response (February 26, 2001) Section A Supplemental Questionnaire Response (March 8, 2001), and Supplemental Section A, C, and D Questionnaire Response (April 2, 2001).

Because the contracts on which Baosteel Group's U.S. sales were based were between Baosteel America and its unaffiliated U.S. customers and Baosteel America invoiced and received payment from the unaffiliated U.S. customer, the Department preliminarily determines that Baosteel Group's U.S. sales were made "in the United States" within the meaning of section 772(b) of the Act, and, thus, should be treated as CEP transactions. This is consistent with *AK Steel Corp. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000).

We calculated weighted-average CEPs for Baosteel Group's U.S. sales made in the United States through its U.S. affiliate. We based CEP on FOB Shanghai prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight from the plant to the port of exportation and brokerage and handling in accordance with section 772(c)(2)(A) of the Act. Because these factors were provided by NME companies, we based them on surrogate rates from India. To calculate inland freight, we multiplied the reported distance from the plant to the port of exit by a surrogate rail rate from India. In accordance with section 772(d)(1) of the Act, we deducted from CEP direct

and indirect selling expenses (*i.e.*, credit and indirect selling expenses) that were associated with Baosteel America's economic activities occurring in the United States. See *Baosteel Group Analysis Memorandum*.

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used factors of production, reported by respondents, for materials, energy, labor, by-products, and packing. We valued all the input factors using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. See also *Lasko Metal Products v. United States*, 437 F.3d 1442, 1445–1446 (Fed. Cir. 1994) ("*Lasko*"). Respondents Baosteel Group, Angang and Benxi reported that some of their inputs were sourced from market economies and paid for in market economy currency. See "Factor Valuation" section below.

Each of the respondents reported "self-produced" factors among its factors of production for energy inputs, including such factors as electricity, oxygen, nitrogen, and argon. We preliminarily determined to value electricity, oxygen, argon, and nitrogen through use of surrogate valuation, rather than based on surrogate valuation of the factors going into the production of those inputs.

#### Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and

contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for respondents, see *Factor Valuation Memorandum*.

Citing Department case precedent, respondent Baosteel Group argued in its March 23, 2001 surrogate value submission that the Department should make deductions to domestic prices to ensure that they are exclusive of India's Central Sales Tax or any state sales tax. Consistent with *Sebacic Acid from the People's Republic of China, Final Results of Antidumping Duty Administrative Review*, 62 Fed. Reg. 65678 (December 15, 1997), where there was substantial evidence that a surrogate value based on a domestic price was tax-inclusive, we deducted sales taxes from the surrogate value. Specifically, the surrogate value for sulphuric acid was based on data from *Indian Chemical Weekly*, which was recently used in the antidumping investigation of bulk aspirin from the People's Republic of China. See *Memorandum to Susan Kuhbach, Factor of Production Valuation for the Final Determination; Final Determination of the Antidumping Duty Investigation of Bulk Aspirin from the People's Republic of China* ("*Bulk Aspirin*") (May 17, 2000). This memorandum was added to the record as an attachment to *Memorandum to the File, Hot-Rolled Carbon Steel Products from the People's Republic of China* (April 17, 2001). In the *Bulk Aspirin* factor valuation memorandum, we calculated a lower, tax-exclusive surrogate value for sulphuric acid. Consistent with *Bulk Aspirin*, we have also calculated a tax-exclusive surrogate value for sulphuric acid in this case.

We added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997). For those Indian Rupee values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*. For those United States dollar denominated values (*e.g.*, for slag, electricity) not contemporaneous with the POI, we adjusted for inflation using producer price indices published in the International Monetary Fund's *International Financial Statistics*.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the *Monthly Trade Statistics of Foreign Trade of India—Volume II—Imports* ("*Indian Import Statistics*") for the time period corresponding to the POI. Where POI-specific *Indian Import Statistics* data were not available, we used *Indian Import Statistics* data from an earlier period (*i.e.*, April 1, 1998 through March 31, 1999 or April 1, 1999 through March 31, 2000). Also, we valued sulfuric acid using *Indian Chemical Weekly* data from October 1998 through March 1999. We adjusted the value for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics* and excluded taxes.

We rejected the following values submitted by respondents and/or petitioners as aberrational. We rejected the POI-specific surrogate value for iron ore pellets (HTS 26011201) provided by respondent Baosteel Group because the value of \$0.29 per MT was aberrational when compared with data from the same source from an earlier period, the value for iron ore available from the Department's *Index of Factor Values for the People's Republic of China* located at <http://www.ia.ita.doc.gov/factorv/prc/material.html>, and the market prices paid by Baosteel Group and Angang. Instead, we valued iron ore pellets using the identical HTS number, but for an earlier period (April 1, 1998 through March 31, 1999). We valued ferro-silicon based on HTS number 72022100 ("*silicon containing greater than 55% of silicon*") rather than respondent Baosteel Group's proposed ferro-silicon value (HTS 72022900 (other ferro-silicon) based on the fact that respondent Baosteel Group's data indicated that the specification of the ferro-silicon purchased by Baosteel Group was of the higher silicon content material. We note that respondents Benxi and Angang also proposed valuing ferro-silicon based on *Indian Import Statistics* data for ferro-silicon containing more than 55 percent silicon, albeit for an earlier period. Also, the Department determined that the surrogate value for slag submitted by both respondents and petitioners was unreliable. According to *New Steel*, February 1997, pages 24 and 44, slag has a relatively low value compared to the price of steel. Because the Indian values for slag were unusually high compared to the price of the subject merchandise, the Department has preliminarily used values for slag from the U.S. Geological Survey *Minerals, Commodities Summaries* from 1998. See *Factor*

*Valuation Memorandum.* We valued ammonium sulphate, which was reported as a by-product for respondent Angang, based on Indian Chemical Weekly and we excluded taxes. The Indian surrogate value proposed by respondents Angang and Benxi represented a sale of only one metric ton. Finally, as the surrogate values for oxygen, nitrogen, and argon appeared aberrational compared with valuation data used for these factors in the *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China (CTL Plate)*, 62 FR 61964, (November 20, 1997) we relied on October 1996 price information from Bhoruka Gases Limited, an Indian manufacturer of Industrial Gases for surrogate values for oxygen, nitrogen, and argon gases. This information was adjusted for inflation using data from the International Monetary Fund's *International Financial Statistics*.

As explained above, respondents Baosteel Group and Angang sourced certain raw material inputs from market economy suppliers and paid for them in market economy currencies. Specifically, Baosteel Group, Firm B of the Baosteel Group, and Angang sourced iron ore from market economy suppliers. Respondent Baosteel Group reported that four types of iron ore were purchased from market economy suppliers, namely, iron ore powder, lump iron ore powder, titanium iron ore and pellet iron powder. The evidence provided by Baosteel Group indicated that its market economy purchases of iron ore were significant. See Exhibits 4 and 9 of Baosteel Group's February 26, 2001 submission. The Department has determined to use the FOB Baosteel Group prices as reported, in accordance with 19 CFR 351.408(c)(1). However, for that portion of the iron ore powder, lump iron ore powder, and pellet iron powder shipments which were unloaded at an intermediary port, we have added an Indian surrogate river transport freight expense, given that the data indicates that the prices reported did not account for these additional expenses. Also, Baosteel Group reported that for certain of the imported iron ore imports, the marine insurance was provided by a non-market economy supplier. Where Baosteel Group reported that the marine insurance was provided by an NME supplier, we valued marine insurance from an Indian company (see below). We then added the freight and shipment expenses as well as a marine insurance expense to a weighted-average FOB Baosteel Group price to account for materials delivered

at an intermediary port. Finally, we weight-averaged the total value of the iron ore delivered directly to Baosteel Group (which included freight and marine insurance expenses) with the total value of the iron ore unloaded at an intermediately port to derive a final market-based iron ore price per category of iron ore reported.

Firm B of the Baosteel Group reported that two types of iron ore were purchased from market economy suppliers, namely, iron ore powder and iron ore lumps. The evidence provided by Firm B of Baosteel Group indicated that its market economy purchases of iron ore were significant. See March 12, 2001 submission of Firm B of Baosteel Group at D-7. The Department has determined to use the FOB Firm B prices as reported, in accordance with 19 CFR 351.408(c)(1). We added to weighted-average price for each input the weighted-average reported amount for freight.

As explained in the preamble to 19 CFR 351.408(c)(1), where the quantity of the input purchase was insignificant, we do not rely on the price paid by an NME producer to a market economy supplier. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 17, 1997). Benxi's reported information demonstrates that the quantity of one of its inputs which it sourced from market economy suppliers was so small as to be insignificant when compared to the quantity of the same input it sourced from PRC suppliers. See *Factor Valuation Memorandum* for the precise volumes. Therefore, as the amount of this reported market economy input is insignificant, we did not use the price paid by Benxi for this input and instead used *Indian Import Statistics* data, as adjusted for inflation.

To value electricity, we used 1997 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, as adjusted for inflation.

Angang purchased iron ore fines and lump iron ore from market economy suppliers during the POI, one of which was an affiliated joint venture. We compared the prices paid to the affiliated supplier with the prices paid to unaffiliated suppliers (both to Angang and Baosteel) and found that price from the affiliated supplier was within the same range as those from the unaffiliated suppliers. After having conducted this test, we calculated a weighted average of the affiliated and unaffiliated purchases to arrive at the price for iron ore fines, because Angang

had purchases from both types of market economy suppliers for this input.

Respondents reported the following packing inputs: Paper, steel strip, steel clip, steel wires, plastic board, plastic washers, inner and outer paperboard, steel cushions, and steel buckles. We used *Indian Import Statistics* data for the POI and for the period April 1, 1998 through March 31, 1999. See *Factor Valuation Memorandum*.

We used Indian transport information to value transport for raw materials. For all instances in which respondents reported delivery by truck, to calculate domestic inland freight (truck), we used a price quote from an Indian trucking company for transporting materials between Mumbai and Surat (263 kilometers), which was provided in Exhibit 32 to Baosteel Group's March 23, 2001 surrogate value submission. We converted the Indian Rupee value to U.S. dollars and adjusted for inflation through the POI. Similarly, for domestic inland freight (rail), we used freight rates as quoted from Indian Railway Conference Association price lists, which was provided in Exhibit Z to the November 22, 2000, amendment to petition in this case. We used the rate for distances between 741-750 kilometers (the lowest distance reported on the schedule) since all of the respondents are located less than 500 kilometers from the port of exit. We converted the Indian Rupee value to U.S. dollars and adjusted for inflation through the POI.

To value inland insurance, we used the Department's recently revised *Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the PRC* (available on the Department's website.) We converted the Indian Rupee value to U.S. dollars and adjusted for inflation through the POI. To value marine insurance and brokerage and handling we used a publicly summarized version of the average value for marine insurance expenses and brokerage and handling expenses reported in *Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews*, 64 FR 856 (January 6, 1999).

To value river transport, we used the surrogate value for river freight used in the *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China ("Cold-Rolled Steel from the PRC")*, 65 FR 1117 (January 7, 2000). No party submitted a surrogate value for ocean freight.

Therefore, to value ocean freight, we used the same methodology as in *CTL Plate* and the initiation of this case. We calculated the total cost, insurance, freight (CIF) value for imports of subject merchandise into the United States during the POI, subtracted the insurance and freight exclusive total Free Alongside (FAS) value, and divided the remainder by the total volume of POI importations of subject merchandise to arrive at a per unit value. *See Factor Valuation Memorandum.*

Respondents identified a number of by-products which they claimed are recovered in the production process and/or sold. However, for certain of the claimed by-products the responses are unclear as to how the various inputs are re-entered into the production process. Therefore, the Department has only offset the respondents' cost of production by the amount of a reported by-product (or a portion thereof) where respondents' responses indicated that it was sold and/or where the record evidence clearly demonstrates that the by-product was re-entered into the production process. We intend to examine this issue more closely at verification for all respondents. *See Factor Valuation Memorandum* for a complete discussion of by-product credits given and the surrogate values used.

To value factory overhead, and selling, general and administrative expenses ("SG&A"), we calculated simple average rates based on financial information from two Indian integrated steel producers, SAIL and Tata. For profit, we used information from Tata. Although respondents requested that we use financial information from another Indian steel producer, that steel producer is a mini-mill, and its financial information would be less comparable to that of the respondents, as the respondents operate integrated steel production facilities. (For a further discussion of the surrogate values for overhead, SG&A and profit, see *Factor Valuation Memorandum.*)

For labor, consistent with section 351.408(c)(3) of the Department's regulations, 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>*). The source of the wage rate data on the Import Administration's Web site is the *1999 Year Book of Labour Statistics*, International Labor Office (Geneva: 1999), Chapter 5B: Wages in Manufacturing.

#### Verification

As provided in section 782(i)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

#### Rate for Producers/Exporters That Responded Only to Separate Rates Questionnaire

For those PRC producers/exporters that responded to our separate rates questionnaire but did not respond to the full antidumping questionnaire because they were not selected to respond (*i.e.*, Panzihua and WISCO), we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected to respond. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41350 (August 1, 1997).

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average percent margin
Angang Group International Trade Corporation .....	64.77
Shanghai Baosteel Group Corporation .....	40.74
Benxi Iron & Steel Group Co., Ltd. ....	67.44
Panzihua Iron & Steel (Group) Company .....	44.47
Wuhan Iron & Steel Group Corporation .....	44.47
China-Wide .....	67.44

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether

the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c).

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10853 Filed 5-2-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-485-806]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Hot-Rolled Carbon Steel Flat Products From Romania

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Riker or Charles Riggall at (202) 482-0186, (202) 482-0650, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (2000.)

#### Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat products (HRS) from Romania are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

#### Case History

This investigation was initiated on December 4, 2000. See *Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products From Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and*

*Ukraine*, 65 FR 77568 (December 12, 2000) (*Initiation Notice*). Since the initiation of these investigations,<sup>1</sup> the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice* at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of hot-rolled carbon steel products from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000, from Energizer on December 15, 2000, from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000, and from Corus Staal BV and Corus Steel U.S.A., Inc. (collectively referred to as Corus), from Thomas Steel Strip Corporation on December 26, 2000, and from Rayovac Corporation on March 12, 2001.

On December 28, 2000, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of the products subject to this investigation are threatening or are materially injuring an industry in the United States producing the domestic like product. See *Hot-Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 66 FR 805 (January 4, 2001).

On January 4, 2001, the Department issued an antidumping questionnaire to the government of Romania, the mandatory respondent in this case. We also sent copies of the questionnaire to Gavazzi Steel and Sidex S.A. (Sidex), both of whom had been identified as producers/exporters of the subject merchandise by the petitioners. On January 30, 2001, we received a letter from Sidex stating that Gavazzi Steel, a producer of the subject merchandise in Romania, did not sell the subject merchandise to the United States during the period of investigation (POI) and that only HRS produced by Sidex was exported to the United States during the POI. On February 1 and February 26, 2001, we received questionnaire responses from Sidex, Sidex Trading,

SRL, Sidex International, Plc (jointly, the Sidex Exporters), Metalexportimport, S.A. (MEI), Metanef, S.A. (Metanef) and Metagrimes, S.A. (Metagrimes). We issued supplemental questionnaires to Sidex and the Sidex Exporters, MEI, Metanef and Metagrimes on March 12, 2001, and received responses on March 31, 2001. On February 1, 2001, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from both the petitioners and the respondents regarding surrogate country selection on February 6, 2001. Between February 6 and April 11, 2001, the petitioners and the respondents submitted additional comments regarding issues they believed the Department should consider for the purposes of the preliminary determination.

On April 11, 2001, counsel for Sidex and the Sidex Exporters, Metanef, MEI and Metagrimes submitted a letter from the Embassy of Romania which stated that Gavazzi Steel made no exports of subject merchandise to the United States during the POI.

#### Period of Investigation

The POI for HRS from Romania is April 1, 2000 through September 30, 2000. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2000).

#### Scope of the Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation.

Specifically included within the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF

<sup>1</sup> The petitioners in these investigations are Bethlehem Steel Corporation, Gallatin Steel Company, IPSCO Steel Inc., LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., U.S. Steel Group (a unit of USX Corporation), Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America (collectively the petitioners). Weirton Steel Corporation is not a petitioner in the investigation involving (HRS) from the Netherlands.

steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506). Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping

and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this investigation is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### *Nonmarket Economy Status*

The Department has treated Romania as a non-market-economy (NME) country in all past antidumping investigations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless, Standard, Line and Pressure Pipe From Romania*, 65 FR 39125 (June 23, 2000). A designation as a NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act).

On January 3, 2001, we received a letter from the Romanian Undersecretary of State requesting market economy status. In response, the Department issued a letter outlining the proper form and procedures for making a request for market economy status. *See Letter from Gary Taverman to the Government of Romania* (January 5, 2001). There has been no further

communication from the Romanian government on this issue.

When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the *Normal Value* section, below.

#### *Separate Rates*

It is the Department's policy to assign all exporters of subject merchandise subject to investigation in a NME country a single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. For purposes of this "separate rates" inquiry, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), 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*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes the following: (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 with respect to exports is based on the following four criteria: (1) Whether the export prices are set by or subject to 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 autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. (*See Silicon Carbide*, 59 FR at 22587.)

We have determined, according to the criteria identified in *Sparklers* and *Silicon Carbide*, that the evidence of record demonstrates an absence of

government control, both in law and in fact, with respect to exports by Metagrimex, Metanef, MEI and the Sidex Exporters. In the case of Metagrimex, that company was established as a privately-owned limited-liability trading company after Romania began its extensive privatization program in 1990; the company has never been state-owned nor controlled by provincial or local governments. In the case of Metanef and MEI, although these companies were previously state-owned, they have since become privately-held trading companies in accordance with legislative enactments decentralizing the companies' control. Moreover, a review of the corporate governance rules of each of these three companies indicates that they are only limited by their respective articles of incorporation and bylaws. Specifically, the information on the record shows that MEI, Metagrimex and Metanef are autonomous in selecting their management, negotiating and signing contracts, setting their own export prices, and retaining their own profits.<sup>2</sup> In the case of Sidex and the Sidex Exporters, although Sidex remains primarily state-owned, the record evidence indicates that the government exercises no control over the daily operations of the company, and that the company operates independently in the selling of the subject merchandise. In the case of Sidex, we note that one of the seven directors of the company is a government official. Otherwise, Sidex and the Sidex Exporters appear to operate independent of government control with respect to the selection of their management, negotiating and signing contracts, setting their own export prices and retaining their own profits.

For a complete discussion of the Department's preliminary determination that Metagrimex, Metanef, MEI and the Sidex Exporters are entitled to separate rates, see the April 23, 2001, memorandum, *Assignment of Separate Rates for Respondents in the Antidumping Duty Investigation of Certain Hot-Rolled Carbon Steel Flat Products from Romania*, which is on file in the Central Records Unit (CRU), room B-099 of the main Commerce Department Building.

<sup>2</sup> We note that an issue has been raised as to whether it is appropriate to assign a margin to any Romanian company other than Sidex, because the evidence on the record may suggest that Sidex has a more direct role in U.S. sales of HRS than is typically seen in NME cases. This issue will be examined closely at verification.

#### *Romania-Wide Rate*

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters comprise a single entity under common government control, the "NME entity." Therefore, the Department assigns a single NME rate to the NME entity, unless an exporter can demonstrate eligibility for a separate rate. If all exporters, accounting for all exports of subject merchandise to the United States during the POI, demonstrate eligibility for a separate rate, the Department will calculate an "all others" rate as it does in market economy cases. However, if record evidence suggests that all exporters have not responded to at least the Department's initial shipment information query, the Department will rely on its presumption that there is an additional entity under government control and will assign a country-wide rate to the NME entity. Such is the situation in this investigation. Specifically, we have been unable to confirm through a comparison of the reported data to public sources, that no other company exported HRS to the United States during the POI.

In an effort to confirm that all sales of HRS from Romania were indeed accounted for in the reported sales volumes for each of the respondents in this investigation, we compared the total sales quantity for all four respondents to total imports of HRS from Romania as reported by the U.S. Customs Service. According to the U.S. Customs Service, total imports of HRS from Romania during the POI were significantly higher than the total sales quantity reported to the Department by the four respondents. See *Memorandum to the File from Valerie Ellis Regarding IM-145 data for POI Imports from Romania* (April 19, 2001). Given this, we believe that additional exporters of the subject merchandise exist that have not responded to the Department's questionnaire.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that 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) of the Act, 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.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, e.g., *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819-20 (October 16, 1997). Section 776(b) of the Act also provides that an adverse inference may include reliance on information derived from the petition. See also Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994).

The SAA, at 870, and section 351.308(c)(1) of the Department's regulations, clarify that information from the petition is "secondary information." If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that corroboration means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

On January 4, 2001, we sent an antidumping questionnaire to the Government of Romania requesting that they transmit the questionnaire to all of the companies in Romania who produce or export the subject merchandise to the United States. There is no record evidence as to whether or not they did so. Although we received questionnaire responses from the exporters named in the petition, as well as from additional trading companies not named in the petition, as discussed above, Customs data indicate that these exporters do not account for all exports of the subject merchandise to the United States during the POI. As a result, the Department presumes that there is an additional NME entity that has not responded to our questionnaire and determination of a country-wide rate is appropriate. Because the information necessary to

calculate a country-wide rate is not available on the record, we have determined the country-wide rate based on the facts available, pursuant to section 776(a)(1) of the Act. In addition, pursuant to section 776(b) of the Act, we are using an adverse inference in selecting among the facts otherwise available because the NME entity failed to cooperate to the best of its ability by not responding to the Department's questionnaire. As adverse facts available, we have assigned a rate of 88.62 percent, the highest rate contained in the petition, as the Romania-wide rate.

To corroborate the petition rate of 88.62 percent, we examined the basis of the rate contained in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price and normal value calculations on which the petition margin calculation was based. The U.S. price in the petition was based on import average unit values. Based on a comparison of the U.S. Census Bureau's official IM-145 import statistics with the average unit values in the petition, we find the export price suggested in the petition to be consistent with those statistics. The normal value was based on a factors of production analysis using public information, reasonably available to the petitioners, to value the factors. The petitioners estimated the factors of production by using a U.S. company's experience in manufacturing a like product during the first nine months of 2000. Where appropriate, the factors were adjusted for known differences using publicly available *UN Commodity Trade Statistics*. We compared the factors used by the petitioners in the petition to the factors provided by the respondents and find them to be similar. In addition, the information used to value the factors comes from public, published sources. For these reasons, we find the petition rate used as adverse facts available to be corroborated for the purposes of this investigation.

#### *Fair Value Comparisons*

To determine whether sales of the subject merchandise by Metagrimex, Metanef, MEI and the Sidex Exporters to the United States were made at LTFV, we compared the export price (EP) to the NV, as described in the *Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to weighted-average NVs.

#### *Export Price*

We used EP methodology in accordance with section 772(a) of the Act, because the Sidex Exporters, Metagrimex, Metanef and MEI sold the merchandise directly to unaffiliated customers in the United States prior to importation, and CEP methodology was not otherwise indicated.

##### 1. The Sidex Exporters

We calculated EP based on packed FOB Galati prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant to the port of embarkation and brokerage and handling in Romania. Because domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Egypt. (See the *Normal Value* section for further discussion.)

##### 2. Metanef

We calculated EP based on packed FOB Galati prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant to the port of embarkation and brokerage and handling in Romania. As with the Sidex Exporters, because domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Egypt. (See the *Normal Value* section for further discussion.)

##### 3. Metagrimex

We calculated EP based on packed FOB Galati prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant to the port of embarkation and brokerage and handling in Romania. As with the Sidex Exporters and Metanef, because domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Egypt. (See the *Normal Value* section for further discussion.)

##### 4. MEI

We calculated EP based on packed FOB Galati prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for inland freight from the plant to the port of embarkation and brokerage and handling in Romania. As

with the other Romanian companies, because domestic brokerage and handling and inland freight were provided by NME companies, we based those charges on surrogate rates from Egypt. (See the *Normal Value* section for further discussion.)

#### *Normal Value*

##### A. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and (2) are significant producers of comparable merchandise. The Department initially determined that the Philippines, the Dominican Republic and El Salvador are the countries most comparable to Romania in terms of overall economic development. We subsequently included Egypt, Ecuador and Algeria among the countries which are economically comparable to Romania because Egypt's per-capita GNP and overall economic development were also similar to that of Romania. See the January 22 and March 30, 2001 memoranda from Jeff May, Director, Office of Policy to Gary Taverman, Director, Office 5, AD/CVD Enforcement.

According to the information on the record, we have determined that Egypt is a significant producer of products comparable to the subject merchandise among the above-referenced potential surrogate countries, and provides the necessary factor price information for most of the factors of production. Accordingly, where possible, we have calculated NV using Egyptian prices to value the Romanian producer's factors of production. We have obtained and relied upon publicly available information whenever possible. Where we did not have reliable Egyptian values, we used values for inputs from the Philippines, which, to a lesser degree, produces comparable products to the subject merchandise, as well. Where the producer purchased factor inputs from a market-economy supplier in significant quantities and paid in a convertible currency, we used the actual prices paid to value all of the input.

##### B. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Sidex, the company in Romania that produced hot-rolled carbon steel flat products, for the exporters that sold hot-rolled carbon steel flat products to the United States

during the POI. To calculate NV, the reported unit factor quantities were multiplied by publicly available Egyptian and, where necessary, Philippine values.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. We added to surrogate values a surrogate freight cost using the distance from the seaport to the factory or the reported distance from the domestic supplier to the factory, whichever distance was shorter. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For those freight values not contemporaneous with the POI, we adjusted for inflation using consumer price indices published in the International Monetary Fund's International Financial Statistics.

We valued material inputs and packing material by Harmonized Tariff Schedule (HTS) number, using imports statistics from the UN Commodity Trade Statistics for 1998. Where a material input was purchased in a market-economy currency from a market-economy supplier, we valued all of the input at the actual purchase price in accordance with section 351.408(c)(1) of the Department's regulations. For a complete analysis of surrogate values, see the April 23, 2001 memorandum, *Factors of Production Valuation for Preliminary Determination (Valuation Memorandum)*, on file in the CRU.

We valued labor using the method described in 19 CFR 351.408(c)(3).

To value electricity, we used the electricity rates for Egypt reported in the January 2000 Middle East and North Africa Region Infrastructure Development Unit publication *Republic of Yemen Comprehensive Development Review (Phase I) Power and Energy Sector Report*.

We based our calculation of depreciation, selling, general and administrative (SG&A) expenses and profit from the financial statements of Alexandria National Iron and Steel Works, an Egyptian producer of products comparable to the subject merchandise. We were unable to calculate an appropriate overhead ratio from any of the information on the record.

To value truck and rail freight rates, we used a 1999 rate, adjusted for inflation, provided by the Egyptian Consulting House, a member of AGN International. For barge transportation, we valued barge rates using an Egyptian rate from an Egyptian freight forwarder

for steel coil and coal in bulk from Alexandria to Hulwan, Egypt, as adjusted for inflation.

For brokerage and handling, we used a 1999 rate provided by a trucking and shipping company located in Alexandria, Egypt. For further details, see *Valuation Memorandum*.

*Verification*

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Romania entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

Exporter/manufacturer	Margin (percent)
Sidex Trading, SRL & Sidex International, Plc .....	22.97
Metanef, S.A .....	32.36
Metagrimex, S.A .....	33.40
Metalexportimport, S.A .....	25.60
Romania-Wide .....	88.62

The Romania-wide rate applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

*Postponement of Final Determination and Extension of Provisional Measures*

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant portion of exports of the subject merchandise or, if in the event of a negative determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by the respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

On April 11, 2000, we received a request from the respondents for postponement of the final determination and an extension of the provisional measures. Because the preliminary determination in this case is affirmative, the requesting respondents account for a significant percent of the exports to the United States and there is no compelling reason to deny the respondents' request, we have extended the deadline for issuance of the final determination in this case until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

*ITC Notification*

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine by the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

*Public Comment*

In accordance with 19 CFR 351.224, the Department will disclose to the parties the details of its antidumping calculations. Case briefs will be due two weeks after the issuance of the final verification report in conjunction with this investigation. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one HRS case, the Department may schedule a single hearing to encompass all cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the final determination will be issued within 135 days after the date of publication of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10854 Filed 5-2-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-817]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Angelica Mendoza or Nancy Decker at (202) 482-3019 and (202) 482-0196, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 2000).

#### Preliminary Determination

We preliminarily determine that certain hot-rolled carbon steel flat

products (HR) from Thailand are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

#### Case History

On December 4, 2000, the Department initiated antidumping investigations of HR products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. *See* Initiation of Antidumping Duty Investigation: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 65 FR 77568 (December 12, 2000) (Initiation Notice). The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, U.S. Steel Group (a Unit of USX Corporation), Gallatin Steel Company, IPSCO Steel Inc., Nucor Corporation, Steel Dynamics, Inc., Weirton Steel Corporation, and Independent Steelworkers Union. Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See* Initiation Notice at 77569. We received no comments from any parties in this investigation. The Department did, however, receive comments regarding product coverage in the investigation of hot-rolled carbon steel products from the Netherlands. In that investigation we received comments from Duracell Global Business Management Group on December 11, 2000, from Eveready Battery Co., Inc., on December 15, 2000, from Bouffard Metal Goods, Inc., and Truelove & Maclean, Inc., on December 18, 2000, and from Corus Staal BV and Corus Steel U.S.A., Inc., and Thomas Steel Strip Corporation on December 27, 2000.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HR products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus Staal BA and Corus Steel USA Inc., (Corus), respondent in the Netherlands investigation (January 3, 2001); Iscor Limited (Iscor), respondent in the South Africa investigation (January 3, 2001);

and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime vs. Secondary Merchandise." *See* the Department's Antidumping Duty Questionnaire, at B-7 and C-7. These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. On January 4, 2001, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. *See* Hot-Rolled Steel Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine, 66 FR 805-02 (January 4, 2001).

On January 4, 2001, the Department issued all sections of its antidumping duty questionnaire to Sahaviriya Steel Industries Public Co., Ltd. (SSI), Siam

Strip Mill Public Co., Ltd. (SSM), and Nakornthai Strip Mill Public Co., Ltd. (Nakornthai). Prior to issuing the antidumping duty questionnaire, the Department received a letter, dated December 25, 2000, from Nakornthai indicating that its mill was not in operation and that it made no sales of subject merchandise during the period of investigation (POI). On January 16, 2001, the Department received Nakornthai's response to Section A of the questionnaire which further stated that it was not in operation during the POI and, therefore, should not be subject to this investigation. On January 18, 2001, Nakornthai submitted additional evidence regarding its non-production of merchandise subject to this investigation. On January 24, 2001, the Department issued a letter indicating that based on Nakornthai's response to Section A of the questionnaire that it was not currently required to respond to Sections B, C, and D. The Department did not receive a response to any section of the questionnaire from SSM. On January 25, 2001, the Department received SSI's response to Section A of the questionnaire. On February 16, 2001, petitioners filed comments on SSI's section A response. On March 1, 2001, the Department issued a supplemental questionnaire for SSI's Section A response. SSI responded on March 16, 2001.

SSI filed its responses to Sections B, C, and D of the questionnaire on February 26, 2001. On March 5, 2001, petitioners submitted comments on SSI's Sections B, C, and D responses. The Department issued a supplemental questionnaire for responses to Sections B and C on March 12, 2001. The Section D supplemental questionnaire was issued on March 12, 2001. The Department received responses to the Sections B-D supplemental questionnaires on March 26, 2001 and March 28, 2001.

#### Period of Investigation

The POI is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (i.e., November 2000), and is in accordance with our regulations. See section 351.204(b)(1). We based our analysis on sales transactions made within the POI by date of sale. For the home market we treated the date of the final commercial invoice as the date of sale. For the U.S. market we treated the date of the final contract as the date of sale.

#### Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this investigation. Specifically included within the scope of this investigation are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided

above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this investigation: level exceeding 2.25 percent.

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, e.g., ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this investigation is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this investigation, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and

7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### **Date of Sale**

SSI states that in the home market, customers submitted purchase orders and SSI issued order confirmations, but that it was not uncommon for both quantity and value to change between the order confirmations and the issuance of the commercial invoice (which occurred at the time of shipment for home market sales). Based upon the above information, we have preliminarily determined that the invoice date is the appropriate date of sale for home market sales.

For U.S. sales, SSI has indicated that the appropriate date of sale is the date of the final commercial invoice, which is essentially the bill of lading date. However, due to an accounting error, SSI did not record the final commercial invoice dates as the bill of lading dates in its accounting system during the POI; instead, the final commercial invoice dates were recorded as the same date as the pre-shipment invoices. Thus, SSI has requested that the Department use the bill of lading date, which is the date of shipment, as a surrogate for the invoice date because this date most closely corresponds to the date of issuance of the final commercial invoice. As to whether the invoice date or the contract date better represents the date of sale, SSI has indicated that the quantity and price terms frequently change after the contract date, whereas the terms of sale do not change after the invoice date. SSI therefore concludes that the terms of sale are established on the date of the final commercial invoice.

We have examined whether the final commercial invoice date or some other date better represents the date on which the material terms of sale were established. The Department has examined the information submitted by SSI concerning the company's initial contracts, final contracts, pre-shipment invoices, and final commercial invoices for its U.S. sales, and has found that the material terms of sale are set at the final contract date. Specifically, we find that the changes in quantity and price referred to by SSI occur after the initial contract date, but not after the final contract date. We note, however, that in some instances there were changes in quantity after the final contract date. We find these changes to be minimal and to have affected a relatively insignificant volume of subject merchandise shipped to the United States. Moreover, unit

prices for the products did not change between the final contract date and invoice date. For business proprietary details of our analysis of the date of sale issue, see Memo to the File regarding Antidumping Duty Investigation on Certain Hot-Rolled Carbon Steel Flat Products from Thailand; Preliminary Determination Analysis for Sahaviriya Steel Industries, Inc. (April 23, 2001) (Analysis Memo). Moreover, we find no basis to use a surrogate date of sale, such as shipment date (bill of lading date), where another date establishes the terms of sale. Accordingly, for U.S. sales, we have preliminarily determined that the final contract date is the appropriate date of sale in this investigation because it better represents the date upon which the material terms of sale were established.

#### **Product Comparisons**

Pursuant to section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation, above, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on eleven criteria, in descending order of importance, to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether painted or not, quality, carbon content level, yield strength, thickness, width, whether coil or cut sheet, whether temper rolled or not temper rolled, whether pickled or not pickled, whether mill-edge or trimmed, and with or without patterns in relief. 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, based on the characteristics and characteristic subcategories indicated in the Department's January 4, 2001, questionnaire.

#### **Facts Available (FA)**

##### *SSM*

As noted above under "Case History," SSM failed to respond to the Department's antidumping questionnaire. Section 776(a)(2)(A) of the Act provides that "if any 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 statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

In this proceeding, SSM provided no response to the Department's antidumping questionnaire. Because SSM provided no information whatsoever, sections 782 (d) and (e) of the Act are not applicable, and the Department is required to resort to the use of facts available for this respondent, in accordance with 776(a)(2)(A) of the Act. Moreover, we note that at no time did SSM contact the Department and state it was having difficulty responding to the questionnaire or otherwise explain why it could not provide the requested information. On January 25, 2001, we contacted counsel for SSM to inquire if SSM would be submitting a response to Section A of the Department's antidumping questionnaire. Counsel confirmed that SSM would not be filing any such response. See Memorandum to the File from Angelica Mendoza (January 25, 2001). Thus, we have also determined that this respondent has not cooperated to the best of its ability. Therefore, pursuant to section 776(b) of the Act, we used an adverse inference

in selecting a margin from the FA. As FA, the Department has applied a margin rate of 20.30 percent, the highest alleged margin based on our recalculation for Thailand in the petition. See Memorandum from Joseph A. Spetrini to Bernard T. Carreau, Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Determination of Sales at Less Than Fair Value—The Use of Facts Available for Siam Strip Mill Public Co. Ltd, and the Corroboration of Secondary Information, dated April 23, 2001 (Facts Available Memorandum).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on “secondary information,” such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department’s disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, (1994) (hereinafter, the SAA) states that “corroborate” means to determine that the information used has probative value. See SAA at 870.

In this proceeding, we considered the petition information the most appropriate record information to use to establish the dumping margins for this uncooperative respondent because, in the absence of verifiable data provided by SSM, the petition information is the best approximation available to the Department of SSM’s pricing and selling behavior in the U.S. market. In accordance with section 776(c) of the Act, we sought to corroborate the data contained in the petition.

To corroborate the margin calculations in the petition, we examined the data relied upon in making those calculations. The export prices (EP) in the petition were based on import values compiled by the U.S. Customs Service. These data are from publicly available sources (i.e., official U.S. government statistics). Therefore, we find that the U.S. price from the petition margin is sufficiently corroborated.

For the normal value (NV) calculation, petitioners relied upon constructed value (CV), consisting of cost of manufacture (COM), selling, general, administrative expenses (SG&A), interest expenses, and profit. Petitioners based depreciation, SG&A, interest, and profit on publicly available financial statements of a Thai steel producer (SSI, a respondent in this investigation). Therefore, because these data are based on publicly available financial statements, we find them to be sufficiently corroborated. Petitioners calculated COM based on their own

production experience, adjusted for known differences between costs incurred to produce HR in the United States and Thailand using publicly available data. To corroborate these data, we compared it to the reported COM of SSI and its affiliates. Our analysis showed that the petitioners’ reported costs were reasonably close to the data submitted by SSI and its affiliates. Based on this analysis, we find that the COM data used in the antidumping petition have probative value. See Facts Available Memorandum.

#### Fair Value Comparisons for SSI

To determine whether sales of certain hot-rolled carbon steel flat products from Thailand were made in the United States at LTFV, we compared the EP to the NV, as described in the Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated POI weighted-average EPs for comparison to POI weighted-average NVs.

#### Export Price

We used EP methodology in accordance with section 772(a) of the Act because SSI sold the merchandise under investigation directly to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States prior to the date of importation, and because a CEP methodology was not otherwise indicated. We based EP on packed prices to the first unaffiliated customer. In accordance with section 772(c)(2), we made deductions from the starting price for movement expenses, including foreign inland freight and customs brokerage and handling.

#### Normal Value

##### A. Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., whether the aggregate quantity of the foreign like product is equal to or greater than five percent of the aggregate quantity of U.S. sales), we compared SSI’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) of the Act. Since SSI’s aggregate quantity of home market sales of the foreign like product was greater than five percent of its aggregate quantity of U.S. sales for the subject merchandise, we determined that the home market was viable for SSI. Therefore, we have based NV on home

market sales in the usual commercial quantities and in the ordinary course of trade.

##### A. Affiliate Party Transactions and Arm’s Length Test

To test whether sales to affiliated end-user customers are made at arm’s length prices, we compare, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers net of all movement charges, billing adjustments, discounts, direct selling expenses, and packing. Where, for the tested models of foreign like product, prices to the affiliated party are on average 99.5 percent or more of the price to unaffiliated parties, we determine that such sales are made at arm’s length prices. See 19 CFR 351.403(c); see also Antidumping Duties; Countervailing Duties Final Rule, 62 FR 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm’s-length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm’s length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. See 19 CFR 351.102. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

##### C. Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that Thai producers had made sales of HR in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

##### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of SSI’s cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A), interest expenses, and packing costs. The Department relied on the COP and CV data submitted by SSI on February 26, 2001 with the exception of the following: (1) SSI reported a SG&A

expense ratio that was derived using POI information (i.e., three-months of 1999 and nine-months of 2000). In accordance with our established practice, we recalculated SSI's SG&A expense ratio using information from the company's audited financial statements; (2) SSI reported a financial expense ratio that was derived using unconsolidated POI information (i.e., three-months of 1999 and nine-months of 2000). In accordance with our established practice, we recalculated SSI's financial expense ratio using information from its consolidated financial statements. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from France, 64 FR 73143, 73152 (Dec. 29, 1999). This practice has been upheld by the Court of International Trade. See *Gulf States Tube v. United States*, 981 F. Supp. 630 (CIT 1997).

## 2. Test of Home Market Sales Prices

We compared the weighted-average COP for SSI to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, discounts, and billing adjustments.

## 3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of SSI'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 SSI's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Act, within an extended period of time. In such cases because we compared prices to weighted-average COPs for the POI, we also determined that such sales were made 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. Therefore, we disregarded those below-cost sales.

## D. Price-to-Price Comparison

We based NV for SSI on prices of home market sales that passed the COP test. We made deductions for billing adjustments and discounts. We made deductions, where appropriate, for inland freight and inland insurance, pursuant to section 773(a)(6)(B) of the Act. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act, and 19 CFR 351.411. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. In accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we made circumstances of sale (COS) adjustments for imputed credit expense, interest revenue, and warranties. For the calculation of imputed credit expense, we based credit days on the number of days between estimated shipment from the plant and payment date, rather than the number of days between shipment from the port and payment date (see Analysis Memo). We also re-coded all home market and U.S. sales that incurred warranty expenses. For further information, see Analysis Memo.

## Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs actually existed in the home market for the respondent, we examine whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

SSI claimed one LOT in the U.S. and two LOTs in the home market: LOT 1 includes direct sales to end-users, trading companies, and service centers; and LOT 2 includes all sales made through its affiliates. SSI claimed that all U.S. sales are at the same LOT as LOT 1 in the home market. SSI reported four channels of distribution for home market sales made through LOT 1 and LOT 2. The first channel of distribution was sales made through unaffiliated trading companies with one customer category (i.e., end-users). The second channel of distribution was sales made through affiliated trading companies with two customer categories (i.e., end-users and service centers). The third channel of distribution was direct sales with one customer category (i.e., unaffiliated end-users). The fourth channel of distribution was direct sales with one customer category (i.e., end-users/resellers).

In analyzing SSI's selling activities for its home market and U.S. market, we determined that essentially the same services were provided for both markets. Due to the proprietary nature of the levels of these selling activities, for further analysis, see Analysis Memo. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as the LOT for all sales in the home market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for SSI.

## Currency Conversions

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the

benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96-1: Currency Conversions (61 FR 9434, March 8, 1996).)

**Verification**

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

**All Others**

Pursuant to sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act, the estimated all-others rate is equal to the estimated weighted average dumping margin established for SSI, the only exporter/producer investigated.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of HR producers from Thailand, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins in the preliminary determination are as follows:

Exporter/manufacture	Margin (percent)
SSI .....	7.48
SSM .....	20.30
All Others .....	7.48

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

**Public Comment**

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several HR cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10855 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-583-835]

**Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Taiwan**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary determination of sales at less than fair value.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Patricia Tran or Robert James at (202) 482-1121 and (202) 482-0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

We preliminarily determine that certain hot-rolled carbon steel flat products from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in Section 733 of the Tariff Act. The estimated margin of sales at LTFV is shown in the "Suspension of Liquidation" section of this notice.

**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 to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to the regulations at 19 CFR part 351 (April 1, 2000).

**Case History**

On December 4, 2000, the Department initiated antidumping investigations of certain hot-rolled carbon steel flat products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine. See *Notice of Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, Kazakhstan, the Netherlands, the People's Republic of China, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 65 FR 77568 (December 12,

2000) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice* at 77569. We received no comments from any parties in this investigation. However, we did receive comment in the hot-rolled investigation regarding the Netherlands as follows: from Duracell Global Business Management Group on December 11, 2000; from Energizer on December 15, 2000; from Bouffard Metal Goods Inc. and Truelove & MacLean, Inc. on December 18, 2000; from the Corus Group plc., which includes Corus Steel USA (CSUSA) and Corus Staal BV (Corus Staal), and Thomas Steel Strip on December 26, 2000; and from Rayovac Corporation on March 12, 2001.

On December 22, 2000, the Department issued a letter to interested parties in all of the concurrent HR products antidumping investigations, providing an opportunity to comment on the Department's proposed model matching characteristics and hierarchy. Comments were submitted by: petitioners (January 5, 2001); Corus Staal BV and Corus Steel USA Inc., (Corus), respondent in the Netherlands investigation (January 3, 2001); Iscor Limited (Iscor), respondent in the South Africa investigation (January 3, 2001); and Zaporizhstal, respondent in the Ukraine investigation (January 3, 2001). Petitioners agreed with the Department's proposed characteristics and hierarchy of characteristics. Corus suggested adding a product characteristic to distinguish prime merchandise from non-prime merchandise. Neither Iscor nor Zaporizhstal proposed any changes to either the list of product characteristics proposed by the Department or the hierarchy of those product characteristics but, rather, provided information relating to its own products that was not relevant in the context of determining what information to include in the Department's questionnaires. For purposes of the questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its December 22, 2000 letter. With respect to Corus' request, the additional product characteristic suggested by Corus, to distinguish prime from non-prime merchandise, is unnecessary. The Department already asks respondents to distinguish prime from non-prime merchandise in field number 2.2 "Prime

vs. Secondary Merchandise." See the Department's Antidumping Duty Questionnaire, at B-7 and C-7. These fields are used in the model match program to prevent matches of prime merchandise to non-prime merchandise.

On December 28, 2000, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Taiwan. On January 4, 2001, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Taiwan (66 FR 805).

On January 4, 2001, the Department issued its antidumping duty questionnaire to China Steel Corporation (China Steel), Yieh Loong Enterprise Co., Ltd. (Yieh Loong), and An Feng Steel Co., Ltd. (An Feng). On February 2, 2001, the Department received from China Steel and Yieh Loong the response to Section A of the questionnaire. (An Feng never responded to any of the Department's questionnaires. See the section "Facts Available" (below).) On February 15, 2001 and February 21, 2001, the petitioners filed comments on the Section A responses of both China Steel and Yieh Loong. On February 27, 2001 the Department issued a supplemental questionnaire for China Steel's and Yieh Loong's Section A responses. The two companies submitted their responses on March 20, 2001. China Steel made additional submissions in follow-up to its March 20, 2001 response on March 21 and March 26, 2001.

China Steel and Yieh Loong filed their Section B, C, and D responses on February 26, 2001. On March 6, 2001 petitioners submitted comments on the Section B, C, and D responses of China Steel and Yieh Loong. The Department issued a supplemental questionnaire to China Steel and Yieh Loong regarding their Section B and C responses on March 15, 2001. On April 3, 2001, China Steel and Yieh Loong filed their supplemental Section B and C responses. On March 16, 2001, petitioners submitted additional comments regarding China Steel's Section D response. On March 21, 2001, petitioners filed additional comments regarding Yieh Loong's Section D response. The Department issued supplemental questionnaires concerning Yieh Loong's Section D response on March 21, 2001, and concerning China Steel's Section D response on March 23, 2001. The Department received the

responses to these supplemental questionnaires on April 9, 2001.

On April 17, 2001 and April 18, 2001, the Department issued another supplementary questionnaire to China Steel and Yieh Loong regarding their Section B, C and D responses. We have set a due date of April 23, 2001 for the responses.

#### Period of Investigation

The period of investigation (POI) is October 1, 1999 through September 30, 2000.

#### Scope of Investigation

For purposes of these investigations, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included within the scope of these investigations are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of these investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or

2.25 percent of silicon, or  
 1.00 percent of copper, or  
 0.50 percent of aluminum, or  
 1.25 percent of chromium, or  
 0.30 percent of cobalt, or  
 0.40 percent of lead, or  
 1.25 percent of nickel, or  
 0.30 percent of tungsten, or  
 0.10 percent of molybdenum, or  
 0.10 percent of niobium, or  
 0.15 percent of vanadium, or  
 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of these investigations unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these investigations:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.

- Ball bearing steels, as defined in the HTSUS.

- Tool steels, as defined in the HTSUS.

- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

- ASTM specifications A710 and A736.

- USS abrasion-resistant steels (USS AR 400, USS AR 500).

- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these investigations is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00,

7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel flat products covered by these investigations, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

#### Affiliations

In the dumping petition the petitioners identified An Feng, China Steel, and Yieh Loong as the principal Taiwanese producers of subject merchandise. We issued questionnaires to these three companies on January 4, 2001. (See the "Case History" section (above).) Upon analysis of the responses of China Steel and Yieh Loong, we have determined that these two companies are affiliated under Section 771(33)(E) of the Tariff Act. The Department has collapsed China Steel and Yieh Loong (hereafter referred to as "China Steel") pursuant to Section 351.401(f) of the Department's regulations for purposes of calculating a weighted-average margin. For details of the Department's analysis, see the Affiliation Memorandum, April 19, 2001, a copy of which is in room B-099 at the main Department of Commerce building. Therefore, the rate that we have assigned to China Steel (Yieh Loong's parent company) in this preliminary determination will be applicable to both China Steel and Yieh Loong.

#### Facts Available

##### *An Feng*

As noted above under "Case History," An Feng failed to respond to the Department's antidumping questionnaire. Section 776(a)(2) of the Tariff Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to

provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of Section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in Section 782(i), the administering authority and the Commission shall, subject to subsection 782(d), use the facts otherwise available in reaching the applicable determination under this title." Because An Feng failed to respond to our request for information, pursuant to Section 776(a)(2) of the Tariff Act we resorted to the facts otherwise available to calculate the dumping margin for this company.

Section 776(b) of the Tariff Act provides that the Department may use an inference that is adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for necessary information. See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316 (1994) (SAA) at 870. Failure by An Feng to respond to the Department's antidumping questionnaire constitutes a failure to act to the best of its ability to comply with a request for information within the meaning of Section 776(b) of the Tariff Act. Because An Feng failed to respond and offered no explanation for its failure, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted in selecting the facts available for this company. Because we are unable to calculate a margin for An Feng, consistent with our practice, we have assigned An Feng the highest margin alleged based on our recalculation of the petition margins. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Japan and the Republic of South Africa*, 64 FR 69718, 69722 (December 14, 1999), and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 10847, 10848 (March 5, 1998)) and *Notice of Preliminary Determinations of Sales at Less Than Fair Value: Stainless Steel Angle from Japan, Korea, and Spain*, 66 FR 2880, 2883 (January 12, 2001). Based on amendments to the petition and the Department's recalculations, where applicable, the highest margin is 29.14 percent. See *Initiation Notice* at 77576.

Section 776(b) of the Tariff Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Tariff Act provides that, when the Department relies on secondary information (such as the petition) as the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

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, U.S. Customs Service data, and information obtained from interested parties during the particular proceeding. *Id.*

To corroborate the margin calculations in the petition, we examined the data relied upon in making those calculations. The export prices (EP) in the petition were based on import values compiled by the U.S. Customs Service. These data, as recalculated by the Department using POI-wide and nation-wide averages for initiation purposes, are from publicly available sources (*i.e.*, official U.S. government statistics). Therefore, we find that the U.S. price from the petition margin is sufficiently corroborated.

For the normal value (NV) calculation, petitioners relied upon constructed value (CV), consisting of cost of manufacture (COM), selling, general, administrative expenses (SG&A), interest, packing, and profit. Petitioners based depreciation, interest, SG&A, packing, and profit on publicly available financial statements of Taiwan steel producers. Therefore, because these data are based on publicly available financial statements, we find them to be sufficiently corroborated. Petitioners based COM (net of depreciation) on their own cost experience of producing merchandise identical to that subject to this investigation. To corroborate these data, we compared it to the reported COM of China Steel and its affiliate Yieh Loong. Although we have found that these companies control numbers (CONNUMs) were mostly unusable, we were still able to make a reliable comparison with the petitioner’s COM data for corroboration purposes. We performed this comparison by first calculating the average COM for all of the CONNUMs China Steel and Yieh Loong reported in their CV databases provided with their April 9, 2001

submissions, and comparing that average to the COM petitioners provided in their submission of November 22, 2000, exhibit I–14. Our analysis showed that the petitioners’ reported costs were reasonably close to the data submitted by China Steel and Yieh Loong. Based on this analysis, we find that the COM data used in the antidumping petition have probative value. *See* Corroboration Memorandum, April 23, 2001.

#### *China Steel*

On January 4, 2001, the Department issued China Steel its antidumping duty questionnaire. The questionnaire explicitly instructed to China Steel to report all sales by affiliates to the first unaffiliated customer. However, if sales to all affiliated customers constituted less than five percent of its total sales in the home market these companies were to notify the Department. On January 19, 2001, China Steel requested to exclude themselves from reporting home market resales by affiliates. China Steel stated that its sales to its affiliates, China Steel Global Trading Corporation (China Steel Global) and China Steel Chemical Corporation (China Steel Chemical), constituted less than five percent of its total sales in the home market. On January 29, 2001, the Department replied to China Steel’s January 19, 2001 letter and stated that we could not make a determination based on the information provided. The Department requested that China Steel document whether the total quantity of subject merchandise sold to all affiliated parties (regardless of whether subject merchandise was further processed by affiliates) constituted less than five percent of total home market sales. China Steel failed to provide such information.

On February 26, 2001, China Steel submitted its response to Sections B, C, and D of the questionnaire. In this submission, China Steel only reported affiliated party sales for the companies it considered to be affiliated entities, and China Steel did not provide resales by these affiliates. China Steel coded sales to Yieh Loong, Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing) and Yieh Phui Enterprise Co., Ltd. (Yieh Phui) as sales to non-affiliated companies. Because the Department collapsed China Steel and Yieh Loong, any reseller affiliated with either China Steel or Yieh Loong is recognized as affiliated with the collapsed entity (China Steel/ Yieh Loong). *See* Affiliation Memorandum, April 19, 2001. Therefore, because of Yieh Phui’s and Yieh Hsing’s affiliation to Yieh Loong, they are affiliated with the collapsed entity, and total affiliated

party sales are greater than five percent of total home market sales. *See* Affiliated Reseller Memorandum, April 19, 2001.

On March 15, 2001, the Department issued its supplemental Sections B and C questionnaire, reiterating that China Steel must report all resales by affiliated parties (Yieh Loong, China Steel Chemical, China Steel Global, Yieh Phui, and Yieh Hsing) to the first unaffiliated party.

China Steel’s April 3, 2001 supplemental response provided incomplete and deficient information regarding affiliated parties’ resales. Although China Steel provided complete sales information for China Steel Global and China Steel Chemical, it provided minimal sales information for Yieh Phui and Yieh Hsing, and inconsistent information regarding Yieh Loong. Sales to China Steel’s affiliates constitute a significant quantity of China Steel’s home market sales, and it is necessary to have this information in order for the Department to calculate a margin. *See* Adverse Facts Available Memorandum, April 23, 2001.

Pursuant to Section 782(c) of the Act, China Steel, after receiving a request from the Department, must promptly notify the Department if it is unable to submit the information requested, together with a full explanation and suggest alternative forms in which it is able to submit the requested information to the Department. The Department has repeatedly requested China Steel to provide complete information with respect to its downstream sales as originally instructed in the January 4, 2001 antidumping questionnaire. The Department has granted a number of extensions to China Steel and Yieh Loong to permit them to provide complete and accurate questionnaire responses. China Steel stated in its April 3, 2001 narrative that it does not control Yieh Hsing and Yieh Phui; therefore, it could not provide complete and adequate information. China Steel has never suggested any alternative reporting methodology. However, the Department finds that China Steel and Yieh Loong’s ability to compel their affiliates to turn over some of the business proprietary information requested by the Department is a clear indication of their ability to exercise control over these parties.

Pursuant to Section 776(A)(B) of the Act, we find that China Steel failed to cooperate to the best of its ability because it repeatedly refused or ignored the Department’s instructions to submit accurate downstream sales data, as demonstrated by its selective

submission of China Steel's affiliates' data, and never provided alternatives or reasonable explanations for why it could not report all downstream sales. Further, without this data, the information regarding home market sales is unusable. A significant quantity of China Steel's home market sales are made through affiliates. Without this information the Department cannot calculate an accurate dumping margin.

In addition, the Department found other deficiencies that made China Steel's submission unusable for purposes of calculating a dumping margin. The principal deficiency was the failure to report certain product characteristics, e.g., quality, carbon content, yield strength, thickness, and width for a significant share of China Steel's sales to affiliated and unaffiliated customers. The Department requires the physical characteristics of paint, quality, carbon, yield strength, thickness, width, cut-to-length versus coiled, tempered rolled, pickled, edge trim, and patterns in order to match the product to its appropriate match in the United States, to ascertain whether the home market merchandise was sold at prices above the cost of production, and to calculate a difference-in-merchandise adjustment. Therefore, without complete physical characteristics for all sales, we cannot calculate an accurate margin.

Moreover, we find that China Steel's claim that it is unable to provide proper physical characteristics in the manner requested by the Department to be inconsistent with other information on the record of this case. For example, China Steel stated in its April 3, 2001 submission that physical characteristics (e.g., carbon, yield strength) can be identified from production records and inventory records as well as its product code system. In addition, China Steel states that it is still able to calculate cost for some merchandise for which it did not report complete physical characteristics. It is unclear from the record why China Steel cannot provide physical characteristics for certain sales, yet still associates costs to those same sales. Moreover, China Steel never provided any supporting documentation in regards to the sales at issue, despite the Department's request in a supplemental questionnaire that it do so. Without this documentation the Department is unable to determine the accuracy of China Steel's responses regarding this merchandise. See Adverse Facts Available Memorandum, April 23, 2001.

Therefore, because of these deficiencies, on April 17 and April 18, 2001, we issued to these companies a supplemental questionnaire, the

response for which is due April 23, 2001. We will analyze the responses to this supplemental questionnaire and issue our analysis, if appropriate, concurrent with the final determination of this investigation.

In light of China Steel's repeated failure to provide affiliated sales information and its repeated failure to provide all necessary product characteristics or to provide any meaningful explanation of why such data could not be provided, we preliminarily determine that China Steel did not cooperate to the best of its ability. Accordingly, for the purpose of this preliminary determination we have assigned, as adverse facts available, the highest margin from the antidumping petition as recalculated by the Department. See the December 4, 2000, Import Administration AD Investigation Initiation Checklist at 25, a copy of which is contained in the public file in room B-099 of the main Department of Commerce building. We consider the data from the petition to be corroborated for the reasons given above in discussing the use of the petition as the basis for adverse facts available for An Feng.

**All Others**

The estimated all-others rate is equal to the average of the dumping margins calculated in the antidumping duty petition as recalculated by the Department. See the December 4, 2000, Import Administration AD Investigation Initiation Checklist.

**Suspension of Liquidation**

In accordance with Section 733(d) of the Tariff Act, the Department will direct the Customs Service to suspend liquidation of all entries of subject merchandise from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The margins in the preliminary determination are as follows:

Exporter/manufacturer	Margin (percent)
China Steel Corporation (including Yieh Loong) .....	29.14
An Feng Steel Co., Ltd. ....	29.14
All Others .....	20.28

**ITC Notification**

In accordance with Section 733(f) of the Tariff Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are causing, or threatening, material injury to the U.S. industry.

**Public Comment**

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. 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.

Section 774 of the Tariff Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several hot-rolled carbon steel flat products cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with section 733(d) and 777(i)(1) of the Tariff Act. Since January 20, 2001, Bernard T. Carreau is fulfilling the duties of the

Assistant Secretary for Import Administration.

Dated: April 23, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-10856 Filed 5-2-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-307-820, A-533-823, and A-834-807]

#### Notice of Initiation of Antidumping Duty Investigations: Silicomanganese From Kazakhstan, India and Venezuela

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Initiation of antidumping duty investigations.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Sally Gannon (India), Robert James (Venezuela), and Jean Kemp (Kazakhstan) at (202) 482-0162, (202) 482-0649, and (202) 482-4037, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

#### Initiation of Investigations

##### *The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (2000).

##### *The Petition*

On April 6, 2001, the Department of Commerce (the Department) received a petition filed in proper form by the following parties: Eramet Marietta Inc. (Eramet) and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639 (collectively, the petitioners). The Department received from the petitioners information supplementing the petition throughout the 20-day initiation period.

In accordance with section 732(b) of the Act, the petitioners allege that imports of silicomanganese from Kazakhstan, India, and Venezuela are

being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate (see the *Determination of Industry Support for the Petitions* section below).

##### *Scope of Investigations*

For purposes of these investigations, the products covered are all forms, sizes and compositions of silicomanganese, including silicomanganese briquettes, fines and slag. Silicomanganese is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese is sometimes referred to as ferrosilicon manganese. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. Silicomanganese is properly classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also be classified under HTSUS subheading 7202.99.5040. This petition covers all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, our written description of the scope remains dispositive.

During our review of the petition, we discussed the scope with the petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by May 17, 2001. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of

scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

##### *Determination of Industry Support for the Petition*

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.<sup>1</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioners do not offer a definition of domestic like product distinct from the scope of the investigation.

In this case, "the article subject to investigation" also is substantially similar to the scope of the Department's antidumping duty order involving silicomanganese published in 1994. See *Notice of Antidumping Duty Order: Silicomanganese From the People's Republic of China (PRC)*, 59 FR 66003 (December 22, 1994). Thus, based on our analysis of the information

<sup>1</sup> See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

presented to the Department above and the information obtained and reviewed independently by the Department, we have determined that there is a single domestic like product which is defined in the *Scope of Investigations* section above, and have analyzed industry support in terms of this domestic like product.

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. The sole U.S. producer of the domestic like product, and the trade union which represents its workers, are petitioners in this case. Furthermore, the Department received no opposition to the petition. Therefore, we conclude that the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) are also met.

Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See the *Import Administration AD Investigation Checklist*, April 26, 2001 (*Initiation Checklist*) (public version on file in the Central Records Unit of the Department of Commerce, Room B-099).

#### *Export Price and Normal Value*

The following are descriptions of the allegations of sales at less than fair value upon which the Department has based its decision to initiate these investigations. The sources of data for the deductions and adjustments relating to home market price, U.S. price, constructed value (CV) and factors of production (FOP) are detailed in the *Initiation Checklist*. Where the petitioners obtained data from foreign market research, we contacted the researcher to establish its credentials and to confirm the validity of the information being provided. See Memorandum to the File, *Contacts with Source of Market Research for Antidumping Petition Regarding Imports of Silicomanganese from India and Kazakhstan*, April 23, 2001 (*Market Research for India and Kazakhstan*),

and see also Memorandum to the File, *Contacts with Source of Market Research for Antidumping Petition Regarding Imports of Silicomanganese from Venezuela*, April 23, 2001 (*Market Research for Venezuela*). Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate. The anticipated period of investigation (POI) for the market economy countries is April 1, 2000, through March 31, 2001, while the anticipated POI for Kazakhstan, the non-market economy (NME) country, is October 1, 2000, through March 31, 2001.

Regarding the investigation involving the NME, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. See, e.g., *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the PRC*, 59 FR 22585 (May 2, 1994). In the course of these investigations, all parties will have the opportunity to provide relevant information related to the issues of Kazakhstan's NME status and the granting of separate rates to individual exporters.

Lastly, export price (EP) was based on the data published by the U.S. International Trade Commission's dataweb, at <http://dataweb.usitc.gov/scripts/REPORT.asp> (dataweb). This data, as presented, is FOB customs value. Specifically, the petitioners calculated the average unit values (AUVs) of silicomanganese entering the United States from India, Kazakhstan, and Venezuela during the respective POIs, excluding February and March 2001, and made the applicable adjustments to the AUVs. The margins calculated using this methodology are as follows: India, 5.89 to 86.98 percent; Kazakhstan, 164.29 percent; and Venezuela, 20.38 to 47.14 percent.

Because the Department considers the country-wide import statistics to calculate estimated margins to be sufficient for purposes of initiation, we have initiated these investigations based on the country-wide import statistics for the POI, excluding February and March 2001, for which data was not available, for each country, respectively.

#### **India**

##### *Export Price*

The petitioners based EP on the AUV of silicomanganese imported from India under the applicable HTSUS

subheading, for the POI, excluding February and March 2001, based on the data published by the U.S. International Trade Commission's dataweb. This data, as presented, is FOB customs value. Net U.S. price was calculated by deducting foreign inland freight and brokerage and handling charges, which were based on foreign market research and inflated appropriately.

##### *Normal Value*

With respect to normal value (NV), the petitioners provided a home market price that was obtained from foreign market research for a grade, i.e., silicon and carbon content, that is comparable or identical to that of the products exported to the United States which serve as the basis for EP. The petitioners state that the home market price quotation was ex-factory, and, therefore, they did not make any deductions for movement expenses from this price.

Although the petitioners provided information on home market prices, they also provided information demonstrating reasonable grounds to believe or suspect that sales of silicomanganese in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Tariff Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Tariff Act, COP refers to the total cost of producing the foreign-like product which includes the cost of manufacturing (COM), selling, general and administrative expenses (SG&A), and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce silicomanganese in the United States and India, using publicly available data, foreign market research, and price quotes from suppliers. To calculate SG&A, petitioners relied upon the aggregate financial and cost data for the metals and chemicals sector in India published by the Reserve Bank of India (RBI). Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Tariff Act. Accordingly, the Department is initiating a country-wide cost investigation. See *Initiation of Cost Investigations* section below.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Tariff Act, petitioners

based NV for sales in India on CV. The petitioners calculated CV using the same COM and SG&A used to compute Indian home market costs. Consistent with section 773(e)(2) of the Tariff Act, petitioners included in CV an amount for profit. The petitioners calculated a profit amount using the data published by the RBI for the metals and chemicals processing and manufacturing sector.

The estimated dumping margin for India based on a comparison between EP and home market price is 5.89 percent. Based upon the comparison of EP to CV, the petitioners calculated an estimated dumping margin of 86.98 percent.

### Kazakhstan

#### Export Price

The petitioners identified Joint Stock Corporation Yermak Ferro-Alloys (Yermak) and Temirtau Chemical and Metal Works (Temirtau) as the only producers of subject merchandise in Kazakhstan. The petitioners were unable to obtain specific sales or offers for sale of subject merchandise in the United States. Therefore, petitioners based EP on the AUVs for one ten-digit category of the HTSUS (7202.30.0000) on imports from Kazakhstan for the POI (excluding February and March 2001 because data were not available at the time of the petition filing). For the HTSUS category under examination, the petitioners calculated the import AUVs using the reported quantity and Customs value for imports as recorded in the U.S. Census Bureau's official IM-145 import statistics. We note that Customs import value as defined by Technical Documentation for US Exports and Imports of Merchandise on CD-ROM excludes U.S. import duties, freight, insurance and other charges incurred in bringing the merchandise to the United States. The petitioners calculated a net U.S. price by deducting from EP foreign inland freight to the port of exportation and brokerage and handling charges at the port of exportation. In order to calculate foreign inland freight, the petitioners determined that the distance by rail between each of the factories and the port exceeds 1,525 kilometers, and then applied an Indian rail rate as a surrogate. We note that the distance from both factories to the port of exportation appears to exceed 1,525 kilometers. For brokerage and handling charges at the port of exportation, petitioners used an Indian brokerage and handling rate as a surrogate. Both of these surrogate value rates, which were adjusted for inflation, were used in the Department's most recent final results of

review in the Silicomanganese from the People's Republic of China antidumping case. See *Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Administrative Review*, 65 FR 31514 (May 18, 2000) (Silicomanganese from the PRC).

#### Normal Value

The petitioners allege that Kazakhstan is an NME country, and in all previous investigations, the Department has determined that Kazakhstan is an NME. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys from the Republic of Kazakhstan*, 62 FR 2648, 2649 (January 17, 1997). Kazakhstan will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Tariff Act, because Kazakhstan's status as an NME remains in effect, the petitioners determined the dumping margin using a factors of production (FOP) analysis.

For NV, the petitioners based the FOP, as defined by section 773(c)(3) of the Tariff Act, on the consumption rates of Eramet's silicomanganese plant in the United States, adjusted for known differences in electricity and electrode consumption. The petitioners assert that information regarding either Kazakhstan producers' consumption rates is not available, and have therefore assumed, for purposes of the petition, that producers in Kazakhstan use the same inputs in the same quantities as the petitioners use, except where a variance from the petitioners' cost model can be justified on the basis of available information. The petitioners argue that the use of the petitioners' FOP is conservative for the following reasons: (1) They have not made adjustments to Eramet's FOP for the increases in certain FOP by the Kazakh producers; and (2) they have used a certain surrogate value. Because this information is proprietary, see the *Initiation Checklist* (proprietary version) for details. Based on the information provided by the petitioners, we believe the petitioners' FOP methodology represents information reasonably available to the petitioners and is appropriate for purposes of initiating this investigation.

The petitioners assert that India is the most appropriate surrogate country for Kazakhstan because, pursuant to section 773(c), the Department calculates normal value in an NME antidumping investigation by valuing the FOP using values in a surrogate, market-economy country that (1) is at a comparable level of economic development to the NME and (2) is a significant producer of

comparable merchandise. Also, petitioners state that Indian data are available for nearly all FOP used to manufacture silicomanganese. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiating this investigation.

In accordance with section 773(c)(4) of the Tariff Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate data from India. Raw and process materials were primarily valued based on price quotes from an Indian supplier, foreign research conducted in India (including using Eramet's cost methodology for valuing silicomanganese fines), and Indian import statistics from the Monthly Statistics of the Foreign Trade of India, Volume II: Imports. (We note that petitioners did not directly value electrode paste but instead treated electrode paste as part of factory overhead, citing *Silicomanganese from the PRC*, in which the Department concluded that electrode paste may have been already included in the "stores and spares" overhead category. See *Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Silicomanganese from the People's Republic of China—December 1, 1997 through November 30, 1998* (May 8, 2000). Also, we note that petitioners believe the correct approach is to directly value electrode paste because it is a direct input and to include "stores and spares" expenses in the numerator in the calculation of the factory overhead rate.) Labor was valued using the regression-based wage rate for Kazakhstan provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate for India published in a quarterly report of the OECD's International Energy Agency. For overhead, SG&A and profit, the petitioners, at the request of the Department, applied rates derived from the RBI for the Indian metals and chemicals sector. All surrogate values which fell outside the POI were adjusted for inflation based on the currency in which the source data were reported. The Indian wholesale price index, as published by the International Monetary Fund's International Financial Statistics, was used for these adjustments. Based on the information provided by the petitioners, we believe their surrogate values represent information reasonably available to the petitioners and are acceptable for

purposes of initiation of this investigation.

Based upon the comparison of EP to CV, the petitioners calculated an estimated dumping margin of 164.29 percent.

### Venezuela

#### *Export Price*

The petitioners based EP on the AUV of silicomanganese imported from Venezuela under the applicable HTSUS subheading, for the POI, excluding February and March 2001, based on the data published by the U.S. International Trade Commission's *dataweb*. This data, as presented, is FOB customs value. Net U.S. price was calculated by deducting foreign inland, which was based on foreign market research.

#### *Normal Value*

Petitioners used data obtained from a foreign market researcher to determine the price charged in the home market. The price quote obtained by the researcher represents a selling price (exclusive of taxes) in U.S. dollars during the last half of 2000 and January and February 2001. Terms of sale were delivered. Petitioners then deducted an amount for inland freight. Information regarding inland freight charges in Venezuela was also obtained from the foreign market researcher. *See Initiation Checklist*.

Petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of silicomanganese in the home market were made at prices below COP, within the meaning of section 773(b) of the Tariff Act, and requested that the Department conduct a sales-below-cost investigation for Venezuela.

As indicated above, pursuant to section 773(b)(3) of the Tariff Act, COP consists of the COM, SG&A, and packing. Petitioners calculated COM based on their own production experience, adjusted for known differences between cost incurred to produce silicon manganese in the United States and Venezuela using publicly available data and foreign market research. To calculate SG&A, petitioners relied on data obtained from the financial statement of HEVENSA, a Venezuelan steel producer. Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made at prices below the COP, within the meaning of section 773(b)(2)(A)(i) of the Tariff Act. Accordingly, the Department is

initiating a cost investigation for Venezuela. *See Initiation of Cost Investigations* section below.

Given the evidence of below-cost sales, petitioners also based NV on CV pursuant to sections 773(a)(4), 773(b) and 773(e) of the Tariff Act. The petitioners calculated CV using the same COM and SG&A used to compute Venezuelan home market costs. The petitioners did not include in CV an amount for profit. However, petitioners point out that, consistent with section 773(e)(2) of the Tariff Act, the Department has to include an amount for profit in its NV and CV calculations during the investigation.

The estimated dumping margin for Venezuela, based on a comparison between EP and home market price, is 20.38 percent. The estimated dumping margin for price-to-CV comparisons is 47.14 percent.

#### *Initiation of Cost Investigations*

As noted above, pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of India and Venezuela were made at prices below the fully absorbed COP and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with the requested antidumping investigations for these countries. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H. Doc. 103-316, at 833(1994); *see also* 19 CFR 351.301(d)(2). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' \* \* \* exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition for the representative

foreign like products to their COPs, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in the markets of India and Venezuela were made at prices below their respective COPs within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigations.

#### *Fair Value Comparisons*

Based on the data provided by the petitioners, there is reason to believe that imports of silicomanganese from India, Kazakhstan, and Venezuela are being, or are likely to be, sold at less than fair value.

#### *Allegations and Evidence of Material Injury and Causation*

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist*).

#### *Initiation of Antidumping Investigations*

Based upon our examination of the petitions on silicomanganese, and the petitioners' responses to our supplemental questionnaire clarifying the petitions, as well as our conversations with the foreign market researcher who provided information concerning various aspects of the petition, we have found that it meets the requirements of section 732 of the Act. *See Initiation Checklist, Market Research for India and Kazakhstan, and Market Research for Venezuela*. Therefore, we are initiating antidumping duty investigations to determine whether imports of silicomanganese from India, Kazakhstan, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later

than 140 days after the date of this initiation.

#### *Distribution of Copies of the Petitions*

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the governments of India, Kazakhstan, and Venezuela. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as appropriate.

#### *International Trade Commission Notification*

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

#### *Preliminary Determinations by the ITC*

The ITC will determine, no later than May 21, 2001, whether there is a reasonable indication that imports of silicomanganese from India, Kazakhstan, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 26, 2001.

**Bernard T. Carreau,**  
*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-11149 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-570-815]

#### **Sulfanilic Acid From the People's Republic of China; Notice of Extension of Time Limit for Antidumping Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 3, 2001.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of

China. The review covers the period August 1, 1999 through July 31, 2000.

#### **FOR FURTHER INFORMATION CONTACT:**

Sean Carey or Samantha Denenberg, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-3964 or (202) 482-1386, respectively.

#### **Postponement of Preliminary Results of Review**

On October 2, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China, covering the period August 1, 1999 through July 31, 2000 (65 FR 58733). The preliminary results are currently due no later than May 3, 2001.

Section 751(a)(3)(A) of the Tariff Act, as amended (the Act), requires the Department to issue its preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the preliminary results within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for a preliminary determination to a maximum of 365 days.

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 to no later than August 31, 2001. See Memorandum from Barbara E. Tillman to Joseph A. Spetrini, dated April 26, 2001, which is on file in the Central Records Unit, Room B-099 of the main Commerce Building. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 27, 2001.

**Richard O. Weible,**  
*Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.*  
[FR Doc. 01-11151 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## **DEPARTMENT OF COMMERCE**

### **International Trade Administration**

[A-588-841]

#### **Vector Supercomputers From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation of Antidumping Duty Order**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of changed circumstances review, and revocation of antidumping duty order.

**SUMMARY:** On March 13, 2001, the Department of Commerce ("the Department") published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke the antidumping duty order on certain vector supercomputers from Japan. See *Certain Vector Supercomputers From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent to Revoke Order ("Initiation and Preliminary Results")*, 66 FR 14547 (March 13, 2001). In our *Initiation and Preliminary Results*, we gave interested parties an opportunity to comment. No interested party opposed the preliminary results.

Therefore, we are now revoking this order because the domestic producer of the like product has expressed no interest in the continuation of the order.

**EFFECTIVE DATE:** May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mark Young or James Terpstra 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) 482-6397, or (202) 482-3965 respectively.

#### *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. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (2000).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On February 27, 2001, Cray Inc. ("Cray") requested that the Department

conduct a changed circumstances review and revoke the antidumping duty order on vector supercomputers from Japan, retroactive to October 1, 2000. In its February 27, 2001 request, Cray claims that it is the only U.S. producer of vector supercomputers and was the sole petitioner in the antidumping investigation that led to the antidumping order. Further, Cray states that it no longer has an interest in maintaining this order. As noted above, we gave interested parties an opportunity to comment on the *Initiation and Preliminary Results*. We received no comments from interested parties. On March 26, 2001 we received a submission from Skymoon Ventures ("Skymoon") in support of revocation of the order. Skymoon identified itself as being part of the "high technology industry." However, Skymoon produced no evidence that it was an interested party within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b). Therefore, we have not considered its comments in these final results.

#### Scope of Review

The scope of this order consists of all vector supercomputers, whether new or used, and whether in assembled or unassembled form, as well as vector supercomputer spare parts, repair parts, upgrades, and system software, shipped to fulfill the requirements of a contract entered into on or after October 16, 1997, for the sale and, if included, maintenance of a vector supercomputer. A vector supercomputer is any computer with a vector hardware unit as an integral part of its central processing unit boards.

In general, the vector supercomputers imported from Japan, whether assembled or unassembled, covered by this order are classifiable under heading 8471 of the Harmonized Tariff Schedules of the United States ("HTS"). Merchandise properly classified under HTS numbers 8471.10 and 8471.30, however, is excluded from the scope of this order. Although, these references to the HTS are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

#### Final Results of Review; Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning vector supercomputers, as described herein, constitutes changed circumstances sufficient to warrant revocation of this order. Furthermore, no interested party commented on the *Initiation and Preliminary Results*. Therefore, the

Department is revoking the order on certain vector supercomputers from Japan, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g), effective October 1, 2000.

We will instruct the U.S. Customs Service ("Customs") to end the suspension of liquidation effective October 1, 2000, and to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of certain vector supercomputers meeting the specifications indicated above entered or withdrawn from warehouse for consumption on or after October 1, 2000. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216 and 351.222(g) of the Department's regulations.

Dated: April 27, 2001.

**Timothy J. Hauser,**

*Acting Under Secretary for International Trade.*

[FR Doc. 01-11272 Filed 5-1-01; 2:32 pm]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On April 6, 2001, CEMEX, S.A. de C.V. ("CEMEX") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of

the North American Free Trade Agreement. Panel review was requested of the 9th Administrative review of the antidumping duty order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. This determination was published in the **Federal Register** (66 Fed. Reg. 14889) on March 14, 2001. The NAFTA Secretariat has assigned Case Number USA-MEX-2001-1904-04 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 6, 2001, requesting panel review of the 9th administrative review of the antidumping duty order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 7, 2001);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline

for filing a Notice of Appearance is May 21, 2001); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 10, 2001.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 01-11042 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-GT-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On April 6, 2001, Tubos de Acero de Mexico, S.A. ("TAMSA") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the five-year sunset review of the antidumping duty order made by the International Trade Administration, respecting Oil Country Tubular Goods from Mexico. This determination was published in the **Federal Register** (66 FR 14131) on March 9, 2001. The NAFTA Secretariat has assigned Case Number USA-MEX-2001-1904-03 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or

countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 6, 2001, requesting panel review of the five-year sunset review of the antidumping duty order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 7, 2001);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is May 21, 2001); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 10, 2001.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 01-11043 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-GT-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On April 20, 2001, Tubos de Acero de Mexico, S.A. ("TAMSA") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the fourth administrative review of the antidumping duty order and determination not to revoke made by the International Trade Administration, respecting Oil Country Tubular Goods from Mexico. This determination was published in the **Federal Register** (66 FR 15832) on March 21, 2001. The NAFTA Secretariat has assigned Case Number USA-MEX-2001-1904-05 to this request.

#### FOR FURTHER INFORMATION CONTACT:

Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on April 6, 2001, requesting panel review of the five-year sunset review of the antidumping duty order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 21, 2001);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in

support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 4, 2001); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: April 24, 2001.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 01-11114 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-GT-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Evaluation of California Coastal Management Program

**AGENCY:** Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The NOAA of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the California Coastal Management Program/California Coastal Commission.

This coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923.

The CZMA requires continuing review of the performance of states with respect to coastal management program implementation. Evaluation of Coastal Zone Management Programs require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

This evaluation includes a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given of the dates of the site visit for the listed evaluation, and the dates, local times, and locations of the public meetings during the site visit.

The California Coastal Management Program/California Coastal Commission evaluation site visit will be held from June 5-13, 2001. Two public meetings will be held during the week. The first will be held on Wednesday, June 6, 2001, from 7-9 p.m., in the Bayside Conference Room at Pier 1, San Francisco, California 94111. The second will be held on Monday, June 11, 2001, from 7-9 p.m. at Ahmanson Auditorium, University Hall 1000, Loyola Marymount College, 7900 Loyola Blvd, Los Angeles, CA 90045.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the State, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

**FOR FURTHER INFORMATION CONTACT:** Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713-3155, Extension 114.

Dated: April 30, 2001.

**Ted I. Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 01-11298 Filed 5-2-01; 8:45 am]

**BILLING CODE 3510-08-M**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Denial of Short Supply Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

April 30, 2001.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Denial of the petition alleging that yarns of cashmere and yarns of camel hair cannot be supplied by the domestic industry in commercial quantities in a timely manner.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUMMARY:** On February 28, 2001 the Chairman of CITA received a petition from Amicale Industries, Inc. alleging yarn of cashmere and yarn of camel hair, classified in heading 5108.10.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that the President proclaim that apparel articles of U.S. formed fabrics of such yarns be eligible for preferential treatment under the CBTPA. As a result, CITA published a Federal Register Notice on March 8, 2001 (66 FR 13913) requesting public comments on the petition. These comments were due March 23, 2001. Based on currently available information, CITA has determined that these products can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the petition.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

**BACKGROUND:** The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States or a CBTPA beneficiary country, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and the President has proclaimed such treatment. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On February 28, 2001 the Chairman of CITA received a petition from Amicale

Industries, Inc. alleging yarn of cashmere and yarn of camel hair, classified in heading 5108.10.60 of the HTSUS, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that the President proclaim that apparel articles of U.S. formed fabrics of such yarns be eligible for preferential treatment under the CBTPA.

CITA solicited public comments regarding this request (66 FR 13913, published on March 8, 2001) particularly with respect to whether yarn of cashmere and yarn of camel hair, classified in HTSUS heading 5108.10.60, can be supplied by the domestic industry in commercial quantities in a timely manner.

On the basis of currently available information, CITA has determined that yarn of cashmere and yarn of camel hair is spun in the United States and is available from U.S. producers in commercial quantities in a timely manner. Two companies in their submissions claim that they currently spin the yarns in question. Two other companies in their submissions claim to have the spinning capacity to produce these yarns. One company in its submission claims it supplies camel and cashmere hair fibers to companies that spin it into yarn and claims that three additional companies are capable of supplying cashmere and camel hair yarn to the petitioner.

Based on currently available information, CITA has determined that Amicale's petition should be denied. Amicale has not established that these yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. Currently available information indicates that the domestic industry is able to supply these yarns in commercial quantities in a timely manner.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.01-11211 Filed 5-1-01; 12:40 pm]

**BILLING CODE 3510-DR-F**

**COMMODITY FUTURES TRADING COMMISSION**

**Agricultural Advisory Committee; Ninth Renewal**

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Agricultural Advisory Committee." The Commission certifies that the renewal of the advisory committee is in

the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee.

Commissioner David D. Spears serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC on April 25, 2001, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 01-11039 Filed 5-2-01; 8:45 am]

**BILLING CODE 6351-01-M**

**COMMODITY FUTURES TRADING COMMISSION**

**Sunshine Act Meeting**

**AGENCY HOLDING THE MEETING:**

Commodity Futures Trading Commission.

**TIME AND DATE:** 10:30 a.m., Wednesday, May 30, 2001.

**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. 01-11229 Filed 5-1-01; 10:59 am]

**BILLING CODE 6351-01-M**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Submission for OMB Review; Comment Request**

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement Part 205, Publicizing Contact Actions, and DFARS 252.205-7000, Provision of Information to Cooperative Agreement Holders; OMB Number 0704-0286.

*Type of Request:* Extension.  
*Number of Respondents:* 5,594.  
*Responses per Respondent:* 1.  
*Annual Responses:* 6,153.  
*Average Burden per Response:* 1.1 hour (average).  
*Annual Burden Hours:* 6,153.

*Needs and Uses:* This information collection requires DoD contractors to provide information to cooperative agreement holders regarding employees or offices that are responsible for entering into subcontracts under DoD contracts. Cooperative agreement holders furnish procurement technical assistance to business entities within specified geographic areas. This policy implements 10 U.S.C. 2416. DFARS Subpart 205.4 and the clause at DFARS 252.205-7000 require that DoD contractors awarded contracts exceeding \$500,000 provide to cooperative agreement holders, upon their request, a list of those appropriate employees or offices responsible for entering into subcontracts under DoD contracts. The list must include the business address, telephone number, and area of responsibility of each employee or office. The contractor need not provide the list to a particular cooperative agreement holder more frequently than once a year.

*Affected Public:* Business or Other For-Profit.

*Frequency:* On Occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Mr. David M. Pritzker. Written comments and recommendations on the proposed information collection should be sent to Mr. Pritzker at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing. Written requests for copies of

the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: April 27, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-11050 Filed 5-2-01; 8:45 am]

BILLING CODE 5000-08-M

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0077]

#### Federal Acquisition Regulation; Proposed Collection; Quality Assurance Requirements

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000-0077).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning quality assurance requirements. The clearance currently expires on June 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before July 2, 2001.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this

burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Beverly Cromer, Acquisition Policy Division, GSA (202) 208-6750.

#### SUPPLEMENTARY INFORMATION:

##### A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection require the contractor to provide and maintain an inspection system that is acceptable to the Government; give the Government the right to make inspections and test while work is in process; and require the contractor to keep complete, and make available to the Government, records of its inspection work.

##### B. Annual Reporting Burden

*Respondents:* 950.

*Responses Per Respondent:* 1.

*Total Responses:* 950.

*Hours Per Response:* .25.

*Total Burden Hours:* 237.5 (238).

##### C. Annual Recordkeeping Burden

*Recordkeepers:* 58,060.

*Hours Per Recordkeeper:* .68.

*Total Burden Hours:* 39,481.

*Total Annual Burden:* 238 + 39,481 = 39,719.

##### Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0077, Quality Assurance Requirements, in all correspondence.

Dated: April 30, 2001.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 01-11078 Filed 5-2-01; 8:45 am]

BILLING CODE 6820-34-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0138]

#### Federal Acquisition Regulation; Proposed Collection; Contract Financing

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0138).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning contract financing. The clearance currently expires on June 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before July 2, 2001.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jerry Olson, Acquisition Policy Division, GSA (202) 501-3221.

#### SUPPLEMENTARY INFORMATION:

**A. Purpose**

The Federal Acquisition Streamlining Act (FASA) of 1994, Pub. L. 103-355, provided authorities that streamlined the acquisition process and minimize burdensome Government-unique requirements. Sections 2001 and 2051 of FASA substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA amended the FAR by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average 2 hours per request for commercial financing and 2 hours per request for performance-based financing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden for commercial financing is estimated as follows:

*Respondents:* 1,000.

*Responses Per Respondent:* 5.

*Total Responses:* 5,000.

*Hours Per Response:* 2.

*Total Burden Hours:* 10,000.

The annual reporting burden for performance-based financing is estimated as follows:

*Respondents:* 500.

*Responses Per Respondent:* 12.

*Total Responses:* 6,000.

*Hours Per Response:* 2.

*Total Burden Hours:* 12,000.

**Obtaining Copies of Proposals**

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0138, Contract Financing, in all correspondence.

Dated: April 30, 2001.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 01-11079 Filed 5-2-01; 8:45 am]

**BILLING CODE 6820-34-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[OMB Control No. 9000-0102]

**Federal Acquisition Regulation; Proposed Collection; Prompt Payment**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000-0102).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning prompt payment. The clearance currently expires on June 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before July 2, 2001.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jerry Olson, Acquisition Policy Division, GSA (202) 501-3221.

**SUPPLEMENTARY INFORMATION:****A. Purpose**

Part 32 of the FAR and the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/ suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/ supplier. Part 32 of the FAR and the clause at 52.232-27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts—

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/ suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontractors and to require each of its subcontractors to

include similar clauses in their subcontracts.

These requirements are imposed by Public Law 100-496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

#### B. Annual Reporting Burden

*Respondents: 38,194.*  
*Responses Per Respondent: 11.*  
*Total Responses: 420,134.*  
*Hours Per Response: 11.*  
*Total Burden Hours: 46,215.*

#### C. Annual Recordkeeping Burden

*Recordkeepers: 34,722.*  
*Hours Per Recordkeeper: 18.*  
*Total Recordkeeping Burden Hours: 624,996.*

#### Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0102, Prompt Payment, in all correspondence.

Dated: April 30, 2001.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 01-11080 Filed 5-2-01; 8:45 am]

**BILLING CODE 6820-34-U**

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0088]

#### Federal Acquisition Regulation; Proposed Collection; Travel Costs

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000-0088).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal

Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning travel costs. The clearance currently expires June 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before July 2, 2001.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jerry Olson, Acquisition Policy Division, GSA, (202) 501-3221.

#### SUPPLEMENTARY INFORMATION:

##### A. Purpose

FAR 31.205-46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel is Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, "Maximum Travel Per Diem Allowances for Foreign Areas." The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

#### B. Annual Reporting Burden

*Respondents: 5,800.*  
*Responses Per Respondent: 10.*  
*Total Responses: 58,000.*  
*Hours Per response: .25.*  
*Total Burden Hours: 14,500.*

#### Obtaining Copies of Proposals:

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0088, Travel Costs, in all correspondence.

Dated: April 30, 2001.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 01-11081 Filed 5-2-01; 8:45 am]

**BILLING CODE 6820-34-U**

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0134]

#### Submission for OMB Review; Comment Request Entitled Environmentally Sound Products

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Environmentally Sound Products. A request for public comments was published at 65 FR 75925, December 5, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be

collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before June 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Laura Smith, Federal Acquisition Policy Division, GSA (202) 208-7279.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

This information collection complies with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA requires the Environmental Protection Agency (EPA) to designate items which are or can be produced with recovered materials. RCRA further requires agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Affirmative procurement programs required under RCRA must contain, as a minimum (1) a recovered materials preference program and an agency promotion program for the preference program; (2) a program for requiring estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and reasonable verification procedures for estimates and certifications; and (3) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

The items for which EPA has designated minimum recovered material content standards are (1) construction products, (2) paper and paper products, (3) vehicular products, (4) landscaping products, (5) nonpaper office products, (6) park and recreation products, (7) transportation products, and (8) miscellaneous products. The FAR rule also permits agencies to obtain pre-award information from offerors regarding the content of items which the agency has designated as requiring minimum percentages of recovered materials. A complete list of EPA

designated items is available at <http://www.epa.gov/cpg>.

In accordance with RCRA, the information collection applies to acquisitions requiring minimum percentages of recovered materials, when the price of the item exceeds \$10,000 or when the aggregate amount paid for the item or functionally equivalent items in the preceding fiscal year was \$10,000 or more.

Contracting officers use the information to verify offeror/contractor compliance with solicitation and contract requirements regarding the use of recovered materials. Additionally, agencies use the information in the annual review and monitoring of the effectiveness of the affirmative procurement programs required by RCRA.

**B. Annual Reporting Burden**

*Respondents:* 64,350.

*Responses Per Respondent:* 1.

*Total Responses:* 64,350.

*Hours Per Response:* 30 minutes (.5 hr).

*Total Burden Hours:* 32,175.

**Obtaining Copies of Proposals**

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208-7312. Please cite OMB control No. 9000-0134, Environmentally Sound Products, in all correspondence.

Dated: April 30, 2001.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 01-11082 Filed 5-2-01; 8:45 am]

**BILLING CODE 6820-34-U**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Science Board; Meeting**

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board (DSB) Task Force on Chemical Warfare Defense will meet in closed session on May 31, 2001, and June 1, 2001, at SAIC, Inc., 4001 N. Fairfax Drive, Arlington, VA 22201. The Task Force will assess the possibility of controlling the risk and consequences of a chemical warfare (CW) attack to acceptable national security levels within the next five years.

The mission of the Defense Science Board is to advise the Secretary of

Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will assess current national security and military objectives with respect to CW attacks; CW threats that significantly challenge these objectives today and in the future; the basis elements (R&D, materiel, acquisition, personnel, training, leadership) required to control risk and consequences to acceptable levels, including counter-proliferation; intelligence, warning, disruption; tactical detection and protection (active and passive); consequence management; attribution and deterrence; and policy. The Task Force will also assess the testing and evaluation necessary to demonstrate and maintain the required capability and any significant impediments to accomplishing this goal.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. Law No. 92-463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: April 27, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-11051 Filed 5-2-01; 8:45 am]

**BILLING CODE 5001-08-M**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Army Science Board; Notice of Partially Closed Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting.

*Name of Committee:* Army Science Board (ASB), Objective Force Soldier.

*Date of Meeting:* May 16-17, 2001.

*Time of Meeting:* 0800-1700 (both days).

*Place:* Fort Bragg, NC.

*Agenda:* The Army Science Board's (ASB) Summer Study on "Objective Force Soldier/Soldier Systems" will meet for panel discussions and report preparation (day one) and study-related site visits of Fort Bragg (day two). The first day of meetings (May 16) will be open to the public. The site visits, due to their classified portions, will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). For further information, please contact Mr. Mike

Hendricks, Lead Staff Assistant on 703-617-7048.

**Wayne Joyner,**

*Executive Assistant, Army Science Board.*  
[FR Doc. 01-11115 Filed 5-2-01; 8:45 am]

**BILLING CODE 3710-08-M**

**DEPARTMENT OF DEFENSE**

**Department of the Army**

**Army Science Board; Notice of Open Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* May 18, 2001.

*Time of Meeting:* 0730-1700, May 18, 2001.

*Place:* US Army Night Vision Laboratory 399, Ft. Belvoir Virginia.

*Agenda:* The Army Science Board's (ASB) panel is conducting a series of panel discussions and a study on "Knowledge Based Management and Information Reliability" to examine innovative ways of addressing technology issues that have the potential to "weight down" our future Warfighters with massive amounts of data. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Mr. Randy Woodson, Office of the DA DCSINT, 703 604 2462, randy.woodson@hqha.army.mil.

**Wayne Joyner,**

*Executive Assistant, Army Science Board.*  
[FR Doc. 01-11116 Filed 5-2-01; 8:45 am]

**BILLING CODE 3710-08-M**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**Notice of Availability of Invention for Licensing; Government-Owned Invention**

**AGENCY:** Department of the Navy, DOD.  
**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,137,117 entitled "Integrating Multi-Waveguide Sensor," Navy Case No. 79,373.

**ADDRESSES:** Requests for copies of the patent application cited should be directed to the Naval Research

Laboratory, Code 1008.2, 4555 Overlook Avenue, SW, Washington, DC 20375-5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375-5320, telephone (202) 767-7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: April 25, 2001.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 01-11117 Filed 5-2-01; 8:45 am]

**BILLING CODE 3810-FF-P**

**DEFENSE NUCLEAR FACILITIES SAFETY BOARD**

**Sunshine Act Meeting**

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

**TIME AND DATE OF MEETING:** 9 a.m., May 23, 2001.

**PLACE:** The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Department of Energy (DOE) requires contractors at defense nuclear facilities to develop and implement nuclear quality assurance programs to ensure the requisite quality of operations, products, and services that directly affect nuclear safety-related systems and operations. Activities required to be conducted under established quality assurance programs extend from scientific studies, to the design, construction, operation, and deactivation of defense nuclear facilities. Notwithstanding contract and rule requirements concerning quality assurance, there is evidence that quality assurance programs at defense nuclear facilities are not consistently achieving their quality objectives.

This is the second in a series of open meetings being held by the Defense Nuclear Facilities Safety Board (Board) on the topic of quality assurance within DOE nuclear defense activities. Board inquiries will address (1) quality assurance requirements and practices in related industries, and (2) the implementation of DOE quality assurance requirements at selected sites.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788-4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: April 30, 2001.

**John T. Conway,**

*Chairman.*

[FR Doc. 01-11162 Filed 4-30-01; 4:17 pm]

**BILLING CODE 3670-01-P**

**DEPARTMENT OF ENERGY**

**Environmental Management Site-Specific Advisory Board, Fernald**

**AGENCY:** Department of Energy.  
**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Saturday, May 12, 2001, 8:30 a.m.-12:00 noon.

**ADDRESSES:** Fernald Environmental Management Project Site, Services Building Conference Room, 7400 Willey Road, Hamilton, OH 45219.

**FOR FURTHER INFORMATION CONTACT:** Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971-0030 or (513) 648-6478, or e-mail; [djsarno@theperspectivesgroup.com](mailto:djsarno@theperspectivesgroup.com).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

8:30 a.m.—Call to Order

8:30-8:45 a.m.—Chair's Remarks and Ex Officio Announcements

8:45-9:45 a.m.—Rebaseline update

9:45-11:45 a.m.—Stewardship Issues

11:45-12:00 noon—Public Comment session

12:00 noon—Adjourn

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board chair either

before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below.

Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS-76, Post Office Box 538704, Cincinnati, OH 43253-8704, or by calling the Advisory Board at (513) 648-6478.

Issued at Washington, DC on April 27 2001.

**Belinda Hood,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 01-11146 Filed 5-2-01; 8:45 am]

**BILLING CODE 6450-01-U**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. QF87-93-007]

#### **Cambria Cogen Company, Small Power Production and Cogeneration Facilities—Qualifying; Notice of Filing**

April 27, 2001.

Take notice that on April 26, 2001, Cambria Cogen Company tendered for filing clarifications regarding its QF Application.

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 May 7, 2001. 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). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-11056 Filed 5-2-01; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER01-1515-001]

#### **Duke Energy Audrain, LLC; Notice of Filing**

April 27, 2001.

Take notice that on April 9, 2001, Duke Energy Audrain, LLC (Duke Audrain) filed a revision to its proposed FERC Electric Tariff Original Volume No. 1 (Tariff), clarifying that all market information shared between Duke Audrain and any public utility with a franchised service territory that is an affiliate of Duke Audrain will be disclosed simultaneously to the public and correcting tariff designations. No other changes were made to the Tariff or to Duke Audrain's Application for Order Accepting Market Based Rates for Filing and Certain Waivers and Pre-Approvals, filed in Docket No. ER01-1208-000 on March 13, 2001.

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 May 7, 2001. 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). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-11055 Filed 5-2-01; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### **Notice of Initiation of Proceeding and Refund Effective Date**

April 27, 2001.

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Docket No. EL00-95-012.

Investigation of Practices of the California Independent System Operator and the California Power Exchange; Docket No. EL00-98-000.

California Independent System Operator Corporation; Docket No. RT01-85-000.

Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council; Docket No. EL01-68-000.

Take notice that on April 26, 2001, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL01-68-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL01-68-000 will be 60 days after publication of this notice in the **Federal Register**.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-11053 Filed 5-2-01; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Project No. 7481-068]

NYS Limited Partnership; Notice of  
Availability of Environmental  
Assessment

April 27, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has prepared an Environmental Assessment (EA) for the New York State Dam Project. The EA examines the environmental impacts of four alternatives for providing downstream fish passage at the project for adult blueback herring.

In the EA, the Commission's staff has reviewed the comments on its June 14, 1996 Draft Environmental Assessment. In summary, the EA evaluates four alternatives for operation of the project's existing fish bypass for adult blueback herring: (1) licensee's alternative; (2) resource agency alternative; (3) staff alternative; and (4) no-action. The EA recommends the licensee operate its fish bypass for adult blueback herring in accordance with the staff alternative. The EA concludes that implementation of this alternative would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference and Files Maintenance Branch, Room 2A of the Commission's offices at 888 First Street, NE., Washington, DC 20426. A copy is also available for inspection and reproduction at the addresses in item g above. This filing may also be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). For further information, please contact Timothy J. Welch at (202) 219-2666.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-11054 Filed 5-2-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
CommissionNotice of Request for Extension of  
Time To Commence and Complete  
Project Construction and Soliciting  
Comments, Motions To Intervene, and  
Protests

April 27, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

*a. Application Type:* Request for Extension of Time to Commence and Complete Project Construction.

*b. Project No.:* 10648-007.

*c. Location:* The proposed project would be located on the Hudson River, in Saratoga and Rensselaer Counties, New York. The project does not utilize federal or tribal lands.

*d. Date Filed:* March 9, 2001.

*e. Applicant:* Adirondack Hydro Development Corporation.

*f. Name of Project:* Waterford Hydroelectric Project.

*g. Pursuant to:* Public Law 104-242.

*h. Applicant Contact:* Keith F. Corneau, Director, Corporate Development, Adirondack Hydro Development Corporation, 39 Hudson Falls Road, South Glens Falls, NY 12803, (518) 747-0930.

*i. FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, at (202) 219-2671, or e-mail address: [lynn.miles@ferc.fed.us](mailto:lynn.miles@ferc.fed.us).

*j. Deadline for filing comments and or motions:* May 4, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: 888 First Street, NE., Washington, DC 20426.

Please include the project numbers (10648-007) on any comments filed.

*k. Description of the Request:* The licensee has requested that the Commission grant its request for an additional two-year period to commence construction of the Waterford Hydroelectric Project. The deadline to commence project construction for FERC Project No. 10648 would be extended to June 9, 2003. The deadline for completion of construction would be extended to June 9, 2005.

*l. 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 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/>

<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 Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Individuals desiring to be included on the Commission's 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 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 Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, as the above-mentioned address. 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. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-11057 Filed 5-2-01; 8:45 am]

BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-6974-1]

**Agency Information Collection Activities: Proposed Collection; Comment Request; Underground Injection Control (UIC) Program****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Underground Injection Control Program, EPA ICR No. 0370.13, OMB Control No. 2040-0042 which expires 9/30/01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before July 2, 2001.

**ADDRESSES:** Persons interested in getting information or making comment about this ICR (# 0370.13) should direct inquiries to Robert E. Smith, U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW, Mail Stop 4606; Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Smith, Office of Ground Water and Drinking Water: 202-260-5559; FAX 202-401-2345; E-mail: *robert-eu@epa.gov*. Further information on the ICR can be obtained from the Safe Drinking Water Hotline at (703) 286-1093, E-mail: *hotline-sdwa@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are owners/operators of underground injection wells and State UIC Primacy Agencies including, Puerto Rico, the U.S. Trust Territories, Indian Tribes, and Alaska's Native Villages and, in some instances, U.S. EPA Regional Offices.

*Title:* Information Collection Request for the Underground Injection Control Program (OMB Control No. 2040-0042; EPA ICR No. 0370.13.), expiring September 30, 2001.

*Abstract:* The Underground Injection Control (UIC) Program under the Safe Drinking Water Act established a Federal and State regulatory system to protect underground sources of drinking water (USDWs) from contamination by injected fluids. Owners/operators of underground injection wells must

obtain permits, conduct environmental monitoring, maintain records, and report results to EPA or the State UIC primacy agency. States must report to EPA on permittee compliance and related information. The information is reported using standardized forms, and regulations are codified at 40 CFR parts 144 through 148. The data are used to ensure the protection of underground sources of drinking water from UIC authorities. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* 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 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. In the UIC Program ICR for 1998-2001, the total burden associated with it was estimated to be 1,135,273 hours per year and the total cost was estimated to be \$58,246,054 per year. EPA expects that the total burden for the continuing UIC Program ICR for the period 2001-2004 will be approximately the same except for inflation for the cost information. This is because little or no significant increase in the UIC well population is anticipated during this period. EPA also considered the possible impact of the Class V Well Phase I rulemaking (64 FR 68546, 11/30/99) implementation for the renewal period. While this rulemaking has separate ICR coverage until November 2002, the Program ICR will include slightly increased burden and cost for State implementation of Class V Well Phase I rulemaking from December 1, 2002 until September 30, 2004.

*Respondents/Affected Entities:* Owners/Operators of UIC wells, State Primacy Agencies including, Puerto Rico, the U.S. Trust Territories, Indian Tribes, and Alaska's Native Villages and EPA Regional Offices.

Dated: April 25, 2001.

**Philip S. Oshida,**

*Acting Director, Office of Ground Water and Drinking Water.*

[FR Doc. 01-11092 Filed 5-2-01; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[PF-1005; FRL-6773-9]

**Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number OPP-50878, must be received on or before June 4, 2001.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the

**SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-50878 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8077; e-mail address: cerrelli.susanne@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this

document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgrstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-50878. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-50878 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail

to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov), or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-50878. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 19, 2001.

**Kathleen F. Knox,**

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petitioner's summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### AgraQuest, Inc.

PP 1G6240

EPA has received a pesticide petition 1G6240 from AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish a temporary exemption from the requirement of a tolerance for the microbial pesticide *Bacillus pumilus* strain QST 2808 in or on all raw agricultural commodities (RAC). Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, AgraQuest, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by AgraQuest, Inc. and EPA has not fully evaluated the merits of the

pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

#### A. Product Name and Proposed Use Practices

Sonata™ AS is proposed for use as a biofungicide to control various plant diseases such as downy mildew, powdery mildew, *Phytophthora*, *Sclerotinia*, *Cercospora*, and/or rust on the following vegetable crop groups: root and tuber, bulb, leafy except Brassica, Brassica, legume, fruiting, and cucurbit; on the following fruit crop groups: pome and stone, on the grain, cereal, group; and the following individual crops: grape, grasses grown for seed, hop, mint, peanuts, strawberry, and field grown roses. The product is applied as a foliar spray alone, in alternating spray programs, or in tank mixes with other registered crop protection products, up to and including the day of harvest.

#### B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Sonata™ AS contains the QST 2808 strain of *Bacillus pumilus* as the active ingredient. *Bacillus pumilus* strain QST 2808 is a ubiquitous, naturally occurring, non-pathogenic microorganism. It is commonly recovered from water, soil, air, and decomposing plant residue. *Bacillus pumilus* produces proteases and other enzymes that enable it to degrade a variety of natural substrates and contribute to nutrient recycling. *Bacillus pumilus* prevents spore germination by formation of a physical barrier and subsequently colonizes fungal spores. QST 2808 Technical is used to formulate Sonata™ AS. The product will be applied at a maximum rate of  $1.18 \times 10^{13}$  colony forming units per acre, which is equivalent to a maximum rate of 3 gallons of Sonata™ AS per acre.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* AgraQuest is submitting a petition requesting that EPA establish a temporary exemption from the requirement of a tolerance for the QST strain of *Bacillus pumilus*, therefore, this section is not applicable.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* AgraQuest is submitting a petition requesting that EPA establish a

temporary exemption from the requirement of a tolerance for the QST strain of *Bacillus pumilus*, therefore, this section is not applicable.

#### C. Mammalian Toxicological Profile

The active ingredient *Bacillus pumilus* strain QST 2808 has been evaluated for toxicity through oral, dermal, pulmonary, intravenous and eye routes of exposure. The results of the studies have indicated there are no significant human health risks. The acute oral toxicity/pathogenicity LD<sub>50</sub> in rats is greater than  $4.1 \times 10^9$  cfu/g. The acute dermal toxicity LD<sub>50</sub> in rats is greater than 2,000 milligrams/kilograms (mg/kg) (toxicity category III). The acute pulmonary toxicity/pathogenicity LD<sub>50</sub> in rats is greater than  $1.6 \times 10^8$  cfu per animal. The acute intravenous toxicity/pathogenicity LD<sub>50</sub> in rats is greater than  $1.6 \times 10^8$  cfu per animal. No pathogenic or infective effects were observed in the studies.

Slight eye irritation in rabbits was observed at a dose of 0.1 mL (toxicity category IV) and minimal skin irritation in rabbits was observed at a dose of 0.5 mL (toxicity category IV). Since its discovery, no incidents of hypersensitivity have been reported by researchers, manufacturers or users of *Bacillus pumilus* strain QST 2808. The formulated product is a very dilute aqueous suspension of *Bacillus pumilus*, with <3% intentionally added inert ingredients. It is unlikely that this product's toxicity profile will differ from that of the technical material. Acute toxicology studies are in progress on the formulated product.

#### D. Aggregate Exposure

Sonata™ AS is proposed for use under an experimental use permit to control various plant diseases on agricultural crops.

1. *Dietary exposure.* Dietary exposure is not expected from the use of this microbial pesticide as proposed. The lack of acute oral toxicity/pathogenicity and the ubiquitous nature of the organism support the exemption from the requirement of a tolerance for this active ingredient.

i. *Food.* Dietary exposure from use of *Bacillus pumilus* strain QST 2808, as proposed, is minimal. Residues of *Bacillus pumilus* strain QST 2808 are not expected on agricultural commodities. In a study conducted to determine the longevity of *Bacillus pumilus* residues on pepper leaf surfaces under field conditions, the results showed that the number of colony forming units of *Bacillus pumilus* decreased significantly over time in the first 5 days. In addition, the

microbial pesticide can be removed from food by peeling, washing, cooking, and processing.

ii. *Drinking water.* Exposure to humans from residues of *Bacillus pumilus* strain QST 2808 in consumed drinking water would be unlikely. *Bacillus pumilus* strain QST 2808 is a naturally occurring microorganism known to exist in terrestrial habitats. Although it may be found in water, it is not known to thrive in aquatic environments.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are agricultural settings. In addition, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. Personal protective equipment (PPE) mitigates the potential for exposure to applicators and handlers of the proposed products, when used in agricultural settings.

#### E. Cumulative Exposure

There is no indication of mammalian toxicity of *Bacillus pumilus* and no information to indicate that toxic effects would be cumulative. Therefore, consideration of a common mode of action is not appropriate. In addition, it is not expected that, when used as proposed, Sonata™ AS would result in residues that would remain in human food items.

#### F. Safety Determination

Risk and exposure to humans, infants, and children is likely to be minimal.

1. *U.S. population.* *Bacillus pumilus* strain QST 2808 is not pathogenic or infective to mammals. There have been no reports of toxins associated with the organism, and acute toxicity/pathogenicity studies have shown that *Bacillus pumilus* strain QST 2808 is non-toxic, non-pathogenic, and non-irritating. Residues of *Bacillus pumilus* strain QST 2808 are not expected on agricultural commodities, and therefore, exposure to the general U.S. population, from the proposed uses, is not anticipated.

2. *Infants and children.* As mentioned above, residues of *Bacillus pumilus* strain QST 2808 are not expected on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to *Bacillus pumilus* strain QST 2808 from the proposed uses.

#### G. Effects on the Immune and Endocrine Systems

*Bacillus pumilus* strain QST 2808 is a naturally occurring, non-pathogenic microorganism. There is no evidence to suggest that *Bacillus pumilus* strain QST 2808 functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

#### H. Existing Tolerances

There is no U.S. EPA tolerance for *Bacillus pumilus* strain QST 2808.

#### I. International Tolerances

There is no Codex Alimentarius Commission maximum residue level (MRL) for *Bacillus pumilus* strain QST 2808.

[FR Doc. 01-11094 Filed 5-2-01; 8:45 am]

BILLING CODE 6560-50-S

### ENVIRONMENTAL PROTECTION AGENCY

[OPP-50878; FRL-6774-1]

#### Experimental Use Permit; Receipt of Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application 69592-EUP-R from AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616 requesting an experimental use permit (EUP) for the microbial pesticide *Bacillus pumilus* Strain QST 2808. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

**DATES:** Comments, identified by docket control number OPP-50878, must be received on or before June 4, 2001.

**ADDRESSES:** Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the

**SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-50878 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-8077; e-mail address: cerrelli.susanne@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of microbial substances under the Federal Food, Drug and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-50878. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

### C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-50878 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-50878. Electronic comments may also be filed online at many Federal Depository Libraries.

### D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about

CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

AgraQuest, Inc., 1530 Drew Avenue, Davis, CA 95616 has requested an EUP for the microbial pesticide *Bacillus pumilus* Strain QST 2808 for a 2 year period, commencing March 1, 2001 and ending March 1, 2003. The objective of this EUP is to obtain efficacy and phytotoxicity data over a large geographical area on many important minor crops. A total of 4,000 acres are proposed to be treated with 2,188 pounds of active ingredient. AgraQuest's proposed testing areas include the following states: Arizona, California, Colorado, Florida, Georgia, Indiana, Michigan, North Carolina, North Dakota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, and Wisconsin. Proposed crop treatment sites include brassica, bulb vegetables, cereal grains, cucurbits, fruiting vegetables, grape, grass seed, hop, leafy vegetables, legume vegetables, mint, peanuts, pome fruits, root and tuber vegetables, roses (field) and stone fruits. The application methods proposed include ground, aerial, and chemigation methodology.

## III. What Action is the Agency Taking?

Following the review of the AgraQuest, Inc. application and any

comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register.**

## IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under 40 CFR part 172.

## List of Subjects

Environmental protection,  
Experimental use permits.

Dated: April 17, 2001.

**Kathleen F. Knox,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 01-11095 Filed 5-2-01; 8:45 am]

**BILLING CODE 6560-50-S**

## FEDERAL COMMUNICATIONS COMMISSION

[DA 01-933, ET Docket No. 98-206]

### The MITRE Corporation Report on Technical Analysis of Potential Harmful Interference to DBS From Proposed Terrestrial Services in the 12.2-12.7 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; request for comments.

**SUMMARY:** The MITRE Corporation delivered to the FCC a Report titled "Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band." The MITRE Corporation report was conducted pursuant to Prevention of Interference to Direct Broadcast Satellite Services, of the Commerce, Justice, State and Judiciary Appropriations Act, (CJSJA Act), H.R. 5548 (enacted on December 21, 2000, as part of Public Law 106-553). The MITRE Corporation report addresses the question of possible interference from MVDDS to DBS. Pursuant to the statute, the Commission seeks comment on this report.

**DATES:** Comments Due: May 15, 2001; Reply Comments Due May 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael Marcus for the MITRE Study, and Tom Derenge for ET Docket No. 98-206, Office of Engineering and Technology, (202) 418-2418, and (202) 418-2451, respectively; internet mmarcus@fcc.gov and tderenge@fcc.gov, respectively.

**SUPPLEMENTARY INFORMATION:** This is a summary of the text of the *Public Notice*, DA 01-933 released April 23, 2001. This document is available on the Commission's Internet site, at [www.fcc.gov/oet/info/mitrereport/](http://www.fcc.gov/oet/info/mitrereport/). It is also available for inspection and copying during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

#### Summary of the Public Notice

1. On April 18, 2001, MITRE Corporation delivered to the FCC a Report titled "Analysis of Potential MVDDS Interference to DBS in the 12.2-12.7 GHz Band." The MITRE Corporation report was conducted pursuant to Section 1012, Prevention of Interference to Direct Broadcast Satellite Services, of the Commerce, Justice, State and Judiciary Appropriations Act, (CJSJA Act), H.R. 5548 (enacted on December 21, 2000, as part of Public Law 106-553). This document can be found through the Commission's Electronic Comment Filing System (ECFS) at [www.fcc.gov/e-file/ecfs.html](http://www.fcc.gov/e-file/ecfs.html). It can also be found directly at [www.fcc.gov/oet/info/mitrereport/](http://www.fcc.gov/oet/info/mitrereport/). (The report contains many color diagrams so use of a color printer is recommended in order to follow the technical details in hard copies.) Pursuant to the statute, the Commission seeks comment on this report.

2. The *First Report and Order and Further Notice of Proposed Rulemaking* in ET Docket 98-206, 66 FR 7606, January 24, 2000, ([http://www.fcc.gov/Bureaus/Engineering\\_Technology/Orders/2000/fcc00418.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Orders/2000/fcc00418.pdf)) proposed that a new Multichannel Video Distribution and Data Service (MVDDS) share the existing Direct Broadcast Satellite Service (DBS) downlink allocation at 12.2-12.7 GHz. The MITRE Corporation report addresses the question of possible interference from MVDDS to DBS users in accordance with Section 1012 of the CJSJA Act.

3. Comments on The MITRE Corporation report shall be filed by no later than May 15, 2001. Replies to the comments shall be filed no later than May 23, 2001. Comments and replies are to be filed with the Commission following the same procedures applicable to the First Report and Order and Further Notice of Proposed Rule Making in this proceeding, ET Docket No. 98-206. Comments filed through the ECFS can be sent as an electronic file via the Internet at [www.fcc.gov/e-file/](http://www.fcc.gov/e-file/)

[ecfs.html](http://ecfs.html). In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message: "get form <your e-mail address>". A sample form and directions will be sent in reply.

4. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Generally, only one electronic submission must be filed. If filing by paper, parties must file an original and four copies. Parties should send comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Parties are also encouraged to file a copy of all pleadings on a 3.5 inch diskette in Word 97 format.

5. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. See 47 CFR 1.1200 and 1.1206. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance or the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r); and pursuant to §§ 0.31 and 0.241 of the Commission's Rules, 47 CFR 0.31 and 0.241.

Federal Communications Commission.

#### Geraldine Matise,

*Deputy Chief, Policy and Rules Division,  
Office of Engineering and Technology.*

[FR Doc. 01-11077 Filed 5-2-01; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Tuesday, May 8, 2001 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**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.

**PREVIOUSLY ANNOUNCED DATE & TIME:** Thursday, May 10, 2001, Meeting Open to the Public.

This meeting has been cancelled.

#### PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,  
Telephone: (202) 694-1200.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 01-11326 Filed 5-1-01; 3:08 pm]

**BILLING CODE 6715-01-M**

## 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/](http://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 May 29, 2001.

**A. Federal Reserve Bank of Atlanta** (Cynthia C. Goodwin, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303-2713:

1. *Financial Investors of the South*, Birmingham, Alabama; to acquire 100 percent of the voting shares of Capital Bank (in organization), Montgomery, Alabama.

2. *Wewahitchka State Bank Employee Stock Ownership Plan*, Wewahitchka, Florida; to acquire 50 percent of the voting shares of Gulf Coast Community Bancshares, Inc., Wewahitchka, Florida, and thereby indirectly acquire Wewahitchka State Bank, Wewahitchka, Florida.

**B. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Advantage Bancorp*, Woodbury, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Choice Bank (in organization), Geneva, Illinois.

2. *CIB Marine Bancshares, Inc.*, Pewaukee, Wisconsin; to merge with Citrus Financial Services, Inc., Vero Beach, Florida, and thereby indirectly acquire Citrus Bank, NA, Vero Beach, Florida.

3. *Hustisford Community Bancorp, Inc.*, Hustisford, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Hustisford State Bank, Hustisford, Wisconsin.

**C. Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *American Summit Financial Holdings, LLC*, Eden Prairie, Minnesota; to become a bank holding company by acquiring up to 60 percent of the voting shares of Superior Financial Holding Company, Two Harbors, Minnesota, and thereby indirectly acquire Lake Bank, N.A., Two Harbors, Minnesota.

Board of Governors of the Federal Reserve System, April 27, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01-11038 Filed 5-2-01; 8:45 am]

**BILLING CODE 6210-01-S**

## GENERAL SERVICES ADMINISTRATION

### Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Future Master Plan Development for the Centers for Disease Control (CDC) in Chamblee, GA

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500-1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4D, GSA announces its Notice of Intent (NOI) to prepare an EIS for the proposed development and future build out for the CDC in Chamblee, Georgia. The proposed action includes the expansion of facilities and will include additional buildings, parking structures, and infrastructure on Government-owned property located in Chamblee located south of Tucker Road between Peachtree Dekalb Airport and Buford Highway. The EIS will examine the impacts of this proposed development on the natural and human environment to include impacts to wetlands, floodplains, traffic, and other potential impacts identified by the community through the scoping process.

The EIS will address the potential impacts of two alternatives: the Proposed Action (Development Alternative), and No-Action Alternative (meet facility requirements without full development on site). GSA will solicit community input throughout this process, and will incorporate community comments into the decision process. As part of the Public Scoping process, GSA solicits comments in writing at the following address: Mr. Phil Youngberg, Environmental Manager (4PT), General Services Administration (GSA), 77 Forsyth Street, Suite 450, Atlanta, GA 30303 or Fax: Mr. Phil Youngberg at 404-562-0790. Comments should be submitted in writing no later than June 1st, 2001.

Dated: April 18, 2001.

**Phil Youngberg,**

*Environmental Manager (4PT), General Services Administration.*

[FR Doc. 01-11147 Filed 5-2-01; 8:45 am]

**BILLING CODE 6820-23-M**

## GENERAL SERVICES ADMINISTRATION

### Public Buildings Service, Portfolio Management Division (9PT); Notice of Public Meeting

The General Services Administration (GSA) is in the process of investigating a potential site for the U.S. Border Patrol in the vicinity of Madison Avenue and Guava Street in Murrieta, CA, and is developing an Environmental Assessment for the project. A public meeting will be held at the Murrieta City Council Chambers, 26442 Beckman Court, Murrieta, CA 92562, on May 9, 2001, at 6 p.m. For additional information regarding this project, call Kevin Waldron, Project Manager, at (415) 522-3275, General Services Administration, Public Buildings Service, Portfolio Management Division, 450 Golden Gate Avenue (9PTC), San Francisco, CA 94102.

Dated: April 17, 2001.

**Abdee Gharavi,**

*Director (9PT), Portfolio Management Division, PBS, General Services Administration.*

[FR Doc. 01-11148 Filed 5-2-01; 8:45 am]

**BILLING CODE 6820-61-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Findings of Scientific Misconduct

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

*Malabika Sarker, M.B.B.S., M.P.H., University of Alabama at Birmingham:* Based on the report of an investigation conducted by the University of Alabama at Birmingham and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) finds that Dr. Sarker, former doctoral fellow, Department of Epidemiology, School of Public Health, University of Alabama at Birmingham, engaged in scientific misconduct by falsifying questionnaire data for risk factors for sexually transmitted diseases (STDs) in Bangladesh for her dissertation. The research was supported by the Fogerty International Center, National Institutes of Health (NIH), grant D43 TW01035, "UAB AIDS/HIV International Training & Research."

The purpose of the research was to determine from questionnaires the lifestyle and personal history factors of subjects and correlate them to infection rates for STDs from use of laboratory tests. Dr. Sarker admitted that she falsified the coding of the questionnaire data relating to the occupations of the subjects and of their sexual partners to present statistically significant data regarding the risk factors for STDs.

Dr. Sarker has accepted the PHS finding and has entered into a Voluntary Exclusion Agreement with PHS in which she has voluntarily agreed for a period of three (3) years, beginning on April 17, 2001:

(1) To exclude herself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee;

(2) That any institution that submits an application for PHS support for a research project on which Dr. Sarker's participation is proposed or that uses Dr. Sarker in any capacity on PHS supported research, or that submits a report of PHS-funded research in which Dr. Sarker is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Dr. Sarker's research contribution. The institution must also submit a copy of the supervisory plan to ORI.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Investigative Oversight, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443-5330.

**Chris Pascal,**

*Director, Office of Research Integrity.*

[FR Doc. 01-11073 Filed 5-2-01; 8:45 am]

**BILLING CODE 4150-31-U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

#### Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), The Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act,

section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

*Date:* May 10-11, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

*Place:* AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Research Dissemination and Implementation.

*Date:* June 4-5, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

*Place:* AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

*Date:* June 7-8, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

*Place:* AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Care Systems Research.

*Date:* June 7-8, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

*Place:* AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

*Date:* June 21-22, 2001 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

*Place:* AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852.

*Contact Person:* Anyone wishing to obtain a roster of members or minutes of the meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594-1847.

(This notice is being published less than 15 days prior to the May 10-11 meeting due to administrative difficulties.)

Agenda items for these meetings are subject to change as priorities dictate.

Dated: April 25, 2001.

**John M. Eisenberg,**

*Director.*

[FR Doc. 01-11040 Filed 5-2-01; 8:45 am]

**BILLING CODE 4160-90-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60 Day-01-32]

#### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639-7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

#### Proposed Project

*NIOSH Website for Kids and Teens—NEW—*The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

The goal of this project is to develop a more effective means of communicating NIOSH occupational safety and health (OSH) information to youth via the NIOSH Website for Kids and Teens. NIOSH research indicates that approximately 80% of youths are employed at some point before they leave high school. Research also indicates that despite being prevented by child labor laws from engaging in the most dangerous occupations, teens have a higher rate of injury per hour worked

than adults. Each year, 70 teens die from work injuries. Another 200,000 are injured on the job each year. Of these, about 100,000 are injured seriously enough to require emergency room treatment.

This project will identify effective promotional methods to assure a high level of awareness of the NIOSH Website for Kids and Teens among youth and to generate a high volume of first-time visitors to the website. This project will also develop enhanced website content to increase the relevance of the NIOSH Website for Kids and Teens for the youth audience and to insure repeated visits to the website. The Theory of Planned Behavior (TPB) will be used to guide the assessment of youth attitudes and intentions regarding the usage of an OSH website. This information will be used to tailor promotional messages to increase their appeal to youth who report that they would not be likely to visit an OSH website. The effectiveness of the tailored promotional messages will be contrasted with that of untailored messages.

Due to significant differences in cognitive and emotional development, the youth audience targeted by this study will be segmented into three age groups, 5–8, 9–14, and 15–19. These age groups roughly correspond to elementary, middle, and high school. Different website content will be developed for each age group.

Since youth from rural and urban backgrounds have different opportunities for employment, it is expected that youth from these two areas will have different OSH information needs. This study will recruit representative samples of youth from both rural and urban areas. Differences found between youth from these two areas will be used to tailor website content for each group. The impact of this tailoring will be assessed by systematically matching and mismatching this tailored content with representative samples of youth from each area.

The aims of this project will be accomplished in three phases: 1) Representative samples from each of three targeted age groups (5–8, 9–14,

15–19) will be surveyed regarding their preferences for website content, style, promotional channels, behavioral intentions, behavioral norms, and perceived behavioral constraints; 2) Pretesting of enhanced OSH website content and format developed by this study on representative samples of the targeted age groups and of promotional materials; 3) A promotional campaign using a 3 (elementary, middle, and high school age groups) X 2 (tailored promotional messages, untailored promotional messages) X 2 (rural, urban) design. Promotional messages will be placed in venues (such as magazines or television programs) that have youth oriented content. The effectiveness of these promotional channels and messages will be determined by monitoring the volume of visits to the respective internet portal pages for the NIOSH Website for Kids and Teens.

Based on an entry level hourly wage of \$5.15, the total cost to respondents is \$15,450.

Type of survey	Type of respondents	No. of respondents	No. of responses per respondents	Average burden per response (in hours)	Total burden (in hours)
Audience Need and Preference Survey ...	Elementary, middle, and high school students.	750	1	2	1,500
Pretesting .....	Elementary, middle, and high school students.	750	1	2	1,500
Total .....	.....				3,000

Dated: April 25, 2001.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 01–11052 Filed 5–2–01; 8:45 am]

**BILLING CODE 4163–18–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[60 Day–01–34]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic

summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Project**

The National Health and Nutrition Examination Survey (NHANES) OMB. No. 0920–0237—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The National Health and Nutrition Examination Survey (NHANES) has been conducted periodically since 1970 by the National Center for Health Statistics, CDC. The current cycle of NHANES began in February 1999 and will now be conducted on a continuous, rather than periodic, basis. About 5,000 persons will be examined annually. They will receive an interview and a physical examination. Participation in the survey is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies

the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental exposures, and diet.

NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be

compared to those from previous surveys to monitor changes in the health of the U.S. population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate recommended dietary allowances, food

fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. The current submission requests approval through November 2004.

The survey description, contents, and uses are the same as those in the previous **Federal Register** notice for this survey which was published on March 27, 2000 (Volume 65, Number 59). There is no net cost to respondents other than their time. Respondents are reimbursed for any out-of-pocket costs such as transportation to and from the examination center.

Category	Number of respondents per year	Number of responses/respondent	Avg. burden per response (in hours)	Total burden (hours)
1. Screening interview only .....	13,333	1	0.167	2,227
2. Screener and family interviews only .....	500	1	0.434	217
3. Screener, family, and SP interviews only .....	882	1	1.101	971
4. Screener, family, and SP interviews and primary MEC exam only .....	4,951	1	6.669	33,018
5. Screener, household, and SP interviews, primary MEC exam and full MEC replicate exam .....	248	1	11.669	2,894
6. Screener, household, and SP interviews, and home exam .....	50	1	1.851	93
7. Quality control verification .....	1,333	1	0.030	40
8. Special studies .....	2,067	1	0.500	1,034
Total .....				40,493

Dated: April 27, 2001.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 01-11066 Filed 5-2-01; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[Program Announcement 02002]

**Grants for Rape Prevention and Education**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notice of the availability of fiscal year 2002 funds and request for comments.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for targeted grants to state health departments to support programs addressing violence against women. The Rape Prevention and Education Grant Program strengthens education and training to combat violence against women by supporting

increased awareness, education and training, and the operation of hotlines. CDC will award targeted grants to State Health Departments to be used for rape prevention and education programs conducted by rape crisis centers, State sexual assault coalitions, and other public and private nonprofit entities.

Assistance will be provided only to the health departments of States or their bona fide agents who are current recipients of Rape Prevention and Education funding, including: the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Approximately \$42,000,000 is available in FY 2002, for funding under this formula-based grant program.

It is expected that the awards will begin on or about October 1, 2001, and will be made for a 12-month budget period within a project period of up to five years. Continuation awards will be made within the project period based on satisfactory progress reflected in the annual continuation application.

States must adhere to Congressional legislation regarding the allowable uses for these funds. Not more than five percent (exclusive of Direct Assistance) of any grant or contract through the

grant may be obligated for administrative costs. This five percent limitation is in lieu of, and replaces, the indirect cost rate. Targeted grants to States are to be used for rape prevention and education programs conducted by rape crisis centers, State sexual assault coalitions, and other public and private nonprofit entities for: educational seminars; the operation of hotlines; training programs for professionals; the preparation of informational material; education and training programs for students and campus personnel designed to reduce the incidence of sexual assault at colleges and universities; education to increase awareness about drugs used to facilitate rapes or sexual assault; and other efforts to increase awareness of the facts about or to help prevent sexual assault, including efforts to increase awareness in underserved communities and awareness among individuals with disabilities (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

A State may not use more than two percent of the amount received for each fiscal year for surveillance studies or prevalence studies. Amounts provided to States must be used to supplement, and not supplant, other Federal, State, and local public funds expended to provide the services described above. Grant funds cannot be used for

construction, renovation, the lease of passenger vehicles, the development of major software applications, or supplanting current applicant expenditures.

The National Center for Injury Prevention and Control of CDC will provide information on submitting applications via the Rape Prevention and Education Version of the Grant Application and Reporting System (RPE-GARS).

**DATES:** Awards will begin on or about October 1, 2001, and will be made for a 12-month budget period within a project period of up to five years.

Comments are due June 4, 2001.

**ADDRESSES:** Interested persons are invited to comment on the proposed program. All comments received on or before June 4, 2001 will be considered before the final program announcement is published. Address comments to: Wendy Watkins, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K-58, Atlanta, GA 30341-3724, Telephone (770) 488-1567, Internet address: [dmw7@cdc.gov](mailto:dmw7@cdc.gov).

**FOR FURTHER INFORMATION CONTACT:** Wendy Watkins, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K-58, Atlanta, GA 30341-3724, Telephone (770) 488-1567, Internet address: [dmw7@cdc.gov](mailto:dmw7@cdc.gov).

Dated: April 27, 2001.

**Joseph R. Carter,**

*Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 01-11068 Filed 5-2-01; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Request for Input on Vaccine Financing**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

**ACTION:** Notice and request for public comment.

**SUMMARY:** The National Vaccine Advisory Committee (NVAC) Work Group on the Introduction of New Vaccines seeks input on issues that may be barriers to the optimal implementation of new vaccines. The work group is evaluating how vaccine financing affects the standard of care for different population subgroups.

Vaccine financing can impact specific population subgroups differentially in terms of access and supply of new vaccines. The process by which the public and private sector purchase and distribute vaccines may differ in important ways. The public sector plays a major role in the financing of pediatric vaccine, but it plays a smaller role in the financing of adult vaccines. The timing of public purchase may depend on specific advisory group recommendations as well as specific state budgets. The eligibility for public and private payer programs may also vary.

We are asking partner organizations and groups to submit their items on the pluses and minuses of the current vaccine financing system. In addition to identifying potential barriers to the optimal implementation of vaccines due to vaccine financing, possible solutions to these problems are requested. The information gathered from the partners will be used as the basis for a meeting to develop options for the NVAC to consider.

**DATES:** Comments and information must be submitted by May 31, 2001.

**ADDRESSES:** Comments and information regarding Vaccine Financing should be submitted to the National Vaccine Program Office, Attn: Introduction of New Vaccines, Centers for Disease Control and Prevention, Mailstop D-66, 1600 Clifton Road, NE., Atlanta, Georgia 30333; Federal Express Address: 200 E. Ponce de Leon Avenue, Decatur, Georgia 30030; fax: 404-687-6687; e-mail: [nvpo@cdc.gov](mailto:nvpo@cdc.gov).

**FOR FURTHER INFORMATION CONTACT:** The National Vaccine Program Office, Attn: Introduction of New Vaccines, Centers for Disease Control and Prevention, Mailstop D-66, 1600 Clifton Road, NE., Atlanta, Georgia 30333; Federal Express Address: 200 E. Ponce de Leon Avenue,

Decatur, Georgia 30030; fax: 404-687-6687; e-mail: [nvpo@cdc.gov](mailto:nvpo@cdc.gov).

Dated: April 27, 2001.

**Joseph R. Carter,**

*Associate Director for Management and Operations, Centers for Disease Control and Prevention.*

[FR Doc. 01-11067 Filed 5-2-01; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 01N-0183]

**Elanco Animal Health, A Div. of Eli Lilly & Co. et al.; Withdrawal of Approval of NADAs**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 13 new animal drug applications (NADAs) listed below at the request of the sponsor. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing the portions reflecting approval of the NADAs.

**DATES:** Withdrawal of approval is effective May 14, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pamela K. Esposito, Center for Veterinary Medicine (HFV-210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-5593.

**SUPPLEMENTARY INFORMATION:** The following sponsors have requested that FDA withdraw approval of the NADAs listed below because the products are no longer manufactured or marketed:

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
Elanco Animal Health, A Div. of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.	NADA 12-585 Tylan Injectable (tylosin tartrate).	522.2640b (000986)
.....	NADA 15-207 Hyferdex Injection (iron dextran complex).	522.1183(c) (000986)

Sponsor	NADA Number Product (Drug)	21 CFR Cite Affected (Sponsor Drug Labeler Code)
.....	NADA 30-330 Tylocine Sulfa Tablets (sul fadiazine, sulfamerazine, sulfamethazine, tylosin).	not applicable
.....	NADA 31-962 Tylan plus Neomycin Eye Powder (neomycin sulfate, tylosin).	524.2640 (000986)
.....	NADA 40-123 Toptic Ointment (cephalonium, flumethasone, iodochlorhydroxyquin, piperocaine hydrochloride, polymyxin B sulfate).	524.321 (000986)
.....	NADA 47-092 Tribodine (ticarbodine) .....	520.2460a (000986)
.....	NADA 47-353 Ferti-Cept (chorionic gonadotropin).	522.1081(b) (000986)
.....	NADA 92-602 Cephalothin Discs (cephaloridine).	529.360 (000986)
.....	NADA 96-678 Tribodine Capsules (ticarbodine).	520.2460b (000986)
Bioproducts, Inc., 320 Springside Dr., suite 300, Fairlawn, OH 44333-2435.	NADA 93-518 Tylan® 10 Plus (tylosin phosphate).	558.625(b)(2) (051359)
Young's Inc., Roaring Spring, PA 16673 .....	NADA 96-162 Hog Grow-R-Mix-4000, Hog Grow-R-Mix-800 (tylosin phosphate).	558.625(b)(13) (035393)
Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215.	NADA 42-889 Oxytocin Injection (oxytocin)	522.1680(b) (000857)
Webel Feeds, Inc., R.R. 3, Pittsfield, IL 62363 ...	NADA 116-196 Webel Tylan Premix (tylosin phosphate).	558.625(b)(73) (035098)

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADAs 12-585, 15-207, 30-330, 31-962, 40-123, 42-889, 47-092, 47-353, 92-602, 93-518, 96-162, 96-678, and 116-196, and all supplements and amendments thereto, is hereby withdrawn, effective May 14, 2001.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations by removing those portions that reflect approval of the NADAs.

Dated: April 23, 2001.

**Linda Tollefson,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. 01-11071 Filed 5-2-01; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**Single Source Cooperative Agreement to Support the National Center for Natural Products Research (NCNPR), University of Mississippi**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intention to accept and consider a single source application for the award of a cooperative agreement to the University of Mississippi (UM) to support the National Center for Natural Products Research (NCNPR), which is located on UM's Campus at Oxford, MS. FDA anticipates providing up to \$1 million in fiscal year 2001 (direct and indirect costs) for this project, with an additional 4 years of funding up to \$1 million per year predicated upon acceptable performance and the availability of future fiscal year funding. These collaborations will support and benefit the public health by promoting more efficient development and dissemination of natural products research and science and will complement the diverse activities of both the public and private sector that may become collaborators.

**DATES:** Submit applications by June 18, 2001.

**ADDRESSES:** An application is available from, and should be submitted to Rosemary Springer, Grants Management Specialist, Division of Contracts and Procurement Management (HFA-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7182, e-mail: rspringe@oc.fda.gov. Applications hand-carried or commercially delivered should be addressed to rm. 2129, 5630 Fishers Lane, Rockville, MD 20857. Application forms can also be found at [http://www.nih.gov/grants/funding/phs398/forms\\_toc.html](http://www.nih.gov/grants/funding/phs398/forms_toc.html).

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the administrative and financial management aspects of this notice:* Rosemary Springer (address above).

*Regarding the programmatic aspects:* Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS-840), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5375, e-mail: JRader@CFSAN.fda.gov.

**SUPPLEMENTARY INFORMATION:** FDA is announcing its intention to accept and consider a single source application from UM for a cooperative agreement to support NCNPR. FDA's authority to enter into grants and cooperative agreements is detailed under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance at 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public.

The Public Health Service (PHS) strongly encourages all award recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a national activity to reduce morbidity and mortality and to improve the quality of life. Applicants may obtain a hard copy of Healthy People 2010 objectives, volumes I and II,

conference edition (B0074) for \$22 per set, by writing to the Office of Disease Prevention and Health Promotion (ODPHP) Communication Support Center, P.O. Box 37366, Washington, DC 20013-7366. Each of the 28 chapters of Healthy People 2010 is priced at \$2 per copy. Telephone orders can be placed to the ODPHP Center on 301-468-5690. The ODPHP Center also sells the complete conference edition in CD-ROM format (B0071) for \$5. This publication is available as well on the Internet at [www.health.gov/healthypeople/](http://www.health.gov/healthypeople/). Web site viewers should proceed to "Publications."

## I. Background

Congress amended the Federal Food, Drug, and Cosmetic Act (the act) with the passage of the Dietary Supplement Health and Education Act of 1994, to create a regulatory framework for dietary supplements under food provisions of the act. FDA has primary responsibility for ensuring that appropriate regulatory actions are taken against marketed products that: (a) Present an unreasonable or significant risk of illness or injury when used according to label directions or under ordinary conditions of use, or (b) bear labeling that is false or misleading.

The ability to identify and analyze specific components in ingredients, including botanical ingredients, and in finished products is an essential component of research and regulatory programs directed at ensuring that dietary supplements are safe and that their labeling is truthful and not misleading. The availability of authenticated reference materials is an essential prerequisite to the accurate identification and quantitative analysis of ingredients or finished products. For many botanical ingredients currently used in marketed dietary supplement products, however, appropriate reference materials are not readily available, their authenticity is not well documented, and their compositional characteristics are not adequately defined and evaluated for biological effects.

The use of botanical products in dietary supplements in the U.S. has increased significantly in recent years. The newness of the regulatory approaches and marketed uses of these products has created a critical need for bringing sound science to a number of issues that are necessary to ensure that marketed products are safe and their labeling is truthful and not misleading. Therefore, it is essential that general principles and criteria for ensuring scientific validity in manufacturing of botanical products and the use of

botanical ingredients in dietary supplements be developed through scientific discussion and consensus-building. Such general principles and criteria will be applicable not only to FDA regulatory and research activities, but will also promote consistency and scientific rigor with respect to research and standard-setting activities performed by other organizations and agencies, and will assist in the development of quality control practices by industry.

## II. Goals and Objectives

### A. Concept

FDA believes that cooperative research with the UM-NCNPR will provide opportunities to address important national and international problems in natural products research in a timely manner. However, only FDA employees will perform any official regulatory activities. Further, FDA believes that cooperative research through UM will promote the efficient use of the complementary resources of both parties.

The applicant would propose to design, implement, and evaluate a comprehensive, multidisciplinary array of scientific activities in the broad area of natural products' ingredients. The applicant's proposal must be designed to meet the objectives of the request for applications (RFA). The applicant's proposal should identify and assess innovative approaches to address the RFA objectives relative to the broad area of natural product identification and safety.

The purpose of this cooperative agreement would be to:

- Coordinate scientific workshops and conferences on relevant topics of public interest to address high priority science and research needs;
- Obtain and characterize authenticated reference materials for botanicals;
- Develop literature reviews on relevant topics; and
- Share technical information and scientific concepts.

### B. Project Emphasis

The purpose is to augment and enhance research and scientific expertise in natural products research. There is a critical need to address the increasingly complex problems in such areas as acquisition, validation, and characterization of botanical reference materials, related research and literature reviews to ensure the safety or effectiveness of marketed products, and the development of sound scientific principles and consensus-building for

dealing with these ingredients and products. Since there is increased concern regarding the safety of dietary supplements, the need to find other ways of expanding the current science base is essential.

The sharing of complementary resources will create opportunities for important national and international issues in natural products research to be addressed in a timely and scientifically sound manner. Many of these issues (e.g., development and characterization of authenticated botanical reference standards, and scientific review and consensus-building) can only be addressed with close cooperation of the public and private sectors. UM's expertise and facilities for obtaining and characterizing authenticated botanical reference materials are needed to conduct investigations at the forefront of natural products research. Additionally, UM's experimental field plots, vast repository containing thousands of natural products extracts for testing in a variety of biological assays, and their expertise and long history of active scientific investigations are well known in these areas. University personnel will provide enhanced scientific expertise in advanced techniques for the characterization of natural products as well as expand the current capabilities in research to support regulatory actions and respond to emergency situations.

### C. Summary

FDA believes that research conducted at the UM is a sound investment in the future public health of American consumers. It provides an opportunity for extensive cooperation with university scientists; and it will stimulate collaborative efforts to ensure a safe food supply contributing significantly to the implementation of the goals for government, academia, industry, and consumers to work together to improve the safety of natural products. The UM scientists would bring a special perspective to advancing the knowledge of natural products germane to the public interest. Interaction among those scientists will stimulate creativity and innovation. FDA's participation in this venture will promote a greater awareness and understanding of regulatory science and practice among academic scientists, thereby providing economic and program benefits to both. In summary, collaboration between the public and the private sector provides an efficient means of remaining current with scientific and technical accomplishments in the areas of natural products research.

### III. Mechanism of Support

#### A. Award Instrument

Support for this program, if awarded, will be in the form of a cooperative agreement. The award will be subject to all policies and requirements that govern the research grant programs of the PHS, including the provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and PHS's grants policy statement. The regulations issued under Executive Order 12372 do not apply.

#### B. Length of Support

The length of support will be for 1 year with the possibility of an additional 4 years of noncompetitive support. Continuation, beyond the first year, will be based upon performance during the preceding year and the availability of Federal fiscal year appropriations. The National Institutes of Health (NIH) modular grant program does not apply to this FDA program.

### IV. Reasons for Single Source Selection

Competition is limited to UM because: (1) FDA's appropriations language has included funds for collaborative research on dietary supplements between UM-NCNPR and FDA; and (2) UM has been determined to be the only institution with the unique capability of providing a broad range of highly relevant scientific expertise and facilities that are physically co-located and singularly dedicated to natural products research.

FDA believes that there is compelling evidence that UM is uniquely qualified to fulfill the objectives of the proposed cooperative agreement. UM is a comprehensive research institution with numerous academic programs relevant to natural products which can help to ensure that market products are safe for the American public. The UM School of Pharmacy has been in existence for 90 years and has an outstanding 30-year track record for isolating and developing prospective new pharmaceuticals from plants and microorganisms.

NCNPR, which opened in July 1999, is a division of the Research Institute of Pharmaceutical Sciences of the UM's School of Pharmacy. NCNPR was created to bring together an alliance of academia, government, and the pharmaceutical and agrochemical industries to integrate research, development, and commercialization of potentially useful natural products. The facility is the nation's only university-affiliated research center devoted to improving human health and agricultural productivity through the discovery, development, and commercialization of pharmaceuticals

and agrochemicals derived from natural products. The goal of NCNPR in botanical dietary supplements is to enable safe, effective, and proper use of high quality botanical products by informed professionals and consumers. NCNPR conducts basic and applied multidisciplinary research to discover and develop natural products for use as pharmaceuticals, dietary supplements and agrochemicals. NCNPR also maintains a repository of several thousand natural product extracts that are available for screening by collaborators working in other areas.

NCNPR has substantial expertise to carry forward specific discoveries, products, and technologies. Most of the projects to develop promising high priority products or technology are conducted in collaboration with industrial partners or through externally funded grants and contract. NCNPR is staffed with a highly synergistic mix of full-time research faculty and support staff and employs a number of undergraduate and graduate students and postdoctoral scientists. Additionally, the USDA's National Products Utilization Research Unit is co-housed and programmatically integrated with the NCNPR thus expanding the available expertise and facilities. Together, the faculty, scientists, staff, students, USDA scientists, and external collaborators, provide the human resources required to accomplish the research and development goals of the RFA.

Additionally, FDA's appropriations language includes funds for collaborative research on dietary supplements between NCNPR and FDA. NCNPR has the unique capability to bring together diverse scientific expertise on bioactive natural products research from: (a) The UM faculty in the School of Pharmacy involving researchers in the Departments of Pharmacognosy, Medicinal Chemistry, Pharmaceutics, Pharmacology, and the Research Institute of Pharmaceutical Sciences; (b) research scientists in the U.S. Department of Agriculture/Agricultural Research Service's (USDA/ARS) National Products Utilization Research Unit who are physically co-housed and programmatically integrated in the NCNPR; and (c) its close academic links and historical collaborations with agricultural and botanical programs and facilities at the UM system. UM-NCNPR's ability to successfully and uniquely collaborate with FDA is also enhanced by its a repository of several thousand natural product extracts; and its long history of successful basic and applied multidisciplinary research to discover

and develop natural products for use as bioactive ingredients in dietary supplements and pharmaceuticals, and for improving the quality and safety of dietary supplements. Finally, the large number of established collaborations among NCNPR scientists and other government agencies, academic organizations, and research institutions will also be useful in enhancing the collaborative efforts with FDA. These collaborations will support and benefit the public health by promoting more efficient development and dissemination of natural products research and science and will complement the diverse activities of both the public and private sector that may become collaborators.

Research in NCNPR is focused on using state-of-the-art knowledge and technology to discover bioactive natural products, develop novel technologies or processes that facilitate the discovery of bioactive natural products, and provide research-based information on plant derived products with health applications. These programs, facilities, and expertise are essential for supporting the needs to ensure that sound science is available for ensuring the safety and truthfulness of labeling of marketed dietary supplement products.

Collaboration between the public and private sector is an efficient means for both FDA and UM to remain current with scientific and technical accomplishments from a natural products research perspective. Harmonizing regulatory activities is but one example of the need for and use of this natural products research knowledge and expertise. The partnership between FDA and UM will provide both the technical and educational expertise necessary for effective mechanisms that will facilitate the movement of new technology and provide direct usefulness to the public health.

### V. Reporting Requirements

An annual financial status report (FSR) (SF-269) is required. The original and two copies of this report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the FSR in a timely fashion will be grounds for suspension or termination of the grant.

An annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report. The progress report must include a description of the progress and accomplishments for each objective stated in the RFA.

A final program progress report, FSR (SF-269), and invention statement must be submitted within 90 days after the expiration of the project period as noted on the notice of grant award.

## VI. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will work closely with the grantee and have final approval on all project activities. This could include management structure for the program, development of plans and strategies for key scientific approaches and projects, and for identifying and carrying out the research.
2. FDA will participate in all functions directly related to the guidance and development of the program.
3. FDA will provide technical monitoring and/or direction of the work, including monitoring of data analysis, interpretation of analytical findings and their significance.
4. FDA will assist and approve (as deemed appropriate) the substance of publications, co-authorship of publications and data release.
5. FDA will have final approval on any re-directions proposed during the course of the project.

## VII. Review Procedures

### A. Review Method

The application submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness. The application will be considered nonresponsive if it is not in compliance with this document. If an application is found to be nonresponsive it will be returned to the applicant without further consideration. An application is considered nonresponsive for the following reasons: (1) The applicant organization is ineligible; (2) it is received after the specified receipt date; (3) it is incomplete; (4) it is illegible; (5) it is not responsive to the RFA; (6) the material presented is insufficient to permit an adequate review; and/or (7) it exceeds the recommended threshold amount reflected in the RFA.

A responsive application will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field. A

responsive application will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. The Commissioner of FDA or his/her designee will make final funding decisions.

### B. Review Criteria

#### 1. Responsiveness to RFA

The application must demonstrate that the objectives and goals of the RFA are understood and the applicant shall offer a logical program to meet the objectives of the RFA.

#### 2. Adequacy of Plan

The applicant must provide a detailed plan to establish a collaborative natural products research program as a multidisciplinary effort (i.e., FDA and academia). The application will be evaluated on the thoroughness of the plan, the reasonableness of the approach, and adherence to the concept and its objectives, as stated in the RFA. The detailed plan must form the basis of a balanced natural products research program directed toward development of skills and expertise in aspects of natural products research, as stated in the RFA. Included will be development of: Scientific expertise in natural products research involving researchers in pharmacognosy, medicinal chemistry, pharmacology, and pharmaceutical sciences; state of the art knowledge and technology to discover bioactive natural products; novel technologies or processes that facilitate the discovery of bioactive natural products; and research-based information on potential health applications of plant derived products. The plan must also include a schedule for accomplishing the objectives outlined above.

#### 3. Timeliness of Program Implementation

The application will be evaluated for the applicant's ability to establish natural products research in an expeditious manner.

#### 4. Adequacy and availability of research facilities

The application must demonstrate that the applicant has adequate research facilities in the areas of: Pharmacognosy, medicinal chemistry, pharmacology, and pharmaceutical sciences, as stated in the RFA.

#### 5. Ability to Conduct Proprietary Research

The application shall demonstrate the applicant's ability to conduct

proprietary research and to protect confidentiality of data, procedures, etc.

#### 6. Staff Experience and Capabilities

The application must demonstrate the availability of core staff with the experience and capability to conduct research as described in the detailed plan presented in item 2 above. The staff must have the capability to deal with natural products research as well as plan long-range research to assess future needs. The availability of sufficient administrative and support personnel to meet the RFA objectives must also be demonstrated.

#### 7. Reasonableness of proposed budget

The application is evaluated on the bases of the reasonableness of costs.

## VIII. Submission Requirements

The original and two copies of the completed grant application form PHS 398 (Rev. 4/98), with appendices for each of the copies, should be delivered to Rosemary Springer (address above). The application receipt date is June 18, 2001. No supplemental or addendum material will be accepted after the receipt date. The outside of the mailing package and item 2 of the application face page should be labeled: "Response to RFA-FDA-CFSAN-2001-2."

## IX. Method of Application

### A. Submission Instructions

Applications will be accepted during normal business hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.) Do not send applications to the Center for Scientific Research (CSR), NIH. Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed nonresponsive and returned to the applicant. Applications must be submitted via mail delivery as stated above. FDA is unable to receive applications electronically. Instructions for completing the application form can

be found on the following Web site: <http://www.nih.gov/grants/funding/phs398/phs398.html>. The forms can be found at [http://www.nih.gov/grants/funding/phs398/forms\\_toc.html](http://www.nih.gov/grants/funding/phs398/forms_toc.html). Applicants are advised that FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by NIH on its applications.

#### B. Format for Application

Submission of the application must be on Grant Application Form PHS 398 (Rev. 4/98). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and mailing label address. The face page of the application should reflect the request for applications number RFA-FDA-CFSAN-2001-2.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

#### C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: April 30, 2001.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 01-11159 Filed 5-2-01; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Anesthetic and Life Support Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on June 14 and 15, 2001, 8 a.m. to 5 p.m.

*Location:* Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact:* Kimberly Topper, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-827-7001, e-mail: [topperk@cder.fda.gov](mailto:topperk@cder.fda.gov), FAX 301-827-6801, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On both days the committee will discuss the medical use of opiate analgesics in various patient populations, including pediatric patients and patients with chronic pain of nonmalignant etiology, as well as the risk to benefit ratio of extending opiate treatment into these populations. It will also address concerns regarding the abuse potential, diversion and increasing incidence of addiction to opiate analgesics, especially to the modified release opiate analgesics.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 7, 2001. Oral presentation from the public will be scheduled between approximately 1 p.m. and 2 p.m. each day. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 7, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Background material from FDA will be posted 24 hours before the meeting at the Anesthetic and Life Support Drugs Advisory Committee docket site at <http://www.fda.gov/ohrms/dockets/ac/acmenu.htm>. (Click on the year 2001 and scroll down to Anesthetic and Life Support Drugs meetings.) This is the same Web site where you can find the minutes, transcript, and slides from the meeting. This material is generally posted about 3 weeks after the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 27, 2001.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 01-11157 Filed 4-30-01; 4:16 pm]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 01D-0184]

#### Compliance Policy Guide: "Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens;" Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide (CPG) entitled "Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens." This CPG is intended to set forth FDA's internal enforcement priorities concerning undeclared food allergens.

**DATES:** Submit written comments on this CPG at any time.

**ADDRESSES:** Submit written requests for single copies of the CPG entitled "Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens" to the Director, Division of Compliance Policy (HFC-230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-827-0482. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

Submit written comments on the CPG to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

#### FOR FURTHER INFORMATION CONTACT:

*Technical questions concerning allergens in foods:* Kathy Gombas, Office of Field Programs (HFS-615), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4231, FAX 202-260-0136.

*Questions concerning regulatory actions:* MaryLynn Datoc, Office of Enforcement (HFC-230), Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-0413, FAX 301-827-0482.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA has developed a CPG on FDA's internal enforcement process concerning undeclared allergens in

foods. The purpose of this CPG is to provide clear policy and regulatory guidance to FDA's field and headquarters staff. It also contains information that may be useful to the regulated industry and to the public. FDA is issuing this CPG as Level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The guidance represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. The guidance is intended to further FDA's efforts to prevent potential serious allergic reactions in sensitive individuals resulting from undeclared allergens in foods. FDA is making this guidance document effective immediately because public participation prior to its implementation is not appropriate in these circumstances (21 CFR 10.115(g)(2); 65 FR 56478). Although the guidance document announced in this notice is being implemented immediately, FDA is requesting comments on the guidance. FDA will review all comments received, revise the guidance in response to the comments as appropriate, and publish a notice of availability if the guidance is revised.

## II. Comments

Interested persons may, at any time, submit written comments on the CPG entitled "Statement of Policy for Labeling and Preventing Cross-Contact of Common Food Allergens," to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except

that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the CPG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Copies of the CPG may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs (ORA) home page includes the CPG and may be accessed at <http://www.fda.gov/ora> under "Compliance References."

Dated: April 27, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*  
[FR Doc. 01-11072 Filed 5-2-01; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 01D-0202]

#### Medical Devices: Draft "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles;" Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles." In this draft guidance, FDA sets forth its interpretation of the provisions of the Food and Drug Administration Modernization Act of 1997 (FDAMA) that require FDA to take into account the least burdensome means for applicants to demonstrate a device's effectiveness or substantial equivalence. This guidance is neither final nor is it in effect at this time.

**DATES:** Submit written comments on this draft guidance by August 1, 2001.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles" to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. Submit written comments on this draft guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Joanne R. Less, Center for Devices and Radiological Health (HFZ-403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1190.

**SUPPLEMENTARY INFORMATION:**

### I. Background

A central purpose of FDAMA was to ensure the timely availability of safe and

effective new products that would benefit the American public. While Congress wanted to reduce unnecessary burdens associated with the premarket clearance and approval processes, Congress did not intend to lower the statutory thresholds for substantial equivalence or reasonable assurance of safety and effectiveness. To help achieve this goal, Congress added section 513(a)(3)(D)(ii) and (i)(1)(D) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c).

These two paragraphs (a)(3)(D)(ii) and (i)(1)(D) of section 513 of the law contain what are commonly referred to as the "least burdensome provisions" of the act. During the last year, FDA has been working with the Least Burdensome Industry Task Force to develop an interpretation of the least burdensome provisions that would accurately capture Congress' intent and that could be implemented consistently by FDA and industry. This draft guidance, in addition to the other guidances developed by the agency, is a part of that process. As presented in this draft guidance, FDA has chosen to apply the least burdensome concept beyond the two statutory provisions in which the language actually appears. FDA considers the least burdensome concept to be one that could affect almost all premarket regulatory activities, including presubmission meetings with industry, premarket submissions, and the development of guidance documents and regulations.

### II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the least burdensome provisions of the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

The agency has adopted good guidance practices (GGPs), and published the final rule, which set forth the agency's regulations on the development, issuance, and use of guidance documents (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance document is issued as a Level 1 guidance in accordance with the GGP regulations.

### III. Electronic Access

In order to receive "The Least Burdensome Provisions of the FDA Modernization Act of 1997: Concept and Principles" via your fax machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter

the system. At the second voice prompt press 1 to order a document. Enter the document number (1332) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>. Guidance documents are also available on the Dockets Management Branch Web site at <http://www.fda.gov/ohrms/dockets/default.htm>.

#### IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by August 1, 2001. Submit two copies of any comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 30, 2001.

**William K. Hubbard,**

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01-11231 Filed 5-1-01; 12:40 pm]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA-116]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment.

Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations in 42 CFR 493.1—.2001; *Form No.:* HCFA-116 (OMB# 0938-0581); *Use:* Certification requirements have been established for any entity that performs testing on human beings for diagnostic or treatment purposes. Laboratories must apply for and obtain a certificate in order to perform this testing; *Frequency:* Biennially; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, local or tribal government; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 20,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: April 23, 2001.

**John P. Burke III,**

HCFA Reports Clearance Officer, HCFA Office of Information Services, Standards and Support Group, Division of HCFA Enterprise Standards.

[FR Doc. 01-11044 Filed 5-2-01; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA-18]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Hospital Insurance in 42 CFR 406.7; *Form No.:* HCFA-18 (OMB# 0938-0251); *Use:* The HCFA-18F5 is used to establish entitlement to hospital insurance and supplementary medical insurance for beneficiaries entitled under title XVIII of the Social Security Act; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone

number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Attn: HCFA-18, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: April 26, 2001.

**John P. Burke, III,**

*Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 01-11118 Filed 5-2-01; 8:45 am]

**BILLING CODE 4120-03-P**

**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: Organ Procurement and Transplantation Network (42 CFR Part 121, OMB No. 0915-0184)—Revision**

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain recordkeeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. This is a request for a revision of the current recordkeeping and reporting requirements associated with the OPTN. These data will be used by HRSA in monitoring the contracts for the OPTN and the Scientific Registry and in carrying out other statutory responsibilities. Information is needed to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to ensure that all qualified entities are accepted for membership in the OPTN.

The estimated annual response burden is as follows:

**ESTIMATED ANNUAL REPORTING AND RECORD KEEPING BURDEN**

Section and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
121.3(b) (2)—OPTN membership and application requirements for OPOs, hospitals, histocompatibility laboratories .....	30	1	30	40	1,200
121.6(c)—Submitting criteria for organ acceptance .....	900	1	900	0.1	90
121.6(c)—Sending criteria to OPOs .....	900	1	900	0.1	90
121.7(b)4—Reasons for refusal .....	900	0.5	34,200	0.1	3,420
121.7(e)—Transplant to prevent organ wastage .....	900	0.5	420	0.1	42
121.9(b)—Designated transplant program requirements .....	10	1	10	2	20
Total .....	940	38.8	36,460	.1	4,862

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: April 26, 2001.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 01-11074 Filed 5-2-01; 8:45 am]

**BILLING CODE 4160-15-U**

**DEPARTMENT OF THE INTERIOR**

**U.S. Geological Survey**

**Request for Public Comments on Extension of Existing Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act**

A request extending the information collection described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)). Copies of the proposed collection may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How 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 forms of information technology.

*Title:* User Survey for National Biological Information Infrastructure (NBII).

*OMB Approval No.:* 1028-0069.

*Summary:* The collection of information referred herein applies to a voluntary survey that allows visitors to the NBII World-Wide Web site ([www.nbii.gov](http://www.nbii.gov)) the opportunity to provide feedback on the utility and effectiveness of the NBII operation and contents in meeting their needs.

*Estimated Completion Time:* 3 minutes.

*Estimated Annual Number of Respondents:* 3,000.

*Frequency:* Once.

*Estimated Annual Burden Hours:* 150 hours.

*Affected Public:* Public and private, individuals and institutions.

*For Further Information Contact:* To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648-7313, or go to the Website (<http://www.nbii.gov>).

Dated: April 23, 2001.

**Dennis B. Fenn,**

*Associate Director for Biology.*

[FR Doc. 01-11045 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-Y7-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-933-1430-DET; IDI-14647]

#### Public Land Order No. 7484; Revocation of a Bureau of Land Management Order dated January 28, 1952; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes a Bureau of Land Management order as it affects the remaining public lands withdrawn for the Bureau of Reclamation's Mountain Home Reclamation Project. The lands are no longer needed for the purposes for which they were withdrawn and the revocation is needed to consummate a pending land exchange. This action will open the lands to surface entry and mining, unless included in other segregations of record. The lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** June 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208-373-3867.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Bureau of Land Management Order dated January 28, 1952, which withdrew public lands for the Bureau of Reclamation's Mountain Home Reclamation Project, is hereby revoked in its entirety.

2. At 9 a.m. on June 4, 2001, the lands described in paragraph 1 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 June 4, 2001, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on June 4, 2001, the lands described in paragraph 1 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 12, 2001.

**Gale A. Norton,**

*Secretary of the Interior.*

[FR Doc. 01-11120 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-GG-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT-080-1430-ET; UTU 76946]

#### Public Land Order No. 7482; Partial Opening of Power Site Classification No. 93; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order opens, subject to the provisions of section 24 of the Federal Power Act, 160.78 acres withdrawn by an Executive Order which established Bureau of Land Management Power Site Classification No. 93. This action will allow for

disposal of the lands and retain the power rights to the United States.

**EFFECTIVE DATE:** June 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Peter Kempenich, BLM Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, 435-781-4432.

**SUPPLEMENTARY INFORMATION:** By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVUT-221-000, it is ordered as follows:

1. At 10 a.m. on June 4, 2001, the following described lands withdrawn by the Executive Order dated April 16, 1925, which established Power Site Classification No. 93, will be opened to disposal, subject to the provisions of section 24 of the Federal Power Act, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

#### Salt Lake Meridian

T. 1 N., R. 25 E.,

Sec. 3, lots 18 and 19, and SW $\frac{1}{4}$ NW $\frac{1}{4}$ .

T. 2 N., R. 25 E.,

Sec. 34, NE $\frac{1}{4}$ SW $\frac{1}{4}$  and SW $\frac{1}{4}$ SW $\frac{1}{4}$ .

The areas described aggregate 160.78 acres in Daggett County.

2. The State of Utah has waived its right of selection in accordance with the provisions of section 24 of the Federal Power Act of June 10, 1920, as amended 16 U.S.C. 818 (1994).

Dated: April 11, 2001.

**Gale A. Norton,**

*Secretary of the Interior.*

[FR Doc. 01-11119 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-DQ-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Park System Advisory Board; Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 1-16, that the National Park System Advisory Board will meet May 21-23, 2001, in Gatlinburg, Tennessee. The Board will tour Great Smoky Mountains National Park on May 21, and will convene its business meeting on May 22 and 23 in the Banquet Room of Calhoun's Restaurant, 1004 Parkway, Gatlinburg, Tennessee 37738.

The Board will convene from 8:30 a.m., until 5 p.m., on May 22 and 23. The Board will consider procedural matters relative to completing its study of the future of the National Park Service and the National Park System. National Historic Landmark nominations will be considered by the Board during the morning session on May 22.

The Board may be addressed at various times by officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone 202-208-7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: April 17, 2001.

**Shirley Sears Smith,**  
*Committee Management Officer, National Park Service.*

[FR Doc. 01-11133 Filed 5-2-01; 8:45 am]

BILLING CODE 4310-70-U

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 21, 2001. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400,

Washington, DC 20240. Written comments should be submitted by May 18, 2001.

**Carol D. Shull,**  
*Keeper of the National Register of Historic Places.*

### ARIZONA

#### Maricopa County

Phoenix Indian School Historic District, 300 E. Indian School Rd., Phoenix, 01000521

### ARKANSAS

#### Nevada County

Allen Tire Company and Gas Station, (Arkansas Highway History and Architecture MPS) 228 1st St., SW, Prescott, 01000523

#### Ouachita County

Harvey's Grocery and Texaco Station, (Arkansas Highway History and Architecture MPS) 3241 AR 24, Camden, 01000524

#### Union County

Griffin Auto Company Building, (Arkansas Highway History and Architecture MPS) 117 E. Locust St., El Dorado, 01000525

### CALIFORNIA

#### San Francisco County

Camera Obscura, 1096 Point Lobos Ave., San Francisco, 01000522

### FLORIDA

#### Bay County

SS Tarpon (Shipwreck), 7.8 nautical mi. offshore Panama City, Panama City, 01000527

#### Broward County

SS Copenhagen (shipwreck), Pompano Drop-Off S of Hillsboro Inlet, Pompano Beach, 01000532

#### Dixie County

City of Hawkinsville (shipwreck), Suwannee R. 100 yds S of Old Town RR trestle, Old Town, 01000533

#### Escambia County

USS Massachusetts—BB-2 (shipwreck), 1. mi. SSW of Pensacola Pass, Pensacola, 01000528

#### Miami-Dade County

Half Moon (shipwreck), Outside Bear Cut off Key Biscayne, Miami, 01000531

#### Monroe County

San Pedro (shipwreck), 1.25 mi. S of Indian Keys, Islamorada, 01000530

#### Palm Beach County

Old Lucerne Historic Residential District, Roughly along N. Lakeside Dr., N. Palmway St., and N. O St., from Lake Ave. to 7th Ave. N, Lake Worth, 01000526

#### St. Lucie County

Urca De Luca (shipwreck), 200 yds offshore Jack Island Park, N of Ft. Pierce Inlet, Ft. Pierce, 01000529

### GEORGIA

#### Baker County

Notchaway Baptist Church and Cemetery, Jct. of GA 91 and GA 253, Newton, 01000534

#### Coweta County

Oak Grove Plantation, 4537 N US 29, Newnan, 01000535

### IDAHO

#### Idaho County

Elk City Wagon Road-Victory Gulch—Smith Grade Segment, Nez Perce National Forest, Elk City, 01000536

### KANSAS

#### Dickinson County

First Presbyterian Church of Abilene, 300 N. Mulberry St., Abilene, 01000540  
Hotel Sunflower, 409 NW 3rd St., Abilene, 01000539  
St. John's Episcopal Church, 519 N. Buckeye Ave., Abilene, 01000537  
United Building, 300 N. Cedar St., Abilene, 01000538

### KENTUCKY

#### Greenup County

General U.S. Grant Bridge, Ohio R.-Chillicothe and Second St., South Portsmouth, 01000560

### MASSACHUSETTS

#### Worcester County

Sutton Center Historic District, Roughly Boston Rd., Singletary Ave., and Uxbridge Rd., Sutton, 01000541

### MISSOURI

#### Boone County

Taylor, John N. and Elizabeth, House, 716 W Broadway, Columbia, 01000546

#### Callaway County

Robnett—Payne House, 223 E Fifth St., Fulton, 01000543  
St. Louis Independent City  
Mississippi Valley Trust Company Building, 401 Pine St., St. Louis (Independent City), 01000544  
St. Louis Theatre, 718 N. Grand Blvd., St. Louis (Independent City), 01000545

### NEW YORK

#### Cattaraugus County

Bank of Gowanda, 8 W. Main St., Gowanda, 01000553

#### Erie County

Engine House No. 28, 1170 Lovejoy St., Buffalo, 01000554

#### New York County

Germania Life Insurance Company Building, 50 Union Sq. E, New York, 01000556

#### Oswego County

Montcalm Park Historic District, Roughly Montcalm St., W 6th St., W. Schuyler St., and Bronson St., vic. of Montcalm Park, Oswego, 01000555

**Queens County**

St. Matthew's Episcopal Church, 85-45 96th St., Woodhaven, 01000550  
Wyckoff-Snediker Family Cemetery, 85-45 96th St., Woodhaven, 01000549

**Rensselaer County**

Elmbrook Farm, 2567 Brookview Rd., Schodack, 01000551

**Schuyler County**

First Presbyterian Church of Hector, 5519 NY 414, Hector, 01000547

**Steuben County**

St. Ann's Federation Building, 38 Broadway, Hornell, 01000552

**Westchester County**

Caramoor, 149-181 Girdle Ridge Rd., Bedford, 01000548

**NORTH CAROLINA****Dare County**

Ballance, Ellsworth and Lovie, House, E side M.V. Australia Ln., 0.1 mi. S of Stowe Landing Rd., Hatteras, 01000558

**Wake County**

Caraleigh Mills, 421 Maywood Ave., Raleigh, 01000557

**OHIO****Hamilton County**

Cincinnati and Whitewater Canal Tunnel, Parallel to Miami Ave., jct. of Wamsley and Miami Ave., Cleves, 01000562

**Logan County**

Schine's Holland Theatre, 125 E. Columbus St., Bellefontaine, 01000561

**Scioto County**

General U.S. Grant Bridge, Ohio R.-Chillicothe and Second St., Portsmouth, 01000559

**Summit County**

Copley Depot, 3772 Copley Rd., Copley, 01000563

**WISCONSIN****Lafayette County**

Mottley Family Farmstead, 21496 Ivey Rd., Willow Springs, 01000564

[FR Doc. 01-11132 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-U**

**DEPARTMENT OF THE INTERIOR****National Park Service**

**Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Grand Valley State University, Allendale, MI**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American

Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Grand Valley State University, Allendale, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Grand Valley State University professional staff in consultation with representatives of the Little River Band of Ottawa Indians of Michigan.

In 1971-1972, human remains representing a minimum of 17 individuals were removed from individual burials during excavations at the Battle Point site (20OT4), Crockery Township, Ottawa County, MI, by Grand Valley State University staff Dr. Richard Flanders. Human remains representing a minimum of an additional nine individuals were removed from disturbed contexts in the same area of the site. No known individuals were identified. The 8,413 associated funerary objects include iron buckets; clay pipes; glass beads; and silver ornaments including gorgets, tinklers, and brooches. The catalog numbers for these associated funerary objects are 2016, 2025, 2026, 2028-2030, 2056-2063, and 2079-2082.

Between 1980 and 1990, human remains representing a minimum of nine individuals were removed from the Battle Point site by Grand Valley State University staff. These remains were exposed through erosion of the Battle Point site by the Grand River. No known individuals were identified. The 60 associated funerary objects include silver ornaments, strike-a-lights, bucket fragments, a knife blade, pieces of wood, and fabric. The catalog number for these associated funerary objects is 9010.

Between 1990 and 1998, human remains representing a minimum of 15 individuals were removed from the Battle Point site by Grand Valley State University staff; Ottawa County, MI, Sheriff's Department staff; and the Office of the State Archaeologist of Michigan. The remains were exposed as a result of erosion of the site by the Grand River. The 149 associated funerary objects are a metal trade ax, wood, nails, and a bucket. The catalog numbers for these associated funerary

objects are 20OT04/1992-1993, 20OT04/7.16.96, 20OT04/3.27.97, 20OT04/12.97.1-8, and 20OT04/9.24.98.

Unassociated funerary objects from the Battle Point site in the possession of the Grand Valley State University are reported in a separate Notice of Intent to Repatriate.

The Battle Point site is a multi-component site consisting of habitation dating to circa A. D. 200-1300, and a cemetery dating to the mid-19th century. Associated funerary objects date the burials to circa 1800-1840. Excavation notes, spatial analyses, and other studies demonstrate that the cemetery intrudes into habitation deposits dating to pre-European contact and that do not include a mortuary component.

Historic documentation indicates that a Native American cemetery associated with the Little River Band of Ottawa Indians of Michigan was located at the Battle Point site in the mid-19th century. An abstract of land title dated to 1846 identifies an association between members of the Little River Band of Ottawa Indians of Michigan and the plot on which the cemetery is located. The cemetery is specifically mentioned in a 1864 land transaction as associated with the Little River Band of Ottawa Indians of Michigan. On the basis of historical and oral historical information, the Battle Point site cemetery is determined to be culturally affiliated with the Little River Band of Ottawa Indians of Michigan.

Based on the above-mentioned information, officials of the Grand Valley State University have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 41 individuals of Native American ancestry. Officials of the Grand Valley State University also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 8,622 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Grand Valley State University have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Little River Band of Ottawa Indians of Michigan.

This notice has been sent to officials of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, the Little Traverse Bay Bands of Odawa Indians of Michigan, the Little River Band of Ottawa Indians of Michigan,

and the Grand River Bands of Ottawa Indians (a non-Federally recognized group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Janet G. Brashler, Professor and Curator of Anthropology, Grand Valley State University, Allendale, MI 49401, telephone (616) 854-3694, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the Little River Band of Ottawa Indians may begin after that date if no additional claimants come forward.

Dated: April 16, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11144 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate Cultural Items in the Possession of Grand Valley State University, Allendale, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Grand Valley State University, Allendale, MI, that meet the definition of "unassociated funerary object" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

In 1971 and 1972, students and staff of Grand Valley State University, under the direction of Dr. Richard Flanders, removed 951 unassociated funerary objects from the Battle Point site (20OT04), Crockery Township, Ottawa County, MI. These funerary objects were not clearly associated with specific burials; however, they are typical of objects found in clear association with other discrete burials on the site. The unassociated funerary objects include iron buckets; clay pipes; glass beads; and silver ornaments, these including gorgets, tinklers, and brooches. The catalog numbers of these unassociated funerary objects are 2001-2003, 2007-

2016, 2018-2024, 2031-2035, 2039-2040, 2042-2047, 2053-2055, 2065-2066, 2068-2071, and 2073.

In 1988, students and staff of Grand Valley State University removed 101 unassociated funerary objects from the Battle Point site during surface survey of the area. The unassociated funerary objects include beads, silver ornaments, tinkle cones, bucket fragments, wood, nails, a kaolin pipe fragment, and a button. The catalog numbers of these unassociated funerary objects are 2000, 20OT04/1988/, and 20OT04/00.

The Battle Point site is a multi-component site consisting of habitation dating to circa A.D. 200-1300, and a cemetery dating to the mid-19th century. Associated funerary objects date the burials to circa 1800-1840. Excavation notes, spatial analyses, and other studies demonstrate that the cemetery intrudes into habitation deposits that date to pre-European contact and that do not include a mortuary component. All Euro-American objects dating to the 19th century, therefore, are reasonably assumed to be funerary objects.

Historic documentation indicates that a Native American cemetery associated with the Little River Band of Ottawa Indians of Michigan was located at the Battle Point site in the mid-19th century. An abstract of land title dated to 1846 identifies an association between members of the Little River Band of Ottawa Indians of Michigan and the plot on which the cemetery is located. The cemetery is specifically mentioned in a 1864 land transaction as associated with historic Grand River Valley Bands of Ottawa Indians in Michigan. The Little River Band of Ottawa Indians is the only current Federally-recognized descendent from the historic Grand River Bands of Ottawa of Michigan. On the basis of historical and oral historical information, the Battle Point site cemetery is determined to be culturally affiliated with the Little River Band of Ottawa Indians of Michigan.

Officials of the Grand Valley State University have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 1,052 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from the grave of an Native American individual. Officials of the Grand Valley State University also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these

cultural items and the Little River Band of Ottawa Indians of Michigan.

This notice has been sent to officials of the Grand Traverse Band of Ottawa and Chippewa Indians of Michigan, the Little Traverse Bay Bands of Odawa Indians of Michigan, the Little River Band of Ottawa Indians of Michigan and to the Grand River Bands of Ottawa Indians, a non-Federally recognized group. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these cultural items should contact Janet G. Brashler, Professor and Curator of Anthropology, Grand Valley State University, Allendale, MI 49401, telephone (616) 854-3694, before June 4, 2001. Repatriation of these cultural items to the Little River Band of Ottawa Indians may begin after that date if no additional claimants come forward.

Dated: April 16, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11145 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Milwaukee Public Museum, Milwaukee, WI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Milwaukee Public Museum, Milwaukee, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Milwaukee Public Museum professional staff and contract specialists in physical anthropology in consultation with representatives of the Forest County Potawatomi Community

of Wisconsin Potawatomi Indians, Wisconsin.

In 1877, human remains representing one individual were removed from a grave (47-CT-38) on the property of J. Berg, Rantoul, Calumet County, WI, by H. H. Hayssen of New Holstein, WI. Mr. Hayssen sold the remains and associated funerary objects to the Milwaukee Public Museum in 1897. No known individual was identified. The 145 associated funerary objects include 19 copper alloy bracelets, copper alloy chains with finger rings, ear/hair ornaments of shell beads, thimbles, ermine tails, glass beads, chains, coins, silver ornaments, silk and cotton clothing fragments with silver ring-and-ball ornaments, German silver brooches, glass bead edging, 2 small pocket mirrors, 20 thimbles made into hair ornaments, a copper alloy finger ring, red ochre chunks, a perforated metal disc, shell beads, a musket ball, a miniature china teapot, an iron kettle, a porcelain basin and pitcher, 5 cowry shells, glass and shell beads, 6 small beaded bags, a kaolin pipe, and wooden matches.

Historic evidence identifies the J. Berg Farm Site as a known historic Potawatomi cemetery. The Potawatomi people abandoned the area in or before 1866. The associated funerary objects from this burial can be dated to circa 1850-1866.

At an unknown date prior to 1901, human remains representing one individual were removed from an unknown site in Kiel, Manitowoc County, WI, by August Stirn. Mr. Stirn donated the remains to the Milwaukee Public Museum in 1901. No known individual was identified. No associated funerary objects are present.

The degree of preservation of this individual's hair suggests that burial occurred during the half-century prior to disinterment. Geographic location of the burial is consistent with the historically documented territory of the Potawatomi in the late 19th century.

In 1916, human remains representing one individual were removed from the Camp Thomas Cemetery Site (47-WK-71) on the Ralph Holtz Farm, Muskego, Waukesha County, WI, by Rudolph Boettger. Mr. Boettger sold the human remains and two associated funerary objects to the Milwaukee Public Museum in 1922. He donated an additional associated funerary object to the museum in 1947. No known individual was identified. The three associated funerary objects are a small copper alloy bucket, a small wooden bowl with projecting animal effigy tab, and an iron knife blade.

The associated funerary objects date this burial to circa 1800. The date is consistent with historical evidence for Potawatomi occupation of the area. The Camp Thomas Cemetery Site is a known Potawatomi cemetery and camp utilized until the 1870s.

Based on cranial morphology, dental traits, and archeological context, these three individuals are identified as Native American. The geographical locations of the sites and dates of the burials are consistent with the historic territory of the Potawatomi people. Consultation evidence provided by representatives of the Forest County Potawatomi Tribe has identified these three sites as part of the Potawatomi's historic territory and verified Potawatomi occupation of the area until approximately 1900.

Based on the above-mentioned information, officials of the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the Milwaukee Public Museum also have determined that, pursuant to 43 CFR 10.2 (d)(2), the 148 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Prairie Band of Potawatomi Indians, Kansas; Hannahville Indian Community, Michigan; Citizen Potawatomi Nation, Oklahoma; Huron Potawatomi, Inc.; and Pokagon Band of Potawatomi Indians of Michigan.

This notice has been sent to officials of the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Prairie Band of Potawatomi Indians, Kansas; Hannahville Indian Community, Michigan; Citizen Potawatomi Nation, Oklahoma; Huron Potawatomi, Inc.; and Pokagon Band of Potawatomi Indians of Michigan. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Alex Barker, Anthropology Section Head, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233, telephone (414) 278-2786, before June 4, 2001.

Repatriation of the human remains and associated funerary objects to the Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin; Prairie Band of Potawatomi Indians, Kansas; Hannahville Indian Community, Michigan; Citizen Potawatomi Nation, Oklahoma; Huron Potawatomi, Inc.; and Pokagon Band of Potawatomi Indians of Michigan may begin after that date if no additional claimants come forward.

Dated: April 6, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11140 Filed 5-2-01; 8:45 am]

BILLING CODE 4310-70-F

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Museum of Natural History and Planetarium professional staff in consultation with representatives of the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1899, human remains representing one individual were recovered from Jamestown, RI, by James H. Clarke and donated to the Museum of Natural History and Planetarium. No known individual was identified. The two associated funerary objects are an iron axe fragment and an animal bone fragment.

Based on red ochre and copper staining on the human remains, this individual has been determined to be Native American from the contact period. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

Before May 1939, human remains representing two individuals were recovered from Old Warwick, near Wharf Road, East Greenwich, RI, by Lincoln C. Bateson, who donated these human remains to the Museum of Natural History and Planetarium in May 1939. No known individuals were identified. No associated funerary objects are present.

Based on museum documentation and physical evidence, these individuals have been identified as Native American. Based on physical evidence and geographic/provenience information, these individuals have been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1854, human remains representing one individual were recovered from the Stone Bridge Inn site (RI 1947), Tiverton, RI, by person(s) unknown, and donated to the Museum of Natural History and Planetarium in 1903. No known individual was identified. No associated funerary objects are present.

Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode

Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1927, human remains representing one individual were recovered from London Street, East Greenwich, RI, and donated to the Museum of Natural History and Planetarium by W.E. Crease. No known individual was identified. No associated funerary objects are present.

Accession information states these human remains were "dug up on London Street, 10 feet deep." Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1936, human remains representing one individual were recovered from Melrose Street, West Ferry site, Jamestown, RI, by Roy Johnson, Louis Watson, and others. In 1937, these human remains were donated to the Museum of Natural History and Planetarium by Mr. Johnson. No known individual was identified. The one associated funerary object is a blanket fragment.

Based on museum documentation and physical evidence, this individual has been identified as Native American. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1894, human remains representing three individuals were recovered from the Burr's Hill Burial Ground, Warren, RI, by A.T. Vaughn, who donated these remains to the Museum of Natural History and Planetarium in 1900. No

known individuals were identified. Museum documentation indicates that "curios" were found with these human remains, and were transferred in 1913 to the Heye Foundation (now the National Museum of the American Indian) as part of an exchange. No associated funerary objects are now present in the collections of the Museum of Natural History and Planetarium.

Based on skeletal morphology and extensive copper staining, these individuals have been identified as Native American from the 17th century. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, these individuals have been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

In 1894, human remains representing one individual were recovered from Jamestown, RI, by A.T. Vaughn of the Antiquarian Society of Warren, RI. In 1900, these human remains were donated by Mr. Vaughn to the Museum of Natural History and Planetarium. No known individual was identified. The four associated funerary objects are fragments of bark, hair, iron, and cloth that are adhered to the human remains.

Based on skeletal morphology and extensive copper staining, this individual has been identified as Native American from the contact or proto-historic period. Based on physical evidence, consultation with tribal representatives, and geographic/provenience information, this individual has been determined to be culturally affiliated with the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group).

Based on the above-mentioned information, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 10 individuals of Native American ancestry. Officials of the Museum of Natural History and Planetarium also have determined that, pursuant to 43

CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Natural History and Planetarium have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). This notice has been sent to officials of the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Marilyn Massaro, Curator of Collections, Museum of Natural History and Planetarium, Roger Williams Park, Providence, RI 02905, telephone (401) 785-9457, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the Narragansett Indian Tribe of Rhode Island and the Wampanoag Repatriation Confederation, representing the Wampanoag Tribe of Gay Head (Aquinnah), the Mashpee Wampanoag (a non-Federally recognized Indian group), and the Assonet Band of the Wampanoag Nation (a non-Federally recognized Indian group) may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11141 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-F**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of the Tonkawa Tribe of Indians of Oklahoma.

In 1868, human remains representing one individual were collected near Fort Cobb in Washita River, Caddo County, OK, by Dr. Palmer of the Smithsonian Institution. In 1869, the remains were transferred to the National Museum of Health and Medicine, Armed Forces Institute of Pathology. No known individual was identified. No associated funerary objects are present.

A logbook entry from the Smithsonian Institution indicates that the remains are of a female Tonkawa Indian "massacred by Indian with tomahawk." Biological evidence is consistent with the logbook entry. The Army Medical Museum accession records also indicate that the individual is a Tonkawa Indian.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains

listed above represent the physical remains of one individual of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Tonkawa Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Tonkawa Tribe of Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306-6000, telephone (202) 782-2203, before June 4, 2001. Repatriation of the human remains to the Tonkawa Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11136 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-F**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency

that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

In 1873, human remains representing one individual were sent to the National Museum of Health and Medicine, Armed Forces Institute of Pathology by U.S. Army Assistant Surgeon John D. Hall of Fort Benton, Chouteau County, MT. In 1872, the individual received a leg wound in battle with Crow Indians, and traveled to Fort Benton where the injured leg was amputated by Assistant Surgeon Hall. The individual is identified as Nap-pan-na-qua (also noted in the accession records as "White Man"). No associated funerary objects are present.

In 1869, human remains representing one individual were collected from Three Buttes, MT, by U.S. Army Assistant Surgeon Elliot Coues. The individual was killed by Assiniboin Indians at Three Buttes. Also in 1869, Assistant Surgeon Coues sent the remains to the Smithsonian Institution. In 1874, the remains were transferred from the Smithsonian Institution to the National Museum of Health and Medicine, Armed Forces Institute of Pathology. No known individual was identified. No associated funerary objects are present.

Based on accession records of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, the individuals have been determined to be Native American. Accession records also indicate that the individuals were Peigan Indian males. Biological evidence of the individuals' injuries is consistent with the accession file information. Historically, the Piegan were a constituent band of the Blackfeet which are now recognized as the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana. To date, consultation with the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana has not identified a lineal descendent.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native

American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

This notice has been sent to officials of the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306-6000, telephone (202) 782-2203, before June 4, 2001. Repatriation of the human remains to the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11138 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native

American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of the Kaw Nation, Oklahoma.

In 1868, human remains representing one individual were sent to the National Museum of Health and Medicine, Armed Forces Institute of Pathology by U.S. Army Surgeon B. E. Fryer of Fort Harker, KS. The individual was wounded in 1867 near Fort Zara, Barton County, KS, and later died at Fort Harker. No known individual was identified. No associated funerary objects are present.

Based on accession records of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, the individual has been determined to be Native American. Accession records also indicate that the individual was a Kaw male who was wounded in a fight with the Cheyenne, and died 20 days later. Biological evidence of the individual's injury is consistent with the accession file information.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Kaw Nation, Oklahoma.

This notice has been sent to officials of the Kaw Nation, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306-6000, telephone (202) 782-2203, before June 4, 2001. Repatriation of the human remains to the Kaw Nation, Oklahoma may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources  
Stewardship and Partnerships.*

[FR Doc. 01-11139 Filed 5-2-01; 8:45 am]

BILLING CODE 4310-70-F

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York.

Prior to 1915, human remains representing one individual were excavated from an Indian mission cemetery in Buffalo, Erie County, NY, by an unknown individual. In 1915, the National Museum of Health and Medicine, Armed Forces Institute of Pathology purchased the remains from the Charles H. Ward Company of Rochester, NY. No known individual was identified. No associated funerary objects are present.

Accession records from the National Museum of Health and Medicine, Armed Forces Institute of Pathology

indicate that the remains were identified by the Charles H. Ward Company as an adult female Seneca Indian. Historical information indicates that the Buffalo Creek Mission Cemetery, from which the remains were obtained, was located in Erie County, NY. Historical records from the Indian Claims Commission places the Seneca in an area that includes Erie County, NY.

Prior to 1914, human remains representing one individual were collected from the farm of George Marsh approximately 5 miles from Canandaigua, Ontario County, NY, by George G. Heye of the Heye Foundation. In 1914, Mr. Heye donated the remains to the Smithsonian Institution. In 1915, the remains were transferred to the National Museum of Health and Medicine, Armed Forces Institute of Pathology. No known individual was identified. No associated funerary objects are present.

Based on the geographic location where these human remains were found, this individual has been identified as Native American. Archeological information indicates that the Marsh farm site was an eastern Seneca village site dating from 1650-1670. Biological information indicates that these human remains are most likely of an adult individual of unknown sex. Based on geographical evidence and on archeological expert opinion, these human remains are most likely culturally affiliated with the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York.

This notice has been sent to officials of the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York. Representatives of any other Indian tribe that believes itself to be

culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306-6000, telephone (202) 782-2203, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the Seneca Nation of New York, Seneca-Cayuga Tribe of Oklahoma, and Tonowanda Band of Seneca Indians of New York may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources  
Stewardship and Partnerships.*

[FR Doc. 01-11137 Filed 5-2-01; 8:45 am]

BILLING CODE 4310-70-F

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### **Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the U.S. Department of Defense, National Museum of Health and Medicine, Armed Forces Institute of Pathology (formerly the Army Medical Museum), Washington, DC.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by National Museum of Health and Medicine, Armed Forces Institute of Pathology professional staff in consultation with representatives of Comanche Indian Tribe, Oklahoma.

In October 1875, human remains representing three individuals were sent to the National Museum of Health and Medicine, Armed Forces Institute of Pathology by U.S. Army Assistant Surgeon W. H. Forwood. The individuals were killed near Fort Richardson, Jack County, TX, in May 1875. Accession records identify them as Eath-ath Qua-ha day (Red Bear), Tooh-Parrah Qua-ha day (Black Bear), Yan-eth-ohis Qua-ha day (Wife of Black Bear). No associated funerary objects are present.

Accession records from the National Museum of Health and Medicine, Armed Forces Institute of Pathology indicate that the remains are of Comanche Indians. Biological evidence of the injuries and sex of the human remains is consistent with the accession records. To date, consultation with the Comanche Indian Tribe, Oklahoma has not identified a lineal descendent.

Based on the above-mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Comanche Indian Tribe, Oklahoma.

This notice has been sent to officials of the Comanche Indian Tribe, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Lenore Barbian, Ph.D., Assistant Curator, Anatomical Collections, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army Medical Center, Building 54, Washington, DC 20306-6000, telephone (202) 782-2203, before June 4, 2001. Repatriation of the human remains to the Comanche Indian Tribe, Oklahoma may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11135 Filed 5-2-01; 8:45 am]

BILLING CODE 4310-70-F

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Robert S. Peabody Museum of Archaeology, Andover, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Robert S. Peabody Museum of Archaeology, Andover, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Robert S. Peabody Museum of Archaeology professional staff in consultation with representatives of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Standing Rock Sioux Tribe of North and South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Yankton Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; and the Shakopee

Mdewakanton Sioux Community of Minnesota (Prior Lake).

In 1869, human remains representing one individual were collected by Warren King Moorehead. In 1895, Mr. Moorehead donated these human remains to the Robert S. Peabody Museum of Archaeology. No known individual was identified. No associated funerary objects are present.

An original card with the human remains states these human remains are those of a Sioux scout killed at Summit Springs, SD, in 1869. Cultural affiliation has been established based on the information on this card. There is no existing information to contradict this finding.

Based on the above-mentioned information, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Standing Rock Sioux Tribe of North and South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Yankton Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; and the Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake). This notice has been sent to officials of the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Crow Creek Sioux Tribe of the Crow Creek

Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Lower Sioux Indian Community of Minnesota Mdwakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Standing Rock Sioux Tribe of North and South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Yankton Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Prairie Island Indian Community of Minnesota Mdwakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; and the Shakopee Mdwakanton Sioux Community of Minnesota (Prior Lake). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact James W. Bradley, Director, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810, telephone (978) 749-4490, before June 4, 2001. Repatriation of the human remains to the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; the Spirit Lake Tribe, North Dakota; the Lower Sioux Indian Community of Minnesota Mdwakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; the Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; the Standing Rock Sioux Tribe of North and South Dakota; the Santee Sioux Tribe of the Santee Reservation of Nebraska; the Yankton Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; the Prairie Island Indian Community of Minnesota Mdwakanton Sioux Indians of the Prairie Island Reservation, Minnesota; the Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota; the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; the Flandreau Santee Sioux Tribe of South Dakota; the Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; and the Shakopee

Mdwakanton Sioux Community of Minnesota (Prior Lake) may begin after that date if no additional claimants come forward.

Dated: April 18, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11142 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Notice of Intent to Repatriate Cultural Items in the Possession of the Tioga County Historical Society, Owego, NY

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Tioga County Historical Society, Owego, NY, that meet the definition of "unassociated funerary objects" under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The eight cultural items are an iron tomahawk, a celt, copper points, arrowshaft fragments, carbonized material, and a deer bone ornament. The iron tomahawk, copper points, arrowshaft fragment, and carbonized material have not been located.

In 1953, the iron tomahawk, celt, copper points, arrowshaft fragment and carbonized material were donated by James S. Truman to the Tioga County Historical Society. Donor information indicates that the iron tomahawk was removed from an "Indian grave in Cayuga County, NY"; the celt was removed from "an Indian mound in Cayuga County, NY"; and the copper points, arrowshaft fragment, and carbonized material were removed "from a Cayuga County, NY Indian grave." Donor information indicates that the deer bone ornament was removed from "a grave in Cayuga County, NY" and was donated at an unknown date to the Tioga County Historical Society by Frank Truman.

Based on geographic location, archeological evidence, and object types, these cultural items have been affiliated with the Cayuga Nation of New York. Historical evidence indicates that the Cayuga Nation of New York were the aboriginal occupants of the areas in which the cultural items were found. Oral history of the Cayuga indicates that the area in which the cultural items were found is within their traditional territory.

Officials of the Tioga County Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these eight cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Tioga County Historical Society also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these items and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York; St. Regis Band of Mohawk Indians; Seneca Nation of New York; Oneida Nation of New York; Onondaga Nation of New York; Seneca-Cayuga Tribe of Oklahoma; Oneida Tribe of Wisconsin; Tonawanda Band of Seneca Indian of New York; and Tuscarora Nation of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dana Leo, Curator, Tioga County Historical Society, 110 Front Street, Owego, NY 13827, telephone (607) 687-2460, before June 4, 2001. Repatriation of these objects to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

Dated: April 11, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11134 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-F**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of North Dakota Hariman Research Center, Grand Forks, ND, and in the Control of the U.S. Department of the Interior, Bureau of Reclamation, Dakotas Area Office, Bismarck, ND****AGENCY:** National Park Service, Interior.**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of North Dakota Hariman Research Center, Grand Forks, ND, and in the control of the U.S. Department of the Interior, Bureau of Reclamation, Dakotas Area Office, Bismarck, ND.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Bureau of Reclamation, Dakotas Area Office professional staff in consultation with representatives of the North Dakota Intertribal Reinterment Committee; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Prairie Island Indian Community of the Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Santee Sioux Tribe of the Santee

Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Winnebago Tribe of Nebraska; and Yankton Sioux Tribe of South Dakota.

On November 9, 2000, the Bureau of Reclamation, Dakotas Area Office and the North Dakota Intertribal Reinterment Committee submitted a request to the Native American Graves Protection and Repatriation Review Committee to make a recommendation on the disposition of a minimum of 14 culturally unidentifiable human remains and 4 associated funerary objects from North Dakota and in the control of the Bureau of Reclamation, Dakotas Area Office. The North Dakota Intertribal Reinterment Committee was established by North Dakota State statute for the reinterment of human remains in the State of North Dakota and is composed of representatives of the following Native American tribes in and from North Dakota: the Standing Rock Sioux Tribe of North & South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota. The Bureau of Reclamation, Dakotas Area Office had previously received a resolution supporting repatriation to the North Dakota Intertribal Reinterment Committee from the Great Plains Tribal Chairman's Association, an association that represents 17 Federally recognized tribes within the Great Plains region of the Bureau of Indian Affairs.

The Native American Graves Protection and Repatriation Review Committee considered the request at its December 11–13, 2000, meeting. The review committee concurred with the Bureau of Reclamation, Dakotas Area Office's proposal to repatriate these culturally unidentifiable human remains and associated funerary objects to the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North & South Dakota; Spirit Lake Tribe, North Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Turtle Mountain Band of Chippewa Indians of North Dakota. A January 11, 2001, letter from the Assistant Director, Cultural Resources Stewardship and Partnerships to the Bureau of Reclamation, Dakotas Area Office confirmed concurrence regarding the disposition of these culturally

unidentifiable human remains and associated funerary objects.

In 1974, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of three individuals from site 32LM104. No known individuals were identified. The one associated funerary object is a projectile point.

The human remains (inventory records 32LM104–A, 32LM104–B, and 32LM104–C) and associated funerary object (32LM104–AFO–A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, these individuals have been identified as Native American and probably date to the Middle Plains Woodland period (100 B.C.–A.D. 600).

In 1974, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from a disturbed portion of site 32LM228. No known individual was identified. The three associated funerary objects are two projectile points and one piece of worked, incised shell.

The human remains (32LM228–A) and associated funerary objects (32LM228–AFO–A, 32LM228–AFO–B, and 32LM228–AFO–C) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, this individual has been identified as Native American and probably dates to the Plains Woodland period (400 B.C.–A.D. 1000).

In 1974, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of four individuals from site 32NE401. No known individuals were identified. No associated funerary objects are present.

The human remains (32NE401–A, 32NE401–B, 32NE401–C, and 32NE401–D) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on the site morphology, osteological evidence, and associated artifacts, these individuals have been identified as Native American and probably date to the Plains Woodland period (400 B.C.–A.D. 1000).

In 1990, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32RY77. No known

individual was identified. No associated funerary objects are present.

The human remains (32RY77-A) were inventoried by the University of North Dakota Hariman Research Center in 1990 and 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American and probably dates to the Early to Middle Woodland period (400 B.C.-A.D. 600).

In 1982, Dakota Interactive Services professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32SN72. No known individual was identified. No associated funerary objects are present.

The human remains (32SN72-A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American of an unknown period.

In 1982, Dakota Interactive Services professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32SN88. No known individual was identified. No associated funerary objects are present.

The human remains (32SN88-A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American of an unknown period.

In 1982, Dakota Interactive Services professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from a survey of site 32SN93. No known individual was identified. No associated funerary objects are present.

The human remains (32SN93-A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American and probably dates to the Plains Woodland period (400 B.C.-A.D. 1000).

In 1985, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32SN246. No known individual was identified. No associated funerary objects are present.

The human remains (32SN246-A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American and probably dates to the Middle Woodland period (100 B.C.-A.D. 600).

In 1976, University of North Dakota professionals, under contract to the Bureau of Reclamation, Dakotas Area Office, collected the remains of a minimum of one individual from excavations at site 32SN403. No known individual was identified. No associated funerary objects are present.

The human remains (32SN403-A) were inventoried by the University of North Dakota Hariman Research Center in 1996. Based on site morphology, osteological evidence, and associated artifacts, the individual has been identified as Native American and probably dates to the Northeastern Plains Complex period (early A.D. 1400s).

Based on the above-mentioned information, officials of the Bureau of Reclamation, Dakotas Area Office have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 14 individuals of Native American ancestry. Officials of the Bureau of Reclamation, Dakotas Area Office also have determined that, pursuant to 43 CFR 10.2 (d)(2), the four objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. In accordance with the recommendations of the Native American Graves Protection and Repatriation and Review Committee, officials of the Bureau of Reclamation, Dakotas Area Office have determined that, pursuant to 43 CFR 10.2 (e), there is no relationship of shared group identity that can be reasonably traced between either these Native American human remains or the associated funerary objects and any present-day Indian tribe or group, and the disposition of these Native American human remains should be to the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North & South Dakota; Spirit Lake Tribe, North Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Turtle Mountain Band of Chippewa Indians of North Dakota.

This notice has been sent to the North Dakota Intertribal Reinterment Committee; Assiniboine and Sioux Tribes of the Fort Peck Indian

Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Ponca Tribe of Nebraska; Prairie Island Indian Community of the Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; Winnebago Tribe of Nebraska; and Yankton Sioux Tribe of South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Kimball Banks, NAGPRA Coordinator, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58501, telephone (701) 250-4242, extension 3602, before June 4, 2001. Repatriation of the human remains and associated funerary objects to the North Dakota Intertribal Reinterment Committee representing the Standing Rock Sioux Tribe of North and South Dakota; the Spirit Lake Tribe, North Dakota; the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Turtle Mountain Band of Chippewa Indians of North Dakota may begin after that date if no additional claimants come forward.

Dated: April 13, 2001.

**John Robbins,**

*Assistant Director, Cultural Resources Stewardship and Partnerships.*

[FR Doc. 01-11143 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-F**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing Its Youth Programs Division**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service (NPS) has prepared a Director's Order setting forth its policies and procedures governing the management and implementation of youth programs throughout the National Park Service. When adopted, the policies and procedures will apply to all units of the national park system.

**DATES:** Written comments will be accepted until June 5, 2001.

**ADDRESSES:** Draft Director's Order #26 is available on the internet at <http://www.nps.gov/refdesk/Dorders/index.htm>. Requests for copies and written comments should be sent to William H. Jones, NPS Youth Programs Division Manager, Department of the Interior, 1849 C St. RM# 7325 NW., Washington, DC 20010.

**FOR FURTHER INFORMATION CONTACT:** William H. Jones at (202) 565-1079.

**SUPPLEMENTARY INFORMATION:** The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. The draft order Director's Order covers topics such as the management and supervision of the Youth Conservation Corps, the Public Land Corps, Job Corps and other programs that introduce youth to employment opportunities and conservation projects in the National Park Service.

Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: April 20, 2001.

**William H. Jones,**  
Program Manager, Youth Programs Division.  
[FR Doc. 01-11131 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-U**

**DEPARTMENT OF THE INTERIOR****National Park Service****Notice of Receipt of Application and Environmental Assessment Received for Access to National Park Service Property for the Siting of Wireless Transmission Antennas and Request for Public Comment**

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Public notice of the receipt of an Application for a right-of-way permit for a wireless telecommunications facility, receipt of an Environmental Assessment (EA) evaluating the potential impact of mounted antennas and supporting infrastructure proposed within the right-of-way at Cape Hatteras National Seashore, and the request for public comment.

**SUMMARY:** Public Notice is hereby given that the National Park Service (NPS) has received an Application from Triton PCS Corporation for a right-of-way permit to construct, operate, and maintain a wireless telecommunications site within the Cape Hatteras National Seashore.

The proposed facility consists of an antenna array incorporated into an existing elevated water tank, which is the subject of a prior right-of-way granted to the Town of Nags Head, NC, in 1986. The proposed facility includes the placement of three separate 9 feet by 10 feet directional antennas on top of an existing water tank which has a height of 149.0 feet and which is situated on Cape Hatteras National Seashore property. Additionally, there is proposed the construction of a 10 feet by 20 feet elevated service module to house associated equipment and access to the site as part of the requested right-of-way.

The NPS is making the Application and EA available for public review. A preliminary review by park staff of the documents submitted to date indicates that the proposed facility will not have a significant impact on the quality of the human environment within the meaning of Section 102(2c) of the National Environmental Policy Act of 1969. The NPS will take no final action on this proposed wireless telecommunications facility until the comments from the public have been considered.

**DATES:** There will be a thirty (30) day public review period for comment on the Application and the EA. Written comments must be received on or before July 2, 2001.

**ADDRESSES:** Interested parties may review the Application and EA at

Headquarters Building, Outer Banks Group, National Park Service, 1401 National Park Drive, Manteo, North Carolina 27954. Comments concerning the Application or EA should be directed to Superintendent Francis A. Peltier, Outer Banks Group, National Park Service, 1401 National Park Drive, Manteo, North Carolina 27954. Phone (252) 473-2111 ext. 132. Copies of the Application and EA can be obtained by writing the Superintendent at 1401 National Park Drive, Manteo, NC, 27954, or calling 252-473-2111 ext. 132.

**Francis A. Peltier,**

*Superintendent, Outer Banks Group.*

[FR Doc. 01-11130 Filed 5-2-01; 8:45 am]

**BILLING CODE 4310-70-P**

**INTERNATIONAL TRADE COMMISSION**

[USITC SE-01-017]

**Sunshine Act Meeting**

**AGENCY HOLDING THE MEETING:** International Trade Commission.

**TIME AND DATE:** May 10, 2001 at 11 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA-201-67 (Wheat Gluten) (Consistency Determination)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the United States Trade Representative on May 17, 2001.)
5. Inv. No. 731-TA-925 (Preliminary) (Greenhouse Tomatoes from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on May 14, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on May 21, 2001.)

6. Outstanding action jackets: none. In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 30, 2001.

By order of the Commission.

**Donna R. Koehnke,**  
*Secretary.*

[FR Doc. 01-11230 Filed 5-1-01; 10:59 am]

**BILLING CODE 7020-02-U**

**DEPARTMENT OF JUSTICE****Notice of Lodging of Partial Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action**

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Partial Consent Decree in *United States v. American Scrap Company*, Civil Action No. 1:99-CV-2047, was lodged with the United States District Court for the Middle District of Pennsylvania on April 20, 2001. This Partial Consent Decree resolves the United States' claims against Hornell Waste Material Co., Inc., Midlane Salvage Co., Inc., Russell I. Young and Barbara Garry ("Settling Defendants") under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for response costs incurred at the Jack's Creek/Sitkin Smelting Superfund Site in Mifflin County, Pennsylvania. The Partial Consent Decree requires the Settling Defendants to pay a total of \$45,000 in past response costs.

The Department of Justice will accept written comments on the proposed Partial Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States v. American Scrap Company*, DOJ # 90-11-2-911/1.

Copies of the proposed Partial Consent Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, 228 Walnut Street, Harrisburg, PA 17108, and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. A copy of the proposed Partial Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611. When requesting a copy of the proposed Partial Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of \$8.50, and reference *United States v. American Scrap Company*, DOJ # 90-11-2-911/1.

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 01-11124 Filed 5-2-01; 8:45 am]

BILLING CODE 4410-15-M

**DEPARTMENT OF JUSTICE****Notice of Lodging of Settlement Agreement Pursuant to the Clean Water Act**

Notice is hereby given that, on April 16, 2001, a proposed Settlement Agreement in *United States v. Arco Pipe Line Company*, No. 99 2161 GTV (D. Kan.) (DJ #90-5-1-06347), was lodged with the United States District Court for the District of Kansas.

The proposed Settlement Agreement would resolve the United States' claims against Arco Pipe Line Company, under Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. 1321, for Arco's January 21, 1994, discharge of 3869 barrels of oil into navigable waters of the United States.

Under the proposed settlement, Arco will pay the United States \$804,700 in civil penalties for the oil spill. In addition, Arco will spend \$145,300 on a Supplemental Environmental Project ("SEP") consisting of remodeling/reconstructing the concrete drinking water intake for the City of Osawatomie, KS. The settlement also resolves Arco's claims against the United States for costs, expenses and damages incurred as a result of the oil discharge.

The U.S. Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, comments relating to the proposed Settlement Agreement. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should reference the following case name and number: *United States v. Arco Pipe Line Company*, DJ #90-5-1-06347.

The proposed Settlement Agreement may be examined at the offices of EPA Region VII, located at 901 North 5th Street, Kansas City, Kansas 66101, c/o Denise Roberts, (913) 551-7559, or at the U.S. Attorney's Office, 500 State Avenue, Suite 360, Kansas City, Kansas 66101, c/o Robert Olsen, (913) 551-6730. A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, c/o Peggy Fenlon-Gore, (202) 514-5245. In requesting a copy, please enclose a check in the amount of \$13.00 (25 cents per page reproduction

cost) payable to the Consent Decree Library.

**Robert Maher,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01-11121 Filed 5-2-01; 8:45 am]

BILLING CODE 4410-15-M

**DEPARTMENT OF JUSTICE****Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act**

Notice is hereby given that a proposed consent decree in *United States v. Drum Service Company of Florida, et al.*, Civil No. 98-697-Civ-Orl-28C, was lodged on April 13, 2001, with the United States District Court for the Middle District of Florida ("NAPA Decree"). The proposed consent Decree would resolve certain claims under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, as well as certain claims under Florida law, brought against NAPA Properties, a Florida general partnership, and its individual partners and distributees (collectively "Settling Defendants"), to recover response costs incurred by the Environmental Protection Agency in connection with the release of hazardous substances at the Zellwood Groundwater Contamination Superfund Site ("Site") in Zellwood, Orange County, Florida. The United States alleges that NAPA Properties is liable as a person who owns a portion of the Site and as the successor of a person who owned a portion of the Site at the time of the release of a hazardous substance. The United States also alleges that the individual partners of NAPA are liable under Florida law for the obligations of the partnership. Under the proposed Consent Decree, the Settling Defendants will pay \$502,813 as well as a portion of the proceeds of certain real property sold by the partnership, to the Hazardous Substances Superfund to reimburse the United States for response costs incurred and to be incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, PO Box 7611, Washington, DC 20530, and should refer to *United*

*States v. Drum Service Company of Florida, et al.*, M.D. FL, Civil No. 98-687-Civ-Orl-28C, DOJ Ref. #90-11-2-266.

The Consent Decree may be examined at the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, GA 30303 and the United States Attorney's Office for the Middle District of Florida, Federal building & U.S. Courthouse, 80 N. Hughey Avenue, Orlando, Florida 32801 c/o Assistant U.S. Attorney Roberto Rodriguez. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of \$12.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Ellen Mahan,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01-11122 Filed 5-2-01; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 28 CFR 50.7 and Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on April 23, 2001, a proposed consent decree in *United States v. General Motors Corp.*, Civil Action NO. 01-CV-0589, was lodged with the United States District Court for the Northern District of New York.

In this action the United States sought costs for response activities in connection with the aluminum diecasting facility owned by General Motors Corp. in Massena, New York. The Complaint alleges that the defendant is liable under Section 107(a), 42 U.S.C. 9607(a), of CERCLA. Pursuant to the decree, defendant will pay to the United States past unreimbursed response costs in an amount totaling at least \$1,245,832.73, plus interest.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC

20044-7611, and should refer to *United States v. Alcoa, Inc.*, D.J. Ref. 90-11-3-558A.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of New York, James T. Foley Federal Building, 445 Broadway, Albany, New York, 12207 and at U.S. EPA, (Region II) 290 Broadway, 17th Floor New York, New York 10007-1866. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. In requesting a copy, please enclose a check in the amount of \$6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Ronald Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01-11125 Filed 5-2-01; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act, the Clean Air Act, and the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on April 18, 2001, a Consent Decree in *United States v. Massachusetts Institute of Technology*, Civil Action No. 01-cv10646-JLT, was lodged with the United States District Court for the District of Massachusetts. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States alleges that the defendant Massachusetts Institute of Technology ("MIT") (a) violated federal hazardous waste emergency, storage, handling, and labeling regulations promulgated under the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.* ("RCRA"), (b) failed to comply with requirements relating to monitoring and reporting in violation of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and (c) failed to meet regulatory requirements relating to oil spill prevention plans in violation of section 311 of the Clean Water Act, 33 U.S.C. 1321.

Under the proposed decree, MIT will pay a civil penalty of \$155,000, undertake three Supplemental Environmental Projects, and comply with a variety of injunctive measures to achieve full compliance with RCRA, the CAA, and the CWA.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States v. Massachusetts Institute of Technology*, D.J. Ref. 90-7-1-06942.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of \$20.25 payable to the "Consent Decree Library."

**Ronald G. Gluck,**

*Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 01-11123 Filed 5-2-01; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on March 29, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Verilink, Madison, AL; ShareGate, Inc., Reno, NV; Mahi Networks, Petaluma, CA; Pivottech Systems, Inc., Piscataway, NJ; Partner Votstream, Vojens, Denmark; and SII Network Systems, Inc., Chiba-shi, Chiba, Japan have been added as parties to this venture. The following principal members have downgraded to auditing members: Thales Communications,

Colombes Cedex, France; Fujitsu, Raleigh, NC; Zdruzenie ATM v SR, Bratislava, Slovakia; Paradyne, Largo, FL; and CNT Corporation, Plymouth, MN. The following members changed their names: CSELT S.p.A. to Telcom Italia Lab S.p.A., Torino, Italy; and Thomson-CSF to Thales Communications, Colombes Cedex, France. The following members have been involved in acquisitions: Spyrant, Calabasas, CA acquired Hekimian Laboratories, Rockville, MD; Qwest Communications, Arlington, VA acquired US West, Boulder, CO; Avtec Systems, Inc., Fairfax, VA acquired Symbiont, Fairfax, VA; Dynegy Connect, LP, Aurora, CO acquired Extant, Aurora, CO; Natural MicroSystems, Inc., St-Hubert, Quebec, Canada acquired InnoMediaLogic, Inc., Framingham, MA; and Altera Corporation, High Wycombe, Buckinghamshire, United Kingdom acquired DesignPRO, Inc., Nepean, Ontario, Canada. Also, Elsa Communications, Helsinki, Finland; Ciena Corporation, Marlboro, MA; K-Net, Ltd., Odiham, Hampshire, United Kingdom; Societe Europeene Des Satellites S.A., Betzdorf, Luxembourg; Telecom New Zealand, Wellington, New Zealand; Roke Manor Research, Romsey Hampshire, United Kingdom; University of Tech Helsinki, Espoo, Finland; University of Wuerzburg, Wuerzburg Germany; Central Research Institute of Electric Power, Tokyo, Japan; and Intercai Telematics Consultants, Utrecht, The Netherlands have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on December 29, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 27, 2001 (66 FR 12565).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*  
[FR Doc. 01-11127 Filed 5-2-01; 8:45 am]

BILLING CODE 4410-11-M

**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**Notice Pursuant to the National Cooperative Research and Production Act of 1933—PKI Forum, Inc.**

Notice is hereby given that, on April 2, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PKI Forum, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. pursuant to Section 6(b) of the Act, the identities of the parties are Andes Networks, Inc., Mountain View, CA; Baltimore, Dublin, Ireland; CertCo, New York, NY; Chrysalis-ITS, Ottawa, Ontario, Canada; Cisco Systems, San Jose, CA; Communications Electronics Security Group (CESG), Cheltenham, Glos, United Kingdom; Compaq Computer Corporation, Houston, TX; Computer Associates, Herndon, VA; Conclusive Logic, Maidenhead, Berks, United Kingdom; Cryptomathic, Aarhus C, Denmark; Cylink, Corporation, Santa Clara, CA; DataKey, Inc., Minneapolis, MN; De La Rue InterClear Limited, Gasingstoke, United Kingdom; Digital Signature Trust Co., Salt Lake City, UT; Diversinet Corp., Toronto, Ontario, Canada; Entrust Technologies, Ottawa, Ontario, Canada; Fujitsu Limited, Tokyo, Japan; FundSERV Inc., Toronto, Ontario, Canada; GlobalSign SA/NV, Brussels, Belgium; LockStar, Inc., Lyndhurst, NJ; Neucum Corporation, Shibuya-ku, Tokyo, Japan; Odyssey Technologies Ltd, Chennai, India; RSA Security, Inc., Bedford, MA; SECUDE GmbH, Darmstadt, Germany; SHYM Technology, Inc., Needham, MA; SSE Ltd, Dublin, Ireland; SSH Communications Security Corp., Helsinki, Finland; Sybase Inc., Emeryville, CA; TeleTrusT e.V., Erfurt, Germany; VeriSign, Inc., Mountain View, CA; Visa International, Foster City, CA; and Wells Fargo, San Francisco, CA.

The venture was formed as a Delaware non-stock member corporation. The nature and objectives of the venture are (a) to provide a forum for the demonstration of support for standards-based, interoperable public key infrastructure as a foundation for e-

business and e-business applications; (b) to foster interoperability by interacting with appropriate standards and testing bodies; (c) to initiate studies and demonstration projects to show the value of interoperable PKI Forum, Inc. and PKI Forum, Inc. based solutions; and (d) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*  
[FR Doc. 01-11128 Filed 5-2-01; 8:45 am]

BILLING CODE 4410-11-M

**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**Notice Pursuant to the National Cooperative Research and Production Act of 1933—Wireless Application Protocol Forum, Ltd.**

Notice is hereby given that, on January 8, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. 4301 *et seq.* ("the Act"), Wireless Application Protocol Forum, Ltd. ("WAP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Air-Go Technologies Corp., San Francisco, CA; APAS Inc., Tokyo, Japan; Apollis AG, Munchen, Germany; Arcot Systems, Inc., Santa Clara, CA; Banksys, Brussels, Belgium; Blue Martini Software, San Mateo, CA; Cherrypicks, Hong Kong, Hong Kong-China; Civista Ltd., Tolworth, England, United Kingdom; ClientSoft Inc., Hawthorne, NY; Columbitech AB, Stockholm, Sweden; Digital Boardwalk, Inc., Santa Monica, CA; EncryptTix, Inc., El Segundo, CA; Equifax, Atlanta, GA; India's Wireless internet Initiative (IWIN), Bangalore, India; Intergraph Corporation, Inc., Huntsville, AL; Inventec Electronics (Shanghai) Co., Ltd., Shanghai, People's Republic of China; KPMG Consulting LLC, McLean, VA; Leap Corporation, Atlanta, GA; Lightbridge, Inc., Burlington, MA; Logical Design Solutions, Inc., Morristown, NJ; mCentric Ltd., London, England, United Kingdom; Mgate Systems AB, Stockholm, Sweden; MobileRAIN Technologies, Inc., Union City, CA; MobileWebSurf.com, Milpitas, CA; Mspect, Inc., Sunnyvale, CA;

Netfish Technologies, Inc., Santa Clara, CA; Netonomy, Paris, France; NextCom K.K., Tokyo, Japan; Nextron, Inc., San Jose, CA; Orsus Solutions Ltd., Or Yehuda, Israel; pacific21 Ltd., London, England, United Kingdom; Partner Communications Co. Ltd., Rosh Ha'ayin, Israel; Pivotal Corporation, North Vancouver, British Columbia, Canada; Plexus Technologies, San Jose, CA; Probaris Technologies, Inc., Philadelphia, PA; Purple Technologies Ltd., London, England, United Kingdom; Radio Frequency Investigation Ltd., Hants, England, United Kingdom; Ripcord Systems Inc., London, England, United Kingdom; SANYO Electric Co., Ltd., Osaka, Japan; SecureSoft Inc., Seoul, Republic of Korea; Shenzhen New World Xianglong, Shen Zhen, Guangdong Province, People's Republic of China; Sinotone Datacom Ltd., Hong Kong, Hong Kong-China; SkyGo.com, Redwood City, CA; Smart421, Herts, England, United Kingdom; Soprano Design Pty Ltd, North Sydney, New South Wales, Australia; SPEEDWARE Corporation, St. Laurent, Quebec, Canada; Synapta, Palo Alto, CA; Synovial Inc., Fremont, CA; Telephia, Inc., San Francisco, CA; The PhonePages of Sweden AB, Kista, Sweden; UltiVerse Technologies, Inc., Waltham, MA; Vетро Corporation, New York, NY; Wiral Ltd., Espoo, Finland; Wmode, Inc., Calgary, Alberta, Canada; WorldCom, Clinton, MS; YacCom, Rennes, France; ZoomON AB, Stockholm, Sweden; and Zurcher Kantonalbank, Zurich, Switzerland have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and WAP intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, WAP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on October 3, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 29, 2000 (65 FR 83096).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*  
[FR Doc. 01-11126 Filed 5-2-01; 8:45 am]

**BILLING CODE 4481-11-M**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

#### Meeting of the CJIS Advisory Policy Board

**AGENCY:** Federal Bureau of Investigation (FBI), Justice.

**ACTION:** Meeting notice.

**SUMMARY:** The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board. The CJIS Advisory Policy Board is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include Proposed CJIS Wide Area Network (WAN) Migration to the Justice Consolidation Network, the Revised National Crime Information Center (NCIC) Sanctions Process, and Secondary Dissemination of NCIC Wanted Person File Data. Discussion will also include the status on the National Crime Prevention and Privacy Compact, Update on DOJ Global and Information Sharing, and other issues related to the Integrated Automated Fingerprint Identification System, NCIC, Law Enforcement Online, National Instant Criminal Background Check System and Uniform Crime Reporting Programs.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy Weise, Programs Development Section (304) 625-2730, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed not more than 15 minutes to present a topic.

**DATES AND TIME:** The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on June 5-6, 2001.

**ADDRESSES:** The meeting will take place at the Opryland Hotel, 2802 Opryland Drive, Nashville, Tennessee, telephone (615) 889-1000.

**FOR FURTHER INFORMATION CONTACT:** Inquires may be addressed to Ms. Lori A. Kemp, Management Analyst, Advisory Groups Management Unit,

Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0149, telephone (304) 625-2619, facsimile (304) 625-5090.

Dated: April 25, 2001.

**Roy G. Weise,**

*Designated Federal Employee, Programs Development Section, Criminal Justice Information Service Division, Federal Bureau of Investigation.*

[FR Doc. 01-11129 Filed 5-2-01; 8:45 am]

**BILLING CODE 4410-02-M**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

#### Advisory Board Meeting

**Time and Date:** 9 a.m. To 4:30 p.m. on Monday, June 4, 2001 & 8:30 a.m. To 12 noon on Tuesday, June 5, 2001.

**Place:** Raintree Plaza Hotel & Conference Center, 1900 Ken Pratt Boulevard, Longmont, Colorado 80501.

**Status:** Open.

**Matters to be Considered:** Update on Interstate Compact Activities; Presentations on Corrections Population Decline, Office of Victims of Crime Funding Allocations, and Publication on Impact of Job Stress on Corrections Officers; and Proposed Initiative to Collect Information on Federal Grants Available to Corrections Entities.

**FOR FURTHER INFORMATION CONTACT:** Larry Solomon, Deputy Director, 202-307-3106, ext. 155.

**Morris L. Thigpen,**

*Director.*

[FR Doc. 01-11089 Filed 5-2-01; 8:45 am]

**BILLING CODE 4410-36-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of April, 2001.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility

requirements of Section 222 of the Act must be met.

(1) That a significant number or protection of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-38,958; *Moeller Rubber Products Co., Inc., Greenville, MS*

TA-W-38,648; *Sterling Last, LLC, Henderson, TN*

TA-W-38,740; *Eaton Corp., Torque Control Products Div., Marshall, MI*

TA-W-38,703; *Olsonite Corp., Algoma, WI*

TA-W-38,748; *Thompson River Lumber Co., Thompson Falls, MT*

TA-W-38,675; *Earl Soesbe Co., Inc., Rensselaer, IN*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-38,839; *ASARCO, Inc., East Helena Plant, East Helena, MT*

TA-W-38,724; *Lear Corp., Formerly Known as United Technologies, Inc., Linden Avenue Plant, Zanesville, OH*

TA-W-38,861; *Brach Confections, Inc., Chicago, IL*

TA-W-38,048; *Invensys Powerware Corp., a/k/a Best Power, Necedah, WI*

TA-W-38,510; *VF Imagewear East (Formerly VF Knitwear), Nutmeg Mills and The 39th Street Facility, Tampa, FL*

TA-W-38,883; *Graphic Packaging Corp., Portland, OR*

#### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each

determination references the impact date for all workers of such determination.

TA-W-39,047; *Rayovac Corp., Wonewoc, WI: March 28, 2000.*

TA-W-38,943; *Stant Manufacturing, Inc., Connersville, IN: March 9, 2000.*

TA-W-38,835; *Allegheny Color Corp., Ridgway, PA: February 15, 2000.*

TA-W-38,603; *The Daniel Green Co., Dolgeville, NY: August 12, 2000.*

TA-W-38,926; *Procon Products, Murfreesboro, TN: March 1, 2000.*

TA-W-38,729; *CAE Newnes, Inc., Sherwood, OR: February 8, 2000.*

TA-W-38,756; *Motor Products, Owosso, MI: February 12, 2000.*

TA-W-38,683; *Didde Web Press, Emporia, KS: January 22, 2000.*

TA-W-38,942; *ISP Minerals, Kremlin Plant, Pembine, WI: March 14, 2000.*

TA-W-38,725; *Ametek/Dixson, Grand Junction, CO: February 9, 2000.*

TA-W-38,523; *Morris Material Handling, Inc., Oak Creek, WI: December 20, 1999.*

TA-W-38,471; *Dura Automotive Systems, Inc., East Jordan Brake Operations, East Jordan, MI: December 6, 1999.*

TA-W-38,713; *Agrifrozen Foods, Woodburn, OR: February 9, 2000.*

TA-W-38,508; *VF Imagewear East (Formerly VF Knitwear), North Wilkesboro, NC: December 18, 1999.*

TA-W-38,495 & A; *VF Imagewear East (Formerly VF Knitwear), Martinsville, VA and Bassett, VA: December 13, 1999.*

TA-W-38,731; *Great Lakes Paper Co., Clifton, NJ: February 8, 2000.*

TA-W-38,661; *Converse, Inc., Mission, TX: February 2, 2000.*

TA-W-38,583; *Vision Legwear, LLC, Plant 1 and Plant 2, Spruce Pine, NC: January 29, 2000.*

TA-W-38,782; *Republic Technologies International, Canton, OH: February 11, 2000.*

TA-W-39,005; *Rayovac Corp., Fennimore, WI: February 21, 2000.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of April, 2001.

In order for an affirmative determination to be made and a

certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agriculture firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

#### Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-04587; *Thompson River Lumber Co., Thompson Falls, MT*

NAFTA-TAA-04632; *Rosboro Lumber Co., Mill A, Springfield, OR*

NAFTA-TAA-04372; *Bermo, Inc., Sauk Rapids, MN*

NAFTA-TAA-04596; *O and M Manufacturing, Inc., Cheboygan, MI*

NAFTA-TAA-04625; *Brach Confections, Inc., Chicago, IL*

NAFTA-TAA-04716; *Motor Products, Owosso, MI*

NAFTA-TAA-04503; *Earl Soesbe Co., Inc., Rensselaer, IN*

NAFTA-TAA-04532; *Olsonite Corp., Algoma, WI*

NAFTA-TAA-04641; *Graphic Packaging Corp., Portland, OR*

NAFTA-TAA-04595; *Eaton Corp., Torque Control Products Div., Marshall, MI*

NAFTA-TAA-04713; *Gateway, Inc., North Sioux City, SD*

NAFTA-TAA-04660; *Rayovac Corp., Fennimore, WI*

NAFTA-TAA-04547; *ASARCO, Inc., East Helena Plant, East Helena, MT*

NAFTA-TAA-04385; *Dura Automotive Systems, Inc., East Jordan Brake Operations, East Jordan, MI*  
 NAFTA-TAA-04553; *Lear Corp., Formerly Known as United Technologies Automotive, Inc., Linden Avenue Plant, Zanesville, OH*

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (1) and (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

NAFTA-TAA-04422; *VF Imagewear East (Formerly VF Knitwear), Nutmeg Mills and The 39th Street Facility, Tampa, FL*

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

NAFTA-TAA-04671; *Weyerhaeuser Co., Western Lumber/Wood Products, Green Mt. Longview Lumber, Longview, WA*

#### **Affirmative Determinations NAFTA-TAA**

NAFTA-TAA-04407; *Morris Material Handling, Inc., Oak Creek, WI: December 18, 1999.*

NAFTA-TAA-04412; *VF Imagewear East (Formerly VF Knitwear), North Wilkesboro, NC: December 18, 1999.*

NAFTA-TAA-04543; *AgriFrozen Foods, Woodburn, OR: February 9, 2000.*

NAFTA-TAA-04405 & A; *VF Imagewear East (Formerly VF Knitwear), Martinsville, VA and Basset, VA: December 13, 1999.*

NAFTA-TAA-04673; *Maxi Switch, Inc., Tucson, AZ: March 26, 2000.*

NAFTA-TAA-04465; *Vision Legwear, LLC, Plant 1 and Plant 2, Spruce Pine, NC: January 17, 2000.*

NAFTA-TAA-04404 & A; *Hedstrom Lumber Co., Inc., Two Harbors Div., Two Harbors, MN and Grand Marais Div., Grand Harais, MN: December 26, 1999.*

NAFTA-TAA-04654; *Burns Philip Food, Inc., Fleischmann's Yeast, Oakland, CA: March 9, 2000.*

NAFTA-TAA-04538; *Chinatex America, Inc., New York, NY: January 26, 2000.*

NAFTA-TAA-04500; *Merit Abrasive Products, Compton, CA: January 30, 2000.*

NAFTA-TAA-04536; *Thrall Car, Thrall North American Rail Car, Chicago Heights, IL: January 15, 2000.*

I hereby certify that the aforementioned determinations were issued during the month of April, 2001. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 23, 2001.

**Edward A. Tomchick,**  
*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 01-11101 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

#### **DEPARTMENT OF LABOR**

##### **Employment and Training Administration**

[TA-W-38,243]

##### **COLOR-TEX International, North Carolina Finishing Division, Salisbury, NC; Notice of Affirmative Determination Regarding Application for Reconsideration**

By letter of February 4, 2001, a petition requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers of the subject firm. The negative determination was signed on January 12, 2001, and published in the **Federal Register** on February 8, 2001 (66 FR 9599).

The Department's review of the application shows that the information provided supports additional survey of the subject firm customers.

##### **Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 16th day of April 2001.

**Linda G. Poole,**  
*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 01-11106 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

#### **DEPARTMENT OF LABOR**

##### **Employment and Training Administration**

[TA-W-37,848]

##### **Genicom Corporation Currently Known as IER, Inc., Temple, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 18, 2000, applicable to workers of Genicom Corporation, Temple, Texas. The notice was published in the **Federal Register** on September 12, 2000 (65 FR 55050).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department inadvertently failed to identify the subject firm title name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read "Genicom Corporation, currently known as IER, Inc."

The amended notice applicable to TA-W-37,848 is hereby issued as follows:

All workers of Genicom Corporation, currently known as IER, Inc., Temple, Texas who became totally or partially separated from employment on or after June 16, 1999 through August 18, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of April, 1999.

**Linda G. Poole,**  
*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 01-11104 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

#### **DEPARTMENT OF LABOR**

##### **Employment and Training Administration**

[TA-W-39,031]

##### **IER, Inc. Temple, TX; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 16, 2001 in response to a worker petition which was filed on behalf of workers at IER, Inc., Temple, Texas.

An active certification covering the petitioning group of workers is already

in effect (TA-W-37,848, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 18th day of April, 2001.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 01-11100 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-38,622]

#### **Mauston Tank, Inc., Mauston, WI; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 5, 2001, in response to a petition filed by a company official on the same date on behalf of workers at Mauston Tank, Inc., Mauston, Wisconsin.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of April, 2001.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 01-11099 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-38,476]

#### **Raider Apparel Inc., Alma, GA; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 27, 2000 in response to a petition filed on behalf of workers at Raider Apparel Inc., Alma, Georgia.

An active certification covering the petitioning group of workers remains in effect (TA-W-36,121). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of April, 2001.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 01-11098 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-38,486]

#### **TYCO Electronics, The Thomas and Betts Corporation, Irvine, CA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 6, 2001, applicable to workers of Tyco Electronics, Irvine, California. The notice was published in the **Federal Register** on March 2, 2001 (66 FR 13086).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electronic connectors and cable assemblies. Information received from the State shows that Tyco Electronics purchased The Thomas and Betts Corporation in July, 2000. Information also shows that some workers separated from employment at Tyco Electronics had their wages reported under a separate unemployment insurance (UI) tax account for The Thomas and Betts Corporation.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Tyco Electronics, Irvine, California who were adversely affected by increased imports.

The amended notice applicable to TA-W-38,486 is hereby issued as follows:

"All workers of Tyco Electronics, The Thomas and Betts Corporation, Irvine, California who became totally or partially separated from employment on or after December 11, 1999 through February 6, 2003 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, DC this 16th day of April, 2001.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 01-11103 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-38,430]

#### **Unilever-Bestfoods, Lipton, Conopco, Inc., Dallas, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 5, 2001, applicable to workers of Unilever-Bestfoods, Lipton, Dallas, Texas. The notice was published in the **Federal Register** on March 2, 2001 (66 FR 13086).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of 50 pound bulk margarine cubes. New information shows that some workers separated from employment at Unilever-Bestfoods, Lipton had their wages reported under a separate unemployment insurance (UI) tax account for Conopco, Inc., a company established by the subject firm to handle worker compensation nationwide.

The intent of the Department's certification is to include all workers of Unilever-Bestfoods, Lipton, who were adversely affected by increased imports of margarine.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA-W-38,430 is hereby issued as follows:

All workers of Unilever-Bestfoods, Lipton, Conopco, Inc., Dallas, Texas, who became totally or partially separated from employment on or after December 5, 1999, through February 5, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 23rd day of April, 2001.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 01-11105 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

**DEPARTMENT OF LABOR****Employment and Training Administration****ETA 207, Nonmonetary Determination Activities Report****ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension collection of the ETA 207, Nonmonetary Determinations Report.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before July 2, 2001.

**ADDRESSES:** Diann Lowery, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue NW, Frances Perkins Bldg. Room S-4516, Washington, DC 20210. Telephone number 202-693-33210 (this is not a toll-free number). FAX number 202-693-3229.

**SUPPLEMENTARY INFORMATION:****I. Background**

The ETA 207 Report, Nonmonetary Determinations, contains State data on the number and types of issues that arise and data on the denials of benefits that may result due to reasons associated with a claimant's reason for separation from work such as voluntary leaving, or questions of continuing eligibility such as refusal of suitable work. These data are used by the Office of Workforce Security (OWS) to determine workload counts, to enable the OWS to evaluate the adequacy and effectiveness of nonmonetary determination procedures, and to

evaluate the impact of State and Federal legislation with respect to disqualifications.

**II. Review Focus**

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and \* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

The continued collection of the information contained on the ETA 207 report is necessary to enable the national office to continue evaluating State performance in the nonmonetary determination area and to continue using the data as a key input to the administrative funding process.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration (ETA).

*Title:* Nonmonetary Determinations Report.

*OMB Number:* 1205-0150.

*Agency Number:* ETA 207.

*Affected Public:* State and Local Governments.

*Total Respondents:* 53.

*Frequency:* Quarterly.

*Total Responses:* 212.

*Average Time per Response:* 4.22 hours.

*Estimated Total Burden Hours:* 896 hours.

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (operating/maintaining):* 0.

Comments submitted in response to this comment request will be summarized and/or 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: April 20, 2001.

**Grace A. Kilbane,**

*Administrator, Office of Workforce Security.*

[FR Doc. 01-11097 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-P**

**DEPARTMENT OF LABOR****Employment and Training Administration****Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability**

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice of incentive funding availability for the Workforce Investment Act of 1998.

**SUMMARY:** The Department of Labor, in collaboration with the Department of Education, announces that six States, (Florida, Indiana, Kentucky, Texas, Utah and Vermont), are eligible to apply for WIA incentive awards under the WIA Regulations.

**DATE:** The six eligible States must submit their applications for incentive funding to the Department of Labor by June 18, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Rabung (e-mail: wrabung@doleta.gov), Office of Workforce Security, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S-4231, Washington, DC 20210, telephone: (202) 693-3190 (voice) (This is not a toll-free number) or 1-800-326-2577 (TDD). Information may also be found at the website: <http://usworkforce.gov>.

**SUPPLEMENTARY INFORMATION:** Six States that took the lead on implementing provisions of the Workforce Investment Act, (WIA), one year ahead of the full implementation date, have qualified for a share of the \$10.08 million available for incentive grant awards. These funds, authorized by 20 CFR 666.220, are available for a three year period to support innovative workforce system building activities which are eligible under title I or title II of WIA, or under the Perkins Act (Perkins III).

In order to qualify for a grant award, a State must have exceeded performance levels, agreed to by the Secretaries, Governor, and State Education Officer, for outcomes in State operated employment and adult education programs. The goals included placement after training, retention in employment, and improvement in literacy levels, among other measures.

The States eligible to apply for incentive grant awards, and the amount they are eligible to receive are Florida, \$2,645,125; Indiana, \$1,308,726; Kentucky, \$1,400,631; Texas, \$3,000,000; Utah, \$882,167; and Vermont \$843,351. The six eligible States must submit their applications for incentive funding to the Department of Labor by June 18, 2001. As set forth in the provisions of WIA section 503(b)(2), and 20 CFR 666.220(b), the application must include assurances that:

A. The legislature of the State was consulted with respect to the development of the application.

B. The application was approved by the Governor, the eligible agency for adult education (as defined in section 203 of WIA), and the State agency responsible for vocational and technical education programs.

C. The State and the eligible State agency, as appropriate, exceeded the State adjusted levels of performance for WIA title I, and the expected levels of performance for WIA title II.

In addition, States are requested to provide a description of the planned use of incentive grants as part of the application process, to ensure that the State's planned activities are innovative and are authorized under the WIA Title I, the Adult Education and Family Literacy Act, and/or the Perkins Act as amended, as required by WIA Section 503(a).

These applications may take the form of a letter from the Governor, or designee, to the Deputy Assistant Secretary of Labor, Raymond J. Uhalde, Attention: William Rabung, 200 Constitution Avenue, Room S-4231, Washington, DC 20210. The States will receive their incentive grant awards this summer.

Signed at Washington, D.C., on April 27, 2001.

**Raymond J. Uhalde,**

*Deputy Assistant Secretary of Labor,  
Employment and Training Administration.*

[FR Doc. 01-11096 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-4618]

#### **Eagle Knits of Stanfield Inc., Norwood, NC; Notice of Termination of Investigation**

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment

assistance, hereinafter called (NAFTA-TAA), and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on March 8, 2001, in response to a petition filed on behalf of workers at Eagle Knits of Stanfield, Inc., Norwood, North Carolina.

The petitioner requested that the petition for NAFTA-TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 24th day of April, 2001.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 01-11107 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[NAFTA-04392]

#### **Unilever-Bestfoods, Lipton, Conopco, Inc., Dallas, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance**

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 5, 2001, applicable to workers of Unilever-Bestfoods, Lipton, Dallas, Texas. The notice was published in the **Federal Register** on March 2, 2001 (66 FR 13087).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of 50 pound bulk margarine cubes. New information shows that some workers separated from employment at Unilever-Bestfoods, Lipton had their wages reported under a separate unemployment insurance (UI) tax account for Conopco, Inc., a company established by the subject firm to handle worker compensation nationwide.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Unilever-Bestfoods, Lipton, who were adversely affected by a shift of production of margarine to Canada.

The amended notice applicable to NAFTA-04392 is hereby issued as follows:

All workers of Unilever-Bestfoods, Lipton, Conopco, Inc., Dallas, Texas, who became totally or partially separated from employment on or after December 5, 1999, through February 5, 2003, are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of April, 2001.

**Linda G. Poole,**

*Certifying Officer, Division of Trade  
Adjustment Assistance.*

[FR Doc. 01-11102 Filed 5-2-01; 8:45 am]

**BILLING CODE 4510-30-M**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Public Law 105-85

**AGENCY:** Office of Federal Procurement Policy, OMB.

**ACTION:** Notice.

**SUMMARY:** The Office of Management and Budget (OMB) is hereby publishing the attached memorandum to heads of agencies concerning the determination of the maximum "benchmark" compensation that will be allowable under government contracts during contractors' FY 2001—\$374,228. This determination is required to be made pursuant to section 808 of Pub. L. 105-85. It applies equally to both defense and civilian procurement agencies.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP on (202) 395-3254.

**Sean O'Keefe,**

*Deputy Director.*

#### **To The Heads of Executive Departments and Agencies**

*Subject:* Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Pub. L. 105-85

This memorandum sets forth the "benchmark compensation amount" as required by section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under section 39, the "benchmark compensation amount" is "the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available." The "benchmark compensation amount" established as directed by section 39 limits the allowability of compensation costs under government contracts. The "benchmark

compensation amount" does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of section 39 that the benchmark compensation amount for contractor fiscal year 2001 is \$374,228. This benchmark compensation amount is to be used for contractor fiscal year 2001, and subsequent contractor fiscal years, unless and until revised by OMB. This benchmark compensation amount applies to contract costs incurred after January 1, 2001, under covered contracts of both the defense and civilian procurement agencies as specified in section 808 of Pub. L. 105-85.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395-3254.

Sean O'Keefe,  
Deputy Director.

[FR Doc. 01-11060 Filed 5-2-01; 8:45 am]

BILLING CODE 3110-01-U

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

April 30, 2001.

**TIME AND DATE:** 11:15 a.m., Monday, April 30, 2001.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider whether to postpone the May 2, 2001, Commission meeting regarding Eagle Energy, Inc., Docket No. WEVA 98-123.

No earlier announcement of the meeting was possible.

**Federal Register CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 66, No. 83, at 21,416, April 30, 2001.

**PREVIOUSLY ANNOUNCED TIME AND DATE:** 10 a.m., Wednesday, May 2, 2001.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

**STATUS:** Closed in Part [Pursuant to 5 U.S.C. 552b(c)(10)].

**CHANGES IN MEETING:** The Commission has postponed the Commission meeting to consider and act upon Eagle Energy, Inc., Docket No. WEVA 98-123, until 10 a.m., Wednesday, May 30, 2001.

**CONTACT PERSON FOR MORE INFO:** Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean H. Ellen,  
Chief Docket Clerk.

[FR Doc. 01-11327 Filed 5-1-01; 3:43 pm]

BILLING CODE 6735-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 01-055]

### Information Collection: Submission for OMB Review, Comment Request

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this proposal should be received on or before June 4, 2001.

**ADDRESSES:** All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Kaplan, NASA Reports Officer, (202) 358-1372.

*Reports:* None.

*Title:* AST—Technology Utilization.

*OMB Number:* 2700-0009.

*Type of review:* Extension.

*Need and Uses:* NASA is required to collect, and NASA contractors/recipients performing research and development are required to actively search for, identify, and report promptly, all new technologies (i.e., "inventions, discoveries, improvements, and innovations") resulting from work performed under such contracts and agreements.

*Affected Public:* Business or other for-profit, Not-for-profit institutions.

*Number of Respondents:* 372.

*Responses Per Respondent:* 2.5.

*Annual Responses:* 930.

*Hours Per Request:* ¾ to 1 hour.

*Annual Burden Hours:* 895.

*Frequency of Report:* Annually.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01-11064 Filed 5-2-01; 8:45 am]

BILLING CODE 7510-01-U

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01-056]

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that OptoGel, Inc., of Ashlawn, Pennsylvania, has applied for an exclusive license to practice the invention disclosed in NASA Case No. GSC-13, 13-1 entitled "Sol-Gel Processing to Form Sol-Gel Monoliths Inside Hollow Core Optical Fiber and Sol-Gel Fiber Devices Made Thereby," for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Publication of this notice is not a determination by NASA that the requested license will be granted, and NASA, in the absence of any objections or after reviewing any objections to this notice, may decide to grant the license as requested, grant co-exclusive or partially exclusive licenses, grant a nonexclusive license, or not grant any license at all. Written objections to the prospective grant of a license should be sent to Goddard Space Flight Center.

**DATES:** Responses to this notice must be received by July 2, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Diana Cox, Goddard Space Flight Center, Office of the Patent Counsel, Mail Code 710.1, Greenbelt, MD 20771, telephone (301) 286-7351.

Dated: April 27, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01-11065 Filed 5-2-01; 8:45 am]

BILLING CODE 7510-01-U

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* "Licensee Event Report".

3. *The form number if applicable:* NRC Form 366.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Holders of operating licenses for commercial nuclear power plants.

6. *An estimate of the number of responses:* 1130 annually.

7. *The estimated number of annual respondents:* 104.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 56,500.

9. *An indication of whether Section 3507(d), Pub. L. 104-13 applies:* Not applicable.

10. *Abstract:* With NRC Forms 366, 366A, and 366B, the NRC collects reports of the types of reactor events and problems that are believed to be significant and useful to the NRC in its efforts to identify and resolve threats to public safety. They are designed to provide the information necessary for engineering studies of operational anomalies and trends and patterns analysis of operational occurrences. The same information can be used for other analytic procedures that will aid in identifying accident precursors.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: <http://www.nrc.gov/NRC/PUBLIC/OMB/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 4, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Amy Farrell, Office of Information and Regulatory Affairs (3150-0104), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-7318.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 27th day of April 2001.

For the Nuclear Regulatory Commission.

**Beth St. Mary,**

*Acting NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01-11110 Filed 5-2-01; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

### Entergy Operations, Inc., Arkansas Nuclear One, Unit 1, Notice of Availability of the Final Supplement 3 to the Generic Environmental Impact Statement Regarding the License Renewal of Arkansas Nuclear One, Unit 1

Notice is hereby given that the U. S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific Supplement 3 to the Generic Environmental Impact Statement (GEIS), NUREG-1437, regarding the renewal of operating license DPR-51 for an additional 20 years of operation at Arkansas Nuclear One, Unit 1 (ANO-1). ANO-1 is located in Pope County, Arkansas. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

In Section 9.3 of the report, the staff concludes:

The staff recommends that the Commission determine that the adverse environmental impacts of license renewal for ANO-1 are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable. This recommendation is based on (1) the analysis and findings in the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants, NUREG-1437; (2) the Entergy ER [Environmental Report]; (3) consultation with other Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments.

The final Supplement 3 to the GEIS is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

**FOR FURTHER INFORMATION, CONTACT:** Mr. Thomas J. Kenyon, Generic Issues, Environmental, Financial, and Rulemaking Branch, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Kenyon may be contacted at (301) 415-1120 or by writing to: Thomas J. Kenyon, U.S. Nuclear Regulatory Commission, MS 0-11 F1, Washington, DC 20555.

Dated at Rockville, Maryland, this 5th day of April, 2001.

For the Nuclear Regulatory Commission.

**David B. Matthews,**

*Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 01-11109 Filed 5-2-01; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Meeting Concerning the Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of public meeting.

**SUMMARY:** NRC will hold a public meeting at the Information Age Park Resource Center at 2000 McCracken Boulevard, Paducah, Kentucky, to provide the local public, facility employees, citizens' groups, and local officials with information about, and an opportunity to provide views on, how the NRC plans to revise and improve its oversight program for nuclear fuel cycle facilities. The oversight program applies to commercial nuclear fuel cycle facilities regulated under 10 CFR parts 40, 70, and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities (one of which is NFS), low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF<sub>6</sub>) production facility. These facilities possess large quantities of materials that are potentially hazardous (*i.e.*, radioactive, toxic, and/or flammable) to the workers, public, and environment. Also, some of the facilities possess information and material important to national security. In this area, the NRC regulates both the Paducah Gaseous Diffusion Plant operated by the United States Enrichment Corporation, and the Honeywell Specialty Chemicals uranium conversion facility in Metropolis, Illinois.

The goal of this revision project is to have an oversight program that: (1) provides earlier and more objective indications of facility performance in the areas of safety and national security, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness, efficiency, and realism. To this end, the NRC is striving to make the oversight program more risk-informed and performance-based. The oversight revision project is described in SECY-99-188, "Evaluation and Proposed Revision of the Nuclear Fuel Cycle Facility Oversight Program Nuclear Fuel

Cycle Facility Safety Inspection Program," and in SECY-00-0222, "Status of Revision." SECY-99-188 and SECY-00-0222, as well as other background information, are available in the Public Document Room and on the NRC Web Page at <http://www.nrc.gov>.

#### Purpose of Meeting

To obtain stakeholder views for improving the NRC oversight program for ensuring fuel cycle licensees and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for special nuclear material and classified matter in the interest of national security. The public meeting will focus on the revisions that are being made to the program, and on how interested parties can provide input to the change process.

**DATE AND LOCATION:** Members of the public, industry, and other stakeholders are invited to attend and participate in the meeting, which is scheduled for 7 to 8 p.m. on Wednesday, May 16, 2001. The meeting will be held in the Resource Center at the Paducah Information Age Park in Paducah, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** Patrick Castleman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-8118, e-mail [pic@nrc.gov](mailto:pic@nrc.gov).

Dated at Rockville, Maryland this 27th day of April 2001.

For the Nuclear Regulatory Commission.

**Patrick Castleman,**

*Project Manager, Inspection Section, Safety and Safeguards Support Branch, Division of Fuel Cycle Safety and Safeguards.*

[FR Doc. 01-11111 Filed 5-2-01; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

### NUREG-1742, "Perspectives Gained From the Individual Plant Examination of External Events (IPEEE) Program"; Draft for Comment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability of the draft report for comment NUREG-1742, "Perspectives Gained from the Individual Plant Examination of External Events (IPEEE) Program".

**SUMMARY:** The Nuclear Regulatory Commission issued on June 28, 1991, Supplement 4 to Generic Letter 88-20, "Individual Plant Examination of External Events (IPEEE) for Severe

Accident Vulnerabilities, 10 CFR 50.54(f)." Associated guidance for conduct of the IPEEEs was issued in June 1991 in NUREG-1407, "Procedural and Submittal Guidance for the Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities." Specifically, the Nuclear Regulatory Commission requested that each licensee perform an IPEEE to identify and report to the Nuclear Regulatory Commission all plant-specific vulnerabilities to severe accidents caused by external events. This review was limited to plant behavior under full-power operating conditions. The external events to be considered included seismic events; internal fires; and high winds, floods, and other (HFO) external initiating events including transportation or nearby facility accidents and plant-unique hazards. All currently operating nuclear power plants in the United States have completed their assessments and submitted their analyses to the NRC.

Consistent with the intent of Generic Letter 88-20, the primary goal of the IPEEE program has been for each licensee to identify plant-specific vulnerabilities to severe accidents. More specifically, Supplement 4 to Generic Letter 88-20 identified the following four objectives for the IPEEE:

- To develop an appreciation of severe accident behavior,
- To understand the most likely severe accident sequences that could occur at the licensee's plant under full-power operating conditions,
- To gain a qualitative understanding of the overall likelihood of core damage and fission product releases, and
- To reduce, if necessary, the overall likelihood of core damage and radioactive material releases by modifying, where appropriate, hardware and procedures that would help prevent or mitigate severe accidents.

The primary objective of the NRC's technical review process was to ascertain the extent to which the licensee's IPEEE submittals have achieved the intent of Generic Letter 88-20, satisfied the four principle IPEEE objectives listed above, and followed the recommended guidance in NUREG-1407. The reviews focused on verifying that the critical elements of acceptable IPEEE analyses in the fire, seismic, and HFO areas were performed in accordance with the guidelines in NUREG-1407. Results of the reviews of each IPEEE are documented in plant-specific Staff Evaluation Reports and Technical Evaluation Reports which were transmitted to each licensee and made publically available. It should also

be noted that the staff's reviews were not intended to validate or verify the licensees' IPEEEs analyses or results (i.e., an in-depth evaluation of the various inputs, assumptions, and calculations was not performed). Rather, methods, approaches, assumptions, and results were reviewed for reasonableness. If inconsistencies were encountered, they were reported in the plant-specific IPEEE Technical Evaluation Reports.

The draft report NUREG-1742, "Perspectives Gained from the Individual Plant Examination of External Events (IPEEE) Program" summarizes the findings from the review of the licensees' IPEEE submittals. The public is invited to provide feedback on this draft report.

As part of the IPEEE program, some generic issues were addressed by the licensees in their submittals. As noted in draft NUREG-1742, while this has resulted in resolution of most of the generic issues related to the IPEEE program, some aspects of some generic issues were not sufficiently discussed in all submittals to reach a resolution. Those remaining issues will be addressed separately from the IPEEE program.

**SUPPLEMENTARY INFORMATION:** This notice serves as a request for public comment on the Nuclear Regulatory Commission's draft report NUREG-1742, "Perspectives Gained from the Individual Plant Examination of External Events (IPEEE) Program," that is dated April 2001 (web address: <http://www.nrc.gov/NRC/NUREGS/SR1742/V1/index.html>). Only written comments are requested. Feedback is especially requested on the following specific questions.

1. Does the information contained in NUREG-1742 represent a useful understanding of the potential vulnerabilities of nuclear power plants to external events? How will the information in this report be used by various stakeholders? What would make the information more useful?

2. Are there another comparisons of information from the IPEEE submittals that would yield useful insights? If so, what comparisons would be useful? Why?

3. Given the information from the IPEEE submittals on the risk from fire, seismic and other external events, is additional research needed to improve methods, reduce uncertainties, or resolve issues? If so, what research should be pursued and why? If not, why not?

4. Potential plant improvements, identified by licensees in their

submittals, can be divided into three general categories—improvements that (1) have been completed, (2) will be made, or (3) will receive further consideration. Are there any improvements in either of the last two categories that have been completed and that resulted in a significant change in a plant's ability to withstand potential external events? If so, what are the improvements and the related changes to the plant's capability?

5. How can the results of the IPEEE program be used to (1) maintain safe operations of nuclear facilities; (2) make NRC activities and decisions more effective, efficient, and reliable; (3) increase public confidence; or (4) reduce unnecessary regulatory burden on stakeholders?

**FOR FURTHER INFORMATION CONTACT:**

Written comments may be sent to Dr. Alan M. Rubin, Probabilistic Risk Analysis Branch, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research, Mail Stop T10E50, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or e-mail: [amr@nrc.gov](mailto:amr@nrc.gov).

**DATES:** Submit comments by July 31, 2001. 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.

Dated this 10th Day of April 2001.

For the Nuclear Regulatory Commission.

**Thomas L. King,**

*Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 01-11113 Filed 5-2-01; 8:45 am]

BILLING CODE 7590-01-U

## NUCLEAR REGULATORY COMMISSION

### FEDERAL EMERGENCY MANAGEMENT AGENCY

#### Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; Draft Addenda to NUREG-0654/FEMA-REP-1, Revision 1,

**AGENCIES:** Nuclear Regulatory Commission. Federal Emergency Management Agency.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) have issued for public comment the Draft Addenda to NUREG-0654/

FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." This NUREG is the basic emergency planning guidance document for radiological emergency planning and preparedness for commercial nuclear power plants and is used by licensees and by State and local government emergency response agencies to develop and maintain radiological emergency plans for nuclear power plants.

**DATE:** The comment period ends August 1, 2001, of this **Federal Register** notice.

**ADDRESSES:** Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland between 7:15 a.m. and 4:30 p.m. on Federal workdays.

Those considering public comment may request a free single copy of the Draft Addenda to NUREG-0654/FEMA-REP-1, Rev. 1, by writing to: Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or E-mail: [DISTRIBUTION@nrc.gov](mailto:DISTRIBUTION@nrc.gov), or Facsimile: (301) 415-2289.

The Draft Addenda to NUREG-0654/FEMA-REP-1, Rev. 1, also is available electronically by visiting NRC's Home Page (<http://www.nrc.gov/NRC/NUREGS/SR0654/R1addenda/index.html>) or FEMA's Home Page (<http://www.fema.gov/pte/rep/>).

A copy of the Draft Addenda to NUREG-0654/FEMA-REP-1, Rev. 1, is available for inspection and copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, Room O1F21.

**FOR FURTHER INFORMATION CONTACT:**

Kathy Halvey Gibson, Chief, Emergency Preparedness and Health Physics Section, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone (301) 415-2910; electronic mail address: [khg@nrc.gov](mailto:khg@nrc.gov) or Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, Washington, DC 20472, telephone (202) 646-3664; electronic mail address: [vanessa.quinn@fema.gov](mailto:vanessa.quinn@fema.gov).

**SUPPLEMENTARY INFORMATION:** This notice announces the availability of and request for comment on the Draft

Addenda to NUREG-0654/FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." NUREG-0654/FEMA-REP-1, Rev. 1, was issued in November 1980 and is the basic emergency planning guidance document for radiological emergency planning and preparedness for commercial nuclear power plants.

NUREG-0654/FEMA-REP-1, Rev. 1, is used by licensees and by State and local government emergency response agencies to develop and maintain radiological emergency plans for nuclear power plants. NUREG-0654/FEMA-REP-1, Rev. 1, is also used by staff of the NRC and FEMA to review, respectively, licensee and State and local government radiological emergency plans and preparedness, and to make findings and determinations regarding the adequacy of these plans. As part of FEMA's strategic review of its radiological emergency preparedness program, FEMA and NRC staff determined that it was not necessary to revise NUREG-0654/FEMA-REP-1, Rev. 1, but that to enhance its usefulness, the outdated citations in the document should be replaced with updated citations through means of an addenda. An initial version of the addenda was posted on the FEMA web site and provided to the member agencies of the Federal Radiological Preparedness Coordinating Committee for comment.

Dated at Rockville, Maryland, this 26th day of March 2001.

For the Nuclear Regulatory Commission.

**Glenn M. Tracy,**

*Chief, Operator Licensing, Human Performance, and Plant Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission.*

For the Federal Emergency Management Agency.

**Russell Salter,**

*Director, Chemical and Radiological Preparedness Division, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency.*

[FR Doc. 01-11112 Filed 5-2-01; 8:45 am]

BILLING CODE 7590-01-U

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38-115

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 38-115, Representative Payee Survey, is used to collect information about how the benefits paid to a representative payee have been used or conserved for the benefit of the incompetent annuitant.

Approximately 4,067 RI 38-115 forms will be completed annually. The form takes approximately 20 minutes to complete. The annual burden is 1,356 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before June 2, 2001.

**ADDRESSES:** Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

#### FOR INFORMATION REGARDING

**ADMINISTRATIVE COORDINATION CONTACT:** Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606-0623.

Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01-11083 Filed 5-2-01; 8:45 am]

**BILLING CODE 6325-50-U**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24963; File No. 812-12392]

### The Equitable Life Assurance Society of the United States, et al.

April 26, 2001.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions

from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder.

*Summary of Application:* Applicants seek an order to amend an Existing Order (describing below) to permit, under specified circumstances, the recapture of certain Credits applied to contributions made under "Contracts" and "Future Contracts" as defined in the applications for the Existing Order ("Prior Applications").<sup>1</sup> Applicants also request that the order being sought extend to "Equitable Broker-Dealers," defined in the Prior Applications.

*Applicants:* The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA" and together with SA 45 and SA 49, the "Accounts"), any other separate accounts of Equitable Life or EOC (collectively, "Future Accounts") that support in the future variable annuity contracts and certificates that are substantially similar in all material respects to the contracts described herein, AXA Advisors, LLC, and Equitable Distributors, Inc. ("EDI") (collectively, "Applicants").

*Filing Date:* The application was filed on January 2, 2001 and amended on April 24, 2001.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New

York, New York 10104, Attn: Dodi Kent, Esq.

**FOR FURTHER INFORMATION CONTACT:** Mark Cowan, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942-8090).

### Applicant's Representations

1. On May 3, 1999, the Commission issued an order ("Prior Order")<sup>2</sup> exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder. The Prior Order specifically permits the recapture, under specified circumstances, of certain 3% Credits applied to contributions made under Contracts or Future Contracts. On July 28, 1999, the Commission issued an order of exemption amending the Prior Order<sup>3</sup> (together with the Prior Order, the "Existing Order") to permit the recapture of Credits of up to 5% ("5% Credits"), under the same specified circumstances.<sup>4</sup>

2. Equitable now desires to offer and recapture Credits of up to 6% of contributions ("6% Credits") under the Contracts or Future Contracts, under the same and certain additional circumstances described below. Equitable will apply a Credit to the account of a Contract owner whenever the owner makes a contribution. The amount of the Credit will equal a percentage ("Credit Rate") of the contribution. For contributions received during the first Contract Year (as defined in the Contract prospectus), the applicable Credit Rate will be based on the Credit schedule then in effect and the total net amount of contributions received to date under a Contract. The Credit Rate applicable to contributions made after the first Contract Year will be

<sup>2</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23822 (File No. 812-11388).

<sup>3</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23924 (File No. 812-11662).

<sup>4</sup> Pursuant to Rule 0-4 under the Act, Applicants incorporate by reference the statement of facts set out in the Prior Applications to the extent necessary to support the Application. Applicants represent that except as described herein all of the facts asserted in the Prior Applications remain true and accurate in all material aspects to the extent that such facts are relevant to any relief on which Applicants continue to rely.

<sup>1</sup> *The Equitable Life Assurance Society of the United States*, Investment Company Act Release Nos. 23774 (Apr. 7, 1999) (File No. 812-11388) and 23889 (July 2, 1999) (File No. 812-11662).

the Credit Rate applicable to "Net First Year Contributions" received during the first Contract Year. "Net Year Contributions" equal total first contributions ("Total First Year Contributions") less any withdrawals of contributions (including withdrawal charges) made during the first Contract Year.

3. Equitable currently proposes to use the following Credit schedule for contributions made under the Contract:

Contributions*		Credit rate (as a percentage of contribution)
At least	But less than	
Minimum ....	\$250,000 ....	4.0
\$250,000 ....	\$1,000,000	5.0
\$1,000,000	unlimited** ..	6.0

\* The Credit Rate applicable depend on total net contributions received to date, Expected First Year Contributions, or Net First Year Contributions, as described below.

\*\* Maximum contribution limitations may apply.

4. If Equitable receives more than one contribution during the first Contract Year and a higher Credit Rate applies to the later contribution(s) based on the total amount of net contributions to date (*i.e.*, the total net contributions surpass a breakpoint), Equitable will apply the higher Credit Rate to that contribution, as well as any prior or subsequent contributions made in the first Contract Year. Equitable will apply any additional Credit amounts resulting from such adjustments as of the date it receives the later contribution(s).

5. If a Contract owner executes a letter of intent ("Letter of Intent") pursuant to which the owner agrees to make a certain amount of contributions in the first Contract Year ("Expected First Year Contributions"),<sup>5</sup> Equitable will apply a Credit amount to each contribution made during the first Contract Year using the Credit Rate applicable to the Expected First Year Contributions ("Letter of Intent Credit Rate"). Equitable will apply Credits at the Letter of Intent Credit Rate when it receives each contribution. For any contribution(s) that results in the total net contributions to date exceeding the Expected First Year Contributions, such that a higher Credit Rate would apply, Equitable will apply the higher Credit Rate to that contribution, as well as any prior or subsequent contribution(s) made in the first Contract Year.

<sup>5</sup> The Letter of Intent will be in the form of an acknowledgment in a delineated section of the application for the Contracts. The initial contribution must be at least 50% of the Expected First Year Contributions for the Letter of Intent Credit Rate to apply.

6. In the future, Equitable may apply Credits for contributions under the Contracts using the same Credit schedule or a different Credit schedule containing higher breakpoints.

7. Equitable will recapture Credits applied to contributions made under Contracts and Future Contracts under the same circumstances permitted by the Existing Order. In addition, on the first anniversary of the Contract ("Contract Anniversary"), Equitable will recapture any "Excess Credits" applied during the first Contract Year, as discussed below.

8. Excess Credits will exist when a Contract owner's Net First Year Contributions are lower than Total First Year Contributions. In such cases, Equitable will recapture an Excess Credit amount equal to the difference between the Credits that were actually applied and the Credits that would have been applied based on Net First Year Contributions.

*Example.*

- Assume an initial contribution of \$250,000. A Credit of \$12,500 (5% of \$250,000) would be applied to the Contract. If the Contract owner withdraws \$100,000 during the first Contract Year, his or her Net First Year Contributions would be \$145,000 (\$250,000-\$100,000-\$5,000 withdrawal charge (\$100,000-15% free withdrawal  $\times$  8%)). The applicable Credit Rate based on Net First Year Contributions is 4%. At the end of the first Contract Year, Equitable would recapture \$6,700 (5% of \$105,000 plus 1% of \$145,000).

9. Excess Credits also will exist when a Contract owner fails to fulfill the conditions of a Letter of Intent, and as a result the Credits applied to the Contract exceed the Credits that would have applied to actual contributions made had the Contract owner not executed a Letter of Intent. For Contract owners who fail to fulfill a Letter of Intent, Equitable will recapture an amount equal to the difference between the Credits that were actually applied and the Credits that would have been applied based on Net First Year Contributions.

*Example.*

- Assume an initial contribution of \$150,000 pursuant to a Letter of Intent under which the Contract owner has agreed to make contributions totaling \$250,000 during the first Contract Year. A Credit of \$7,500 (5% of \$150,000) would apply to the Contract. If the Contract owner makes no more contributions during the first Contract Year (and thus does not fulfill the terms of the Letter of Intent), then at the end of the first Contract Year, Equitable

would recapture \$1,500 (1% of \$150,000).

10. The Contracts and Future Contracts will be substantially similar in all material respects to the Contracts covered by the Existing Order except that: (a) Equitable will apply and recapture Credits as described above, and (b) a sorter withdrawal charge schedule will apply. Specifically, the Contracts and Future Contracts will have a withdrawal charge schedule that declines from 8% in years one and two, to 0% in year nine and thereafter (rather than year 10 and thereafter, as it currently does).

11. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Contracts and Future Contracts that are substantially similar in all material respects to the Contracts described herein and underwritten or distributed by AXA Advisors, LLC, Equitable Distributors, Inc., or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

#### Applicant's Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provision of the Act and the rules promulgated thereunder 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.

2. Applicants request that the Commission, pursuant to Section 6(c) of the Act, amend the Existing Order to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit: (a) the recapture of 6% Credits under the same circumstances covered by the Existing Order, and (b) the recapture of Excess Credits in the manner described above.

3. Applicants submit that the recapture of Credits will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder the same reasons given in support of the Existing Order. First, the 6% Credits will be recapturable under the same circumstances and on the same basis as the 5% Credits described in the Prior Applications, the only difference being the higher percentage amount. In addition, Applicants submit that when Equitable recaptures any Excess Credit, it is also simply retrieving its own assets, because a Contract owner's

interest in any Excess Credit allocated to a Contract within the first Contract Year is not vested. Rather, Equitable retains the right to, and interest in, the Excess Credit, although not any earnings attributable to the Excess Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Excess Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience attributable to any Excess Credit). The amounts recaptured will never exceed the Credits (or any Excess Credit) provided by Equitable from its own general account assets, and Equitable will not recapture any gain attributable to the Credit (or any Excess Credit).

5. Furthermore, Applicants submit that permitting a Contract owner who withdraws contributions, or who fails to fulfill his or her Letter of Intent obligations to retain any Excess Credit, would be patently unfair and would deny the Applicants a reasonable measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make an initial contribution, receive Credits, then later, during the first Contract Year, withdraw monies (perhaps by taking advantage of the 15% free withdrawal feature), thereby enabling the Contract owner to retain Credit amounts that otherwise would not have been applied. Similarly, a Contract owner could execute a Letter of Intent with no intention of fulfilling it, in order to obtain higher Credit amounts. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Excess Credits provided by Equitable from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value.

6. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit or Excess Credit under the Contracts does not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

7. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Contracts and Future Contracts that are substantially similar in all material

respects to the Contracts described herein and underwritten or distributed by AXA Advisors, LLC, Equitable Distributors, Inc., or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

#### Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are 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, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-11048 Filed 5-2-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24964]

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 27, 2001.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 2001. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifty St., NW., Washington, DC 20549-0102 (tel. 202-942-8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 22, 2001, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-

0609. For Further Information Contact: Diane L. Titus, at (202) 942-0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549-0506.

### Firstmark Partners Contrarian Value Fund [File No. 811-9109]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately \$3,800 incurred in connection with the liquidation were paid by applicant's investment adviser, Firststock Financial Services, Inc.

*Filing Dates:* The application was filed on March 7, 2001, and amended on April 18, 2001.

*Applicant's Address:* 5212 Underwood Ave., Omaha, NE 68132.

### Circle Income Shares, Inc. [File No. 811-2378]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On January 22, 2001, applicant transferred its assets to One Group Mutual Funds based on net asset value. Expenses of \$123,169 were incurred in connection with the reorganization. Applicant and the acquiring fund each were responsible for their own reorganizational expenses. Bank One Investment Advisors Corporation, the acquiring fund's investment adviser, assumed the costs of certain expenses, including proxy solicitation and legal expenses.

*Filing Date:* The application was filed on April 6, 2001.

*Applicant's Address:* PO Box 77004, Indianapolis, IN 46277-7004.

### Imperial Special Investments, Inc. [File No. 811-9919]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 26, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$16,600 incurred in connection with the liquidation were paid by applicant.

*Filing Date:* The application was filed on April 4, 2001.

*Applicant's Address:* 9920 S. La Cienega Blvd., Suite 636, Inglewood, CA 90301.

### Bearguard Funds, Inc. [File No. 811-9291]

*Summary:* Applicant seeks an order declaring that it has ceased to be an

investment company. On April 2, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of \$8,500 incurred in connection with the liquidation were paid by applicant's investment adviser, Skye Investment Advisers LLC.

*Filing Date:* The application was filed on April 4, 2001.

*Applicant's Address:* 985 University Avenue, Suite 26, Los Gatos, CA 95032.

**Kemper Bond Enhanced Securities Trust, Series 1 and Subsequent Series**  
[File No. 811-4382]

*Summary:* Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On September 8, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

*Filing Date:* The application was filed on March 30, 2001.

*Applicant's Address:* 250 North Rock Road, Suite 150, Wichita, KA 67206-224.

**IGAM Group Funds**  
[File No. 811-9493]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On February 15, 2001, applicant made a liquidating distribution to its shareholders based on net asset value. Applicant incurred no expenses in connection with the liquidation.

*Filing Date:* The application was filed on March 27, 2001.

*Applicant's Address:* 24 Salt Pond Road, South Kingstown Office Park, Suite A5, Wakefield, RI 02879.

**Income Opportunities Fund 2000, Inc.**  
[File No. 811-7240]

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 27, 2000, applicant made a liquidating distribution to its shareholders based on net asset value. As of April 6, 2001, applicant still had 20 shareholders who have not redeemed their shares. The Bank of New York is holding any unclaimed funds, which will escheat to each shareholder's state of residence after the applicable holding period. Expenses of \$35,133 incurred in connection with the liquidation were paid by applicant.

*Filing Dates:* The application was filed on February 23, 2001, and amended on April 18, 2001,

*Applicant's Address:* Merrill Lynch Investment Managers, LLP, 800 Scudders Mill Road, Plainsboro, NJ 08536.

**State Farm Balanced Fund, Inc.**  
[File No. 811-1520]

**State Farm Interim Fund, Inc.**  
[File No. 811-2726]

**State Farm Municipal Bond Fund, Inc.**  
[File No. 811-2727]

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On April 1, 2001, each applicant transferred its assets to a corresponding series of State Farm Associates' Funds Trust based on net asset value. Expenses of \$66,928, \$7,878, and \$25,025, respectively, incurred in connection with the reorganizations were paid by each applicant.

*Filing Dates:* The applications were filed on April 6, 2001, and amended on April 25, 2001.

*Applicant's Address:* Three State Farm Plaza, Bloomington, IL 61710-0001.

**Composite Deferred Series, Inc.**  
[File No. 811-4962]

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On April 21, 2000, Applicant distributed all of its shares at net asset value to its sole shareholder in connection with Applicant's liquidation. Total expenses of approximately \$4,000.00 were incurred in connection with the liquidation and were paid by WM Advisors, Inc.

*Filing Date:* The application was filed on February 1, 2001.

*Applicant's Address:* John T. West, c/o WM Advisors, Inc., 1201 Third Avenue, Suite 1400, Seattle, WA 98101.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 01-11087 Filed 5-2-01; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44223; File No. SR-NASD-00-55]

**Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delivery Requirement of a Margin Disclosure Statement to Non-Institutional Customers**

April 26, 2001.

**I. Introduction**

On September 5, 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 ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to require NASD member firms to deliver a margin disclosure statement to their non-institutional customers with margin accounts. On September 26, 2000, NASD Regulation submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on October 23, 2000.<sup>4</sup> The Commission received eight comment letters with respect to the proposed rule change and Amendment No. 1.<sup>5</sup> On March 28, 2001,

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 clarified that if the equity in a customer's margin account falls below applicable requirements, an NASD member firm can force the sale of any of the securities in any of the customer's accounts held at the firm and such liquidations are not limited to the customer's margin account. Additionally, NASD Regulation deleted the phrase "under the law" from its original filing to clarify that maintenance margin requirements are requirements of self-regulatory organizations. See Letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 25, 2000.

<sup>4</sup> See Securities Exchange Act Release No. 43441 (October 12, 2000), 65 FR 63275 ("Notice").

<sup>5</sup> See letter from Bill Singer, Attorney, Singer Frumento LLP, to Jonathan G. Katz, Secretary, Commission, dated October 26, 2000 ("Singer Letter"); letter from J. Scott Colesanti, Senior Compliance Attorney, Edward D. Jones & Co., Inc. to Jonathan G. Katz, Secretary, Commission, dated November 10, 2000 ("Edward Jones Letter"); letter from Professor Barbara Black and Adjunct Professor Jill Gross, Co-Directors, Securities Arbitration Clinic, John Jay Legal Services, Inc., Pace University School of Law, to Jonathan G. Katz, Secretary, dated November 8, 2000 ("John Jay Letter"); letter from

NASD Regulation filed Amendment No. 2 to the proposed rule change responding to the comments.<sup>6</sup> On April 11, 2001, NASD Regulation filed a technical Amendment No. 3 to the proposed rule change.<sup>7</sup> In this notice and order, the Commission is approving the proposed rule change and Amendment No. 1, and approving Amendment Nos. 2 and 3 on an accelerated basis. The Commission is also seeking comment from interested persons on Amendment Nos. 2 and 3.

## II. Description of the Proposal

As described in the proposed rule change and Amendment No. 1, the NASD, through NASD Regulation, proposes to add a new NASD Rule 2341 to require NASD member firms to deliver to their non-institutional customers,<sup>8</sup> prior to or at the opening of

a margin account, a specified disclosure statement discussing the operation of margin accounts and the risks associated with trading on margin.<sup>9</sup> NASD Regulation also proposes to require NASD member firms to deliver a disclosure statement to their non-institutional customers with margin accounts on an annual basis.<sup>10</sup> NASD Regulation proposes the following proposed rule text amendments in response to the comment letters submitted to the Commission regarding the proposed rule change and Amendment No. 1. The amended rule is as follows:

Proposed new language is *italicized*.  
Proposed deletions are in [brackets].

\* \* \* \* \*

### Rule 2341. Margin Disclosure Statement

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, *and in a separate document*, the following margin disclosure statement:

Your brokerage firm is furnishing this document to you to provide some basic facts about purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you

A bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing similar functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

<sup>9</sup> NASD's 2300 series of rules covers *Transactions with Customers*.

<sup>10</sup> This annual disclosure statement may be the mandated margin disclosure statement as specified in proposed NASD Rule 2341(a), the abbreviated disclosure specified in proposed NASD Rule 2341(b), or an alternate disclosure that is "substantially similar" to the two other disclosure statements. In addition, the annual disclosure statement may be delivered within or as part of other account documentation, and is not required to be provided in a separate document. See Amendment No. 2, *supra* note 6 and Amendment No. 3, *supra* note 7.

will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities *or other assets* in any of your accounts held with the member, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- *You can lose more funds than you deposit in the margin account.* A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities *or assets* in your account(s).

- *The firm can force the sale of securities or other assets in your account(s).* If the equity in your account falls below the maintenance margin requirements or the firm's higher "house" requirements, the firm can sell the securities *or other assets* in any of your accounts held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.

- *The firm can sell your securities or other assets without contacting you.* Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities *or other assets* in their accounts to meet the call unless the firm has contact them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without the notice to the customer.

- *You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.* Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.

- *The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.* These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause

Christopher R. Franke, Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association ("SIA"), to Margaret H. McFarland, Deputy Secretary, dated November 13, 2000 ("SIA Self-Regulation Committee Letter"); letter from W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, dated November 14, 2000 ("Charles Schwab Letter"); letter from Albert Tylka, Vice President, A.G. Edwards & Sons, Inc., to Margaret H. McFarland, Deputy Secretary, dated November 17, 2000 ("A.G. Edwards Letter"); letter from George Ruth, Chairman of the Rules and Regulations Committee, Credit Division, SIA, to Jonathan G. Katz, Secretary, dated November 21, 2000 ("SIA Credit Division Letter"); and letter from Jeffrey S. Alexander, Vice President and Senior Counsel, Office of the General Counsel, Merrill Lynch, to Jonathan G. Katz, Secretary, dated November 22, 2000 ("Merrill Lynch Letter").

<sup>6</sup> In Amendment No. 2, NASD Regulation responded to the comment letters submitted on the proposed rule change and Amendment No. 1, and incorporated several recommendations from the comment letters into the proposed rule text. The comments concerned the following: the need for flexibility with respect to the type of disclosure statement that NASD member firms would be required to provide to their customers; the burden and costs of sending a separate document; the expense and need for the requirement that the disclosure statement be delivered annually; the need for clarification of the delivery requirement and method; and the need for disclosure of the fact that any of the customers' assets, in addition to securities, carried by a broker-dealer firm on behalf of such customers may be liquidated to satisfy a margin call. See Letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division, Commission, dated March 27, 2001 ("Amendment No. 2").

<sup>7</sup> In Amendment No. 3, NASD Regulation provided a technical amendment to the proposed rule language clarifying that the annual margin disclosure statement may be delivered within or as part of other account documentation, and is not required to be provided in a separate document. See Letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Jack Drogin, Assistant Director, Division, Commission, dated April 10, 2001 ("Amendment No. 3").

<sup>8</sup> The term "non-institutional customer" would mean a customer that does not qualify as an "institutional account" under NASD Rule 3110(c)(4). NASD Rule 3110(c)(4) defines "institutional account" to mean the account of: (1)

the member to liquidate or sell securities in your account(s).

- *You are not entitled to an extension of time on a margin call.* While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

(b) Members shall, with a frequency of not less than once a calendar year, deliver individually, in writing or electronically, the disclosure statement described in paragraph (a) *or the following bolded disclosures* to all non-institutional customers with margin accounts:

*Securities purchased on margin are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account. It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:*

- *You can lose more funds than you deposit in the margin account.*
- *The firm can force the sale of securities or other assets in your account(s).*
- *The firm can sell your securities or other assets without contacting you.*
- *You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.*
- *The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.*
- *You are not entitled to an extension of time on a margin call.*

*The annual disclosure statement required pursuant to this paragraph (b) may be delivered within or as part of other account documentation, and is not required to be provided in a separate document.*

(c) In lieu of providing the [margin] disclosures [statement] specified in paragraphs (a) and (b), a member may provide to the customer an alternative disclosure statement, provided that the alternative disclosures [statement] shall be substantially similar to the disclosures [statement] specified in paragraphs (a) and (b).

(d) For purposes of this Rule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 3110(c)(4).

\* \* \* \* \*

#### A. Background

The recent growth in the level of customer margin account balances, coupled with the increase in customer inquiries and complaints to NASD Regulation and SEC staffs relating to the handling of margin accounts, has raised concerns as to whether investors understand the operation and risks associated with margin trading. NASD Regulation believes that investors' misconceptions about margin requirements, particularly with respect to maintenance margin, may cause them to underestimate the risks of margin trading and misunderstand the operation of and reasons for margin calls.

In this regard, a May 2000 General Accounting Office ("GAO") report ("GAO Report") noted that the SEC determined from the customer complaints it received that many investors who traded on-line did not understand margin requirements.<sup>11</sup> The GAO Report indicated that the lack of disclosures relating to when firms would sell securities in a margin account to cover margin loans was among the leading margin-related complaints that the SEC received.

In addition, the GAO Report collected and summarized information from 12 on-line broker-dealers.<sup>12</sup> All of the on-line firms contacted did provide their customers with the limited information required by Rule 10b-16 under the Act.<sup>13</sup> Some firms also provided additional information relating to margin, such as requirements for account opening, procedures for selling securities to cover account losses, or special requirements for volatile stocks. Nearly half of the firms contacted, however, automatically opened margin accounts for new customers without providing the customer with information relating to the risks associated with margin trading. At three

<sup>11</sup> See *On-Line Trading, Better Investor Protection Information Needed*, Report to Congressional Requesters, GAO, GGD-00-43 (May 2000). Between January 1998 and June 1999, 140 margin-related complaints concerning on-line trading firms were submitted to the SEC.

<sup>12</sup> While these firms represented less than 10 percent of the total estimated number of firms that offer on-line trading, they accounted for about 90 percent of the on-line trading volume during early 1999.

<sup>13</sup> Rule 10b-16 under the Act requires broker-dealers that extend credit to customers to finance securities transactions to furnish, in writing, specified information regarding the terms of the loan. These disclosures must be made on both an initial and periodic basis. For example, at the time a customer opens a margin account, the broker-dealer must provide the customer with a written statement disclosing, among other things, the annual rate of interest, the method of computing interest, and what other credit charges may be imposed. 17 CFR 240.10b-16.

of the firms that automatically<sup>14</sup> opened margin accounts, customers would find out about their account type only if they read and understood their account agreements. Three of the 12 on-line broker-dealers contacted did take "extra measures" to assure that their customers understood that stocks could be sold to cover outstanding loans in a margin account. These firms included information on their web sites that explained that accounts could be liquidated in fast-moving markets before the customary period.

The GAO Report concluded that better investor protection information, including information relating to margin requirements, was needed on web sites of some on-line broker-dealers. In this regard, the GAO Report recommended that the SEC ensure that broker-dealers with on-line trading systems include accurate and complete information on their web sites regarding, among other things, margin requirements.

#### B. Specific Areas of Concern

Based on customer complaints and the inquiries it has received, NASD Regulation identified several areas associated with margin trading that may have generated confusion and misunderstanding between customers and NASD member firms. According to NASD Regulation, these areas include:

*Margin Calls—Notification.* Some investors hold the mistaken belief that their broker-dealer must contact them for a margin call to be valid, and that their broker-dealer cannot liquidate securities or other assets in their accounts to meet the call unless a specified number of days have passed and/or the broker-dealer has contacted the customer. There are no such restrictions in Regulation T<sup>15</sup> promulgated by the Board of Governors of the Federal Reserve System or NASD Rule 2520.<sup>16</sup> Moreover, securities that have been purchased on margin by a customer and securities and other assets held in any other accounts with the firm by a customer are collateral for the margin loan and are, therefore, subject to the security claim of the broker-dealer until the customer fully pays for the securities. Thus, if a broker-dealer believes that the collateral for the margin loan is at risk, the broker-dealer

<sup>14</sup> Those firms that provide clear indications of the type of account to be opened offered their customers the option on the web site to choose either a cash or margin account, or both. However, those firms that automatically opened margin accounts only offered new customers a choice with respect to account ownership, such as a joint or individual account.

<sup>15</sup> 12 CFR 220 *et seq.*

<sup>16</sup> NASD Rule 2520 governs margin requirements.

is entitled to take any steps necessary to protect its financial interests, including immediate liquidation without notice to the customer. Some broker-dealers will attempt to notify their customers of margin calls, but they are not required to do so. Even if a broker-dealer has contacted a customer and provided a specific date by which the customer can meet a margin call; however, the broker-dealer can still take necessary steps to protect its financial interests, including immediate liquidation, without further notice to the customer.

*Extension of time on margin calls.* Some investors believe they are automatically entitled to an extension of time to meet margin calls. While an extension of time to meet initial margin requirements may be available to the customer under certain conditions, it is only granted if the clearing firm chooses to request an extension from its Designated Examining Authority—the customer does not have a right to an automatic extension.

In addition, some investors believe that when a maintenance margin call has been issued they are entitled to one or more extensions of time to meet the call, however, there is no mechanism for extending maintenance margin calls. If the customer fails to meet a maintenance margin call, the broker-dealer can, under certain circumstances, take a charge to its net capital in lieu of collecting the call, but the broker-dealer is not required to do so, and the customer has no right to demand it.

*Right to dictate which security or other asset is liquidated.* Some investors believe that they have the right to control which securities or other assets are liquidated to meet a maintenance margin call if there is more than one security or asset in the NASD customer's accounts.<sup>17</sup> There is no provision in the margin rules that gives the customers the right to control liquidation decisions. As discussed above, because the securities and other assets in any of the customers' accounts are collateral for the margin loan, the broker-dealer has the right to control the disposition of the collateral in order to protect its interests. In this regard, the broker-dealer may choose which securities or other assets in the margin account, or any other account held by the NASD member firm on behalf of the customer, to liquidate, and this selection need not relate to factors associated with the individual customer.<sup>18</sup> For example, the broker-dealer may choose a particular security or asset in customer's account to

liquidate based on a high concentration of the security held by customers firm-wide.

*NASD members raising their maintenance margin requirements.* Some NASD member firms have increased their "house" maintenance margin requirements (*i.e.*, requirements above those required by law) as a result of concerns about the volatility and extreme price run-ups on certain stocks, the risks to their customers, and the NASD members's own potential exposure to losses from margin defaults. These changes in policy often take effect immediately and may result in the issuance of maintenance margin call. A customer's failure to satisfy the call will usually cause the NASD member firm to liquidate a portion of the customers's account.

Some investors believe that an NASD member firm must provide thirty days written notice before implementing this type of change. While Rule 10b-16 under the Act requires members to disclose to customers the credit terms (interest rates and methods of calculating interest) for margin transactions and requires advance written notice of such changes, it does not require advance notice of the amount of margin required.

### C. Description of Proposal

#### 1. Delivery Requirement

NASD Regulation believes that, although some NASD member firms are providing additional disclosures to customers relating to margin to address customers confusion, the content of these disclosures is not consistent from firm-to-firm and may not always be in a form that investors find clear and easy to understand.

Accordingly, the NASD is proposing to require all NASD member firms to deliver to each non-institutional customer individually, in hard copy or by electronic means, prior to or at the opening of a margin account, a disclosure statement that includes all of the information as specified in proposed NASD Rule 2341(a), or a substantially identical disclosure statement.<sup>19</sup> NASD member firms would also be required to deliver to each non-institutional customer individually, in hard copy or

<sup>19</sup> NASD member firms would be permitted to develop an alternative margin disclosure statement, provided that the alternative disclosure statement is substantially similar to the mandated disclosure statement and incorporates all of the relevant concepts. NASD Regulation represents that it will determine whether an alternative disclosure statement contains substantially identical information as required by the proposed NASD Rule 2341 during routine examinations of NASD member firms.

by electronic means, a disclosure statement on an annual basis.<sup>20</sup>

The proposal, as amended, would require that disclosure at or prior to the opening to the margin account be made in a separate document.<sup>21</sup> NASD Regulation represents that the initial disclosure statement may be on a separate page of, or as a separate attachment to, the margin agreement or other opening account documentation. NASD member firms, however, would be permitted to provide the annual disclosure within other documentation, such as the customer account statement.<sup>22</sup>

Furthermore, NASD member firms would be required to provide the disclosure statement to existing margin customers at the time the NASD member firm is required to send the next annual statement to the customer (following the effective date of the proposed rule change, as amended), but not to exceed 180 days following the effective date of the proposed rule change, as amended.

#### 2. Content of Margin Disclosure Statement

The margin disclosure statement, as specified in proposed NASD Rule 2341(a), the abbreviated disclosure specified in proposed NASD Rule 2341(b), or an alternate disclosure that is "substantially similar" to the two versions provided by the proposal, as amended, should: (1) Describe the operation of a margin account; (2) emphasize that customers should carefully review their margin agreements; and (3) clarify some of the risks associated with margin trading, including among others, that the customer can lose more funds than initially deposited, the firm can force the sale of the securities or other assets in any of the customers's accounts held by the firm without notice the customer, the firm can dictate which securities or other assets in any of the customers's accounts may be selected for liquidation to meet a margin call, the firm may increase its "house" maintenance margin requirements at any time and is not required to provide the customer with advance written notice, and the customer is not entitled to an extension of time on a margin call.

#### 3. Effective Date of the Proposed Rule

NASD Regulation intends to announce the effective date of the proposed rule change, as amended, in a Notice to Members to be published no

<sup>20</sup> See *supra* note 10.

<sup>21</sup> An NASD member firm would not satisfy the proposal's delivery requirement by posting the disclosure statement on its web site.

<sup>22</sup> See Amendment No. 3, *supra* note 7.

<sup>17</sup> See Amendment No. 1, *supra* note 3.

<sup>18</sup> *Id.*

later than 60 days following Commission approval of the proposed rule change. The effective date would be 30 days following publication of the Notice to Members announcing Commission approval of the proposed rule change.

### III. Summary of Comments

The Commission received eight comment letters in response to the proposal and Amendment No. 1.<sup>23</sup> While most commenters generally favored the concept of providing customers of NASD members firms with a disclosure of margin trading risks, they also suggested various modifications to the proposal. The comments submitted to the Commission are summarized by issue below.

#### A. Margin Disclosure Statement

Several commenters stated that the proposal needed to be more flexible and that a "one-size-fits-all" disclosure statement on margin trading is not appropriate for all firms.<sup>24</sup> Commenters indicated that firms should be permitted to develop a method of disclosure that is best suited to their individual business, so long as they provide the specific disclosure information required by the proposal. NASD Regulation responded to these concerns through the new proposed rule language in paragraph (c) of proposed NASD Rule 2341 providing that, in lieu of using the margin disclosure statement specified in the proposal, an NASD member firm may use an alternative disclosure statement, provided that the alternative disclosure statement is substantially similar to the mandated disclosure statement specified in the proposal.

One commenter indicated that the proposal should be directed only at customers who trade on-line, and not those being assisted by a registered representative.<sup>25</sup> The commenter stated that the proposal should address more directly the concerns of the GAO Report<sup>26</sup> that determined that on-line traders do not understand margin requirements. The commenter suggested that the disclosure statements would best serve on-line customers who do not have accounts with full-services firms that can provide appropriate education on margin trading. NASD Regulation responded that, although customer accounts of on-line brokerage firms were the focus of the GAO Report, margin-related complaints received by NASD

Regulation and the Commission have originated from customers of both on-line and full-service firms. Accordingly, NASD regulation believes that the misconceptions about the operation of a margin account and margin requirements are not limited to those investors who trade on-line, and that all investors would benefit significantly from the information provided in the proposed margin disclosure statement.

#### B. Separate Document

Several commenters opposed the requirement that the margin disclosure be made in a separate disclosure document, stating that such a requirement is unnecessary, duplicative, and economically burdensome.<sup>27</sup> These commenters also indicated that presenting the disclosure statement in a separate document could confuse customers by giving them the impression that it is more important than other disclosure requirements not presented in the same format, or by leading customers to believe it amends or voids their original agreements. In this regard, certain commenters indicated that such mistaken beliefs by customers could lead to costly legal challenges for NASD member firms.

In response, NASD Regulation indicated that it believes that the initial delivery of the margin disclosure statement should be in a separate document. NASD Regulation was concerned that the proposed disclosure may be hidden within other documentation and possibly overlooked by customers. With respect to the comment that a separate document may confuse customers, NASD Regulations responded that NASD member firms would be permitted to provide additional statements necessary to clarify the purpose of the disclosure document, including that the disclosures do not change or supersede the margin agreement in any way. With respect to the annual delivery requirement, NASD Regulation stated that the annual disclosure statement may be delivered within or as part of other account documentation.

One commenter, while supporting the proposed margin disclosure requirement, also indicated that customers should be educated about margin trading by their NASD member firms, and firm employees should be readily available to customers via dedicated telephone numbers and e-mail addresses posted on the firm's

Internet sites.<sup>28</sup> This commenter suggests that when communication fails, customers should document attempts to contact firms, and firms should be held liable for margin-related damages. As a general matter, NASD Regulation responded by agreeing that NASD member firms should be prepared to answer customer questions relating to margin, and that the proposed margin disclosure statement is not intended to replace NASD member firms' responsibilities to respond to customer inquiries.

#### C. Annual Delivery

Several commenters opposed the proposed requirement that the disclosure statement be delivered annually. The commenters indicated that it would present an undue burden and expense for firms and would be excessive, redundant, and counter-productive in light of the amount of documentation and disclosure statements already sent to customers.<sup>29</sup> One commenter stated that this firm already receives numerous complaints from its customers about the amount of paperwork being mailed to them.<sup>30</sup> Another commenter was concerned that repeated statements about the risks of margin trading would undermine legitimate products associated with central asset accounts.<sup>31</sup>

NASD Regulation continues to believe that providing customers with information about the operation of margin accounts at account opening and annually thereafter will be of significant value to customers in understanding the operation of a margin account. Given that the full margin disclosure statement would be provided to customers at account opening, however, NASD Regulations believes that providing an abbreviated version of the disclosures would be appropriate for the annual disclosure requirement, thereby addressing some of the commenters' concerns. Accordingly, NASD Regulation amended the proposed rule language to permit members, at their option, to provide an abbreviated version of the disclosures to comply with the annual disclosure requirement provided that, at a minimum, such version contains all of the "bulleted information" as specified in proposed NASD Rule 2341(b).

In addition, NASD Regulation amended the proposed rule language to clarify that the annual disclosure

<sup>23</sup> See *supra* note 5.

<sup>24</sup> See Singer Letter, SIA Self-Regulation Committee Letter, Merrill Lynch Letter and SIA Credit Division Letter, *supra* note 5.

<sup>25</sup> See Merrill Lynch Letter, *supra* note 5.

<sup>26</sup> See GAO Report, *supra* note 11.

<sup>27</sup> See SIA Self-Regulation Committee Letter, Merrill Lynch Letter, and A.G. Edwards Letter, *supra* note 5.

<sup>28</sup> See Singer Letter, *supra* note 5.

<sup>29</sup> See Charles Schwab Letter, SIA Credit Division Letter, and A.G. Edwards Letter, *supra* note 5.

<sup>30</sup> See Merrill Lynch Letter, *supra* note 5.

<sup>31</sup> See SIA Credit Division Letter, *supra* note 5.

statement required pursuant to proposed NASD Rule 2341(b) may be delivered within or as part of other account documentation, and is not required to be provided in a separate document.<sup>32</sup>

#### D. Timing of Account Opening Delivery Requirement

One commenter indicated that the proposal needed to clarify better when the initial disclosure statement should be delivered.<sup>33</sup> According to the commenter, the proposal directs that the initial disclosure statement be delivered when the margin account is opened; however, the proposal does not indicate what constitutes the opening of the account. The commenter questioned whether an account would be considered opened when the customer loan agreement is signed or when a loan is extended to the customer by the firm on margin. Another commenter requested clarification on whether "Personal Line of Credit" accounts would invoke the proposed margin disclosure requirements.<sup>34</sup> In order to address these comments, NASD Regulation clarified that, under the proposal, the margin disclosure statement is required to be sent at the time a margin account is opened, irrespective of whether a margin loan is extended. Also, if a "Personal Line of Credit" account is treated by the NASD member firm as an extension of credit via a margin account, NASD Regulation believes that the proposed disclosure requirement would apply.

#### E. Other Comments

One commenter indicated that the proposed delivery of the disclosure statement, "in writing or electronically," is confusing and suggests that the proposed rule confuses format with delivery.<sup>35</sup> To clarify, NASD Regulation indicated that the proposed disclosure statement may be sent "in writing," meaning that it may be delivered to the customer in a hard copy, paper format. The proposed disclosure statement also may be delivered "electronically," meaning that it may be delivered to the customer via an electronic delivery system (Internet, e-mail, etc.), provided that it is sent individually to the customer by such means.

Another commenter indicated that the proposed margin disclosure statements should be clarified to state that any asset held by the customer, not just securities,

can be liquidated.<sup>36</sup> The commenter believed that this clarification would be an important piece of information for the customer to understand. In addition, the commenter indicated that certain crucial language on the statement should be in boldface for better emphasis, and that disclosures using industry jargon, such as "equity," "house requirements" and "maintenance margin," should be avoided. NASD Regulation agreed that a clarification that any assets held by the firm on behalf of the customer, not just securities, can be liquidated, is appropriate to include in the proposed disclosure statement. Accordingly, NASD Regulation amended the proposed rule language to indicate that an NASD member firm can liquidate securities or other assets held in the customer's accounts. With respect to the comment regarding the use of industry jargon, NASD Regulation does not believe that the use of those terms in confusing within the context of the overall statement and indicated that it had endeavored to use a minimal amount of industry jargon in the proposed margin disclosure statement.

Finally, one commenter stated that each customer should be required to sign the disclosure statement to acknowledge receipt and understanding of it.<sup>37</sup> NASD Regulation believes that such a requirement would be overly burdensome for members to comply with, and would not significantly increase the informational value to the customer of the margin disclosure statement.

#### F. Amendment to the Proposed Rule Language

NASD Regulation amended proposed NASD Rule 2341(a), in Amendment No. 2, to clarify that the initial margin disclosure document must be delivered in a separate document.<sup>38</sup>

NASD Regulation also added the phrase "*or other assets*" throughout the text of proposed NASD Rule 2341 to clarify that assets other than securities held in the customer's account can be liquidated and sold by the NASD member firm to satisfy a margin call.<sup>39</sup>

Furthermore, NASD Regulation provided an abbreviated disclosure statement, as discussed above, in paragraph (b) of proposed NASD Rule 2341 that NASD member firms could use on an annual basis.<sup>40</sup>

In addition, NASD Regulation amended the proposed rule language, in Amendment No. 3, to clarify that the annual disclosure statement required pursuant to paragraph (b) of proposed NASD Rule 2341 need not be provided in a separate document.<sup>41</sup>

#### IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act<sup>42</sup> and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds the proposal to be consistent with the requirements of Section 15A(b)(6)<sup>43</sup> of the Act, because the proposal is 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.

As discussed above, based on the growing number of customer complaints and the GAO study, the Commission believes that many investors do not fully understand certain significant features of their margin accounts. The Commission believes that the proposed rule change will better inform investors by requiring NASD member firms to disclose to their non-institutional customers, in "plain English," the operations and the risks associated with margin trading. The Commission also believes that the proposal, as amended, will enhance customer protection by requiring that all NASD member firms provide identical or substantially identical information, and deliver the disclosures in a similar manner (*i.e.*, in the form of a hard copy or through electronic means) to their customers, pursuant to proposed NASD Rule 2341. The proposal's requirements will provide for uniform information consistent across all NASD member firms.

Specifically, the Commission finds that the mandated disclosure statement

<sup>36</sup> See John Jay Letter, *supra* note 5.

<sup>37</sup> *Id.*

<sup>38</sup> The proposed rule language is amended to clarify this requirement as follows:

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, and in a separate document, the following margin disclosure statement:

<sup>39</sup> See Amendment No. 2, *supra* note 6.

<sup>40</sup> *Id.*

<sup>41</sup> The proposed rule language is amended to clarify this requirement as follows:

The annual disclosure statement required pursuant to this paragraph (b) may be delivered within or as part of other account documentation, and is not required to be provided in a separate document.

<sup>42</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>43</sup> 15 U.S.C. 78o-3(b)(6).

<sup>32</sup> See Amendment No. 3, *supra* note 7.

<sup>33</sup> See Edward Jones Letter, *supra* note 5.

<sup>34</sup> *Id.*

<sup>35</sup> See Merrill Lynch Letter, *supra* note 5.

is designed to alleviate customers' confusion and should help to alert them to some of the risks associated with margin trading, such as: (1) A customer could lose more funds than he/she deposits in a margin account; (2) an NASD member firm can force the sale of securities or other assets in any of the customer's accounts; (3) a customer does not have the right to dictate in which order those securities or other assets may be liquidated or sold to meet a margin call; (4) an NASD member firm may increase its "house" maintenance margin requirements at any time and is not required to provide its customer with advance written notice; and (5) an NASD customer is not entitled to an extension of time on a margin call.

The Commission also believes that NASD Regulation has responded adequately to commenters' concerns and suggestions by incorporating most of the recommendations into the proposal and explaining why it is not incorporating others. Among other things, in response to comments submitted on the published proposal, including Amendment No. 1, NASD Regulation clarified that: (1) Any asset held by the NASD member firm on behalf of the customer, not just securities, can be liquidated to satisfy a customer margin call; (2) the annual margin disclosure statement may be provided in an abbreviated form containing all the required information as specified in the proposed rule text; and (3) the annual disclosures may be delivered within or as part of other account documentation.

The Commission agrees that it was necessary for NASD Regulation to clarify that an NASD member firm may liquidate any securities or other assets held by such firm on behalf of the customer to meet a margin call. The Commission believes that this clarification will warn customers of the full extent of the risks of margin trading and ensure that such disclosure information is consistent with similar information provided in customers' margin agreements.

The Commission also believes that NASD Regulation's amendment to the proposed rule language to provide for an abbreviated version of the annual disclosure statement is appropriate because doing so allows NASD member firms flexibility as to the form of the annual disclosures, while still preserving the core disclosure information to investors.

Finally, the Commission believes that it is appropriate for NASD Regulation to require that, prior to or at the opening of a margin account, an NASD member firm must provide the disclosure

statement in a separate document so that customers do not overlook information that is critical to making an informed decision regarding whether to trade on margin. As a matter of general business practice, this document should be provided at the time the margin agreement is established. It may be more cost effective, however, for firms to provide the annual disclosure as part of other documentation.

Furthermore, although NASD Regulation determined not to require the signature of customers on the disclosure statement, the Commission notes that NASD member firms must have supervisory procedures reasonably designed to demonstrate that customers have received the margin risk disclosures, as well as to demonstrate compliance with Rules 15c2-5 and 10b-16 under the Act.<sup>44</sup>

The Commission notes that NASD Regulation will announce the operational date of the proposed rule change, as amended, in a Notice to Members to be published no later than 60 days following the date of approval by the Commission, and that the operational date will be 30 days following the date of publication of the Notice to Members announcing Commission approval. The Commission believes that requiring NASD member firms to implement the disclosure requirements pursuant to the proposed NASD Rule 2341, 30 days following the date of publication of the Notice to Members announcing Commission approval of the proposal, will provide NASD member firms with sufficient time to comply with the requirements of proposed NASD Rule 2341.

#### V. Accelerated Approval of Amendment Nos. 2 and 3

The Commission finds good cause for approving Amendment Nos. 2 and 3 prior to the thirtieth day after publication in the **Federal Register**. The Commission believes that NASD Regulation has responded adequately to commenters' concerns and suggestions by incorporating certain commenters' recommendations into the proposed rule language in Amendment No. 2, and by explaining why it was not incorporating others. Further, the Commission noted that Amendment No. 3 is a technical amendment providing clarifying language in the proposed rule text that the annual margin disclosure statement is not required to be provided in a separate document. Instead, the annual margin disclosure statement may be delivered within or as part of other customer account documentation. In

sum, the Commission believes that the substance of the proposed rule change was provided in the Notice and has been the subject of a full comment period. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) and 19(b) of the Act,<sup>45</sup> to approve Amendment Nos. 2 and 3 to the proposal on an accelerated basis.

#### VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3, including whether the proposed rule change, as amended, 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 at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-00-55 and should be submitted by May 23, 2001.

#### VII. Conclusion

The Commission believes that the proposed rule change, as amended, is consistent with the Act, and, particularly, with Section 15A.<sup>46</sup>

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>47</sup> that the proposed rule change (File No. SR-NASD-00-55) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>48</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 01-11049 Filed 5-2-01; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>45</sup> 15 U.S.C. 78f(b) and 78s(b).

<sup>46</sup> 15 U.S.C. 78o-3.

<sup>47</sup> 15 U.S.C. 78s(b)(2).

<sup>48</sup> 17 CFR 200.30-3(a)(12).

<sup>44</sup> 17 CFR 240.15c2-5; 240.10b-16.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44231; File No. SR-PCX-2001-20]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to One Point Strike Price Intervals for Options on Exchange-Traded Fund Shares and the Hours of Trading for Options on the Nasdaq-100 Index Tracking Stock

April 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 5, 2001, the Pacific Exchange, Inc. ("PCX" 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 Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act.<sup>3</sup> 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 PCX Rule 6.4 by adding Commentary .04 to create one point strike price intervals for options on Exchange-Traded Fund Shares. The PCX also proposes to amend PCX Rule 4.2 by adding Commentary .02 to establish the hours of trading for options on the Nasdaq-100 Index Tracking Stock, which is a particular type of Exchange-Traded Fund Shares,<sup>4</sup> from 6:30 a.m. to 1:15

p.m. Pacific Time ("PT"), except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index Tracking Stock will end at 1:05 p.m. PT. Below is the text of the proposed rule change. Proposed new language is italicized, and proposed deletions are in brackets.

\* \* \* \* \*

#### ¶ 3703 Trading Sessions

Rule 4.2—No change.

Commentary:

.01—No change.

.02 *The hours for trading options on Nasdaq-100 Index Tracking Stock will commence at 6:30 a.m. and end at 1:15 p.m. each business day, except the last trading day of each calendar month, when trading in options on Nasdaq-100 Index Tracking Stock will end at 1:05 p.m.*

\* \* \* \* \*

#### ¶ 4745 Series of Options Open for Trading

Rule 6.4(a)–(e)—No change.

Commentary:

.01–.03—No change.

.04 *The interval of strike prices of series of options on Exchange-Traded Fund Shares will be \$1 or greater where the strike price is \$200 or less.*

\* \* \* \* \*

#### 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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to provide one point strike price intervals for options on Exchange-

merchantability or fitness for a particular purpose or use with respect to the Nasdaq-100 Index<sup>®</sup> or any data included therein. Without limiting any of the foregoing, in no event shall the Corporations have any liability for any lost profits or special, incidental, punitive, indirect, or consequential damages, even if notified of the possibility of such damages.

Traded Fund Shares and to establish the hours of trading in options on the Nasdaq-100 Index Tracking Stock from 6:30 a.m. to 1:15 p.m. PT, except the last trading day of each calendar month, when trading in options on the Nasdaq-100 Index Tracking Stock will end at 1:05 p.m. PT.

The PCX received approval from the Commission to trade options on Exchange-Traded Fund Shares on February 28, 2001.<sup>5</sup> The PCX proposes to amend Rule 6.4 by adding Commentary .04 regarding strike price intervals for options on Exchange-Traded Fund Shares to bracket the Fund Shares at one point intervals up to a share price of \$200. This proposed amendment is consistent with the strike price interval established for options on Exchange-Traded Fund Shares on the American Stock Exchange, LLC ("Amex")<sup>6</sup> and by the Philadelphia Stock Exchange, Inc. ("Phlx").<sup>7</sup>

The PCX also proposes to amend its hours of business to trade options on the Nasdaq-100 Index Tracking Stock in PCX Rule 4.2 from 6:30 a.m. to 1:15 p.m. PT, except the last trading day of a calendar month, when trading in options on the Nasdaq-100 Index Tracking Stock will end at 1:05 p.m. PT. These hours are consistent with the trading of options on Nasdaq-100 Index Tracking Stock on the Amex and the Phlx.

The PCX believes that these amendments will increase investor protection by allowing options on Exchange-Traded Fund Shares and, in particular, options on the Nasdaq-100 Index Tracking Stock to trade at the same strike price intervals and trading hours on the PCX as on other exchanges. The PCX believes that these amendments will enable the PCX to compete with other exchanges in these products.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change will assist in allowing the Exchange to offer investors another choice of venue to conduct trading in these products. Thus, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers

<sup>5</sup> See Securities Exchange Act Release No. 44025 (February 28, 2001), 66 FR 13986 (March 8, 2001) (Order approving SR-PCX-01-12).

<sup>6</sup> See Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (Order approving SR-Amex-96-44).

<sup>7</sup> See Securities Exchange Act Release No. 44055 (March 8, 2001), 66 FR 15310 (March 16, 2001) (Order approving SR-Phlx-01-32).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> The Nasdaq-100<sup>®</sup>, and Nasdaq-100 Index<sup>®</sup>, and Nasdaq<sup>®</sup> are trade or service marks of The Nasdaq Stock Market, Inc. (with its affiliates, the "Corporations") and are licensed for use by the Exchange. Options on Nasdaq-100 Index Tracking Stock (the "Products") have not been passed on by the Corporations as to their legality or suitability. The Products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the Products. The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq-100 Index<sup>®</sup> or any data included therein. The Corporations make no warranty, expressed or implied, as to results to be obtained by Licensee, owners of the Products, or any other person or entity from the use of the Nasdaq-100 Index<sup>®</sup> or any data included therein. The Corporations make no express or implied warranties, and expressly disclaim all warranties of

the objectives of Section 6(b)(5)<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of free and open market and a national market system, and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6).<sup>13</sup> The Exchange also provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change. At any time within 60 days of the filing of such 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR-PCX-2001-20 and should be submitted by May 24, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 01-11088 Filed 5-2-01; 8:45 am]

**BILLING CODE 8010-01-M**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Highway Administration**

#### **Environmental Impact Statement: Shelby County, Tennessee and Desoto County, Mississippi**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for Section 9 of proposed Interstate 69 in Desoto County, MS and Shelby County, TN beginning near Hernando, MS and extending to Millington, TN.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Doctor, Field Operations Team Leader, Federal Highway Administration, 640 Grassmere Park, Suite 112, Nashville, Tennessee 37211, Telephone: (615) 781-5788

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Tennessee Department of Transportation and Mississippi Department of Transportation will prepare an Environmental Impact

Statement (EIS) on a proposal to provide a divided freeway facility from Interstate 55 (I-55) and State Route (S.R.) 304 near Hernando in Desoto County, Mississippi to US 51/S.R. 385 near Millington in Shelby County, Tennessee. Two general corridors, A and B, are being studied. Corridor A will pass through the city of Memphis and will generally follow the existing interstate system from I-55/S.R. 304 in Hernando, MS to US 51/S.R. 385 near Millington. Corridor B will be east of Memphis and will begin at I-55/S.R. 304 in Hernando, MS and end at US 51/S.R. 385 near Millington. The proposed project will be 64 to 96 kilometers (40 to 60 miles) in length depending on which alternative alignment is selected.

This proposed improvement is a section of independent utility of the Congressionally-designated High Priority Corridor 18, or future Interstate 69 which proposes to construct Interstate 69 from Port Huron, Michigan to the lower Rio Grande Valley in Texas. The overall purpose of this corridor is to improve international and interstate trade and to facilitate economic development.

Alternatives to be considered are: (1) Taking no action (no-build); (2) three build alternatives in Corridor A and three build alternatives in Corridor B. All alternatives will have a full control of access freeway design and will be on both existing and new location and (3) other alternatives that may arise from public and agency input. Incorporated into and studied with the build alternatives will be design variations of grade and alignment.

Initial coordination letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held upon completion of the Draft EIS and public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting and public involvement meetings are planned for late Spring 2001.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: April 26, 2001.

**Gary D. Corino,**

*Tennessee Assistant Division Administrator,  
Nashville.*

[FR Doc. 01-11047 Filed 5-2-01; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

#### United States Department of the Interior

[Docket Number FRA-2001-9012]

The United States Department of the Interior on behalf of Steam Town National Historic Site seeks a waiver of compliance with the Inspection and Maintenance Standards for Steam Locomotives, 49 CFR Part 230, published November 17, 1999. Section 230.3(c) of the standards requires steam locomotives having flue tubes replaced prior to September 25, 1995, have a one thousand four hundred seventy-two service day inspection [49 CFR 230.17] performed prior to being allowed to operate under the requirements. The Steam Town National Historic Site seeks this waiver for one locomotive number CP 2317, which had the flue tubes replaced and was returned to service in July of 1998. Steam Town National Historic Site was unaware of the requirement to file for special consideration and failed to meet the cut off filing date of January 18, 2001.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before

the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2001-9012) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room P1-401, Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at DOT Central Docket Management Facility, Room P1-401 (Plaza Level), 400 Seventh Street SW., Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Issued in Washington, DC, on April 23, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 01-11085 Filed 5-2-01; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### Long Island Rail Road

[Docket Number FRA-2000-8588]

Long Island Rail Road (LIRR) seeks a waiver of compliance with the Safety Appliance Safety Standards, 49 CFR part 231.14, which requires that sill steps be mounted utilizing mechanical fasteners. They request that the waiver be granted for one hundred twenty-one bi-level passenger coaches and twenty-three bi-level control car locomotives manufactured by Kawasaki. The waiver, if granted, would allow sill steps located at the four corners and two located on each side of the equipment, at the side

door locations, to be mechanical fastened to a bracket that is welded to a tubular side sill. The railroad states that the equipment is a center sill-less design and is supported by two tubular side sills and to mechanically fasten the step to the car would require drilling the sill which would weaken it.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2000-8588) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room P1-401, Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://dms.dot.gov>.

Issued in Washington, DC on April 27, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 01-11084 Filed 5-2-01; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket RSPA-98-4957 Notice 26]

#### Request for Public Comment

**AGENCY:** Research and Special Programs Administration, DOT.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA) published its request to renew its information collection "Reporting of Safety-Related Conditions on Gas, Hazardous Liquid

and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities" on February 15, 2001, (66 FR 10560). No comments were received. RSPA is giving the public an additional 30 days to provide comments.

**FOR FURTHER INFORMATION CONTACT:**

Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-6205, or by Fax (202) 366-4566, or via electronic mail at marvin.fell@rspa.dot.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Reporting of Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

*OMB Number:* 2137-0578.

*Type of Request:* Renewal of existing information collection.

*Abstract:* 49 U.S.C. 60102 requires each operator of a pipeline facility (except master meter) to submit to the Department of Transportation a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of pipeline facility or a condition that is a hazard to life, property or the environment.

*Estimate of Burden:* The average burden hour per response is 6 hours.

*Respondents:* Pipeline and Liquefied Natural Gas facility operators.

*Estimated response per year:* 47.

*Estimated Total Annual Burden on Respondents:* 282 hours.

*Frequency:* On occasion.

*Use:* To alert RSPA of hazardous conditions that might continue uncorrected.

Copies of this information can be reviewed at the Dockets Unit, Plaza 401, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, 10:00 A.M. to 4:00 P.M. Monday through Friday excluding Federal Holidays or through the internet at [dms.dot.gov](http://dms.dot.gov).

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 respond including the use of the appropriate automated,

electronic, mechanical, or other technological collection techniques. Send comments directly to the Office of Management and Budget, Office of Information and Regulatory Affairs ATTN: RSPA Desk Officer 726 Jackson Place NW., Washington, DC 20503.

Issued in Washington, DC on April 25, 2001.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 01-11154 Filed 5-2-01; 8:45 am]

**BILLING CODE 4910-60-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**[OMB Control No. 2900-0166]**

**Proposed Information Collection Activity: Proposed Collection; Comment Request**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on forms needed to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age 70.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before July 2, 2001.

**ADDRESSES:** Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail comments to: [irmnkess@vba.va.gov](mailto:irmnkess@vba.va.gov). Please refer to "OMB Control No. 2900-0166" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104-13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

*Titles:* a. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 65, National Service Life Insurance, VA Form 29-8485.

b. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 70, National Service Life Insurance, VA Form 29-8485a.

c. Application for Ordinary Life Insurance, Replacement Insurance for Modified Life Reduced at Age 65, National Service Life Insurance, VA Form 29-8700.

d. Information About Modified Life Reduction, VA Forms 29-8700a-e.

*OMB Control Number:* 2900-0166.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The forms are used by the insured to apply for replacement insurance to replace the amount of Modified Life Insurance that was reduced at age 70. The information is used by VA to initiate the granting of coverage for which applied.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 642 hours.

*Estimated Average Burden Per Respondent:* 5 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 7,700.

Dated: April 26, 2001.

By Direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 01-11059 Filed 5-2-01; 8:45 am]

**BILLING CODE 8320-01-U**

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-0559]

**Agency Information Collection Activities Under OMB Review**

**AGENCY:** National Cemetery 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 National Cemetery Administration (NCA), 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 June 4, 2001.

**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, FAX (202) 273-5981 or e-mail [denise.mclamb@mail.va.gov](mailto:denise.mclamb@mail.va.gov). Please refer to "OMB Control No. 2900-0559" in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* State Cemetery Data, VA Form 40-0241.

*OMB Control Number:* 2900-0559.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Abstract:* VA Form 40-0241 is used to collect information regarding the number of interments conducted at state veterans' cemeteries each year. This information is necessary for budget and oversight purposes.

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 August 17, 2000, at pages 50276-50277.

*Affected Public:* State, Local or Tribal Government.

*Estimated Annual Burden:* 65 hours.

*Estimated Average Burden Per Respondent:* 60 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 65.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395-7613. Please refer to "OMB Control No. 2900-0559" in any correspondence.

Dated: April 20, 2001.

By Direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 01-11058 Filed 5-2-01; 8:45 am]

**BILLING CODE 8320-01-U**

# Corrections

Federal Register

Vol. 66, No. 86

Thursday, May 3, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER00-325-002, et al.]

#### Southern Company Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 17, 2001.

#### *Correction*

In notice document 01-10080 beginning on page 20651 in the issue of Tuesday, April 24, 2001, make the following correction:

On page 20652, in the first column, in the third line from the bottom, the docket number should read "ER01-1778-000".

[FR Doc. C1-10080 Filed 5-2-01; 8:45 am]

**BILLING CODE 1505-01-D**

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## DEPARTMENT OF THE TREASURY

### Customs Service

#### Quarterly IRS Interest Rates Used In Calculating Interest on Overdue Accounts and Refunds on Customs Duties

#### *Correction*

In notice document 01-9647 beginning on page 20173 in the issue of Thursday, April 19, 2001, make the following correction:

On page 20174, in the second column, in the second paragraph, in the first sentence, "IRB 136" is corrected to read "IRB 936".

[FR Doc. C1-9647 Filed 5-2-01; 8:45 am]

**BILLING CODE 1505-01-D**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8940]

RIN 1545-AY73

#### Purchase Price Allocation in Deemed and Actual Asset Acquisitions; Correction

#### *Correction*

In rule document 01-7934 beginning on page 17362 in the issue of Friday, March 30, 2001, make the following correction:

On page 17363, in the table under the column heading "Add", in the second line, "\$1.338&--2(c)(17)" is corrected to read "\$1.338-2(c)(17)".

[FR Doc. C1-7934 Filed 5-2-01; 8:45 am]

**BILLING CODE 1505-01-D**



# Federal Register

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**Thursday,  
May 3, 2001**

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**Part II**

## **Department of Health and Human Services**

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**Administration for Children and Families**

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**Fiscal Year 2001 Discretionary  
Announcement for Head Start Family  
Worker Training and Credentialing  
Initiative; Availability of Funds and  
Request for Applications; Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[Program Announcement No. ACYF/HS-2001-07]

#### Fiscal Year 2001 Discretionary Announcement for Head Start Family Worker Training and Credentialing Initiative; Availability of Funds and Request for Applications

**AGENCY:** Administration on Children, Youth and Families (ACYF), ACF, DHHS.

**ACTION:** Notice.

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of \$1,000,000; up to \$100,000 per project for one year to support up to ten entities to design and/or adapt competency-based training programs and curricula suitable for the training and credentialing of Head Start Family Worker Staff. Academic institutions, other training providers, and public or private non-profit or for-profit organizations are eligible to apply for projects, which will be funded on a competitive basis.

Applicants must provide assurances that if they receive funds under the announcement, the model training program required as part of the final report described in the section of this announcement entitled: *Expectations and Requirements for Family Worker Training and Credentialing Projects* will be established as part of the grantee's regular curricular offerings no later than one year from the date of submission of the report.

**DATES:** The closing date for receipt of applications is 5:00 P.M. EDT, July 2, 2001.

**ADDRESSES:** Mail applications to: Head Start Family Worker Training and Credentialing Initiative, ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209.

Hand delivered courier or overnight delivery applications are accepted during the normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, on or prior to the established closing date.

All packages should be clearly labeled as follows:

Application for Head Start Family Worker Training and Credentialing Initiative

**FOR FURTHER INFORMATION CONTACT:** The Head Start Discretionary Grant Support Team (1-800-351-2293) is available to answer questions concerning application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions. You may e-mail your questions to: hs@lcnnet.com.

In order to determine the number of expert reviewers that will be necessary, if you plan to submit an application, you are requested to send a post card or call with the following information: the name, address, telephone and fax numbers, and e-mail address of the project director and the name of the applicant at least four weeks prior to the submission deadline date to: Head Start Family Worker Training and Credentialing Initiative, ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209.

Fiscal Year 2001 Discretionary Announcement for Head Start Family Worker Training and Credentialing Initiative

#### Table of Contents

This program announcement is divided into five sections:

Part I contains general information and an introductory section that describes the background of various Head Start initiatives supporting professional development, the target audience of this initiative, and the Head Start Bureau's expectations regarding this initiative and next steps.

Part II contains key program information such as a description of competitive categories, eligible applicants, project periods and applicable Head Start regulations.

Part III contains the requirements for information that must be included in each application.

Part IV contains the criteria upon which applications will be reviewed and evaluated.

Part V contains a discussion of the application process.

*Appendix A* includes the relevant application forms, certifications, disclosures and assurances necessary for completing and submitting the application.

*Appendix B* contains a listing of Competency Goals and Indicators for Head Start Staff Working with Families.

*Appendix C* includes a listing of the Head Start Quality Improvement Centers. The Head Start Quality Improvement Centers and Disability Services Quality Improvement Centers form a regionally-based system, composed of institutions and organizations whose common purpose is to support the continuous improvement of all grantees and delegate agencies as they work to provide high quality and effective services to children and families and address the emerging priorities of child care partnerships, Head Start expansion and welfare reform. The Training and Technical Assistance reflects a national commitment to quality

improvement, local capacity-building and ongoing evaluation.

#### Part I. Purpose and Background

##### A. Purpose

The purpose of this announcement is to solicit applications for grants for the design and/or adaptation of competency-based training programs appropriate for utilization in a national Head Start Family Worker Training and Credentialing Initiative. Grants will be awarded to develop methodologies and approaches to enhance the skills, knowledge, and effectiveness of Family Services staff who are working with parents and young children in Head Start and Early Head Start, and other early childhood and child care family support programs.

Organizations funded under this Announcement will work cooperatively with the Head Start Bureau, national experts, and national organizations in furthering this initiative.

Successful applicants will be expected to work collaboratively with local Head Start programs as well as with other service agencies and organizations involved in endeavors, which grant credit, degrees, and credentialing of Family Workers.

##### B. Background

###### Head Start

Head Start and Early Head Start are comprehensive child development programs which serve children from birth to age five, pregnant women, and their families. The Early Head Start program provides services to children zero to three and serves approximately 50,000 children. Head Start, which provides services to children age three to five, currently serves over 850,000 low-income families and their children through a nationwide network of approximately 2,100 grantee and delegate agencies. These agencies serve children and families through a variety of program options and service strategies including center-based, home-based, and family child care partnerships.

**Note:** In the balance of this document, the term "Head Start" refers to both Head Start and Early Head Start programs and staff, unless otherwise indicated.

Since its inception in 1965, Head Start has had a strong commitment and impressive success in involving, educating and supporting parents and families as an integral part of every local program. For example, recent research in a nationally representative sample of programs documented high levels of parent involvement and satisfaction: approximately 80% of all parents

participate in home visits, parent-teacher conferences, classroom observations and volunteering and over 85% of parents were very satisfied with the quality of services their child received. These findings corroborate the 1999 report of the American Customers Satisfaction Index, in which Head Start received the highest rating of any government program.

Building on this strong record of success and commitment, the initiative described in this announcement is intended to continue to strengthen the quality of services to and depth of partnerships with families by enhancing the training and effectiveness of Family Workers in all Head Start programs. It complements a broad series of related efforts to improve Head Start program quality, staff credentials, and accountability, including more specific performance standards and measures in children's literacy and language development, a new focus on child outcomes in program monitoring and self-assessment, expanded funding to upgrade program quality and staff compensation, and higher qualification standards for Head Start teachers.

#### Family Workers in Head Start

More than 25,000 Family Workers are employed in local Head Start programs. Family Workers play a critical role in developing and supporting the implementation of Head Start's family partnership process. Through this process the family of each enrolled child has opportunities to develop and implement an individualized plan of services based on their interests and needs. In many instances, the quality of support received by families correlates with the training and qualifications of the program's Family Workers.

Collectively, Family Workers represent a group with varied levels of professional education/training and experience. Local agencies have established a range of qualifications for Family Workers varying from a Masters of Social Work (MSW) or other related degree to a High School diploma. Accordingly, some Head Start Social Services and Parent Involvement staff (known as Family and Community Partnerships staff since 1998) are college degreed as well as state licensed or credentialed. Others have received undergraduate training or on-the-job training. Some Family Workers are current or former parents of Head Start children. As might be expected, Family Workers also vary widely in characteristics such as salary levels, staffing patterns, fields of study, tenure, average salary, forms of supervision and

ongoing professional development opportunities.

#### Family Worker Training and Credentialing Initiative

The Family Worker Training and Credentialing Initiative is designed to implement a mandate from Congress in the Head Start Act Amendments of 1994 (P.L. 103-252). This Section of the Act required that "the Secretary, in coordination with concerned public and private agencies and organizations examining the issues of standards and training for family service workers, shall \* \* \* (1) review and, as necessary, revise or develop new qualification standards for Head Start staff providing such services; (2) promote the development of model curricula (on subjects including parenting training and family literacy) designed to ensure the attainment of appropriate competencies by individuals working or planning to work in the field of early childhood and family services; and (3) promote the establishment of a credential that indicates the attainment of the competencies that is accepted nationwide".

To assist in planning to carry out the Congressional mandates, the Head Start Bureau in 1999 and 2000 convened five focus groups of leaders from: national organizations, local Head Start Programs including parents of past and currently enrolled children; Head Start Quality Improvement Centers; accreditation organizations and higher education institutions to discuss the needs, issues, and existing models of Head Start Worker staff training.

Among the issues and needs identified by focus group participants were the following:

- Input to the development of "Competency Goals and Indicators for Head Start Staff Working with Families" attached in Appendix B, page 27. These competencies are being communicated to Head Start agencies to assist local efforts in selecting, training, and supervising Family Workers and will provide a common framework for competency-based training models solicited via this announcement;
- Key characteristics of models for delivery of training in these competencies and approaches to link competency-based training to higher education coursework and degrees;
- The importance and challenges of creating competency-based training that is responsive to highly diverse adult learners, such as Family Workers in Head Start and child care programs with little recent experience as students, who frequently continue to work while pursuing a degree, and who may require

special academic and social supports to successfully meet standards in general education and early childhood courses, and

- Recognition that with over twenty-nine percent of Head Start staff members being parents of former or current Head Start children that there is a necessity to ensure that any competency-based training program/curriculum for Family Workers is appropriate for, open to, and welcomes the parents of Head Start children so that they can attain the necessary competencies.

#### Expectations and Requirements for Family Worker Training and Credentialing Projects

Section 649 the Head Start Act authorizes grants for research, demonstration and collaboration activities. These grants will involve extensive investigation into areas where knowledge is currently insufficient and will be awarded pursuant to Section 649.

Based on the above legislative mandates, focus group input, and additional planning, the Head Start Bureau is issuing this grants announcement to support the development and/or adaptation of a variety of models of competency-based, credit-bearing training for Family Workers in Head Start and early childhood and family support programs. The central requirements for all projects are as follows:

- Develop competency-based training programs and curricula relevant to the work of a Head Start Family Worker based on the Head Start Program Performance Standards; the Competency Goals and Indicators for Head Start Staff Working with Families, attached in Appendix B; and include a credible approach to assessing the attainment of these competencies by individual trainees;
- Create or adapt competency-based training that is linked to academic credit and degree programs and to other forms of credentialing for Family Workers. Applicants are urged to present plans for training which provide for articulation to AA, BA, MS degree programs if the trainee decides to continue his/her education, and portability, should trainees desire to be Family Workers in other related programs;
- Develop training and curricula that is accessible and affordable for adult learners and that accommodates the training needs of current Head Start Family Workers, including former Head Start Parents who are likely to continue to work full time as they continue to

participate in training towards a Family Worker credential; and

- Create state-of-the-art training and assessment strategies that will ultimately enhance the quality of program services and outcomes for the increasing diversity of low-income families served by Head Start and early childhood programs and agencies.

The Bureau is soliciting applications to develop and/or adapt competency-based training curricula and programs appropriate to the fulfillment of educational and professional growth needs of Family Worker staff nationwide, including all geographic regions as well as for staff serving Migrant and Indian families and communities. For purposes of this announcement "development" means the creation and design of a totally new competency-based, credit-based, training program. "Adaptation" means the proposed utilization of "as is" or slightly modified appropriate credit-bearing competency-based training program coursework and materials, delivery modalities, scheduling and cost factors, etc.

Innovative, realistic, forward-looking, and trainee accessible model training program designs are necessary in order to facilitate and advance the Head Start Family Worker Training Initiative. Applicants may propose developmental work such as re-shaping course materials, curriculum and teaching strategies; adapting mentoring, advisement, reflective practice, and practicum strategies, using distance learning and other forms of technology in new ways, alternate means to improve access, reduce costs, and increase the successful completion of the training sequence and demonstration of competencies by candidates; and new efforts and methods to link competency-based training and curriculum to academic credit, higher education degree programs and related credentialing systems for Family Workers. Applicants are strongly encouraged to involve Family Workers, managers, program directors from Head Start and other community-based programs and training and technical assistance providers in their grant application planning and implementation of their projects. Attachment C provides a Directory of Head Start Training and Technical Assistance providers.

Each funded project will be expected to present a comprehensive competency-based credit-bearing training program and curriculum (plus alternate designs, if any) to the Head Start Bureau at the end of this grant project period. All elements of the

training program, including but not limited to recruitment, entry requirements, course content, credit hours, primary and alternate delivery modalities, time requirements, implementation plans and schedule, staffing qualifications, program and student assessments (including a method or strategy for the assessment of the competencies to be acquired by trainees), program accreditation, credentialing mechanisms, articulation plans/processes/agreements, and cost factors are to be included in this presentation. At some point in the future, the Head Start Bureau intends to require a common set of competencies and skills for Family Workers. Model curricula developed under this Announcement will be used to help determine the requisite training and credential attainment for these workers. Therefore, successful applicants are also expected to declare their intent to implement their proposed program after the end of the grant period, independent of any additional Federal support, if the Head Start Bureau determines that their model is sufficient to meet the training needs of Head Start Family Workers.

The Bureau in concert with national experts and practitioners will carry out a comprehensive review of all final submissions. The review will include examination of how proposed programs will enhance the capacities of trainees in all of the areas addressed in the Head Start Program Performance Standards and sub-areas of the eleven Family Workers "Competency Goals and Indicators" as defined in Appendix B. As a result of this review, the Bureau will examine the possible establishment and implementation of a Family Worker Training Program Resource Data Base incorporating all training programs conforming to Head Start's requirements. Those providers and programs included in the Data Base will be deemed to be responsive and appropriate for use by local program Family Worker staff in pursuing courses of studies and credentialing.

Grantees will be expected to attend a three-day Orientation Meeting regarding this Initiative in Washington D.C. to be held no later than six weeks after grant award. The Head Start Bureau and a work group of national consultants on competency-based training and credentialing will convene to engage with grantees regarding programmatic issues and Bureau expectations for this initiative. Applicants need to budget for the three-day Orientation meeting.

## Part II. Program Information and Requirements

### A. Statutory Authority

The Head Start Act, as amended 42 U.S.C. 9801 et seq.

### B. Eligible Applicants

Applicants must be public or private institutions of higher education or nonprofit or for profit organizations with experience and knowledge in working with early childhood programs for young children birth to age five. In accordance with 45 CFR 74.81, for profit organizations must waive their profit when applying for funding under this announcement.

### C. Project Duration

Awards will be made on a competitive basis and will be for a one-year period. The total project period will be one year.

### D. Federal Share of Project Costs

A total of approximately \$1,000,000 in ACF funds will be available.

### E. Number of Projects To Be Funded

ACF will fund up to ten applicants. An individual discretionary grant will be awarded to a successful applicant in order to foster achievement of the goals of this Head Start initiative.

### F. Matching Requirement

Although there are no matching requirements, applicants are encouraged to provide non-Federal contributions to the project.

## Part III. Application Requirements

### A. Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly.

In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

### B. General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in

quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

#### Introduction

Applicants are required to submit a full project description and shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

#### Project Summary/Abstract

Provide a summary of the Project description (a page or less) with reference to the funding request.

#### C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, institutional and other problems(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported or (to be initiated), some of which may be outside the scope of the program announcement.

#### D. Results or Benefits Expected

Identify the results and benefits to be derived.

#### E. Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors

that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals whom will work on the project along with a short description of the nature of their effort or contribution.

#### F. Additional Information

Following are requests for additional information that need to be included in the application.

##### 1. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

##### 2. Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information.

#### G. Third-Party Agreements

Include written agreements between the grantee and subgrantees or subcontractors or other cooperative entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other

terms and conditions that structure or define the relationship.

#### Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

#### H. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

#### General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

#### Personnel

*Description:* Costs of employee salaries and wages.

*Justification:* Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

**Fringe Benefits**

*Description:* Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

**Travel**

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

*Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

**Equipment**

"Equipment" means an article of nonexpendable, tangible personal property having a useful life or more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

*Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

**Supplies**

*Description:* Costs of all tangible personal property other than that included under the Equipment category.

*Justification:* Specify general categories of supplies and their costs. Show computations and provide other information, which supports the amount requested.

**Other**

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

**Indirect Charges**

*Description:* Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

*Justification:* An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Total Direct Charges, Total Indirect Charges, Total Project Costs.

Self-explanatory.

**Part IV Evaluation Criteria****A. Review Criteria**

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

**Criterion 1. Objectives and Need for Assistance: (15 points)**

The extent to which the application identifies relevant physical, economic, social, financial, institutional or other problems requiring a grant; demonstrates the need for assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant.

Information provided in response to Part III, Section C. of this announcement will be used to evaluate applicants on this criterion.

**Criterion 2. Results or Benefits Expected: (25 points)**

The extent to which the application identifies the results and benefits to be derived; describes the anticipated contribution to policy, practice, theory and/or research; specific benefits should be described for Head Start and the whole early childhood community working with children birth through five.

The Head Start Bureau is particularly interested in the following:

1. Based on the stated program objectives, identify the results and benefits to be derived for Family Workers in Head Start, Early Head Start, and staff in other early childhood, child care and family support agencies.

2. Describe potential longer term benefits of this initiative, including enhancing participation and provision of higher education opportunities for family service staff; enhancement of relationships between higher education institutions and local early care and education programs, including Head Start; program quality, and practices and outcomes in early care child/family programs.

Information provided in response to Part III, Section D of this announcement will be used to evaluate applicants on this criterion.

**Criterion 3. Approach: (50 points)**

The extent to which the application outlines an acceptable plan of action pertaining to the scope of the project which details how the proposed work will be accomplished, including a timeline; lists of each organization, consultants, including the evaluator, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; assures the adequacy of time devoted to the project by key staff, the key staff should be knowledgeable of Head Start and Early Head Start, the applicant must fully describe the

approach and/or methodology and delineate the relationship of each task to the accomplishment of the proposed objectives. There should be evidence that the planned approach reflects sufficient input from collaborating partners.

The Head Start Bureau is particularly interested in the following:

1. Describe the applicants' experience and capabilities in providing training to family worker staff from Head Start and early childhood and family support programs.

2. Provide a discussion of the major current and emerging challenges facing family workers, and the challenges of delivering competency-based training to current staff members.

3. Describe the planning and development process the applicant will use to develop a final design/model program and describe how Head Start and other program family workers, managers and others will be involved.

4. Discuss how other career development and higher education organizations, institutions, and providers/partners or contributors may be involved in the planning and design phase, as well as in ongoing refinement and improvement of the desired model for curricula.

5. Propose and defend an initial overall professional development strategy for Head Start Family workers and other related early childhood higher education programs, including content, and sequence of development experience, and ways to encourage applications of new knowledge, standards and best practices to the instruction of participants and their sponsoring Head Start program. Include discussion of issues such as the admission/eligibility requirements, program scheduling, accessibility, and location of activities, including explicit approaches to supporting peer networking and mentoring of participants.

6. Provide assurance that training/courses are offered at the lowest reasonable justifiable cost to trainees.

7. Indicate initial plans for the recruitment and selection of faculty or trainers who would train Family Workers. Discuss how recruitment and selection process will attract faculty/trainers with demonstrated ability to respond to the growing diversity of the population of families and children served in Head Start, Early Head Start and other early care and education programs.

Information provided in response to Part III, Sections E, F and G of this announcement will be used to evaluate applicants on this criterion.

Criterion 4. Budget and Budget Justification: (10 points)

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF-424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness and allocability of the proposed costs.

#### *B. The Review Process*

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part IV of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACYF may also solicit comments from ACF Regional Office staff and other Federal agencies. The ACYF Commissioner may also consider a variety of all factors in funding decisions, including supporting a set of projects to serve Head Start programs and Family Workers in all geographic regions and representative of approaches to working with different types of Head Start programs, including Indian and Migrant grantees.

### **Part V. The Application Process**

#### *A. Required Forms*

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement in Appendix A. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 approved by the Office of Management and Budget under Control Number 0348-0043. A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348-0040). Applicants must sign and return the Standard Form 424B

with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of \$100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348-0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within P.L. 103-227, Part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice, which implements the smoking prohibition, is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

#### *B. Application Limits*

The application should be double-spaced and single-sided on 8½" × 11" plain white paper, with 1" margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the application. All pages of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. Although there is no limitation regarding number of pages, applicants are urged to be concise and limit applications to no more than 50 pages. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required.

Applicants are encouraged to submit curriculum vitae in a biographical format. Please note that applicants that

do not comply with the requirements in the section on "Eligible Applicants" will not be included in the review process.

### C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

- One original, signed and dated application plus two copies.
- Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.
- (1) Application for Federal Assistance (SF-424, Rev. 7-97)
- (2) Budget information-non-construction programs (SF424A&B)
- (3) Budget Justification, including subcontract agency budgets
- (4) Application Narrative and Appendices
- (5) Proof that the organization is a non-profit organization
- (6) Assurances Non-Construction Program
- (7) Certification Regarding Lobbying
- (8) If appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF-424, Rev. 7-97
- (9) Certification of Protection of Human Subjects

### D. Closing Date for Receipt of Applications

The closing time and date for receipt of applications is 5:00 p.m. (Eastern Time Zone) on August 1, 2001. Mailed or handcarried applications received after 5:00 p.m. on the closing date will be classified as late.

**Deadline:** Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the ACF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209. Applicants are responsible for mailing applications well in advance when using all mail services to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or other representatives of the applicant or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 5:00 p.m. at the ACF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, between Monday and Friday (excluding Federal Holidays).

Applicants are cautioned that express/overnight mail services may not always deliver as agreed.

ACF cannot accommodate the transmission of applications by FAX or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

**Late applications:** Applications that do not meet the criteria stated above are considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

**Extension of deadlines:** ACF may extend an application deadline for applicants affected by Acts of God such as floods and hurricanes, when there is widespread disruptions of mail service, or for other disruptions of services, such as a prolonged blackout, that affect the public at large. A determination to waive or to extend deadline requirements rests with the Chief Grants Management Officer.

### E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104-13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under the following current valid OMB control numbers 0348-0043, 0348-0044, 03480-0040, 0348-0046, 0925-0418 and 0970-0139.

Public reporting burden for this collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

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

### F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

\*All States and Territories except Alabama, Alaska, Arizona, Colorado,

Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those Official State process recommendations, which may trigger the accommodation or explain rule.

When comments are submitted directly to ACF, they should be addressed to William Wilson, Head Start Bureau, 330 C Street, SW, Washington, DC 20447, Attn: Head Start Family Worker Training and Credentialing Initiative. A list of Single Points of Contact for each State and Territory can be found on the web site: <http://www.whitehouse.gov/omb/grants/spoc.html>

(Catalog of Federal Domestic Program Number 93.600, Project Head Start)

Dated: April 26, 2001.

**Gail E. Collins,**

*Acting Deputy Commissioner, Administration on Children, Youth and Families.*

**BILLING CODE 4184-01-P**

**Appendix A—Application Forms, Certifications, Disclosures, and Assurances**

**APPLICATION FOR  
FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

<b>1. TYPE OF SUBMISSION:</b> Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier
		<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier
		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier
<b>5. APPLICANT INFORMATION</b>			
Legal Name:		Organizational Unit:	
Address (give city, county, State, and zip code):		Name and telephone number of person to be contacted on matters involving this application (give area code)	
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> [ ][ ] - [ ][ ][ ][ ][ ][ ][ ][ ][ ]		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/>	
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es)      [ ]      [ ] A. Increase Award      B. Decrease Award      C. Increase Duration D. Decrease Duration      Other(specify): _____		A. State      H. Independent School Dist. B. County      I. State Controlled Institution of Higher Learning C. Municipal      J. Private University D. Township      K. Indian Tribe E. Interstate      L. Individual F. Intermunicipal      M. Profit Organization G. Special District      N. Other (Specify) _____	
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> [ ][ ] - [ ][ ][ ][ ] TITLE: _____		<b>9. NAME OF FEDERAL AGENCY:</b>	
<b>12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):</b>		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>	
<b>13. PROPOSED PROJECT</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>	
Start Date	Ending Date	a. Applicant	b. Project
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>	
a. Federal	\$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. No. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E. O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
b. Applicant	\$ .00		
c. State	\$ .00		
d. Local	\$ .00		
e. Other	\$ .00		
f. Program Income	\$ .00		
g. TOTAL	\$ .00		
		<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b> <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No	
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.</b>			
a. Type Name of Authorized Representative		b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed	

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET.  
SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:  | Item: | Entry:   |
|-------|---|-------|--|
| 1.    | Self-explanatory.   | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).   | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).   | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.   | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.  | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.   | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.   | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's <u>authorization for you to sign this application as official representative must be on file in the applicant's office.</u> (Certain Federal agencies may require that this authorization be submitted as part of the application.)   |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br><br>-- "New" means a new assistance award.<br><br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br><br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.  |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.   |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.   |       |  |

OMB Approval No. 0348-0044

**BUDGET INFORMATION - Non-Construction Programs**

**SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. Totals		\$	\$	\$	\$	\$

**SECTION B - BUDGET CATEGORIES**

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (Rev. 7-97)  
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTAL (sum of lines 8-11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	\$
17.					
18.					
19.					
20. TOTAL (sum of lines 16-19)	\$	\$	\$	\$	\$
SECTION F - OTHER BUDGET INFORMATION					
21. Direct Charges:	22. Indirect Charges:				
23. Remarks:					

## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

For *new* applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

**INSTRUCTIONS FOR THE SF-424A (continued)**

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

**ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes—or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

**Administration for Children, Youth, and Families  
U.S. Department of Health and Human Services**

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

**Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)**

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:  
  
Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);  
  
Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;  
  
Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;  
  
Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to

the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**Certification Regarding Drug-Free Workplace Requirements**

**Alternate I. (Grantees Other Than Individuals)**

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about -- (1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -- (1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted -- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

.....  
.....

Check if there are workplaces on file that are not identified here.

**Alternate II. (Grantees Who Are Individuals)**

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

**Administration for Children, Youth, and Families  
U.S. Department of Health and Human Services****CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS****Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions****Instructions for Certification**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and

#### Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

#### Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

##### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered

Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

#### Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Administration for Children, Youth, and Families  
U.S. Department of Health and Human Services**

**CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Statement for Loan Guarantees and Loan Insurance**

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

.....  
Signature

.....  
Title

.....  
Organization

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

Approved by OMB  
0348-0046

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known:</i>  Congressional District, <i>if known:</i>	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, <i>if known:</i>	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, <i>if applicable:</i> _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
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**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

## CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

**BILLING CODE 4184-01-C**

It is estimated that in 2001 the Federal Government will outlay \$305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental Review of Federal Programs" was issued with the desire to foster the intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below. States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of these States, you may still send application materials directly to a Federal awarding agency.

*Arkansas*

Tracy L. Copeland  
Manager, State Clearinghouse  
Office of Intergovernmental Services  
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tlcopeland@dfa.state.ar.us

*California*

Grants Coordination  
State Clearinghouse  
Office of Planning and Research  
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state.clearinghouse@opr.ca.gov

*Delaware*

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Executive Department

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*Florida*

Florida State Clearinghouse  
Department of Community Affairs  
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Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to [grants@omb.eop.gov](mailto:grants@omb.eop.gov). If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW, Washington, DC.

### Appendix B—Competency Goals and Indicators for Head Start Staff Working With Families

The "Competency Goals and Indicators for Head Start Staff Working with Families" described on the following pages are intended to define competencies and skills for entry-level staff who are working directly with families under ongoing supervision in furtherance of their professional development. Family Workers should be able to demonstrate their ability to provide services consistent with the requirements of the Head Start Program Performance Standards.

Today's workers are expected to exhibit a new level of professionalism to effectively support today's families. Increasingly, new organizational structures and innovative service models within Head Start require workers to:

- Develop respectful relationships with families which evolve into an individualized family partnering process which addresses the parent's role in supporting child development goals, health and disabilities goals, as well as traditional social services, family development, and parent involvement goals.

- Work in partnership with families and other community providers to develop family partnership agreements and to integrate this process into family plans when appropriate.

- Support families in their efforts to obtain employment and move towards self-sufficiency.

- Provide a new level of service in the area of family literacy, reflective of the intent of the current Head Start Program Performance Standards.

Appendix B as follows:

- Reflects the Head Start Program Performance Standards

- Reflects the latest thinking in the family support field including strength-based, family centered principles, and

- Includes new areas of competency in response to the changing role of family support staff

Indicators are listed for each area of competency. These Indicators provide a mechanism to measure individuals seeking

demonstrable competency in each of the competency goal areas.

**BILLING CODE 4184-01-P**

**COMPETENCY GOALS AND INDICATORS FOR HEAD START STAFF WORKING WITH FAMILIES**

**Competency Goal #1:**            **Establish mutually respectful partnerships with families to enhance the quality of their lives and their communities.**

**Indicators:**    *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Conduct outreach, recruitment, and enrollment;
- ◆ Provide orientation on philosophy of program and services provided;
- ◆ Establish and maintain ongoing partnerships based on trust with families;
- ◆ Communicate effectively using appropriate verbal and nonverbal messages and reflective listening skills;
- ◆ Implement strategies including home visits to learn about families and the changing community.

**Competency Goal #2:**            **Support families' efforts to reach their goals.**

**Indicators:**    *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Develop strengths-based assessments with families that describe their goals, strengths, resources and support networks, as well as necessary services and supports;
- ◆ Develop, in partnership with the family, an individualized family plan;
- ◆ Facilitate families' problem-solving and teach problem-solving skills;
- ◆ Coach, consult, educate, and utilize counseling skills, where appropriate;
- ◆ Advocate for the family and support them in advocating for themselves;
- ◆ Follow-up with the family on the progress toward meeting their goals and any needed revisions to the plan;
- ◆ Assist with transitions to other programs, communities and schools.

**Competency Goal #3: Offer parents opportunities to be involved in group activities, including policy groups and educational activities based on interest and need.**

**Indicators:** *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Identify common interests and needs of parents in order to plan appropriate activities;
- ◆ Work with parent groups on group formation, group processing, and leadership
- ◆ Provide and/or coordinate training and educational opportunities for parents; and
- ◆ Engage parents in volunteering, community service and other ways of contributing to program activities and services.

**Competency Goal #4: Provide opportunities for children and families to participate in family literacy services.**

**Indicators:** *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Work with other program staff to support interactive literacy activities between parents and their children;
- ◆ Provide training for parents in how to be the primary teacher for their children and full partners in the education of their children;
- ◆ Assist parents as adult learners to recognize and address their own literacy goals; and
- ◆ Link and support parents in engaging in literacy training that contributes to self-sufficiency.

**Competency Goal #5: Coordinate and integrate Head Start services in order to enhance effectiveness.**

**Indicators:** *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Serve as a productive team member on an interdisciplinary team of professionals;
- ◆ Participate in and facilitate case conferences to promote service integration;
- ◆ Apply knowledge of health, mental health, disabilities, and child development in order to ensure holistic service delivery;
- ◆ Promote and support parent involvement and leadership throughout the program.

**Competency Goal #6: Support families in accessing other community resources.**

**Indicators:** *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Research and keep up-to-date on program and community resources;
- ◆ Analyze match of community resources to family needs and identify unmet family needs.
- ◆ Refer families to community resources and follow-up on the effectiveness of referrals; and
- ◆ Promote community partnerships that will improve supports to families.

**Competency Goal #7: Assist families in crisis.**

**Indicators:** *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Listen to families and assess the crisis situation;
- ◆ Take active steps to ensure the safety of all involved;
- ◆ Decide when to intervene and when to refer a family;
- ◆ Identify (with the family) options, resources, and consequences to address the crisis; and
- ◆ Support families in making decisions and taking active steps to resolve current crises and be prepared to address future crises;

**Competency Goal #8: Respect and respond competently to the culture, traditions, lifestyle, language, and values of each family and community.**

**Indicators:** *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Be knowledgeable about and sensitive to each family's values, beliefs, traditions, cultural influences, makeup, and circumstances;
- ◆ Work with families representing different cultures using a culturally competent and flexible approach.
- ◆ Identify and reflect on personal values, experiences and biases that facilitate and present barriers in working with certain groups of people.

**Competency Goal #9****Contribute to effective program practices and maintain a commitment to professionalism.**

**Indicators:** *Head Start staff working with families should demonstrate their ability to do the following:*

- ◆ Perform record-keeping and internal and external reporting tasks in a timely and objective fashion;
- ◆ Effectively utilize supervisory professional development and technical assistance resources to improve competence;
- ◆ Contribute to and participate in strategic planning, program self-assessment and other efforts to improve program services and agency responsiveness to families;
- ◆ Make decisions and act based on family support principles, theories, practices, and code of ethics;
- ◆ Articulate an awareness of self, values, and ethics as they impact on work with families; and
- ◆ Maintain professional boundaries and confidentiality.

## QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
<p><b>Region I</b></p> <p>Connecticut Maine Massachusetts New Hampshire Rhode Island Vermont</p>	<p><b>Education Development Center, Inc.</b> 55 Chapel Street Newton, MA 02458-1060</p> <hr/> <p><i>Disabilities Services:</i> <b>Education Development Center, Inc.</b> 55 Chapel Street Newton, MA 02458-1060</p>	<p>Pat Fahey 617-969-7100 x2375 617-969-3440 Fax E-mail[pfahey@edc.org]</p> <hr/> <p>Philip Printz 800-225-4276 x2349 617-618-2349 617-969-3440 Fax E-mail[pprintz@edc.org]</p>
<p><b>Region II</b></p> <p>(a)  New Jersey New York</p> <p>(b)  Puerto Rico/ Virgin Islands</p>	<p><b>(a) New York University</b> Head Start Quality Improvement Center 726 Broadway, 5<sup>th</sup> Floor New York, NY 10003</p> <hr/> <p><b>(b) Development Associates, Inc.</b> Puerto Rico/Virgin Islands P.O. Box 3968 Guaynabo, PR 00970-3968</p> <hr/> <p><i>Disabilities Services:</i> <b>New York University</b> School of Education 726 Broadway, 5<sup>th</sup> Floor New York, NY 10003</p> <p><u>Satellite Office</u></p> <p><b>New York University QIC-D</b> 130 Winston Churchill Avenue San Juan, PR 00926</p>	<p>Patricia M. Hall 212-998-5550 212-995-3458 Fax E-mail[pmh5@is2.nyu.edu]</p> <hr/> <p>Gloria de-Llovio Dominguez 787-281-0125/0100/0110 787-281-0120 Fax E-mail[dahstasc@tld.net]</p> <hr/> <p>Barbara Schwartz 212-998-5528 212-995-4562 Fax E-mail[b.schwartz@nyu.edu]</p> <hr/> <p>Linna Irizarry-Mayoral 787-751-8880 787-751-8810 Fax E-mail[cynuqid@tld.net]</p>
<p><b>Region III</b></p> <p>Delaware District of Columbia Maryland Pennsylvania Virginia West Virginia</p>	<p><b>University of Maryland University College</b> 3501 University Boulevard East Adelphi, MD 20783</p> <hr/> <p><i>Disabilities Services:</i> <b>Child Development Resources</b> P.O. Box 280 Norge, VA 23127-0280</p> <p><u>Satellite Office</u></p> <p><b>West Virginia DSQIC Office</b> 2A Hyre Avenue Petersburg, WV 26847</p>	<p>Madhavi Parikh 301-446-1040 800-688-1675 301-446-1060 Fax E-mail[parim@hsrtc.umuc.edu]</p> <hr/> <p>Sheri Osborne 757-566-3300 757-566-8977 Fax E-mail [sherio@cdr.org]</p> <hr/> <p>Carol Thomas 304-257-4853 888-869-1359 304-257-4829 Fax E-mail[carolm@hardynet.com]</p>

## QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
<p><b>Region III (Cont.)</b></p> <p>Delaware District of Columbia Maryland Pennsylvania Virginia West Virginia</p>	<p><b>Children's Hospital and the UCLID Center</b> University of Pittsburgh 3705 Fifth Avenue at Desoto Street Pittsburgh, PA 15123-2583</p> <p><u>Subcontract Office</u> <b>Georgetown University Child Development Center</b> 3307 M Street, SW, 4<sup>th</sup> Floor Washington, DC 20007-3935</p>	<p>Stephen J. Bagnato 412-692-6520 412-692-8729 Fax E-mail[stephen_bagnato@poplar.chp.edu]</p> <p>Kris Hansen 202-687-5107 202-687-8899 Fax E-mail[hansenk@gunet.georgetown.edu]</p>
<p><b>Region IV</b></p> <p>(a)</p> <p>Kentucky North Carolina South Carolina Tennessee</p> <p>(b)</p> <p>Alabama Florida Georgia Mississippi</p>	<p><b>(a) Western Kentucky University</b> Training and Technical Assistance Services College of Education Room 344, Tate C. Page Hall 1 Big Red Way Bowling Green, KY 42101-3576</p> <hr/> <p><b>(b) Western Kentucky University</b> Training and Technical Assistance Services College of Education Room 344, Tate C. Page Hall 1 Big Red Way Bowling Green, KY 42101-3576</p> <hr/> <p><i>Disabilities Services:</i> <b>Chapel Hill Training-Outreach Project</b> 800 Eastowne Drive, Suite 105 Chapel Hill, NC 27514</p> <p><u>Satellite Offices</u></p> <p><i>Florida</i> <b>Pinellas County Head Start</b> 66988<sup>th</sup> Avenue North, Suite D Pinellas Park, FL 33781</p> <p><i>Georgia</i> 1806 Calibre Woods Drive Atlanta, GA 30329</p> <p><i>Mississippi</i> 4791 McWillie Drive, Suite 103 Jackson, MS 39206</p>	<p>Colleen B. Mendel 270-745-4041 270-745-3340 Fax E-mail[colleen.mendel@wku.edu]</p> <p>Marce Verzaro-O'Brien 305-289-2034 800-882-7482 305-289-0337 Fax E-mail[mvobrien@aol.com]</p> <p>Brenda Bowen 919-490-5577 x224 800-473-1727 919-490-4905 Fax E-mail[bbowen@intrex.net]</p> <p>Pam Kautz 727-547-5900 727-547-5909 Fax E-mail[pamkautz@aol.com]</p> <p>Lisa Goldman 404-325-0903 404-329-5488 Fax E-mail[lmgoldman@mindspring.com]</p> <p>Valerie Campbell 601-362-9154 601-362-9487 Fax E-mail[campbell@misnet.com]</p>

## QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
<p><b>Region V</b></p> <p>(a)</p> <p>Michigan Minnesota Wisconsin</p> <p>(b)</p> <p>Illinois Indiana Ohio</p>	<p><b>(a) Cooperative Educational Service Agency #5</b> P.O. Box 564 626 East Slifer Street Portage, WI 53901</p> <p><u>Satellite Offices</u></p> <p><b>Bemidji State University</b> 325 Education/Art Building (EA325) 1500 Birchmont Drive NE Bemidji, MN 56601-2699</p> <p><b>BHK Head Start</b> HC2 Box 989 Allouez, MI 49805</p> <p><b>Michigan State University</b> Kellogg Center Room 22 East Lansing, MI 48824-1036</p> <p><b>University of Minnesota</b> 370C Peik Hall 159 Pillsbury Drive Minneapolis, MN 55455-0223</p> <p><b>UW-Waisman Center</b> 122 E. Olin Avenue Suite 110 Madison, WI 53713</p>	<p>Linda Young 608-742-8814 x309 800-862-3275 x309 608-742-2384 Fax E-mail[youngl@cesa5.k12.wi.us]</p> <p>Connie Grant 218-755-3782 218-755-3787 Fax E-mail[cegrant@vax1.bemidji.msus.edu]</p> <p>Sally Hruska 906-337-5043 906-337-5043 Fax E-mail[shruska@up.net]</p> <p>Brooke Foulds 517-353-5194 517-355-5220 Fax E-mail[fouldsdo@pilot.msu.edu]</p> <p>Jean Marchessault 612-624-9509 612-625-2097 Fax E-mail[march020@tc.umn.edu]</p> <p>Linda Leonhart 608-265-9423 608-265-9421 Fax E-mail[leonhart@waisman.wisc.edu]</p>
	<p><b>(b) The Ohio State University</b> Center for Special Needs Populations Suite 440 700 Ackerman Road Columbus, OH 43202-1559</p> <p><u>Satellite Offices</u></p> <p><b>OHSAI</b> 505 Windsor Park Drive Dayton, OH 45459</p>	<p>Dennis Sykes 614-447-0844 x133 800-447-1424 614-447-9043 Fax E-mail[sykes.3@osu.edu]</p> <p>Barbara Haxton 937-435-1113 937-435-5411 Fax E-mail[haxton@erinet.com]</p>

## QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
<p><b>Region V (Cont.)</b></p> <p>(a)</p> <p>Michigan Minnesota Wisconsin</p> <p>(b)</p> <p>Illinois Indiana Ohio</p>	<p><b>OSU College of Education</b> ARPS Hall, Room 333 1945 North High Street Columbus, OH 43202</p> <p><b>University of Cincinnati</b> Evaluations Service Center P.O. Box 210002 One Edwards Center 51 W. Corry Street Cincinnati, OH 45221-0105</p> <hr/> <p><i>Disabilities Services:</i> <b>University of Illinois</b> Department of Special Education 139 Children's Research Center, 51 Gerty Drive Champaign, IL 61820</p> <p><u>Subcontract Offices</u></p> <p><i>Chicago</i> <b>Chicago Great Lakes QIC-D Office</b> P.O. Box 436945 Chicago, IL 60643-6945</p> <p><i>Ohio</i> <b>Ohio Head Start Association, Inc.</b> 505 Windsor Park Drive Dayton, OH 45459</p> <p><i>Wisconsin</i> <b>CESA 5</b> 626 E. Slifer Street P.O. Box 564 Portage, WI 53901</p>	<p>David Fernie 614-292-8023 614-292-7695 Fax E-mail[fernie.1@osu.edu]</p> <p>Larry Johnson 513-556-2322 513-556-9311 Fax E-mail[Lawrence.Johnson@uc.edu]</p> <p>Teresa C. Bennett 217-333-3876 217-244-6191 Fax E-mail[t-benne@uiuc.edu]</p> <p>Bea Nichols 773-429-9723 773-429-9724 Fax</p> <p>Barbara Haxton 937-435-1113 937-435-5411 Fax E-mail[haxton@erinet.com]</p> <p>Nola Larson 608-742-8814 608-742-2384 x233 E-mail[larsonn@cesa5.k12.wi.us]</p>
<p><b>Region VI</b></p> <p>(a)</p> <p>Arkansas Louisiana Oklahoma</p> <p>(b)</p> <p>New Mexico Texas</p>	<p><b>(a) Basic Health Management</b> The Lafayette Building 523 South Louisiana, Suite 303 Little Rock, AR 72201</p> <hr/> <p><b>(b) Texas Tech University</b> Institute for Child and Family Studies College of Human Sciences, Room 167 Box 41162 Lubbock, TX 79409-1162</p>	<p>Linda Reasoner 501-370-9155 800-270-2872 501-370-9158 Fax E-mail[lreasoner@bhmqic.com]</p> <p>James Mitchell 806-742-3296 800-527-2802 806-742-0508 Fax E-mail[jmitchellttu@worldnet.att.net]</p>

## QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
<p><b>Region VI (Cont.)</b></p> <p>(a)</p> <p>Arkansas Louisiana Oklahoma</p> <p>(b)</p> <p>New Mexico Texas</p>	<p><i>Disabilities Services:</i> <b>University of Arkansas UAP</b> 501 Woodlane, Suite 210 Little Rock, AR 72201</p>	<p>Karan Burnette 800-831-4827 501-682-9900 501-682-9901 Fax E-mail[BurnetteKaranB@exchange.uams.edu]</p>
<p><b>Region VII</b></p> <p>Iowa Kansas Missouri Nebraska</p>	<p><b>Community Development Institute</b> 5616 Raytown Road Raytown, MO 64133</p> <hr/> <p><i>Disabilities Services:</i> <b>University of Kansas Medical Center</b> KUMC CDU G001 3901 Rainbow Boulevard Kansas City, KS 66160-7339</p>	<p>Donna McDaniel 816-356-5373 816-356-2818 Fax E-mail[Dmcdaniel@CDI7.com]</p> <p>Barbara Lawrence 913-588-5960 913-588-5920 Fax E-mail[blawren1@kumc.edu]</p>
<p><b>Region VIII</b></p> <p>Colorado Montana North Dakota South Dakota Utah Wyoming</p>	<p><b>Community Development Institute</b> 9745 E. Hampden Avenue, Suite 310 Denver, CO 80231</p> <hr/> <p><i>Disabilities Services:</i> <b>Utah State University/HSRC</b> Room 13 6582 Old Main Hill Logan, UT 84322-6582</p> <p><u>Subcontract Offices</u></p> <p><b>PEAK Parent Center, Inc.</b> 6055 Lehman Drive, Suite 101 Colorado Springs, CO 80918</p> <p><b>Parents Let's Unite for Kids (PLUK)</b> 516 N. 32<sup>nd</sup> Street Billings, MT 59101-0298</p>	<p>Deborah Hinrichs 303-369-5959 x19 800-488-CDI8 (2348) 303-369-5801 Fax E-mail[Debhinch@aol.com] or [CDI8QIC@aol.com]</p> <p>Don Barringer 435-797-0988 888-523-5127 435-797-0983 Fax E-mail[nordon@cc.usu.edu]</p> <p>Shirley Swope 719-531-9400 719-531-9452 Fax E-mail[parentadvisor@peakparent.org]</p> <p>Rebecca Johns 406-837-2029 888-288-2029 406-255-0253 Fax E-mail[rjohns@digisys.net]</p>

## QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
<p><b>Region VIII (Cont.)</b></p> <p>Colorado Montana North Dakota South Dakota Utah Wyoming</p>	<p><b>Pathfinder Family Center (Pathfinder PTI)</b> Arrowhead Mall 1600 2<sup>nd</sup> Avenue SW Suite 19 Minot, ND 58701-3459</p> <p><b>South Dakota Parent Connection</b> 3701 West 49<sup>th</sup> Street Suite 200B Sioux Falls, SD 57106</p> <p><b>Utah Parent Center</b> 2290 East 4500 South, Suite 110 Salt Lake City, UT 84117</p> <p><b>Parent Information Center</b> 5 North Lobban Buffalo, WY 82834</p>	<p>Kathryn Erikson 701-837-7500 701-837-7501 TDD 701-837-7548 Fax E-mail[ndpath01@minot.ndak.net]</p> <p>Bev Peterson 605-361-3171 605-361-2928 Fax E-mail[bpeterson@dakota.net]</p> <p>Jennie Gibson 801-763-0722 801-763-0422 Fax</p> <p>Terri Dawson 307-684-2277 307-684-5314 Fax E-mail[tdawson@vcn.com]</p>
<p><b>Region IX</b></p> <p>Arizona California Guam Hawaii Nevada Outer Pacific Area</p>	<p><b>Development Associates, Inc.</b> 1475 North Broadway, Suite 200 Walnut Creek, CA 94596</p> <p><u>Satellite Offices</u></p> <p><i>Arizona</i> <b>Quality Improvement Center at the Arizona State Head Start Association</b> 3910 S. Rural Road, Suite M Tempe, AZ 85282</p> <p><i>California</i> <b>Development Associates, Inc.</b> Quality Improvement Center at the Research Center Pacific Oaks College 65 S. Grand Avenue Pasadena, CA 91103-3592</p>	<p>Kelly M. Crowell, Jr. 925-935-9711 800-666-9711 925-935-0413 Fax E-mail[kcrowell@devassoc.com] Web[www.devassoc.com]</p> <p>Norbert C. Corbeille, Jr. 480-829-6335 480-829-8768 Fax E-mail[ncorbeil@devassoc.com]</p> <p>Jacqueline Davis 800-666-9711 626-792-9720 626-397-1304 Fax E-mail[jdavis@devassoc.com]</p>

## QUALITY IMPROVEMENT CENTERS (QICS)

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Region/States	Agency	Project Director
<p><b>Region IX (Cont.)</b></p> <p>Arizona California Guam Hawaii Nevada Outer Pacific Area</p>	<p><b>Development Associates, Inc.</b> Quality Improvement Center at the Neighborhood House Association 5660 Copley Drive San Diego, CA 92111</p> <p><b>Development Associates, Inc.</b> Quality Improvement Center 4812 N. Fourth Street Fresno, CA 93726</p> <p><b>Development Associates, Inc.</b> 1475 North Broadway, Suite 200 Walnut Creek, CA 94596</p> <hr/> <p><i>Disabilities Services:</i> <b>California Institute of Human Services</b> Sonoma State University 1801 East Cotati Avenue Rohnert Park, CA 94928-3609</p> <p><i>Southern Office</i> <b>Ventura County Superintendent of Schools Office</b> 5189 Verdugo Way Camarillo, CA 93012</p>	<p>Stephen Romano 800-666-9711 619-715-2642 x158 619-715-5830 Fax E-mail[sromano@devassoc.com]</p> <p>Mary Anne Doan 707-664-2957 800-625-7648 707-664-2418 Fax E-mail[maryanne.doan@sonoma.edu]</p> <p>Mary Ann Walker 805-383-9301 800-625-7649 805-383-9304 Fax E-mail[mawalker@vcss.k12.ca.us] Web[http://www.sonoma.edu/cihs/hsds/]</p>
<p><b>Region X</b></p> <p>Alaska Idaho Oregon Washington</p>	<p><b>Early Childhood Training Center</b> Portland State University P.O. Box 1491 1633 SW Park Avenue Portland, OR 97207</p> <p><u>Sub-Grant</u></p> <p><b>Alaska Satellite Support Center</b> Prevention Associates 101 East 9<sup>th</sup> Avenue, Suite 7A Anchorage, AK 99501</p>	<p>Carillon J. Olmsted 503-725-4815 503-725-4838 Fax E-mail[olmstedc@pdx.edu] Web[http://extended.pdx.edu/ectc.htm]</p> <p>Sally Mead 907-272-6925 907-272-6946 Fax E-mail[smead@alaska.net]</p>

## QUALITY IMPROVEMENT CENTERS (QICS)

July 2000

Region/States	Agency	Project Director
<b>Region X (Cont.)</b>  Alaska Idaho Oregon Washington	<i>Disabilities Services:</i> <b>Early Childhood Training Center</b> Portland State University P.O. Box 1491 1633 SW Park Avenue Portland, OR 97207	Carillon J. Olmsted 503-725-4815 503-725-4838 Fax E-mail[olmstedc@pdx.edu] Web[http://extended.pdx.edu/ectc.htm]
<b>Region XI</b>	<b>University of Oklahoma</b> American Indian Institute 555 Constitution Street Suite 237 Norman, OK 73072-7820	Pattie Howell 405-325-4129 405-325-7319 Fax E-mail[powell@ou.edu]
	<i>Disabilities Services:</i> <b>Three Feathers Associates</b> P.O. Box 5508 Norman, OK 73070	Antonia Dobrec 405-360-2919 405-360-3069 Fax E-mail[toni@threefeathersassoc.com]
<b>Region XII</b>	<b>Academy for Educational Development</b> 1825 Connecticut Avenue, NW Washington, DC 20009-5721	Leilani Pennel 800-864-0465 202-884-8729 202-884-8732 Fax E-mail[lpennel@aed.org]
	<i>Disabilities Services:</i> <b>Academy for Educational Development</b> 1825 Connecticut Avenue, NW Washington, DC 20009-5721	Julie Jones 800-864-0465 202-884-8728 202-884-8732 Fax E-mail[jjones@aed.org]

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# Federal Register

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**Thursday,  
May 3, 2001**

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## **Part III**

# **Department of Transportation**

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**Federal Motor Carrier Safety  
Administration**

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**49 CFR Part 365, et al.**

**Revision of Regulations and Application  
Form for Mexican-Domiciled Motor  
Carriers To Operate in U.S. Municipalities  
and Commercial Zones on the U.S.-  
Mexico Border; Proposed Rules**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Parts 368 and 387**

[Docket No. FMCSA-98-3297]

RIN 2126-AA33

**Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers To Operate in U.S. Municipalities and Commercial Zones on the U.S-Mexico Border****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of Proposed Rulemaking (NPRM); request for comments.

**SUMMARY:** The FMCSA proposes to revise its regulations and form that relate to the issuance of Certificates of Registration to any Mexican-domiciled motor carrier (of property) that wants to operate only in U.S. municipalities and commercial zones adjacent to Mexico in Texas, New Mexico, Arizona, or California. The notice also proposes a change to FMCSA's regulations governing financial responsibility of motor carriers to accurately reflect the requirements placed on these Mexican motor carriers. Other carriers that currently hold or may want to apply for a Certificate of Registration would now apply under separate FMCSA regulations. These revisions are part of our implementation of the North American Free Trade Agreement (NAFTA) entry provisions. The proposed changes would ensure that we receive adequate information to assess an applicant's safety program and its ability to comply with U.S. safety standards before it is registered to operate in the U.S. They would also enable us to maintain an accurate census of registered carriers. In addition, we would update the regulations as needed to reflect the transfer of motor carrier regulatory functions from the Federal Highway Administration (FHWA) to FMCSA.

**DATES:** We must receive your comments by July 2, 2001.**ADDRESSES:** You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Docket Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, FAX (202) 493-2251, on-line at <http://dmses.dot.gov/search.htm>. You must include the docket number that appears in the heading of this document in your comment. You can examine and

copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at <http://dmses.dot.gov/search.htm> by typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines in the "Help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or you may print the acknowledgement page that appears after you submit comments on-line.

**FOR FURTHER INFORMATION CONTACT:** Valerie Height, (202) 366-1790, Regulatory Development Division, FMCSA, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** We will consider all comments we receive before the close of business on the comment closing date. We will include comments we receive after the comment closing date in the docket, and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

**Background**

Since 1982, significant limitations have been in place concerning operations by Mexican-domiciled motor carriers in the United States. A moratorium has existed on grants of operating authority under the jurisdiction of the former Interstate Commerce Commission (ICC). Access has been allowed only for certain motor carriers that fell outside the ICC's licensing jurisdiction. These carriers receive Certificates of Registration by filing Form OP-2 under the provisions of what is now 49 CFR part 368. Mexican-domiciled carriers who are eligible for Certificates of Registration are those who operate solely in the municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities (border area), as well as certain private carriers and carriers of exempt goods who operate beyond the border area.

**Current Proposal**

With the implementation of the NAFTA entry provisions, it is expected

that additional Mexican-domiciled motor carriers will seek to operate in the United States, most of them beyond the border area. In deciding how to organize the treatment of all Mexican-domiciled carriers in this changing environment, the FMCSA considered both the advisability of uniform treatment, the familiarity of small businesses with the existing regime, and the need to ensure that all Mexican-domiciled carriers that enter the United States, whether to operate in commercial zones close to the border or beyond, meet our safety standards (*i.e.*, carrier requirements, vehicle requirements, and driver requirements, including but not limited to, the ability of the driver to read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, respond to official inquiries and make entries on reports and records).

We are proposing to continue the use of the Form OP-2 (with substantial changes discussed later) and the issuance of Certificates of Registration only for those carriers whose operations are limited to the border area. The FMCSA believes that there are carriers that are most familiar with the Certificate of Registration and want to continue operating in a limited area; however, we are interested in comments on the need to maintain the Certificate of Registration process. With the proposed changes to the Form OP-2, the only other main distinction between holders of Certificates of Registration and other Mexican-domiciled carriers operating in the United States would concern the type of insurance required to be held (trip versus continuous). This is addressed under the proposed changes to part 387 later in this preamble.

Further we are proposing that all current holders of Certificates of Registration would need to file new forms with the FMCSA. Those carriers who wish to continue operating only in the border area would file the Form OP-2 in accordance with the procedures in part 368. All other holders of Certificates of Registration who want to operate beyond the border area would file Form OP-1(MX) like all other Mexican-domiciled property carriers now seeking the ability to operate under the implementation of the NAFTA entry provisions. We are proposing to include these carriers in revisions to 49 CFR part 365 that are published elsewhere in today's **Federal Register**. That NPRM

also proposes changes to Form OP-1(MX).

For all holders of Certificates of Registration, their Certificates of Registration would remain valid until the FMCSA has acted on an application submitted on the Form OP-2 or Form OP-1(MX). No filing fee is required for current holders of a Certificate of Registration who operate solely in municipalities in the U.S. on the U.S.-Mexico international border or within the commercial zones of such municipalities and are only updating their application information. However, if the current holder of a Certificate of Registration is requesting to expand the territorial scope of its current operations beyond this area, it must submit a new application using Form OP-1(MX), and is subject to the filing fee. That application will be processed as a new application.

The FMCSA proposes to modify parts 368, 387 and Form OP-2 as part of our implementation of the NAFTA entry provisions. The proposed changes will help ensure that we receive adequate information to assess a carrier's safety program and its ability to comply with U.S. safety standards. The changes will also enable us to maintain an accurate census of registered carriers. We are also seeking comments on the proposal to reissue all existing Certificates of Registration and to require current holders of Certificates of Registration to submit additional safety information about their operations. We are proposing revisions to part 368 that relate to the Form OP-2 modifications. In addition, we are updating the regulations as needed to reflect the transfer of motor carrier regulatory functions from FHWA to FMCSA.

Finally, under the ICC Termination Act (Pub. L. 104-88) and the Motor Carrier Safety Improvement Act (Pub. L. 106-159, 113 Stat. 1767)(December 9, 1999) (MCSIA), the FMCSA is directed to develop a new registration system to replace, in part, the current process. We believe that handling all applications by Mexican-domiciled motor carriers of property that want to operate beyond the border area under the same procedures is part of developing this new system of registration that captures all the important information that the FMCSA needs for ensuring safety.

This NPRM is one of three proposals related to carriers operating between Mexico and the U.S. published in today's **Federal Register**. Another NPRM seeks comments on changes to Form OP-1(MX) and 49 CFR part 365. The FMCSA made a conscious decision to propose retaining two different application forms, the OP-2 and the

OP-1(MX). The third NPRM seeks comments on a safety monitoring program for Mexican carriers operating in the U.S. These three proposals are part of a coordinated effort to assess and monitor the safety performance of Mexican carriers before and as they operate in the U.S.

#### **Proposed Revisions to 49 CFR Part 368**

The titles to part 368 and § 368.1 would be revised to more accurately reflect the types of operations covered under part 368. Section 368.1 would be modified to clarify that a vehicle found to be operating beyond the authority granted in the Certificate of Registration may be ordered out of service and would be subject to applicable penalties. This authority was added by section 219 of MCSIA.

Section 368.2 would include only definitions for the terms "interstate transportation" and "Mexican-domiciled motor carrier."

Existing §§ 368.3, 368.4 and 368.5 would be revised and consolidated under a new proposed § 368.3 to clearly describe the application procedures for a Certificate of Registration. Under the revised procedures, an applicant would be required to submit a completed Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, and Form MCS-150—Motor Carrier Identification Report (Application for U.S. DOT Number) as attachments to the OP-2 application form. Applicants should be aware that under a recent revision, Form MCS-150 must be submitted every 2 years, following the initial application for a Certificate of Registration (65 FR 70509, November 24, 2000). The Form OP-2 itself would be extensively revised to require significantly more safety information.

Proposed § 368.4 would include a new requirement for holders of Certificates of Registration to notify FMCSA in writing of any changes in, or corrections to, applicant information in the Form OP-2 as well as any changes in the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, within 45 days of the change. Currently, there is no requirement for filing of updated information after the initial application has been received. The proposed requirement would assist FMCSA in keeping its information on Mexican carriers current. The proposed requirement would not be an annual re-filing. A carrier with no change in status would not need to take any action apart from the biennial submission of Form MCS-150. A carrier who fails to update required information may be subject to

suspension or revocation of its Certificate of Registration.

Proposed § 368.5 would require certain current holders of Certificates of Registration to register using the new Form OP-2 and attached Forms BOC-3 and MCS-150. However, no fee would be required for this registration. Current holders of Certificates of Registration would have a 1-year period to meet this one-time requirement. Current Certificates of Registration would remain valid until the new Form OP-2 has been processed.

Proposed § 368.6 would specify that approval would require evidence in the application that the carrier is currently registered with the Mexican Federal Government and in databases that are available to the FMCSA. This section would also make necessary technical corrections to change references from FHWA to FMCSA and delete outdated references to an "employee review board."

Proposed § 368.7 would require a holder of a Certificate of Registration to carry a copy of it in the vehicle. This is an existing requirement that was previously found in § 368.3.

Proposed § 368.8 would adopt provisions for appealing a decision denying an application and would make necessary terminology changes from FHWA to FMCSA.

#### **Proposed Revisions to 49 CFR Part 387**

Part 387 prescribes the minimum levels of financial responsibility that motor carriers must maintain. We are proposing to revise § 387.7 to make it clear that the longstanding exception that allows Mexican carriers operating in the border area to hold only trip insurance would be limited to those carriers and would not extend to other Mexican-owned or domiciled motor carriers operating under grants of authority issued under part 365.

#### **Proposed Revisions to Form OP-2**

The FMCSA proposes extensive revisions to the Form OP-2. The FMCSA proposes to add a new section to solicit additional information from the applicant to assist in identifying the nature of the applicant's existing operations in the U.S., if any, to help identify any previously submitted Form MCS-150, to verify the applicant's domicile in Mexico, and to confirm that the applicant holds a valid registration from the Mexican Federal Government. The question regarding domicile would be moved to the proposed new section "Additional Applicant Information." However, the proposed question regarding whether the applicant holds a valid registration from the Mexican

Federal Government is new. It is proposed to ensure that only a carrier who has met Mexican Federal Government standards and regulations will hold a U.S. Certificate of Registration.

Under section 219 of MCSIA, a foreign carrier engaging in transportation in the United States without proper authorization may be disqualified from operating commercial vehicles in the United States. Accordingly, applicants would be asked to disclose whether any affiliated entities have been disqualified.

The proposed form would require an applicant to identify the type(s) of operations requested. The FMCSA would make clear that use of the Form OP-2 and issuance of Certificates of Registration would be limited to carriers that would operate solely in U.S. municipalities along the United States-Mexico border and commercial zones of such municipalities.

Additional information would be requested about insurance held by the applicant.

FMCSA proposes to add a new section that would require the applicant to certify that it has a system in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, drug and alcohol testing, vehicle condition, accident monitoring, and hazardous materials transportation. In addition, FMCSA proposes that the applicant provide narrative responses describing how it will monitor hours of service, how it will maintain an accident register and what is its monitoring program. This part would also require that the applicant provide information including the names of individuals in charge of the applicant's safety program; locations where Federal Motor Carrier Safety Regulations (FMCSRs) are maintained, names of the individuals in charge of drug and alcohol testing (if applicable), and the drug testing laboratory used (if applicable). The FMCSA would evaluate only those safety certifications that apply to the applicant. For example, due to the weight of the vehicles they operate, certain applicants would not be subject to the drug and alcohol testing and CDL requirements in 49 CFR parts 382 and 383, respectively, and would not be required to certify compliance with those regulations. The certification information would enable FMCSA to evaluate, upon initial application, the safety compliance program of the applicant.

The proposed form would require household goods applicants to affirm a willingness to offer arbitration as a

means of settling loss and damage claims in accord with U.S. law.

The FMCSA proposes to add more extensive and specific certifications regarding compliance, including compliance with Department of Labor regulations. Other parts of this certification would require the applicant to affirm its willingness and ability to provide the proposed service and to comply with all pertinent statutory and regulatory requirements. It would remind the applicant of statutory and regulatory responsibilities, which if neglected or violated, might subject the applicant to disciplinary or corrective action by FMCSA. Another certification, derived from the existing Form OP-2 application, would highlight the need to comply with applicable provisions of the U.S. Internal Revenue Code relating to payment of the Heavy Vehicle Use Tax. An additional certification would ensure that the applicant understands that the agents for service of process designated on the Form BOC-3 would also be deemed the applicant's representative in the United States for service of judicial process and notices under 49 U.S.C. 13304 and administrative notices under 49 U.S.C. 13303. Finally, the applicant would affirm that it is not currently disqualified from operating a commercial motor vehicle in the United States under the provisions of MCSIA.

The FMCSA will conduct workshops and also provide written material, such as handbooks, to help the Mexican applicants understand the various requirements and the proper way to complete the applications.

#### Request for Comments

The FMCSA solicits comments from the public on all aspects of this proposal, specifically the proposals to:

(1) Require new applicants for, and current holders of, Certificates of Registration to submit the revised Form OP-2;

(2) Require new applicants and current holders of Certificates of Registration to attach to the revised Form OP-2 a newly completed Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders;

(3) Require new applicants and current holders of Certificates of Registration to attach to the revised Form OP-2 a newly completed Form MCS-150—Motor Carrier Identification Report (Application for U.S. DOT Number); and

(4) Establish for all holders of Certificates of Registration a requirement for prompt updates concerning carrier operations, current

addresses, and Form BOC-3 agents for service of process information.

The FMCSA further solicits comments on the desirability of combining Form OP-2 and Form OP-1(MX).

#### Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures*

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has been reviewed by the Office of Management and Budget. It is anticipated that the economic impact of the proposals in this rulemaking would be minimal. The new or revised Form OP-2, while intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexican carriers, would impose little additional expense upon public agencies or the motoring public.

Nevertheless, the subject of safe operations by Mexican carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. A copy of the Regulatory Evaluation prepared for the three companion NPRMs published in today's **Federal Register** is in the docket.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96-354, 5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104-121), requires federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The FMCSA is issuing this NPRM because of the planned implementation of the NAFTA's motor carrier access provisions. A NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow any Mexican carriers greater access to the United States.

Mexican carriers would be subject to the same safety regulations as domestic carriers when operating in the U.S. The FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. We do not currently have this type of information on Mexican carriers. We do not have abundant information on their safety record, OOS rates, or other overall safety. Thus, a key component of this proposal is the requirement that holders of Certificates of Registration must complete a Form MCS-150 biennially, and notify the FMCSA of corrections to or changes in applicant information on the Form OP-2 as well as changes in the Form BOC-3 within 45 days of the change. This would enable the FMCSA to better monitor these carriers, and to quickly determine whether their safety or OOS rate changes.

The objective of this proposal is to help determine the capability of certain Mexican carriers to operate safely in the United States. The proposal describes what additional information Mexican carriers would have to submit.

This proposal would primarily affect Mexican-domiciled small motor carriers who wish to wish to operate solely within U.S. municipalities and commercial zones on the U.S.-Mexico border. The amount of information these carriers would have to supply to the FMCSA has been increased, and we estimate that it would take 4 hours to complete each form after compiling the necessary information.

The number of carriers subject to the proposals in this rule and the two companion rules published elsewhere in today's **Federal Register** is the sum of those currently operating within the United States and those who apply for authority in the future. First, we estimated the number of Mexican carriers already operating within the United States. Most of these carriers currently have operating authority and would merely be required to re-file using the revised forms. To continue operations solely within the border area as proposed in this rule, carriers would re-file the revised Form OP-2. To take advantage of NAFTA's liberalized access provisions, these carriers would re-file using the revised Form OP-1(MX) (see the rulemaking *Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and*

*Commercial Zones on the U.S.-Mexico Border* published elsewhere in today's **Federal Register**.)

The FMCSA's Office of Data Analysis and Information Systems developed a file comprised of Mexican carriers that have recently operated in the United States. As of January 2001, this file contained 11,787 Mexican motor carriers (2.3% of the 500,000 carriers listed in the FMCSA Motor Carrier Management Information System (MCMIS) census file). It includes Mexican carriers with operating authority, carriers who have a DOT number but not authority, carriers with both a DOT number and operating authority, and other carriers that the Agency believes are operating in the United States with neither operating authority nor a DOT number. These latter carriers are those who have been subject to a roadside inspection in the United States at some point in the last 3 years.

It has been suggested that many of these Mexican carriers no longer operate in the United States. The FMCSA calendar year 2000 MCMIS inspection and accident database identifies approximately 4,500 Mexican motor carriers. The FMCSA also verified that approximately 10,000 Mexican carriers currently have operating authority. Therefore, we constructed three different baseline scenarios for the number of Mexican carriers currently operating in the United States, a low (4,500), medium (9,500) and high (11,787) scenario.

The second step in figuring out the total number of Mexican carriers subject to these proposals is to determine how many *new* carriers will request authority under the proposals. Approximately 1,600 Mexican carriers have filed a Form OP-2 annually over the last several years (and a similar number have been granted). Only 190 OP-1(MX) applications are pending, as Mexican carriers stopped filing these forms when it became clear that these forms were not being processed. For the high estimate, the FMCSA assumes that this number will double to 3,200 in the first year after this proposal becomes a final rule, and then fall to 2,500 applicants per year for the following 9 years. As in the case of domestic carriers, the annual applicant number may include carriers that go out of business and subsequently re-enter the market. For the lower and middle estimates, we estimate that there will be 500 new applicants the first year, and then 200 per year thereafter. This translates into approximately 15,000 applicants in the first year for the high estimate, 10,000 for the medium estimate, and 5,000 for the low estimate.

As was noted above, the FMCSA estimates that more than 500,000 motor carriers are currently operating in the United States.

We estimate that it takes 4 hours to complete each form. As was noted above, the vast majority of Mexican motor carriers currently operating in the United States have OP-2 authority. We estimate that half of all these carriers will switch to OP-1(MX) authority, while the other half will continue operating within U.S. municipalities and commercial zones on the U.S.—Mexico border. We assume that the new carriers will be more likely than current carriers to apply for OP-2 authority, since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating in U.S. municipalities and commercial zones on the U.S.—Mexico border under OP-2 authority. While some new applicants will also want to take advantage of the opportunity to operate throughout the United States, many will not have the financial and administrative wherewithal to benefit from the enlarged operations allowed. Accordingly, the FMCSA estimates that three quarters (75%) of all new applicants will apply for OP-2 authority, with one quarter (25%) requesting OP-1(MX) authority. Nonetheless, changing this value would have no impact on the analysis since the costs of completing the two forms are identical.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small. For Mexican carriers with any trucks, the mean number of trucks was 5.1. That mean was pulled up by a small number of large carriers. Seventy-five (75) percent of Mexican carriers had three or fewer trucks, and the 95th percentile carrier had only 15 trucks.

These proposals should not have any impact on small U.S. based motor carriers.

The regulatory evaluation includes a description of the recordkeeping and reporting requirements of these proposals. Under the revised procedures, an applicant would be required to submit a completed Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, and Form MCS-150—Motor Carrier Identification Report (Application for U.S. DOT Number) as attachments to the OP-2 or OP-1(MX) application form. In addition, Mexican carriers would update the FMCSA of certain information changes.

The Form MCS-150 is approximately two pages long. In addition to requiring basic identifying information, it requires

that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The Form BOC-3 merely requires the name, address and other information for a domestic agent to be contacted if the FMCSA needs to contact the motor carrier. The proposals also include other modest changes in the OP-1(MX) and OP-2 forms.

The FMCSA did not propose any different requirements or timetables for small entities. As noted above, we do not believe these requirements would be onerous, with the carriers required to spend 4 hours to complete the relevant forms. Mexican carriers would only be required to complete forms that most domestic U.S. carriers already are required to submit.

The FMCSA would not consolidate or simplify the compliance and reporting requirements for small carriers. As noted above, small U.S. carriers already have to comply with the similar paperwork requirements of part 365. Given the compelling interest in guaranteeing the safety of Mexican carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were proposed.

The FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexican carriers operating in the U.S. would be small; exempting them would have the same impact as not issuing these proposals. Therefore, FMCSA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes proposed in this rulemaking would not have an impact of \$100 million or more in any one year.

#### *Executive Order 12988 (Civil Justice Reform)*

This action 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.

#### *Executive Order 13045 (Protection of Children)*

We have analyzed this action 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 safety that may disproportionately affect children.

#### *Executive Order 12630 (Taking of Private Property)*

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

#### *Executive Order 13132 (Federalism Assessment)*

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States. Comments on this conclusion are welcome and should be submitted to the docket.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### *Executive Order 13166 (Limited English Proficiency)*

Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the application instructions incorporated within the Form OP-2 application. We believe that

this action complies with the principles enunciated in the Executive Order.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (49 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, sponsor or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB No. 2126-0019.

This proposal will not have any impact on information collection OMB No. 2126-0015, entitled, "Designation of Agents, Motor Carriers, Brokers and Freight Forwarders." This currently approved collection covers the Form BOC-3. The current estimates of annual filings include the minimal additional Mexican motor carriers who would be filing updated information on the Form BOC-3.

The OMB has approved the information collection requirements on Form OP-2 under the control number 2126-0019, titled "Application for Certificate of Registration for Foreign Motor Carrier and Foreign Motor Private Carriers Under 49 U.S.C. 13902(c)." This includes approval for "Form OP-2—Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902(c)", approved for 2,000 burden hours (1,000 respondents per year @ 2 hours each to complete the form). The FMCSA proposes to change the form title to Form OP-2—Application for Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902."

The Regulatory Evaluation for this proposal uses a numerical range to estimate the number of Mexican carriers anticipated to request OP-2 or OP-1(MX) authority under this proposal and a companion rule published elsewhere in today's **Federal Register** (see NPRM titled *Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*). We estimate the number of applicants to range between a low estimate of 5,000, a medium estimate of 10,000 or a high estimate of 15,000 applicants. Please reference the Regulatory Flexibility Act analysis in this document or the Regulatory Evaluation for this rulemaking for a detailed discussion on how these estimates were derived. This analysis is based upon the high estimate (15,000) since that number enables the FMCSA to assess the maximum

information collection burden to respondents.

The FMCSA estimates in the regulatory evaluation that 11,787 Mexican carriers are currently operating in the United States and are categorized as follows: Mexican carriers operating pursuant to OP-2 Certificates of Registration; Mexican carriers that previously filed an OP-1(MX) application; and Mexican carriers assigned DOT numbers and no OP authority or operating without appropriate authorization. The Agency estimates that half of the 11,787 Mexican carriers (or 5,894) known to be now operating in the U.S. will switch to OP-1(MX) authority, while the other half will continue operating pursuant to OP-2 authority.

Based upon the high estimate scenario, the FMCSA anticipates 3,200 first-time applicants for either OP-2 or OP-1(MX) authority in the first year that this proposal becomes a final rule, and 2,500 applicants annually in subsequent years. The agency estimates that 75 percent of the first year new applicants (2,400) would file a Form OP-2; and 75 percent of the subsequent-year new applicants (1,875 annually) would file a Form OP-2.

We assume that first-time applicants will be more likely than current carriers to apply for OP-2 authority, since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating in the border commercial zones pursuant to OP-2 authority. While some new applicants may also want to take advantage of the opportunity to operate throughout the United States, many will not have the financial and administrative wherewithal or resources to benefit from the enlarged operations allowed.

This proposal would also require Mexican carriers to submit corrections to or changes in the OP-2 applicant information within 45 days of the change. For changes and updates, the agency anticipates that in the first year, 2,765 carriers would file updates or changes to the Form OP-2. In subsequent years, approximately 625 carriers would file updates or changes to the Form OP-2. The FMCSA estimates that it would take 30 minutes to fill out a form to request changes.

Therefore, the FMCSA estimates an adjusted burden hour calculation for the Form OP-2 as follows:

*Mexican carrier re-filings or initial filings of the Form OP-2:*  
(in first year, known carriers): 5,894 x 4 hrs per form = 23,576 hrs  
(in first year, first-time applicants):

2,400 x 4 hrs per form = 9,600 hrs  
(in subsequent-years, first-time applicants): 1,875 x 4 hrs per form = 7,500 hrs

Updates/Changes:

(all in first year): 2,765 x 30 min. per form = 1,383 hrs  
(all in subsequent years): 625 x 30 min. per form = 313 hrs

Therefore, the total burden hours for this information collection in the first year is 34,559 [(23,576 + 9,600 = 33,176) + 1,383]; and 7,813 in subsequent years [7,500 + 313].

*OMB Control Number:* 2126-0019.

*Title:* Application for Certificate of Registration for Foreign Motor Carrier and Foreign Motor Private Carriers Under U.S.C. 13902.

*Respondents:* Foreign motor carriers.

*Estimated Annual Hour Burden for this NPRM:* Year 1 = 34,559 hours; Subsequent years = 7,813 hours.

#### *National Environmental Policy*

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment. An environmental impact statement is, therefore, not required.

#### **List of Subjects**

##### *49 CFR Part 368*

Administrative practice and procedure, Highways and roads, Insurance, Motor Carriers of property.

##### *49 CFR Part 387*

Freight forwarders, Highways and roads, Motor carriers, Surety bonds.

For the reasons set forth in the preamble, the FMCSA proposes to amend 49 CFR parts 368 and 387 as follows:

1. Revise part 368 to read as follows:

#### **PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES**

Sec.

368.1 Certificate of registration.

368.2 Definitions.

368.3 Applying for a certificate of registration.

368.4 Requirement to notify of change in applicant information.

368.5 Re-registration of certain carriers holding certificates of registration.

368.6 Review of the application.

368.7 Requirement to carry certificate of registration in the vehicle.

368.8 Appeals.

Appendix A to Part 368—Form OP-2—Application for Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902

**Authority:** 49 U.S.C. 13301 and 13902; Pub. L. 106-159, 113 Stat. 1748; and 49 CFR 1.73.

#### **§ 368.1 Certificate of registration.**

(a) A Mexican-domiciled motor carrier must apply to the FMCSA and receive a Certificate of Registration to provide interstate transportation in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A).

(b) A Certificate of Registration permits only interstate transportation of property in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. A holder of a Certificate of Registration who operates a vehicle beyond this area is subject to applicable penalties and the vehicle may be placed out of service.

#### **§ 368.2 Definitions.**

*Interstate transportation* means transportation described at 49 U.S.C. 13501, and transportation in the United States otherwise exempt from the Secretary's jurisdiction under 49 U.S.C. 13506(b)(1).

*Mexican-domiciled motor carrier* means a motor carrier of property whose principal place of business is located in Mexico.

#### **§ 368.3 Applying for a certificate of registration.**

(a) If you wish to obtain a Certificate of Registration under this part, you must submit an application that consists of: Form OP-2—Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902, Form MCS-150—Motor Carrier Identification Report, and Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders.

(b) The FMCSA will only process your application for a Certificate of Registration if it meets the following conditions:

(1) The application must be completed in English.

(2) The information supplied must be accurate and complete in accordance with the instructions to the Form OP-2, Form MCS-150 and Form BOC-3.

(3) The application must include all the required supporting documents and

applicable certifications set forth in the instructions to the Form OP-2, Form MCS-150 and Form BOC-3.

(4) The application must include the filing fee payable to the FMCSA in the amount set forth in 49 CFR § 360.3(f)(1); and

(5) The application must be signed by the applicant.

(c) If you fail to furnish the complete application as described under paragraph (b) of this section your application may be rejected.

(d) If you submit false information under this section, you will be subject to applicable Federal penalties.

(e) You must submit the application to the address provided in the instructions to the Form OP-2.

(f) You may obtain the application described in paragraph (a) of this section from any FMCSA Division Office or download it from the FMCSA web site at: <http://www.fmcsa.dot.gov/factsfigs/formspubs.htm>. Form OP-2 is also published in Appendix A to this part.

**§ 368.4 Requirement to notify of change in applicant information.**

(a) You must notify the FMCSA of any changes or corrections to the information in Parts I, IA or II submitted on the Form OP-2 or the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during the application process or while you have a Certificate of Registration. You must notify the FMCSA in writing within 45 days of the change or correction.

(b) If you fail to comply with paragraph (a) of this section, the FMCSA may suspend or revoke the Certificate of Registration until you meet those requirements.

**§ 368.5 Re-registration of certain carriers holding certificates of registration.**

(a) Each holder of a Certificate of Registration that permits operations only in municipalities in the United States along the United States-Mexico international border or in commercial zones of such municipalities issued prior to *[Insert date of publication of final rule in the Federal Register.]* who wishes to continue solely in those operations must submit an application according to procedures established under § 368.3 of this part, except the filing fee in paragraph (b)(4) of that section is waived. You must file your application by *[Insert date 1 year after date of publication of final rule in the Federal Register.]*

(b) The FMCSA may suspend the Certificate of Registration of any applicable holder that fails to comply with the procedures set forth in this section.

(c) Certificates of Registration issued prior to *[Insert date of publication of final rule in the Federal Register.]* would remain valid until the OP-2 application filed according to paragraph (a) of this section is processed.

**§ 368.6 Review of the application.**

(a) The Federal Motor Carrier Safety Administration will review the application for correctness, completeness, and adequacy of information. Minor errors will be corrected without notice to the applicant. Incomplete applications will be rejected.

(b) Compliance will be determined solely on the basis of the application, required attachments, and the safety fitness of the applicant as determined by the information supplied in the application, including evidence that the applicant, its vehicles and drivers are registered with the Federal Government

of Mexico and included in Mexican electronic databases that are available for inspection by the FMCSA.

(c) If the applicant does not require or is not eligible for a Certificate of Registration, the FMCSA will deny the application and notify the applicant.

(d) If the FMCSA grants the application, it will issue a Certificate of Registration.

(1) The Certificate of Registration will permit operations only in U.S. municipalities and commercial zones adjacent to the United States-Mexico border.

(2) The Certificate of Registration will be conditioned upon completion, to the satisfaction of FMCSA, of a safety review under § 385.215 of this title within 18 months of the date of the Certificate.

(e) Notice of the authority sought will not be published in either the **Federal Register** or the FMCSA Register. Protests or comments will not be allowed. There will be no oral hearings.

**§ 368.7 Requirement to carry certificate of registration in the vehicle.**

A holder of a Certificate of Registration must maintain a copy of the Certificate of Registration in any vehicle providing transportation service within the scope of the Certificate.

**§ 368.8 Appeals.**

An applicant has the right to appeal denial of the application. The appeal must be in writing and specify in detail why the agency's decision to deny the application was wrong. The appeal must be filed with the Director, Data Analysis and Information Systems within 20 days of the date of the letter denying the application. The decision of the Director will be the final agency order.

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**Appendix A to Part 368—Form OP-2—Application for Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902**

U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Form Approved  
OMB No. 2126-0019  
Expires on 00/00/00

**Instructions for completing Form OP-2 Application for Mexican Certificate  
of Registration for Foreign Motor Carriers and Foreign Private Carriers  
Under 49 U.S.C. 13902**

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for your records. These instructions will assist you in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and **may** result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

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**PURPOSE OF THIS APPLICATION FORM:**

This Form OP-2 is required to be filed by foreign (Mexican) motor carriers and motor private carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities.

This form is also required to be utilized by Mexican for-hire and private motor carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued before **[Insert date of publication of final rule in Federal Register]** with a territorial scope of operations limited to municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities and are required to supplement the information in their original applications by completing and re-filing the revised Form OP-2.

This form should not be used for registration by Mexican for-hire and private motor carriers to perform transportation in the United States beyond the commercial zones of municipalities on the international border, by United States based enterprises, owned or controlled by Mexican nationals, providing truck services for the transportation of international cargo within the United States as permitted under provisions of the North American Free Trade Agreement (NAFTA), nor by carriers previously issued a Certificate of Registration that authorized operations beyond border municipalities and their respective commercial zones. To register under NAFTA, or to reregister operations beyond commercial zones, you should instead complete and file Form OP-1(MX). To apply for authority to establish U.S.-based enterprises, owned or controlled by Mexican nationals, providing: (1) truck services for the transportation of international cargo within the United States, or (2) point-to-point bus services in the United States, in accordance with NAFTA provisions, complete and file Form OP-1 or OP-1(P), respectively.

**WHAT TO FILE:**

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-2, Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers, with all necessary attachments and statements.
2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-2, and applicant's address, including the street address, the city, state, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person(s) designated as the agent(s) for service of judicial process and notices under 49 U.S.C. 13304 and administrative notices under 49 U.S.C. 13303. A person must be designated in each state in which the applicant may operate.
3. A completed and signed Form MCS-150 Motor Carrier Identification Report.
4. Internal Revenue Service Form 2290, Schedule I, which shows payment of Federal taxes for highway use by heavy vehicles, applicable under 26 U.S.C. § 4481, or a letter, signed by an authorized company official stating why applicant is not subject to this tax requirement. The form should be a copy of the most recent form filed with the IRS.
5. A filing fee of \$300 for **each** type of registration requested, payable in U.S. dollars to the Federal Motor Carrier Safety Administration, by means of a check, money order or an approved credit card. Cash is not accepted.

**GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:**

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."
- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.
- The application must be completed in English.
- The completed certification statements and oath must be signed by the applicant only, and not by the applicant's attorney or other applicant representative. The same person must sign the oath and certifications.

- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to any question, please use separate sheets of paper. Identify continuation sheets by using headings that show both the number of the page of the revised OP-2 form or Attachment page on which the question or response appears and the item number of the question.

#### ADDITIONAL ASSISTANCE

##### OP-2

Additional information on obtaining registration or monitoring the status of your application is available through the Automated Response Capability (ARC) telephone system. After dialing (202) 358-7000, press 1, then request the appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas:

INFORMATION REQUESTED	MENU NUMBER
Status of your application (NOTE: Use the assigned docket number to expedite your request. The FMCSA will notify you of the docket number by letter.	1
Status of insurance and process agent filings	2
Assistance in filing your application	3
If you require information that is not available in the automated response system, the ARC will guide you to an appropriate FMCSA staff member who will be able to assist you in other areas.	

#### U.S. DOT REGISTRATION AND SAFETY RATINGS

To obtain information on registering with U.S. DOT (filing Form MCS-150) call: (800) 832-5660 (Automated Response System)

For information concerning a carrier's assigned safety rating, call: (800) 832-5660

## U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities you intend to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or contact the U.S. DOT, Research and Special Programs Administration at 1-800-467-4922.

To obtain information about DOT hazardous materials transportation registration requirements, contact the U.S. DOT, Research and Special Programs Administration at 1-800-467-4922.

### SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

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#### **SECTION I - APPLICANT INFORMATION**

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##### **APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME.**

The applicant's name should be your full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Trucking, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time you write it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

**BUSINESS ADDRESS/MAILING ADDRESS.** The business address is the physical location of the business in Mexico. Example: El Camino Real #756, Guadalajara, Jalisco, Mexico. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

**REPRESENTATIVE.** If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application.

6. **U.S. DOT NUMBER.** Applicants are required to obtain a US DOT number from the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT number should provide it; applicants that have not previously obtained a U.S. DOT number should refer to the U.S. DOT information sources under the "Additional Assistance" part of these Instructions. **NOTE:** a completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

**FORM OF BUSINESS.** A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

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**SECTION IA – ADDITIONAL APPLICANT INFORMATION**

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All applicants must answer each question in this section. Applicants must have been issued a Registration by the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT) before a Certificate of Registration will be issued. Applicant's registration must be contained in an SCT database. If the applicant is in the process of obtaining its SCT registration, indicate the date the application was filed. Applicant must supplement the information once the number has been issued prior to being issued its CR. If an applicant currently holds a CR and is supplementing the information contained in its original application, this information is also required. An existing CR will be suspended if the SCT registration number and information is not supplied.

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**SECTION II - OWNERSHIP, CONTROL AND AFFILIATIONS INFORMATION**

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All applicants must disclose pertinent information concerning the persons who own or control the applicant, and concerning any relationships or

**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 or any other law.

**SECTION III – TYPE(S) OF REGISTRATION REQUESTED**

Check the appropriate box(es) for the type(s) of registration you are requesting. For purposes of this application, for-hire motor carrier means an entity that is transporting the goods of others, and motor private carrier means an entity (person or company) that is transporting its own goods, including an entity that is performing such operations under an agreement or contract with a U.S. shipper or other business.

If you are reregistering you do not need to complete this section. Please refer to the following for a description of the commercial zones:

**COMMERCIAL ZONES  
UNITED STATES/MEXICO PORTS OF ENTRY**

Commercial zones, unless otherwise defined, are determined through a formula dependant upon the population of the municipality (49 CFR 372, Subpart B). The commercial zones for all United States/Mexico ports of entry allow for transportation from the corporate limits of the municipality as follows:

	<u>Location</u>	<u>Population</u>	<u>Commercial Zone</u>
<u>Limits</u>			
<u>Arizona</u>			
	Douglas	13,270	4 miles
	Lukeville	65	3 miles
	Naco	1,000	3 miles
	Nogales	19,745	4 miles
	San Luis	6,405	4 miles
	Sasabe	37	3 miles
<u>California</u>			
	Andrade	20	3 miles
	Calexico	22,246	4 miles
	Otay Mesa	Unknown	20 miles
	San Diego	1,110,500	20 miles

## SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM

	<u>Location</u>	<u>Population</u>	<u>Commercial Zone</u>
<u>Limits</u>			
	Tecate	212	20 miles**
<u>New Mexico</u>			
	Columbus	N/A	+++
	Santa Teresa	Unknown	+++
<u>Texas</u>			
	Brownsville	266,600+	*
	Del Rio	30,705	6 miles
	Eagle Pass	20,651	4 miles
	El Paso	592,400	15 miles
	Fabens	1,599	3 miles
	Hidalgo	384,800++	*
	Laredo	126,300	8 miles
	Presidio	3,072	4 miles
	Progreso	1,951	*
	Rio Grande City	9,891	*
	Roma	8,059	*

**\*Cameron, Hidalgo, Starr and Willacy Counties, Texas**

Transportation within a zone comprised of Cameron, Hidalgo, Starr and Willacy Counties, Texas, by motor carriers of property, in interstate or foreign commerce, not under common control, management, or arrangement for shipments to or from points beyond such zone, is partially exempt from regulation under 49 U.S. Code §13506.

To the extent that commercial zones of municipalities within the above four counties extend beyond the boundaries of such commercial zones, they shall be considered to be part of the zone and partially exempt from regulation under 49 U.S. Code §13506.

\*\*Considered a part of the San Diego commercial zone.

+Population based upon Brownsville-Harlingen metropolitan area.

++Population based upon McAllen-Edinburg-Mission metropolitan area.

+++The area comprised of Dona Ana and Luna counties.

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**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

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***SECTION IV - INSURANCE INFORMATION***

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Check the appropriate line that describes the type of business you will be conducting.

If you are applying for motor property carrier registration and you operate vehicles with a gross vehicle weight rating of 10,000 pounds or more and haul only non-hazardous materials, you are required to maintain \$750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require \$1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require \$5 million minimum liability coverage. If you operate only vehicles with a gross vehicle weight rating under 10,000 pounds, you must maintain \$300,000 minimum liability coverage. If you operate only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, you must maintain \$5 million minimum liability coverage

Applicant does not have to submit evidence of insurance with the application, but if the registration is granted, applicant must carry on the vehicle when crossing the border a current Department of Transportation Form MCS-90 and evidence of insurance, which shows either trip insurance coverage, or evidence of continuing insurance coverage.

The FMCSA does not furnish copies of insurance forms. You must contact your insurance company to obtain all required insurance forms.

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***SECTION V - SAFETY CERTIFICATIONS***

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Applicants for motor carrier registration must complete the safety certifications. You should check the "YES" response only if you can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

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**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

If you are exempt from the U.S. DOT safety fitness regulations because you operate only vehicles with a gross vehicle weight rating under 10,001 pounds, and you will not transport any hazardous materials, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable State and local laws relating to the safe operation of commercial motor vehicles.

Applicants should complete all applicable attachment pages and, if necessary to complete the responses, attach additional pages referring to the appropriate Sections and items in the application or Attachment pages. If you are exempt from the U.S. DOT safety fitness regulations, you must complete all relevant attachment pages to demonstrate your willingness and ability to comply with general operational safety fitness guidelines and applicable State and local laws.

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**SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS**

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For-hire carriers of property operating entirely in commercial zone areas that intend to transport household goods as defined in 49 U.S.C. 13102 (10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

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**SECTION VII - COMPLIANCE CERTIFICATIONS**

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All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements including those administered by the Department of Labor and certain state agencies, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive filings and notices under 49 U.S.C. 13303.

Applicants are required to certify to their willingness and ability to comply with regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations, as well as all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or a state agency operating a plan pursuant to section 18 of the Occupational Safety Health Act of 1970 ("OSHA state plan agency").

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**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

Applicants will also be required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA and the requirements administered by the U.S. Department of Labor.

The DOT considers compliance with Department of Labor and OSHA state plan agency requirements to be extremely important. An applicant's certification of its willingness to comply with DOL and OSHA requirements reflects an overall intention to comply with U.S. laws. While registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such requirements, such certification is required to avoid notification to DOL of an applicant's unwillingness to comply with these requirements.

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**SECTION VIII - APPLICANT'S OATH**

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The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath. In the case of companies, an authorized employee in the business structure (i.e., an officer, director, or other employee having access to the information necessary to make the oath or affirmation) may sign.

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**LEGAL PROCESS AGENTS**

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if you will operate only in commercial zones along the U.S./Mexico border in CA and AZ, you must designate an agent in each of those states; if you will operate in only one state, an agent must be designated for that state only. Process agents who will accept legal filings on applicant's behalf are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application.

**STATE NOTIFICATION**

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every state in which the carrier will operate to obtain information regarding various state rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other state regulations and procedures. Begin this process by selecting the state of California, New Mexico or Texas as your base state for payment of your Single State Registration fees. See 49 CFR Part 367. You should select the state in

**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM** which you will operate the largest number of motor vehicles in the next year and contact that state's transportation agency (the California Public Utilities Commission, in San Francisco; the New Mexico State Corporation Commission, in Santa Fe; or the Texas Department of Transportation, in Austin), to obtain registration forms and instructions. Arizona does not participate in the Single State Registration System. If the majority of your transportation is in AZ, but you also operate in another state, you will need to contact a state other than AZ for this registration. Failure to accomplish this state registration could subject you to substantial state penalties as well as the potential loss of your registration. Please refer to the additional information provided in your application packet for further information.

**MAILING INSTRUCTIONS:**

To file for registration you must submit an **original and one copy** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for your own records.

Mailing addresses for applications:

**ALL DOCUMENTS WITH FEES ATTACHED  
(REGULAR MAIL ONLY):**  
Federal Motor Carrier Safety Administration  
P. O. Box 100147  
Atlanta, GA 30384-0147

**FOR EXPRESS MAIL ONLY:**  
NationsBank Wholesale Lockbox 100147  
6000 Feldwood Road  
3rd Floor East  
College Park, GA 30349

**FOR CREDIT CARD USERS ONLY:**  
Federal Motor Carrier Safety Administration  
Suite 600, 400 Virginia Avenue, SW.  
Washington, DC 20024

**FOR CURRENT CERTIFICATE OF REGISTRATION HOLDERS SUBMITTING UPDATED INFORMATION ONLY:**  
Federal Motor Carrier Safety Administration  
Suite 600, 400 Virginia Avenue, SW.  
Washington, DC 20024

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**FMCSA FILING FEES**

Fee Schedule effective January 1996 Fee for Registration . . . \$300.00
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**FEE POLICY**

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a private motor carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the preceding paragraph titled **MAILING INSTRUCTIONS**.
- After an application is received, the filing fee is non-refundable.
- The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. The application will not be processed until the fee is paid in full.
- **NO FILING FEE IS REQUIRED FOR CURRENT CERTIFICATE OF REGISTRATION HOLDERS WHO OPERATE ONLY IN MUNICIPALITIES IN THE U.S. ON THE U.S.-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES AND ARE ONLY UPDATING THEIR APPLICATION INFORMATION.** However, if applicant is expanding the territorial scope of its current operations beyond this area, it must submit a new application using Form OP-1(MX), and a \$300 filing fee. The application will be processed as a new application.

**FILING FEE INFORMATION**

All applicants must submit a filing fee of \$300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in **Section III** of the Form OP-2. Fees for multiple authorities may be combined in a single payment.

Total number of boxes  
checked in **Section III** \_\_\_\_\_ x filing fee \$ \_\_\_\_\_ = \$ \_\_\_\_\_

INDICATE AMOUNT \$ \_\_\_\_\_ AND METHOD OF PAYMENT:

CHECK OR  MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER  
SAFETY ADMINISTRATION**

VISA  MASTERCARD

Credit Card Number \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Form Approved  
OMB No. 2126-0019  
Expires 00/00/00

**FORM – OP-2**  
**Application for Mexican Certificate of Registration for Foreign Motor Carriers  
and Foreign Private Carriers Under 49 U.S.C. 13902**

This application is for (1) all Mexican for-hire motor carriers and private motor carriers who wish to register to transport property only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities; and for Mexican for-hire and private motor carriers that hold a Certificate of Registration from the former Interstate Commerce Commission, the Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration issued Insert date of publication of final rule in Federal Register authorizing operations in the border commercial zones and that are required to file the revised Form OP-2.

<b>For FMCSA Use Only</b>	
Docket No. MX	_____
DOT No.	_____
Filed	_____
Fee No.	_____

**PAPERWORK BURDEN**

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. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

**SECTION I - APPLICANT INFORMATION**

<b>LEGAL BUSINESS NAME:</b> _____			
<b>DOING BUSINESS AS NAME:</b> _____			
<b>BUSINESS ADDRESS:</b> (Actual Street Address):			
_____			
(Street Name and Number)			
(City)	(State)	(Country)	(Zip Code)
( )		( )	
(Telephone Number)		(Fax Number)	

**SECTION I - APPLICANT INFORMATION (continued)****MAILING ADDRESS:** (If different from above)\_\_\_\_\_  
(Street Name and Number)\_\_\_\_\_  
(City) (State) (Country) (Zip Code)**U.S. ADDRESS:** (Does the applicant currently have an office in the United States? If so, give address and telephone number.)\_\_\_\_\_  
(Street Name and Number)\_\_\_\_\_  
(City) (State) (Country) (Zip Code)\_\_\_\_\_  
(Telephone Number)\_\_\_\_\_  
(Fax Number)**APPLICANT'S REPRESENTATIVE:** (Person who can respond to inquiries)\_\_\_\_\_  
(Name and title, position, or relationship to applicant)\_\_\_\_\_  
(Street Name and Number)\_\_\_\_\_  
(City) (State) (Country) (Zip Code)\_\_\_\_\_  
(Telephone Number)\_\_\_\_\_  
(Fax Number)**US DOT NUMBER** (If available; if not, see Instructions) \_\_\_\_\_**FORM OF BUSINESS** (Check one) **CORPORATION** (Give Mexican or U.S. State of Incorporation) \_\_\_\_\_ **SOLE PROPRIETORSHIP** (Give full name of individual)\_\_\_\_\_  
(First Name)

(Middle Name)

(Surname)

 **PARTNERSHIP** (Identify each of the partners) \_\_\_\_\_

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**SECTION IA – ADDITIONAL APPLICANT INFORMATION**

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1. Do you or your company currently operate in the United States?  
 Yes       No

1a. If yes, indicate the locations where you operate and the ports of entry utilized.

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2. Has the applicant previously completed and submitted a Form MCS-150?  
 Yes       No

2a. If so, give the name under which it was submitted.

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3. Do you or your company presently hold, or have you ever applied for regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?  
 Yes       No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority.

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3b. If the application was rejected prior to the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application.

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4. Is the applicant domiciled in Mexico? (Check one)  
 Yes       No
5. Indicate whether the applicant is owned or controlled by persons of Mexico (Check one)  
 Yes       No
6. Does the applicant hold a Federal Tax Number from the U.S. Government?  
 Yes       No
- 6a. If yes, enter the number here: \_\_\_\_\_
7. Has your company been issued a Registration by the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT)?  
 Yes       No
- 7a. If yes, give the name under which your company is registered, the Registration Number, and the place where the Registration was issued.  
 \_\_\_\_\_  
 \_\_\_\_\_

**SECTION II – OWNERSHIP, CONTROL AND AFFILIATIONS INFORMATION**  
**OWNERSHIP AND CONTROL**

- If the applicant is a **corporation**, list the names, country of residence, citizenship and domicile, if any, of the corporation, all principal officers and stockholders (holding more than 10 percent of stock) of applicant.
- If applicant is a **partnership**, list the names, country of residence, citizenship and percentage of ownership of partnership for each partner.
- If applicant is an **individual**, enter that individual's name, country of residence, and citizenship.

Name	Country of Residence	Citizenship	Domicile	Percentage of Ownership

**AFFILIATIONS**

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to you or your company, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA) or any other law. (If you require more space, attach the information to this application form.

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under the MCSIA or any other law?

**SECTION III – TYPE(S) OF REGISTRATION REQUESTED**

You must submit a filing fee for each type of registration requested (for each checked box). \*\*If you will operate beyond commercial zone you are not eligible for a Certificate of Registration. Please use form OP-1(MX) to apply for such authority.\*\*

Applicant seeks to provide the following transportation service:

<b>FOR-HIRE MOTOR CARRIER</b>
<input type="checkbox"/> Service as a <b>for-hire motor carrier of property (except household goods)</b> , between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).
<input type="checkbox"/> Service as a <b>for-hire motor carrier of household goods</b> between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).
<b>PRIVATE MOTOR CARRIER</b>
<input type="checkbox"/> Service as a <b>private motor carrier of property</b> (handling your own goods) between Mexico and points entirely in a municipality that is adjacent to Mexico, in contiguous municipalities in the U.S., any one of which is adjacent to Mexico, or in a zone that is adjacent to, and commercially a part of the municipality(ies).

**SECTION IV – INSURANCE INFORMATION**

<input type="checkbox"/> Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport: <ul style="list-style-type: none"> <li><input type="checkbox"/> Non-hazardous commodities (\$750,000)</li> <li><input type="checkbox"/> Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) (\$1,000,000).</li> <li><input type="checkbox"/> Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) (\$5,000,000).</li> </ul>
<input type="checkbox"/> Applicant will operate only vehicles having a GVWR of less than 10,000 pounds to transport: <ul style="list-style-type: none"> <li><input type="checkbox"/> Any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials (\$5,000,000).</li> <li><input type="checkbox"/> Commodities other than those listed above (\$300,000).</li> </ul>

**SECTION IV – INSURANCE INFORMATION (continued)**

Does the applicant presently hold public liability insurance?

Yes       No

If applicant does hold such insurance, please provide the information below:

Insurance Company \_\_\_\_\_

Address: \_\_\_\_\_

Maximum Insurance Amount \_\_\_\_\_

Policy Number \_\_\_\_\_

Date Issued \_\_\_\_\_

Insurance Effective Date \_\_\_\_\_ Expiration Date \_\_\_\_\_

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?

Yes       No

**SECTION V – SAFETY CERTIFICATIONS**

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,001 pounds) and will not transport hazardous materials.

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If you answered **yes**, proceed to the end of this section, sign the certification and complete the appropriate attachments to Section V. Refer to the instructions for additional information.

If you answered No, you must complete the remaining questions in Section V, and sign the certification before you complete the appropriate attachments to Section V.

Applicant maintains copies of all U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMR)(if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the requirements.

\_\_\_\_\_ Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

**1. Driver qualifications:**

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

\_\_\_\_\_ Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 5 years, to determine whether the individual is qualified and competent to drive safely.

\_\_\_\_\_ Yes

The carrier has established a system and requirements that each driver report to the carrier in writing under the driver's signature, all criminal convictions within 30 days of occurrence, including the following information: the driver's full name, driver's license number, and the date of conviction; details of the offense, including suspension, revocation, or cancellation of driving privileges, and the location of the offense.

\_\_\_\_\_ Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

\_\_\_\_\_ Yes

**2. Hours of service:**

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

\_\_\_\_\_ Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

\_\_\_\_\_ Yes

The carrier has attached to this application statements describing the carrier's monitoring procedures to ensure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

\_\_\_\_\_ Yes

**3. Drug and alcohol testing:**

The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR 382 and 49 CFR 40 and has in place a program for systematic testing of drivers.

\_\_\_\_\_ Yes

The carrier has attached to this application the name, address, and telephone number of the person responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing services that are used by the company.

\_\_\_\_\_ Yes

**4. Vehicle condition:**

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's FMCSRS and the Hazardous Materials Regulations (HMR).

\_\_\_\_\_ Yes

The carrier's vehicles were manufactured in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

\_\_\_\_\_ Yes

The carrier has inspected all vehicles that will be used in the United States prior to the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

\_\_\_\_\_ Yes

**5. Accident monitoring program:**

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15

\_\_\_\_\_ Yes

The carrier has attached to this application a copy of its accident register for the previous year (or 12 months), or a description of how the company will maintain this register once it begins operations in the United States.

\_\_\_\_\_ Yes

The carrier has established an accident countermeasures program and a driver training program to reduce preventable accidents.

\_\_\_\_\_ Yes

The carrier has attached to the application a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

\_\_\_\_\_ Yes

**6. Production of records:**

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized official.

\_\_\_\_\_ Yes

The carrier is including as an attachment to this application the name, address and telephone number of the employee who should be contacted for requesting records.

\_\_\_\_\_ Yes

**7. Hazardous Materials (to be completed by carriers of hazardous materials only).**

The HM carrier has full knowledge of the U.S. DOT HMR, and has established programs for the thorough training of its personnel in such regulations.

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles for HM transportation in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the HMR.

\_\_\_\_\_ Yes

The HM carrier has attached to this application a statement providing information concerning (1) the names of employees (other than drivers) responsible for assuring compliance with HM regulations referenced in Section V of this application), and (2) a description of their positions, training and experience with respect to safety regulations

\_\_\_\_\_ Yes

The HM carrier has established a system and procedures for maintaining HM shipping documents.

\_\_\_\_\_ Yes

**7A. For Cargo tank carriers (of HM):**

The carrier submits with this application a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the

facility the carrier will be utilizing to conduct the test and inspections of such tanks required by Part 180.

\_\_\_\_\_ Yes

The carrier will register under Part 107, Subpart G, if transporting a minimum of 55 lbs. of explosives, any quantity of highway route controlled quantity of radioactive materials, more than 1 liter of PIH Zone A, other HM in a tank over 3,500 gallons, or more than 5,000 lbs. loaded in one place.

\_\_\_\_\_ Yes

**8. Compliance with all of the following once operations in the United States have begun.**

The carrier will insure that drivers operate within the hours of service rules and are not fatigued while on duty.

The carrier will insure that all drivers operating in the United States are at least 21 years of age and possess a valid Commercial Drivers License (CDL) or Licensia Federal de Conductor (LFC).

The carrier will insure that all vehicles operated in the United States are inspected on an annual basis.

The carrier will insure that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter the United States.

\_\_\_\_\_ Yes

\_\_\_\_\_  
Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding leading to the revocation of the authority granted.





The drug testing laboratory and the alcohol testing services that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

**ATTACHMENT FOR SECTION V, NO. 4,**  
**Intentionally Left Blank**





**ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS**

Contact person(s) for requesting records

Name	Address	Telephone Number





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**SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS**

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**If applicant will be transporting household goods between Mexico and border commercial zones, it must certify as follows:**

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of U.S.C. § 14708.

\_\_\_\_\_  
Signature

**SECTION VII – COMPLIANCE CERTIFICATIONS****All applicants must certify as follows:**

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.  
\_\_\_\_\_ Yes
- Applicant is willing and able to comply with all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by a state agency operating a plan pursuant to Section 18 of the Occupational Safety and Health Act of 1970 ("OSHA state plan agency,") including, but not limited to, requirements of the Occupational Safety and Health Act, the Surface Transportation Assistance Act, and the Fair Labor Standards Act.  
\_\_\_\_\_ Yes
- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Code (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code (26 U.S.C. §4482(c)).  
\_\_\_\_\_ Yes
- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of judicial filings and notices issued in connection with the enforcement of any Federal statutes or regulations.  
\_\_\_\_\_ Yes
- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Motor Vehicle Safety Standards, and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.  
\_\_\_\_\_ Yes
- Applicant is willing and able to produce for review or inspection documents (including employment, timekeeping, payroll, safety and health, and training records), which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the U.S. Department of Labor and OSHA state plan agencies, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.  
\_\_\_\_\_ Yes
- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 or any other law.  
\_\_\_\_\_ Yes



## PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

2. The authority citation for part 387 is revised to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.73.

3. In § 387.7, revise the first sentence of paragraph (b)(3) introductory text to read as follows:

### § 387.7 Financial responsibility required.

\* \* \* \* \*

(b) \* \* \*

(3) *Exception.* A Mexican motor carrier operating solely in the commercial zones with a certificate of registration issued under part 368 may meet the minimum financial responsibility requirements of this subpart by obtaining insurance coverage, in the required amounts, for periods of 24 hours or longer, from insurers that meet the requirements of § 387.11 of this subpart. \* \* \*

\* \* \* \* \*

Issued on: April 27, 2001.

**Brian M. McLaughlin,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 01-11034 Filed 5-1-01; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 365

[Docket No. FMCSA-98-3298]

RIN 2126-AA34

### Application by Certain Mexican Motor Carriers To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FMCSA proposes changes in its regulations to govern applications by Mexican carriers to operate beyond municipalities and commercial zones at the United States-Mexico border. The FMCSA also proposes to revise the application form, OP-1(MX), to be filed by these Mexican motor carriers. The proposed form would require additional information about the applicant's business and operating practices to allow the FMCSA to determine if the applicant could meet the safety standards established for

operating in interstate commerce in the United States. Carriers that had previously submitted an application would have to submit the updated form. These proposed changes are needed to implement part of the North American Free Trade Agreement (NAFTA).

**DATES:** We must receive your comments by July 2, 2001.

**ADDRESSES:** You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001 FAX (202) 493-2251, on-line at <http://dmses.dot.gov/submit>. You must include in your comment the docket number that appears in the heading of this document. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at <http://dms.dot.gov/search.htm> and typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines at the "Help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Valerie Height, (202) 366-1790, Regulatory Development Division, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** We will include comments received after the comment closing date in the docket, and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

#### Background

Under the Bus Regulatory Reform Act of 1982, (Pub. L. No. 97-261, 96 Stat. 1103) Congress imposed a two-year moratorium on issuance by the former Interstate Commerce Commission (ICC) of new grants of operating authority to motor carriers domiciled in a foreign country, or owned or controlled by persons of a foreign country. The legislation authorized the President to

remove or modify the moratorium upon a determination that such action was in the national interest. As a result of legislative and executive extensions of the moratorium, only a limited class of Mexican motor carriers have operated in the United States on Certificates of Registration issued under what is now 49 CFR part 368.

The terms of NAFTA, Annex I, provide that the moratorium on licensing Mexican motor carriers to operate within the United States would be lifted by the President in phases under the following schedule:

(1) When NAFTA took effect on January 1, 1994, applications by Mexican bus operators to conduct cross border charter and tour bus services in international transportation service between Mexico and all points in the United States were to be accepted and processed by the ICC, and suitable authority issued.

(2) In the second stage, beginning December 17, 1995, Mexican trucking companies engaged in the transportation of property were to be permitted to file applications for cross border operations between Mexico and four United States border states and establish companies within the United States to distribute international cargo within the United States

(3) In the third phase, beginning January 1, 1997, applications were to be accepted and processed for Mexican passenger carriers to conduct regular route passenger operations in international service from Mexico to all points in the United States.

(4) In the fourth phase, beginning January 1, 2000, Mexican property carriers were to be allowed to file applications for cross border operations from Mexico to all points in the United States (except for point-to-point carriage of domestic cargo within the United States, for which the moratorium has not been removed under NAFTA).

(5) Finally, in the last phase, beginning on January 1, 2001, Mexican nationals were to be allowed to establish companies in the United States to provide point-to-point bus services in the United States.

Pursuant to the first phase of NAFTA, on January 1, 1994, the ICC began accepting applications from Mexican passenger carriers to conduct international charter and tour bus operations into the United States. The ICC promulgated rules and a revised application form to effect the processing of Mexican applications (Ex Parte No. 55 (Sub-No. 96), *Freight Operations by Mexican Motor Carriers—Implementation of the North American Trade Agreement*, 10 I.C.C. 2d 854

(1995). These rules were anticipating the implementation of the second phase of NAFTA providing Mexican property carriers with additional access to the United States. A copy of the decision is in the public docket for this rulemaking. The ICC designated the revised application form OP-1(MX). On December 15, 1995, the International Brotherhood of Teamsters sought an emergency stay of the ICC decision in the United States Court of Appeals for the District of Columbia. *International Brotherhood of Teamsters v. Secretary of Transportation*, No. 95-1603 (D.C. Cir., filed Dec. 15, 1995). The Teamsters contended that the ICC decision was arbitrary and capricious because it failed to address serious concerns regarding the safe operation of Mexican motor carriers. The Teamsters had requested the ICC to add additional safety questions to the applications filed by Mexican carriers to ensure that the applicants were willing and able to comply with applicable safety regulations.

On December 18, 1995, the DOT announced a delay in implementing the NAFTA motor carrier access provisions. Because of safety concerns related to the operations of Mexican motor carriers and the lack of a motor carrier safety regulation and compliance program in Mexico, the ICC decided not to process applications from Mexican motor carriers for authority to operate in the United States border States in accordance with NAFTA's liberalization schedule. The FHWA continued this decision after the January 1, 1996, termination of the ICC and transfer of responsibilities to the FHWA.

Mexico filed complaints against the United States under NAFTA's dispute resolution provisions, challenging the United States decision to deny further trucking, investment, and bus access. An arbitration panel met in May 2000 to hear the trucking and investment case, which was the subject of extensive pre- and post-hearing briefings on safety and legal issues.

The panel issued a final report on February 6, 2001. A copy of the report is in the docket. The report unanimously concluded that the blanket refusal to process applications of Mexican motor carriers seeking United States operating authority out of concerns over the carriers' safety was in breach of NAFTA obligations of the United States, specifically NAFTA's liberalization provisions and provisions ensuring national treatment and most-favored-nation treatment for cross-border services. The panel also concluded that alleged deficiencies in Mexico's regulation of motor carrier

safety did not relieve the United States of those NAFTA obligations. The panel stated, however, that the Department could subject Mexican motor carriers seeking to operate in the United States to different requirements than it applies to United States and Canadian carriers. The United States and Mexico have engaged in negotiations regarding the implementation of the liberalization provisions in light of the panel's decision.

The FMCSA regulates commercial motor vehicle (CMV) safety in the United States under a comprehensive system of regulations designed to ensure that drivers are medically qualified; meet applicable licensing standards; can read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, respond to official inquiries and make entries on reports and records; and do not operate vehicles while impaired by drugs, alcohol or excessive fatigue. We require that every CMV be equipped with certain standard safety-related equipment and that vehicles be regularly inspected and maintained to ensure that they remain in safe operating condition. We enforce these regulatory requirements through roadside inspections and on-site compliance reviews. Roadside inspections focus on potentially unsafe vehicle and driver violations that may pose a threat to public safety, unless the vehicle or driver is placed out of service. Our compliance reviews entail a review of a carrier's overall compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations. Our investigators examine carrier records (including driver logbooks and drug and alcohol testing information) and evaluate roadside vehicle inspection data, accident records, and other safety related information to determine whether a motor carrier meets safety fitness standards.

The DOT has consulted extensively with Mexican transportation officials regarding the strengthening of Mexican truck safety regulation, and significant progress has been made in this area. Mexico has agreed to utilize the Commercial Vehicle Safety Alliance (CVSA) out-of-service (OOS) criteria and has issued final regulations based on these criteria. These standards cannot be effective without a safety oversight program, including systematic roadside inspections, to ensure compliance with and enforcement of the standards. The DOT officials have worked extensively with Mexican transportation officials on the establishment of such a program.

However, Mexico has not yet completed implementation of a comprehensive safety inspection program.

With the exception of border commercial zone drayage operations, Mexican carriers have, for the most part, little or no experience operating under regulations comparable to the FMCSRs. The FMCSA must be prepared to evaluate the safety fitness of motor carriers having no experience operating under a comprehensive system of safety regulation like ours.

The FMCSA asks for public comment on proposed regulations and a revised Form OP-1(MX) that would require additional safety information and certifications of compliance with applicable safety requirements from all Mexican motor carrier applicants operating beyond the commercial zones.

In another NPRM published elsewhere in today's **Federal Register**, RIN 2126-AA33 *Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*, the FMCSA is proposing changes to the process and form (OP-2) used to obtain a Certificate of Registration. The changes would limit a Certificate of Registration to Mexican-domiciled motor carriers that operate, or will operate, only in the commercial zones adjoining the United States-Mexico border. All other Mexican carriers, including current holders of Certificates of Registration who operate beyond the commercial zones, would be subject to the proposals in this NPRM.

The FMCSA proposes to revise the OP-1(MX) application form by requiring each motor carrier applicant to answer questions to demonstrate its basic knowledge of the FMCSRs and to indicate how it intends to comply with these regulations. In addition, the FMCSA proposes to require each applicant to make specific certifications of compliance. This additional information will enable the FMCSA to determine that each applicant is willing and able to comply with the FMCSRs while conducting operations in the United States. In addition, the FMCSA would require applicants to submit verification from the Mexican government that the applicant is a registered Mexican carrier authorized to conduct motor carrier operations up to the United States-Mexico border and that all drivers who would operate in the United States have a valid *Licencia Federal de Conductor* issued by the Government of Mexico. These requirements also are consistent with section 210(b) of the Motor Carrier Safety Improvement Act of 1999 (Pub. L.

106–159, 113 Stat. 1748) (MCSIA), which requires the Secretary to establish regulations ensuring that all applicant motor carriers, including foreign motor carriers, are knowledgeable about the FMCSRs before being granted authority to operate in the United States. Failure to provide such verification would result in the rejection of the application.

The FMCSA solicits comment from the public on our proposal that Mexican applicants who have filed for authority on the existing Form OP–1(MX) must file the proposed revised Form OP–1(MX) to update and supplement the information about their operations, including the requirement that the carrier be registered with the Government of Mexico. This requirement would ensure that FMCSA's database contains current and consistent information about Mexican registrants and thus enhance the effectiveness of FMCSA's safety oversight.

These proposed requirements should not distract from, or detrimentally affect, the efforts underway between the Governments of Mexico and the United States to establish compatible regulations and to ensure that a comprehensive safety oversight program is put into place in Mexico. Over the long term, consistent, compatible safety standards and compliance practices will have the greatest impact in promoting safety, facilitating enforcement, reducing the enforcement burden on the border States, and establishing permanent and stable programs.

#### **Proposed Form OP–1(MX)**

The FMCSA proposes extensive revisions to the Form OP–1(MX). The FMCSA proposes to add new sections to solicit additional information from the applicant to assist in identifying the nature of the applicant's existing operations in the U.S., if any. Other sections would help identify any previously submitted Form MCS–150, verify the applicant's domicile in Mexico, and confirm that the applicant holds a valid registration from the Government of Mexico. The question regarding domicile would be removed. However, the proposed question regarding whether the applicant holds a valid registration from the Mexican government is new. It is proposed to ensure that only a carrier who has met Mexican Federal government standards and regulations will operate in the United States.

The single form for both passenger and property carriers would lessen the paperwork burden on the Mexican applicants and facilitate the inclusion of

additional safety questions and certifications.

Under section 219 of MCSIA, a foreign carrier engaging in transportation in the United States without proper authorization may be disqualified from operating commercial vehicles in the United States. Accordingly, applicants would be asked to disclose whether any affiliated entities have been disqualified.

The proposed form would require an applicant to identify the type(s) of operations requested. The form would make clear that use of the Form OP–1(MX) and issuance of Authority Registrations would be limited to carriers that would operate *beyond* the municipalities along the United States-Mexico border and commercial zones of such municipalities.

Additional information would be requested about insurance held by the carrier.

The FMCSA proposes to add a new section that would require the applicant to certify that it has a system in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, drug and alcohol testing, vehicle condition, accident monitoring, and hazardous materials transportation. In addition, the FMCSA proposes that the applicant provide narrative responses describing how it will monitor hours of service, how it will maintain an accident register and what is its monitoring program. This section would also require that the applicant provide information including the names of individuals in charge of the applicant's safety program. The applicant must provide: specific locations where the applicant maintains current FMCSRs, the names of the individuals in charge of drug and alcohol testing (if applicable). The FMCSA would require only those safety certifications that apply to the applicant. For example, due to the weight of the vehicles they operate, certain applicants would not be subject to the drug and alcohol testing and CDL requirements in 49 CFR parts 382 and 383, respectively, and would not be required to certify compliance with those regulations. The certification information would enable FMCSA to evaluate, upon initial application, the safety compliance program of the applicant. The FMCSA would reject an applicant that cannot offer a specific, unambiguous plan to ensure compliance.

The proposed form would require household goods applicants to affirm a willingness to offer arbitration as a means of settling loss and damage claims in accord with U.S. law.

The FMCSA proposes to add more extensive and specific certifications regarding compliance, including compliance with Department of Labor regulations. Other parts of this certification would require the applicant to affirm its willingness and ability to provide the proposed service and to comply with all pertinent statutory and regulatory requirements. It would remind the applicant of statutory and regulatory responsibilities, which if neglected or violated, might subject the applicant to disciplinary or corrective action by the FMCSA. Another certification, derived from the existing Form OP–2 application, would highlight the need to comply with applicable provisions of the U.S. Internal Revenue Code relating to payment of the Heavy Vehicle Use Tax. An additional certification would ensure that the applicant understands that the agents for service of process designated on the Form BOC–3 would also be deemed the applicant's representative in the United States for service of judicial process and notices under 49 U.S.C. 13304 and administrative notices under 49 U.S.C. 13303. Finally, the applicant would affirm that it is not currently disqualified from operating a commercial motor vehicle in the United States under the provisions of MCSIA.

The FMCSA will conduct workshops and also provide written material, such as handbooks, to help the Mexican applicants understand the various requirements and the proper way to complete the applications.

#### **Proposed Revision to Part 365**

The FMCSA proposes to add a new subpart E to part 365 to address the specific requirements of the application process for Mexican carriers. First, proposed § 365.501 sets out that all Mexican-domiciled carriers that want to operate *beyond* the border area must file the Form OP–1(MX). This would be a change from current practice to facilitate uniform treatment of all Mexican carriers that may wish to offer long haul service, and it is discussed as well in the NPRM concerning part 368 published in today's **Federal Register**. These special filing rules would *not* apply to Mexican-owned enterprises domiciled in the United States that want to distribute international cargo within the United States. Nor do they apply to Mexican nationals establishing companies in the United States to provide point-to-point bus services in the United States. Such entities would file either the standard OP–1 or OP–1(P) application form, as appropriate.

In proposed § 365.503, the FMCSA states that applications must be filled

out in English and be complete to be considered. Information on obtaining applications is also provided.

We propose in § 365.505 to provide a waiver from the filing fee for two types of applicants. First would be those who submitted an application under the earlier version of the Form OP-1(MX) before the decision of the United States to stay implementation of the NAFTA entry provisions. Second would be those applicants that currently hold a Certificate of Registration and wish to continue operations solely within the U.S. municipalities and commercial zones along the U.S.-Mexico border.

In proposed § 365.507, the FMCSA states that all applications by Mexican carriers would be reviewed under the existing procedures of part 365. Also, we propose that approval of an application would be conditional upon successful completion of a safety review within 18 months. The safety review is discussed in another NPRM published today in the **Federal Register** (*Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States*).

Proposed § 365.509 would include a requirement for Mexican carriers to notify FMCSA in writing of any changes in, or corrections to, applicant information in the Form OP-1(MX) as well as any changes in the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, within 45 days of the change. The proposed requirement would assist FMCSA in keeping its information on Mexican carriers current. The proposed requirement would not be an annual re-filing. A carrier with no change in status would not need to take any action apart from the biennial submission of Form MCS-150. A carrier who fails to update required information may be subject to suspension or revocation of its operating authority.

Finally, we propose to add the Form OP-1(MX) as Appendix A to subpart E of part 365.

#### Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures*

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Office of Management and Budget has reviewed this document. It

is anticipated that the economic impact of the proposals in this rulemaking would be minimal. The new or revised Form OP-1(MX), while intended to foster and contribute to safety of operations, adherence to U.S. law and regulations, and compliance with U.S. insurance and tax payment requirements on the part of Mexican carriers, would impose little additional expense upon public agencies or the motoring public.

Nevertheless, the subject of safe operations by Mexican carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. A copy of the Regulatory Evaluation prepared for the three companion NPRMs published in today's **Federal Register** is in the docket.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96-354, 5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104-121), requires federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The FMCSA is issuing this NPRM because of the planned implementation of the NAFTA's motor carrier access provisions. A NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow any Mexican carriers greater access to the United States.

Mexican carriers would be subject to the same safety regulations as domestic carriers when operating in the U.S. The FMCSA's enforcement of the FMCSRs has become increasingly data dependent in the last several years. Several programs have been put in place to continually analyze crash rates, out-of-service (OOS) rates, compliance review records, and other data sources to allow the agency to focus on high-risk carriers. This strategy is only effective if the FMCSA has adequate data on carriers' size, operations, and history. We do not currently have this type of information on Mexican carriers. We do not have abundant information on their safety record, OOS rates, or other overall safety. Thus, a key component of this proposal is the requirement that carriers

with OP-1(MX) authority must complete a Form MCS-150 biennially, and notify the FMCSA of corrections to or changes in applicant information on the Form OP-1(MX) as well as changes in the Form BOC-3 within 45 days of the change. This would enable the FMCSA to better monitor these carriers, and to quickly determine whether their safety or OOS rate changes.

The objective of this proposal is to help determine the capability of certain Mexican carriers to operate safely in the United States. The proposal describes what additional information Mexican carriers would have to submit.

This proposal would primarily affect Mexican-domiciled small motor carriers who wish to operate beyond the U.S. municipalities and commercial zones on the U.S.-Mexico border. The amount of information these carriers would have to supply to the FMCSA has been increased, and we estimate that it would take 4 hours to complete each form after compiling the necessary information.

The number of carriers subject to the proposals in this rule and the two companion rules published elsewhere in today's **Federal Register** is the sum of those currently operating within the United States and those who apply for authority in the future. First, we estimated the number of Mexican carriers already operating within the United States. Most of these carriers currently have operating authority and would merely be required to re-file using the revised forms. To operate in the U.S. beyond the municipalities and commercial zones along the U.S.—Mexico border, as proposed in this rule, carriers would file the revised Form OP-1(MX). To continue operations within the U.S. solely in municipalities and commercial zones along the U.S.—Mexico border, these carriers would file using the revised Form OP-2 (see the rulemaking *Revision of Regulations and Application Form for Mexican—Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.—Mexico Border* published elsewhere in today's **Federal Register**).

The FMCSA's Office of Data Analysis and Information Systems developed a file comprised of Mexican carriers that have recently operated in the United States. As of January 2001, this file contained 11,787 Mexican motor carriers (2.3% of the 500,000 carriers listed in the FMCSA Motor Carrier Management Information System (MCMIS) census file). It includes Mexican carriers with operating authority, carriers who have a DOT number but not authority, carriers with both a DOT number and operating

authority, and other carriers that the Agency believes are operating in the United States with neither operating authority nor a DOT number. These latter carriers are those who have been subject to a roadside inspection in the United States at some point in the last 3 years.

It has been suggested that many of these Mexican carriers no longer operate in the United States. The FMCSA calendar year 2000 MCMIS inspection and accident database identifies approximately 4,500 Mexican motor carriers. The FMCSA also verified that approximately 10,000 Mexican carriers currently have operating authority. Therefore, we constructed three different baseline scenarios for the number of Mexican carriers currently operating in the United States, a low (4,500), medium (9,500) and high (11,787) scenario.

The second step in figuring out the total number of Mexican carriers subject to these proposals is to determine how many *new* carriers will request authority under the proposals. Approximately 1,600 Mexican carriers have filed an OP-2 form annually over the last several years (and a similar number have been granted). Only 190 OP-1(MX) applications are pending, as Mexican carriers stopped filing these forms when it became clear that these forms were not being processed. For the high estimate, the FMCSA assumes that this number will double to 3,200 the first year this proposal is in effect, and then fall to 2,500 applicants per year for the following 9 years. As in the case of domestic carriers, the annual applicant number may include carriers that go out of business and subsequently re-enter the market. For the lower and middle estimates, we estimate that there will be 500 new applicants the first year, and then 200 per year thereafter. This translates into approximately 15,000 applicants in the first year for the high estimate, 10,000 for the medium estimate, and 5,000 for the low estimate. As was noted above, the FMCSA estimates that more than 500,000 motor carriers are currently operating in the United States.

We estimate that it takes 4 hours to complete each form. As was noted above, the vast majority of Mexican motor carriers currently operating in the United States have OP-2 authority. We estimate that half of all these carriers will switch to OP-1(MX) authority, while the other half will continue operating within U.S. municipalities and commercial zones on the U.S.—Mexico border. We assume that the new carriers will be more likely than current carriers to apply for OP-2 authority,

since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating in U.S. municipalities and commercial zones on the U.S.—Mexico border under OP-2 authority. While some new applicants will also want to take advantage of the opportunity to operate throughout the United States, many will not have the financial and administrative wherewithal to benefit from the enlarged operations allowed. Accordingly, the Agency estimates that three quarters (75%) of all new applicants will apply for OP-2 authority, with one quarter (25%) requesting OP-1(MX) authority. Nonetheless, changing this value would have no impact on the analysis since the costs of completing the two forms are identical.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small. For Mexican carriers with any trucks, the mean number of trucks was 5.1. That mean was pulled up by a small number of large carriers. Seventy-five (75) percent of Mexican carriers had three or fewer trucks, and the 95th percentile carrier had only 15 trucks.

These proposals should not have any impact on small U.S. based motor carriers.

The regulatory evaluation includes a description of the recordkeeping and reporting requirements of these proposals. Under the revised procedures, an applicant would be required to submit a completed Form BOC-3-Designation of Agents—Motor Carriers, Brokers and Freight Forwarders, and Form MCS-150—Motor Carrier Identification Report (Application for U.S. DOT Number) as attachments to the OP-2 or OP-1(MX) application form. In addition, Mexican carriers would update the FMCSA of certain information changes.

The Form MCS-150 is approximately two pages long. In addition to requiring basic identifying information, it requires that carriers state the type of operation they run, the number of vehicles and drivers they use, and the types of cargo they haul. The Form BOC-3 merely requires the name, address and other information for a domestic agent to be contacted if the FMCSA needs to contact the motor carrier. The proposals also include other modest changes in the OP-1(MX) and OP-2 forms.

The FMCSA did not propose any different requirements or timetables for small entities. As noted above, we do not believe these requirements would be onerous, with the carriers required to spend 4 hours to complete the relevant forms. Mexican carriers would only be

required to complete forms that most domestic U.S. carriers already are required to submit.

The FMCSA would not consolidate or simplify the compliance and reporting requirements for small carriers. As noted above, small U.S. carriers already have to comply with the similar paperwork requirements of part 365. Given the compelling interest in guaranteeing the safety of Mexican carriers operating in the United States, and the fact that the majority of these carriers are small entities, no special changes were proposed.

The FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexican carriers operating in the U.S. would be small; exempting them would have the same impact as not issuing these proposals. Therefore, FMCSA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes proposed in this rule making would not have an impact of \$100 million or more in any one year.

#### *Executive Order 12988 (Civil Justice Reform)*

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

#### *Executive Order 13045 (Protection of Children)*

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

*Executive Order 12630 (Taking of Private Property)*

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

*Executive Order 13132 (Federalism)*

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States. Comments on this conclusion are welcome and should be submitted to the docket.

*Executive Order 13166 (Limited English Proficiency)*

Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency," dated August 16, 2000 (65 FR 50121), requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency. The FMCSA plans to provide a Spanish translation of the application instructions incorporated within the Form OP-1(MX) application. We believe that this action complies with the principles enunciated in the Executive Order.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (49 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, sponsor, or require through regulations. The FMCSA has determined that this proposal would impact a currently approved information collection, OMB No. 2126-0016.

This proposal will not have any impact on information collection OMB No. 2126-0015, entitled, "Designation of Agents, Motor Carriers, Brokers and Freight Forwarders." This currently approved collection covers the Form BOC-3. The current estimates of annual filings include the minimal additional Mexican motor carriers who would be filing updated information on the Form BOC-3.

The information collection requirements on Form OP-1(MX) have been approved by the OMB under the control number 2126-0016, titled "Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations." This approval includes forms OP-1(MX), OP-1(P), OP-1(FF), and OP-1 and totals 38,000 burden hours. Two thousand (2,000) of these 38,000 burden hours represent the approved amount for the OP-1(MX) (1,000 respondents per year @ 2 hours each to complete the form). The FMCSA proposes to change the form title to Form OP-1(MX)—Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)."

The Regulatory Evaluation for this proposal uses a numerical range to estimate the number of Mexican carriers anticipated to request OP-1(MX) or OP-2 authority under this proposal and a companion rule published elsewhere in today's **Federal Register** (see NPRM titled *Revision to Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*). We estimate the number of applicants to range between a low estimate of 5,000, a medium estimate of 10,000 or a high estimate of 15,000 applicants. Please reference the Regulatory Flexibility Act analysis in this document or the Regulatory Evaluation for this rulemaking for a detailed discussion on how these estimates were derived. This analysis is based upon the high estimate (15,000) since that number enables the Agency to assess the maximum information collection burden to respondents.

The FMCSA estimates that 11,787 Mexican carriers are currently operating in the United States and are categorized as follows: Mexican carriers operating pursuant to OP-2 Certificates of Registration; Mexican carriers that previously filed an OP-1(MX) application; and Mexican carriers assigned DOT numbers and no OP authority or operating without appropriate authorization. The Agency estimates that half of the 11,787

Mexican carriers (or 5,894) known to be now operating in the U.S. will switch to OP-1(MX) authority, while the other half will continue operating pursuant to OP-2 authority.

Based upon the high estimate scenario, the FMCSA anticipates 3,200 first-time applicants for either OP-2 or OP-1(MX) authority in the first year that this proposal becomes a final rule, and 2,500 applicants annually in subsequent years. The agency estimates that 25 percent of the first year new applicants (800) would file a Form OP-1(MX); and 25 percent of the subsequent-year new applicants (625 annually) would file a Form OP-1(MX).

We assume that first-time applicants will be more likely than current carriers to apply for OP-2 authority, since most of the large carriers who would presumably benefit from expanded U.S. operations are already operating in the border commercial zones pursuant to OP-2 authority. While some new applicants may also want to take advantage of the opportunity afforded by this proposal to operate throughout the United States, many will not have the financial and administrative wherewithal or resources to benefit from the enlarged operations allowed.

This proposal would also require Mexican carriers to submit corrections to or changes in the OP-1(MX) applicant information within 45 days of the change. For changes and updates, the agency anticipates that in the first year, 2,232 carriers would file updates or changes to the Form OP-1(MX). In subsequent years, approximately 208 carriers would file updates or changes to the Form OP-1(MX). The FMCSA estimates that it would take 30 minutes to fill out a form to request changes.

Therefore, the FMCSA estimates an adjusted burden hour calculation for the Form OP-1(MX) as follows:

*Mexican carrier re-filings or initial filings of the Form OP-1(MX):*  
(in first year, known carriers): 5,894 × 4 hrs per form = 23,576 hrs  
(in first year, first-time applicants): 800 × 4 hrs per form = 3,200 hrs  
(in subsequent-years, first-time applicants): 625 × 4 hrs per form = 2,500 hrs

*Updates/Changes:*  
(all in first year): 2,232 × 30 min. per form = 1,117 hrs  
(all in subsequent years): 208 × 30 min. per form = 104 hrs

Therefore, proposals in the NPRM, when promulgated as a final rule, would result in a change to the total burden hours for this information collection as follows:

In the first year: 63,893 [(38,000 - 2,000 = 36,000) + 26,776 + 1,117]; and

in subsequent years: 38,604 [36,000 + 2,500 + 104].

*OMB Control Number:* 2126-0016.

*Title:* Revision of Licensing Application Forms, Application Procedures, and Corresponding Regulations.

*Respondents:* Motor carriers that operate CMVs in interstate commerce.

*Estimated Annual Hour Burden for this NPRM:* Year 1 = [(38,000 - 2,000 = 36,000) + 26,776 + 1,117 = 63,893 hrs]; Subsequent years = [(38,000 - 2,000 = 36,000) + 2,500 + 104 = 38,604 hours].

### National Environmental Policy

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment. An environmental impact statement is, therefore, not required.

### List of Subjects

#### 49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FMCSA proposes to amend 49 CFR part 365 as set forth below:

### PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

1. The authority citation for part 365 is revised to read as follows:

**Authority:** 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901-13906, 14708, 31138, and 31144; 49 CFR 1.73.

2. Add a new subpart E to part 365 to read as follows:

#### Subpart E—Special Rules for Certain Mexican Carriers

Sec.

365.501 Scope of rules.

365.503 Application.

365.505 Re-registration and fee waiver for certain applicants.

365.507 Review of the application.

365.509 Requirement to notify of change in applicant information.

Appendix A to Subpart E of Part 365—Form OP-1(MX) “ Application to Register

Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)

### Subpart E—Special Rules for Certain Mexican Carriers

#### § 365.501 Scope of rules.

The rules in this subpart govern the application by a Mexican-domiciled motor carrier to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones adjacent to the border.

#### § 365.503 Application.

(a) Each applicant applying under this subpart must submit an application that consists of: Form OP-1 (MX), Form MCS-150—Motor Carrier Identification Form, and Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders.

(b) The FMCSA will only process your application if it meets the following conditions:

(1) The application must be completed in English.

(2) The information supplied must be accurate, complete, and include all required supporting documents and applicable certifications in accordance with the instructions to Form OP-1 (MX), Form MCS-150, and Form BOC-3.

(3) The application must include the filing fee payable to the FMCSA in the amount set forth at 49 CFR 360.3(f)(1); and

(4) The application must be signed by the applicant.

(c) You must submit the application to the address provided in Form OP-1 (MX).

(d) You may obtain the application forms from any FMCSA Division Office or download it from the FMCSA website at: <http://www.fmcsa.dot.gov/factsfigs/formspub.htm>. *Form OP-1 (MX) is also published in Appendix A to this part.*

#### § 365.505 Re-registration and fee waiver for certain applicants.

(a) If you filed an application using Form OP-1(MX) before [Insert date of publication of the final rule in the Federal Register], you are required to file a new Form OP-1(MX) to update information about your operations. You do not need to submit a fee when you file a new application under this subpart.

(b) If you hold a Certificate of Registration issued before [Insert date of publication of final rule in the Federal Register] authorizing operations beyond the municipalities and commercial zones along the United States-Mexico border, you are required to file an OP-1(MX) if you want to continue those operations. You do not need to submit a fee when you file a new application under this subpart.

(1) You must file the application by [Insert date 1 year after date of publication of final rule in the Federal Register].

(2) The FMCSA may suspend or revoke the Certificate of Registration of any applicable holder that fails to comply with the procedures set forth in this section.

(3) Certificates of Registration issued prior to [Insert date of publication of final rule in the Federal Register] would remain valid until the OP-1(MX) application filed according to paragraph (b) of this section is processed.

#### § 365.507 Review of the application.

(a) The FMCSA will review and act on each application submitted under this subpart in accordance with the procedures set out in this part.

(b) When the FMCSA approves an application submitted under this subpart, the approval will be conditional upon the completion, to the satisfaction of the FMCSA, of a safety review under § 385.21 of this chapter within 18 months of the date of approval.

#### § 365.509 Requirement to notify of change in applicant information.

(a) You must notify the FMCSA of any changes or corrections to the information in Parts I, IA or II submitted on the Form OP-1(MX) or the Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders during the application process or after having been granted operating authority. You must notify the FMCSA in writing within 45 days of the change or correction.

(b) If you fail to comply with paragraph (a) of this section, the FMCSA may suspend or revoke your operating authority until you meet those requirements.

BILLING CODE 4910-22-P

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Appendix A to Subpart E of Part 365—Form OP-1(MX)—Application To Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Form Approved  
OMB No. 2126-0016  
Expires 00/00/00

**Instructions for Completing Form OP-1(MX) Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)**

Please read these instructions before completing the application form. Retain the instructions and a copy of the complete application for your records. These instructions will assist you in preparing an accurate and complete application. Applications that do not contain the required information will be rejected and **may** result in a loss of the application fee. **The application must be completed in English** and typed or printed in ink. If additional space is needed to provide a response to any item, use a separate sheet of paper. Identify applicant on each supplemental page and refer to the section and item number in the application for each response.

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**PURPOSE OF THIS APPLICATION FORM:**

The Form OP-1(MX) is required to be filed by foreign (Mexican) for-hire motor carriers of passengers or property and motor private carriers who wish to register to transport property or passengers in the United States in accordance with the provisions of the North American Free Trade Agreement (NAFTA).

This form is also required to be utilized by those Mexican persons or entities who had previously filed applications for registration under NAFTA provisions and who are required to supplement the information in their original applications by completing and re-filing the revised Form OP-1(MX).

This Form should not be used for registration by Mexican carriers to perform transportation only in municipalities in the United States on the United States-Mexico international border or within the commercial zones of such municipalities. To apply for such registration, you should instead complete and file Form OP-2.

This form should not be filed by United States based enterprises, owned or controlled by Mexican nationals, providing: (1) truck services for the transportation of international cargo within the United States, or (2) point-to-point bus services in the United States, in accordance with NAFTA provisions. To apply for such registration, you should instead complete and file Form OP-1 or OP-1(P), respectively.

**WHAT TO FILE:**

All applicants must submit the following:

1. An original and one copy of a completed revised Form OP-1(MX) Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement, with all necessary attachments and statements.
2. A signed and dated Form BOC-3, Designation of Agents for Service of Process, which reflects the applicant's full and correct name, as shown on the Form OP-1(MX), and applicant's address, including the street address, the city, state, country and zip code, must be attached to the application. The BOC-3 form must show street address(es), and not post office box numbers, for the person (s) designated as the agent (s) for service of judicial process and notices under 49 U.S.C. 13304 and administrative notices under 49 U.S.C. 13303. A person must be designated in each State in which the applicant may operate.
3. A completed and signed Form MCS-150 Motor Carrier Identification Report.
4. An Internal Revenue Service Form 2290, Schedule I, which shows payment of Federal Taxes for highway use by heavy vehicles, applicable under 26 U.S.C. § 4481, or a letter, signed by an authorized company official stating why applicant is not subject to this tax requirement. The form should be a copy of the most recent form filed with the IRS.
5. A filing fee of \$300 for **each** type of registration requested, payable in U.S. dollars to the Federal Motor Carrier Safety Administration, by means of a check, money order, or an approved credit card. Cash is not accepted.

**GENERAL INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM:**

- All questions on the application form must be answered completely and accurately. If a question or supplemental attachment does not apply to the applicant, it should be answered "not applicable."
- The application must be typewritten or printed in ink. Applications written in pencil will be rejected.
- The application must be completed in English.
- The completed certification statements and oath must be signed by the applicant only, and not by the applicant's attorney or other applicant representative. The same person must sign the oath and certifications.
- Use the attachment pages included, as appropriate, to provide any descriptions, explanations, statements or other information that is required to be furnished with the application. If additional space is needed to respond to

any question, please use separate sheets of paper. Identify continuation sheets by using headings that show both the number of the page of the revised OP-1(MX) form or Attachment page on which the question or response appears and the item number of the question.

#### ADDITIONAL ASSISTANCE

##### OP-1(MX)

Additional information on obtaining registration or monitoring the status of your application is available through the Automated Response Capability (ARC) telephone system. After dialing (202) 358-7000, press 1, then request the appropriate menu number indicated below. You may use the ARC 24 hours a day, 7 days a week to obtain information in the following areas:

INFORMATION REQUESTED	MENU NUMBER
Status of your application (NOTE: Use the assigned docket number to expedite your request. The FMCSA will notify you of the docket number by letter.)	1
Status of insurance and process agent filings	2
Assistance in filing your application	3
If you require information that is not available in the automated response system, the ARC will guide you to an appropriate FMCSA staff member who will be able to assist you in other areas.	

##### U.S. DOT REGISTRATION AND SAFETY RATINGS

To obtain information on registering with U.S. DOT (filing Form MCS-150) call: (800) 832-5660 (Automated Response System)

For information concerning a carrier's assigned safety rating, call: (800) 832-5660

##### U.S. DOT HAZARDOUS MATERIALS REGULATIONS

To obtain information on whether the commodities you intend to transport are considered as hazardous materials:

Refer to the provisions governing the transportation of hazardous materials found under Parts 100 through 180 of Title 49 of the Code of Federal Regulations (CFR), particularly the Hazardous Materials Table at 49 CFR § 172.101 or contact the U.S. DOT, Research and Special Programs Administration at 1-800-467-4922.

To obtain information about DOT hazardous materials transportation registration requirements, contact the U.S. DOT, Research and Special Programs Administration at 1-800-467-4922.

#### **SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

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#### ***SECTION I - APPLICANT INFORMATION***

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##### **APPLICANT'S LEGAL BUSINESS NAME and DOING BUSINESS AS NAME.**

The applicant's name should be your full legal business name -- the name on the incorporation certificate, partnership agreement, tax records, etc. If you use a trade name that differs from your official business name, indicate this under "Doing Business As Name." Example: If you are John Jones, doing business as Quick Way Trucking, enter "John Jones" under APPLICANT'S LEGAL BUSINESS NAME and "Quick Way Trucking" under DOING BUSINESS AS NAME.

Because the FMCSA uses computers to retain information about licensed carriers, it is important to spell, space, and punctuate any name the same way each time you write it. Example: John Jones Trucking Co., Inc.; J. Jones Trucking Co., Inc.; and John Jones Trucking are considered three separate companies.

**BUSINESS ADDRESS/MAILING ADDRESS.** The business address is the physical location of the business. Example: El Camino Real #756, Guadalajara, and Jalisco, Mexico. If applicant receives mail at an address different from the business location, also provide the mailing address. Example: P. O. Box 3721. **NOTE:** To receive FMCSA notices and to ensure that insurance documents filed on applicant's behalf are accepted, notify in writing the Federal Motor Carrier Safety Administration, Suite 600, 400 Virginia Avenue, SW., Washington, DC 20024, if the business or mailing address changes. If applicant also maintains an office in the United States, that information should also be provided.

**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

**REPRESENTATIVE.** If someone other than the applicant is preparing this form, or otherwise assisting the applicant in completing the application, provide the representative's name, title, position, or relationship to the applicant, address, and telephone and FAX numbers. Applicant's representative will be the person contacted if there are questions concerning this application.

**U.S. DOT NUMBER.** Applicants are required to register with the U.S. Department of Transportation (U.S. DOT) before initiating service. Motor carriers that already have been issued a U.S. DOT registration number should provide it; applicants that have not previously registered with U.S. DOT should refer to the U.S. DOT information sources under the "Additional Assistance" part of these Instructions. **NOTE:** a completed and signed Form MCS-150 Motor Carrier Identification Report must be submitted separately with this application.

**FORM OF BUSINESS.** A business is a corporation, a sole proprietorship, or a partnership. If the business is a sole proprietorship, provide the name of the individual who is the owner. In this situation, the Owner is the registration applicant. If the business is a partnership, provide the full name of each partner.

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**SECTION IA – ADDITIONAL APPLICANT INFORMATION**

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All applicants must answer each question in this section. Applicants must have been issued a Registration by the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT) before a Mexican Motor Carrier Authority Registration will be issued. Applicant's registration must be contained in the SCT database. If the applicant is in the process of obtaining its SCT registration, indicate the date the application was filed. Applicant must supplement the information once the number has been issued prior to being issued its Authority Registration. If an applicant currently holds an Authority Registration and is supplementing the information contained in its original application, this information is also required. An existing Authority Registration will be suspended if the SCT registration number and information is not supplied.

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**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

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**SECTION II - OWNERSHIP, CONTROL AND AFFILIATIONS INFORMATION**

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All applicants must disclose pertinent information concerning the persons who own or control the applicant, and concerning any relationships or affiliations which the applicant has had with other entities registered with FMCSA or its predecessor agencies. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 or any other law.

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**SECTION III - TYPE (S) OF REGISTRATION REQUESTED**

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Check the appropriate box (es) for the type(s) of registration you are requesting. For purposes of this application, for-hire motor carrier means an entity that is transporting the goods of others, and motor private carrier means an entity (person or company) that is transporting its own goods, including an entity that is performing such operations under an agreement or contract with a U.S. shipper or other business.

A separate filing fee is required for each type of registration requested.

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**SECTION IV - INSURANCE INFORMATION**

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Check the appropriate line that describes the type of business you will be conducting.

If you are applying for motor passenger carrier registration, check the line that describes the seating capacity of your vehicles. If all the vehicles you operate have a seating capacity of 15 passengers or fewer, you are required to maintain \$1,500,000 minimum liability coverage. If any one of the vehicles you operate has a seating capacity of 16 passengers or more, you are required to maintain \$5,000,000 minimum liability coverage.

If you are applying for motor property carrier registration and you operate vehicles with a gross vehicle weight rating of 10,000 pounds or more and haul only non-hazardous materials, you are required to maintain \$750,000 minimum liability coverage for the protection of the public. Hazardous materials referred to in the FMCSA's insurance regulations in item (c) of the table at 49 CFR 387.303 (b)(2) require \$1 million minimum liability coverage; those in item (b) of the table at 49 CFR 387.303 (b)(2) require \$5 million minimum liability coverage. If you operate only vehicles with a

**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

gross vehicle weight rating less than 10,000 pounds, you must maintain \$300,000 minimum liability coverage. If you operate only such vehicles but will be transporting any quantity of Division 1.1, 1.2 or 1.3 explosives; any quantity of poison gas (Division 2.3, Hazard Zone A, or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials, you must maintain \$5 million minimum liability coverage. Minimum levels of cargo insurance must be maintained by all motor common carriers in the amount of \$5,000 for loss of or damage to property carried on any one motor vehicle, and \$10,000 for loss of or damage to property occurring at any one time and place.

Appropriate insurance forms must be filed within **90 days** after the date notice of your application is published in the *DOT/FMCSA Register*. Form BMC-91 or BMC-91X for bodily injury and property damage; Form BMC-34 for cargo liability (common property carriers only).

The FMCSA does not furnish copies of insurance forms. You must contact your insurance company to arrange for the filing of all required insurance forms.

Applicant does not have to submit evidence of insurance with the application, but if the registration is granted, applicant must carry on the vehicle when crossing the border a current Department of Transportation Form MCS-90 and evidence of continuing insurance coverage.

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**SECTION V - SAFETY CERTIFICATIONS**

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Applicants for motor carrier registration must complete the safety certifications. You should check the "YES" response only if you can attest to the truth of the statements. The carrier official's signature at the end of this section applies to the Safety Certifications. The "Applicant's Oath" at the end of the application form applies to all certifications. False certifications are subject to the penalties described in that oath.

If you are exempt from the U.S. DOT safety fitness regulations because you operate only vehicles with a gross vehicle weight rating under 10,001 pounds, and you will not transport any hazardous materials, you must certify that you are familiar with and will observe general operational safety fitness guidelines and applicable State and local laws relating to the safe operation of commercial motor vehicles.

Applicants should complete all applicable Attachment pages and, if necessary to complete the responses, attach additional pages referring to

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**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

the appropriate Sections and items in the application or Attachment pages. If you are exempt from the U.S. DOT safety fitness regulations, you must complete all relevant attachment pages to demonstrate your willingness and ability to comply with general operational safety fitness guidelines and applicable State and local laws.

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**SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS**

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Applicants for household goods registration as defined in 49 U.S.C. 13102(10) must certify their agreement to offer arbitration as a means of settling loss and damage claims as a condition of registration. The signature should be that of the same company official who completes the Applicant's Oath.

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**SECTION VII - SCOPE OF OPERATING REGISTRATION SOUGHT**

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Applicant must indicate, by checking one or more lines, the description(s) which describes the registration(s) for which application is being made. A separate fee is assessed for each registration sought.

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**SECTION VIII - COMPLIANCE CERTIFICATIONS**

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All applicants are required to certify accurately to their willingness and ability to comply with statutory and regulatory requirements including those administered by the Department of Labor and certain State agencies, to their tax payment status, and to their understanding that their agent for service of process is their official representative in the U.S. to receive DOT filings and notices.

Applicants are required to certify to their willingness and ability to comply with regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations and Hazardous Materials Regulations, as well as all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or a State agency operating a plan pursuant to section 18 of the Occupational Safety Health Act of 1970 ("OSHA State plan agency").

Applicants will also be required to certify their willingness to produce records for the purpose of determining compliance with the applicable safety regulations of the FMCSA and the requirements administered by the U.S. Department of Labor.

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**SPECIFIC INSTRUCTIONS FOR COMPLETING EACH SECTION OF THE APPLICATION FORM**

The DOT considers compliance with Department of Labor and OSHA state plan agency requirements to be extremely important. An applicant's certification of its willingness to comply with DOL and OSHA requirements reflects an overall intention to comply with U.S. laws. While registration will not be withheld based solely on the failure by an applicant to certify that it is willing and able to comply with such requirements, such certification is required to avoid notification to DOL of an applicant's unwillingness to comply with these requirements.

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**SECTION IX - APPLICANT'S OATH**

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The applicant or an authorized representative may prepare applications. In either case, the applicant must sign the oath. In the case of companies, an authorized employee in the business structure (i.e., an officer, director, or other employee having access to the information necessary to make the oath or affirmation) may sign.

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**LEGAL PROCESS AGENTS**

All motor carrier applicants must designate a process agent in each State where operations are conducted. For example, if you will operate only in California and Arizona, you must designate an agent in each of those States; if you will operate in only one State, an agent must be designated for that State only. Process agents who will accept legal filings on applicant's behalf are designated on FMCSA Form BOC-3. Form BOC-3 must be filed with the application.

**STATE NOTIFICATION**

Before beginning operations, all applicants must contact the appropriate regulatory agencies in every State in and through which the carrier will operate to obtain information regarding various state rules applicable to interstate registrations. It is the applicant's responsibility to comply with registration, fuel tax, and other State regulations and procedures. You should select the State in which you will operate the largest number of motor vehicles in the next year and contact that State's transportation agency, to obtain registration forms and instructions. If the majority of your transportation is in Arizona, but you also operate in another State, you will need to contact a State other than Arizona for this registration. Failure to accomplish this State registration could subject you to substantial State penalties as well as the potential loss of your registration.

Please refer to the additional information provided in your application packet for further information.

**MAILING INSTRUCTIONS:**

To file for registration you must submit an **original and one copy** of this application with the appropriate filing fee to FMCSA. **Note:** Retain a copy of the completed application form and any attachments for your own records. Mailing addresses for applications:

**ALL DOCUMENTS WITH FEES ATTACHED:**  
Federal Motor Carrier Safety Administration  
P. O. Box 100147  
Atlanta, GA 30384-0147

**FOR EXPRESS MAIL ONLY:**  
Nationsbank Wholesale Lockbox 100147  
6000 Feldwood Road  
3rd Floor East  
College Park, GA 30349

**FOR CREDIT CARD USERS ONLY:**  
Federal Motor Carrier Safety Administration  
Suite 600, 400 Virginia Avenue, SW.  
Washington, DC 20024

**FMCSA FILING FEES**

Fee Schedule effective January 1996  
Fee for Registration . . . \$300.00

**FEE POLICY**

- Filing fees must be payable to the **Federal Motor Carrier Safety Administration**, by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency or by approved credit card.
- Separate fees are required for each **type of registration** requested. If applicant requests registration as a for-hire motor carrier and as a private motor carrier, multiple fees are required. The applicant may submit a single payment for the sum of the applicable fees.
- Filing fees must be **sent along with the original and one copy of the application** to the appropriate address under the preceding paragraph titled **MAILING INSTRUCTIONS**.
- After an application is received, the filing fee is non-refundable.
- The FMCSA reserves the right to discontinue processing any application for which a check is returned due to insufficient funds. The application will not be processed until the fee is paid in full.

**FILING FEE INFORMATION**

All applicants must submit a filing fee of \$300.00 for each type of registration requested. The total amount due is equal to the fee(s) times the number of boxes checked in **Section III** of the Form OP-1(MX). Fees for multiple authorities may be combined in a single payment.

Total number of boxes  
checked in **Section III** \_\_\_\_\_ x filing fee \$ \_\_\_\_\_ = \$ \_\_\_\_\_

INDICATE AMOUNT \$ \_\_\_\_\_ AND METHOD OF PAYMENT:

CHECK OR  MONEY ORDER, PAYABLE TO: **FEDERAL MOTOR CARRIER  
SAFETY ADMINISTRATION**

VISA  MASTERCARD

Credit Card Number \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_



U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Form Approved OMB No. 2126-0016 Expires 00/00/00

FORM-OP-1(MX)

Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)

This application is for all Mexican carriers requesting to register to operate as motor carriers of passengers or property in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones adjacent to the border, and for all Mexican persons or entities who had previously filed applications for registration under NAFTA provisions and who are required to supplement the information in their original applications by completing and re-filing the revised Form OP-1(MX).

For FMCSA Use Only

Docket No. MX DOT No. Filed Fee No.

PAPERWORK BURDEN

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. It is estimated that an average of 4 burden hours per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024

SECTION I - APPLICANT INFORMATION

LEGAL BUSINESS NAME: DOING BUSINESS AS NAME: (Trade Name, if any) BUSINESS ADDRESS: (Actual Street Address): (City) (State) (Country) (Zip Code)

(Telephone Number)	(Fax Number)
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**SECTION I – APPLICANT INFORMATION (continued)**

**MAILING ADDRESS:** (If different from above)

(Street Name and Number)

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(City) (State) (Country) (Zip Code)

**U.S. ADDRESS:** (Does the applicant currently have an office in the United States? If so, give address and telephone number.)

(Street Name and Number)

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(City) (State) (Country) (Zip Code)

( ) ( )

(Telephone Number) (Fax Number)

**APPLICANT’S REPRESENTATIVE:** (Person who can respond to inquiries)

(Name and title, position, or relationship to applicant)

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(Street Name and Number)

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(City) (State) (Country) (Zip Code)

( ) ( )

(Telephone Number) (Fax Number)

**US DOT NUMBER** (If available; if not, see Instructions) \_\_\_\_\_

**FORM OF BUSINESS** (Check one)

**CORPORATION** (Give Mexican or U.S. State of Incorporation) \_\_\_\_\_

**SOLE PROPRIETORSHIP** (Give full name of individual)

(First Name) (Middle Name) (Surname)

**PARTNERSHIP** (Identify each of the partners) \_\_\_\_\_

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**SECTION IA – ADDITIONAL APPLICANT INFORMATION**

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1. Do you or your company currently operate in the United States?  
 Yes       No

1a. If so, indicate the locations where you operate and the ports of entry utilized.

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2. Has the applicant previously completed and submitted a Form MCS-150?  
 Yes       No

2a. If so, give the name under which it was submitted.

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3. Do you or your company presently hold, or have you ever applied for regular (MC) or Mexican (MX) authority from the former U.S. Interstate Commerce Commission, the U.S. Federal Highway Administration, the Office of Motor Carrier Safety, or the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation under the name shown on this application, or under any other name?  
 Yes       No

3a. If yes, please identify the lead docket number(s) assigned to the application or grant of authority

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3b. If the application was rejected prior to the time a lead docket number(s) was assigned, please provide the name of the applicant shown on the application

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4. Is the applicant domiciled in Mexico? (Check one)  
 Yes       No
5. Indicate whether the applicant is owned or controlled by persons of Mexico (Check one)  
 Yes       No
6. Does the applicant hold a Federal Tax Number from the U.S. Government?  
 Yes       No
- 6a. If so, enter the number here: \_\_\_\_\_
7. Has your company been issued a Registration by the Mexican Government's Secretaria de Comunicaciones y Transportes (SCT)?  
 Yes       No
- 7a. If so, give the name under which your company is registered, the Registration Number, and the place where the Registration was issued.

\_\_\_\_\_

\_\_\_\_\_

**SECTION II – OWNERSHIP, CONTROL AND AFFILIATIONS INFORMATION**  
**OWNERSHIP AND CONTROL**

- If the applicant is a **corporation**, list the names, country of residence, citizenship and domicile, if any, of the corporation, all principal officers and stockholders (holding more than 10 percent of stock) of applicant.
- If applicant is a **partnership**, list the names, country of residence, citizenship and percentage of ownership of partnership for each partner.
- If applicant is an **individual**, enter that individual's name, country of residence, and citizenship.

Name	Country of Residence	Citizenship	Domicile	Percentage of Ownership

**AFFILIATIONS**

Disclose any relationship the applicant has, or has had, with any U.S. or foreign motor carrier, broker, or freight forwarder registered with the other former ICC, FHWA, Office of Motor Carrier Safety, or Federal Motor Carrier Safety Administration within the past 3 years. For example, this relationship could be through a percentage of stock ownership, a loan, a management position, a wholly-owned subsidiary, or other arrangement.

If this requirement applies to you or your company, provide the name of the affiliated company, the latter's MC or MX number, its U.S. DOT Number, if any, and the company's latest U.S. DOT safety rating. Applicant must indicate whether these entities have been disqualified from operating commercial motor vehicles in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748)(MCSIA) or any other law. (If you require more space, attach the information to this application form.

Name of affiliated company	MC or MX Number	U.S. DOT Number	U.S. DOT Safety Rating	Ever Disqualified under the MCSIA or any other law?

**SECTION III – TYPE(S) OF REGISTRATION REQUESTED**

You must submit a filing fee for each type of registration requested (for each checked box).

Applicant seeks to provide the following transportation service:

**PASSENGER REGISTRATION**

- Charter and special operations** transportation, in interstate or foreign commerce, between Mexico and the United States.
- Service as a common carrier over **regular routes** between Mexico and the United States (Regular route passenger carrier registration to perform regularly scheduled service only over named roads or highways). Regular route passenger service includes registration to transport newspapers, baggage or passengers, express packages, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

Applicants requesting registration to operate over regular routes – On a separate sheet of paper attached to the application, describe the specific route involved in your passenger carrier service description(s).

- Service as a **contract carrier** between Mexico and the United States, under continuing contract(s) with persons or organizations requiring passenger transportation service;

**PROPERTY REGISTRATION**

- Motor Common Carrier of Property (except Household Goods)**
- Motor Contract Carrier of Property (except Household Goods)**
- Motor Common Carrier of Household Goods**
- Motor Contract Carrier of Household Goods**
- Private Carrier**

**SECTION IV – INSURANCE INFORMATION****MOTOR PASSENGER CARRIER APPLICANTS**

All motor passenger carriers operating in the United States, including Mexican carriers, must maintain public liability insurance. The amounts in parentheses represent the minimum amount of coverage required.

Applicant will use vehicles with seating capacities of (*check only one*):

- 16 passengers or more (\$5,000,000)
- 15 passengers or fewer only (\$1,500,000)

**MOTOR PROPERTY CARRIER APPLICANTS** (*including Household Goods Carriers*)

**NOTE:** Refer to **SECTION IV** under the *Instructions to the Form OP-1(MX)* for information on cargo insurance filing requirements for motor common carriers.

- Applicant will operate vehicles having a gross vehicle weight rating (GVWR) of 10,000 pounds or more to transport:
  - Non-hazardous commodities (\$750,000)
  - Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(c) (\$1,000,000).
  - Hazardous materials referenced in the FMCSA insurance regulations at 49 CFR § 387.303(b)(2)(b) (\$5,000,000).
- Applicant will operate only vehicles having a GVWR under 10,000 pounds to transport:
  - Any quantity of Division 1.1, 1.2 or 1.3 explosives; and quantity of poison gas (Division 2.3, Hazard Zone A or Division 6.1, Packing Group 1, Hazard Zone A materials); or highway route controlled quantity of radioactive materials (\$5,000,000).
  - Commodities other than those listed above (\$300,000).

**SECTION IV – INSURANCE INFORMATION (continued):**

Does the applicant presently hold public liability insurance?

Yes       No

If applicant does hold such insurance, please provide the information below:

Insurance Company \_\_\_\_\_

Address: \_\_\_\_\_

Maximum Insurance Amount \_\_\_\_\_

Policy Number \_\_\_\_\_

Date Issued \_\_\_\_\_

Insurance Effective Date \_\_\_\_\_ Expiration Date \_\_\_\_\_

Does applicant presently operate or has it operated under trip insurance issued for movements in U.S. border commercial zones?

Yes       No

**SECTION V – SAFETY CERTIFICATIONS**

Applicant certifies that it is exempt from the U.S. DOT Federal Motor Carrier Safety Regulations (FMCSRs) because it will operate only small vehicles (GVWR under 10,000 pounds) and will not transport hazardous materials.

\_\_\_\_\_ Yes      \_\_\_\_\_ No

If you answered **yes**, proceed to the end of this section, sign the certification and complete the appropriate attachments to Section V. Refer to the instructions for additional information.

If you answered No, you must complete the remaining questions in Section V, and sign the certification before you complete the appropriate attachments to Section V.

Applicant maintains current copies of all U.S. DOT Federal Motor Carrier Safety Regulations, and the Hazardous Materials Regulations (if a property carrier transporting hazardous materials), understands and will comply with such Regulations, and has ensured that all company personnel are aware of the current requirements.

\_\_\_\_\_ Yes

Applicant certifies that the following tasks and measures will be fully accomplished and procedures fully implemented before it commences operations in the United States:

\_\_\_\_\_ Yes

**1. Driver qualifications:**

The carrier has in place a system and procedures for ensuring the continued qualification of drivers to operate safely, including a safety record for each driver, procedures for verification of proper licensing of each driver, procedures for identifying drivers who are not complying with the U.S. and Mexican safety regulations, and a description of a retraining and educational program for poorly performing drivers.

\_\_\_\_\_ Yes

The carrier has procedures in place to review drivers' employment and driving histories for at least the last 5 years, to determine whether the individual is qualified and competent to drive safely.

\_\_\_\_\_ Yes

The carrier has established a system and requirements that each driver report to the carrier in writing under the driver's signature, all criminal convictions within 30 days of occurrence, including the following information: the driver's full name, driver's license number, and the date of conviction; details of the offense, including suspension, revocation, or cancellation of driving privileges, and the location of the offense.

\_\_\_\_\_ Yes

The carrier has established a program to review the records of each driver at least once every 12 months and will maintain a record of the review.

\_\_\_\_\_ Yes

**2. Hours of service:**

The carrier has in place a record keeping system and procedures to monitor the hours of service performed by drivers, including procedures for continuing review of drivers' log books, and for ensuring that all operations requirements are complied with.

\_\_\_\_\_ Yes

The carrier has ensured that all drivers to be used in the United States are knowledgeable of the U.S. hours of service requirements, and has clearly and specifically instructed the drivers concerning the application to them of the 10 hour, 15 hour, and 60 and 70 hour rules, as well as the requirement for preparing daily log entries in their own handwriting for each 24 hour period.

\_\_\_\_\_ Yes

The carrier has attached to this application statements describing the carrier's monitoring procedures to insure that drivers complete logbooks correctly, and describing the carrier's record keeping and driver review procedures.

\_\_\_\_\_ Yes

**3. Drug and alcohol testing:**

The carrier is familiar with the alcohol and controlled substance testing requirements of 49 CFR 382 and 49 CFR 40 and has in place a program for systematic testing of drivers.

\_\_\_\_\_ Yes

The carrier has attached to this application the name, address, and telephone number of the person responsible for implementing and overseeing alcohol and drug programs, and also of the drug testing laboratory and alcohol testing service that are used by the company.

\_\_\_\_\_ Yes

**4. Vehicle condition:**

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations.

\_\_\_\_\_ Yes

The carrier has inspected vehicles that will be used in the United States prior to the beginning of such operations and has proof of the inspection on-board the vehicle as required by 49 CFR 396.17.

\_\_\_\_\_ Yes

The carrier's vehicles were manufactured in compliance with the applicable U.S. DOT Federal Motor Vehicle Safety Standards.

\_\_\_\_\_ Yes

**5. Accident monitoring program:**

The carrier has in place a program for monitoring vehicle accidents and maintains an accident register in accordance with 49 CFR 390.15.

\_\_\_\_\_ Yes

The carrier has attached to this application a copy of its accident register for the previous year (or 12 months), or a description of how the company will maintain this register once it begins operations in the United States.

\_\_\_\_\_ Yes

The carrier has established an accident countermeasures program and a driver training program to reduce preventable accidents.

\_\_\_\_\_ Yes

The carrier has attached to the application a description and explanation of the accident monitoring program it has implemented for its operations in the United States.

\_\_\_\_\_ Yes

**6. Production of records:**

The carrier can and will produce records demonstrating compliance with the safety requirements within 48 hours of receipt of a request from a representative of the USDOT/FMCSA or other authorized official.

\_\_\_\_\_ Yes

The carrier is including as an attachment to this application the name, address and telephone number of the employee who should be contacted for requesting records.

\_\_\_\_\_ Yes

**7. Hazardous Materials (to be completed by carriers of hazardous materials only).**

The HM carrier has full knowledge of the U.S. DOT Hazardous Materials Regulations, and has established programs for the thorough training of its personnel in such regulations.

\_\_\_\_\_ Yes

The carrier has established a system and procedures for inspection, repair and maintenance of its vehicles for HM transportation in a safe condition, and for preparation and maintenance of records of inspection, repair and maintenance in accordance with the U.S. DOT's Hazardous Materials Regulations.

\_\_\_\_\_ Yes

The HM carrier has attached to this application a statement providing information concerning: (1) the names of employees (other than drivers) responsible for assuring compliance with HM regulations referenced in Section V of this application), and (2) a description of their positions, training and experience with respect to safety regulations.

\_\_\_\_\_ Yes

The HM carrier has established a system and procedures for maintaining HM shipping documents.

\_\_\_\_\_ Yes

**7A. For Cargo tank carriers (of HM):**

The carrier submits with this application a certificate of compliance for each cargo tank the company utilizes in the U.S., together with the name, qualifications, CT number, and CT number registration statement of the facility the carrier will be utilizing to conduct the test and inspections of such tanks required by Part 180.

\_\_\_\_\_ Yes

The carrier will register under Part 107, Subpart G, if transporting a minimum of 55 lbs. of explosives, any quantity of highway route controlled quantity of radioactive materials, more than 1 liter of PIH Zone A, other hazardous materials in a tank over 3,500 gallons, or more than 5,000 lbs. loaded in one place.

\_\_\_\_\_ Yes

**8. Compliance with all of the following once operations in the United States have begun.**

The carrier will insure that drivers operate within the hours of service rules and are not fatigued while on duty.

The carrier will insure that all drivers operating in the United States are at least 21 years of age and possess a valid Commercial Drivers License (CDL) or Licencia Federal de Conductor (LFC).

The carrier will insure that all vehicles operated in the United States are inspected on an annual basis.

The carrier will insure that all violations and defects noted on inspection reports are corrected before vehicle and drivers are permitted to enter or continue in the United States.

\_\_\_\_\_ Yes

\_\_\_\_\_  
Signature of applicant

By signing these certifications, the carrier official is on notice that the representations made herein are subject to verification through inspections in the United States and through the request for and examination of records and documents. Failure to support the representations contained in this application could form the basis of a proceeding leading to the revocation of the authority granted.

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**Safety and Compliance Information and Attachments for Section V**

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1. Individual responsible for safe operations and compliance with applicable regulatory and safety requirements.

NAME	ADDRESS	POSITION

2. Location where current copies of the Federal Motor Carrier Safety Regulations and other regulations are maintained.



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**ATTACHMENT FOR SECTION V, NO. 3, DRUG AND ALCOHOL TESTING**

Person responsible for implementing and overseeing alcohol and drug programs

NAME	ADDRESS	POSITION

The drug testing laboratory and the alcohol testing service that are used by the carrier.

NAME	ADDRESS	TELEPHONE NO.

**ATTACHMENT FOR SECTION V, NO. 4,**  
**Intentionally Left Blank**





**ATTACHMENT FOR SECTION V, NO. 6, PRODUCTION OF RECORDS**

Contact person for requesting records

Name	Address	Telephone Number





**SECTION VI - HOUSEHOLD GOODS ARBITRATION CERTIFICATIONS**

**Household Goods Motor Common and Contract Carrier Applicants must certify as follows:**

Household goods carrier registration is now conditioned on the carrier's agreement to offer arbitration as a means of settling loss and damage claims.

Applicant certifies that it will offer arbitration in accordance with the requirements of 49 U.S.C. § 14708.

\_\_\_\_\_  
Signature

**SECTION VII - SCOPE OF OPERATING REGISTRATION SOUGHT**

1. Applicant seeks to provide the following transportation service in foreign commerce:

- For a Mexican carrier to transport property between the United States-Mexico international border and all points in the United States (except for point-to-point carriage of domestic cargo in the U.S., which continues to be prohibited).
- For Mexican passenger carriers, charter and tour bus operations between the U.S.-Mexico international border and points in the United States.
- For Mexican passenger carriers, service as a common carrier over regular routes. (Regular route passenger carrier authority to perform regularly scheduled service only over named roads or highways.) Regular route passenger service includes authority to transport newspapers, baggage of passengers, express packages, and mail in the same motor vehicle with passengers, or baggage of passengers in a separate motor vehicle.

2. Indicate the principal border crossing points which applicant intends to utilize.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION VIII – COMPLIANCE CERTIFICATIONS****All applicants must certify as follows:**

- Applicant is willing and able to provide the proposed operations or service and to comply with all pertinent statutory and regulatory requirements and regulations issued or administered by the U.S. Department of Transportation, including operational regulations, safety fitness requirements, motor vehicle safety standards, and minimum financial responsibility requirements.

\_\_\_\_\_ Yes

- Applicant is willing and able to comply with all applicable statutory and regulatory requirements administered by the U.S. Department of Labor, or by a state agency operating a plan pursuant to Section 18 of the Occupational Safety and Health Act of 1970 ("OSHA state plan agency,") including, but not limited to, requirements of the Occupational Safety and Health Act, the Surface Transportation Assistance Act, and the Fair Labor Standards Act.

\_\_\_\_\_ Yes

- Applicant has paid any taxes it owes under Section 4481 of the U.S. Internal Revenue Code (26 U.S.C. §4481) for the most recent taxable period as defined under Section 4482(c) of the Internal Revenue Code.

\_\_\_\_\_ Yes

- Applicant understands that the agent(s) for service of process designated on FMCSA Form BOC-3 will be deemed applicant's official representative(s) in the United States for receipt of filings and notices in administrative proceedings under 49 U.S.C. 13303, and for receipt of filings and notices issued in connection with the enforcement of any Federal statutes or regulations.

\_\_\_\_\_ Yes

- Applicant is willing and able to produce for review or inspection documents which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the Department of Transportation, including the Federal Motor Carrier Safety Regulations, Motor Vehicle Safety Standards and Hazardous Materials Regulations, within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

\_\_\_\_\_ Yes

- Applicant is willing and able to produce for review or inspection documents (including employment, timekeeping, payroll, safety and health, and training records) which are requested for the purpose of determining compliance with applicable statutes and regulations administered by the U.S. Department of Labor and OSHA state plan agencies within 48 hours of any written request. Applicant understands that the written request may be served on the person identified in the attachment for Section V, number 6, or the designated agent for service of process.

\_\_\_\_\_ Yes

- Applicant is not presently disqualified from operating a commercial vehicle in the United States pursuant to the Motor Carrier Safety Improvement Act of 1999 or any other law.

\_\_\_\_\_ Yes

**SECTION IX – APPLICANT’S OATH**

**APPLICANT’S OATH MUST BE COMPLETED (SIGNED) BY APPLICANT**

I, \_\_\_\_\_,  
(First Name) (Middle Name) (Surname) (Title)

*verify under penalty of perjury, under the laws of the United States of America, that I understand the foregoing certifications and that all responses are true and correct. I certify that I am qualified and authorized to file this application. I know that willful misstatement or omission of material facts constitute Federal criminal violations under 18 U.S.C. §§ 1001 and 1621 and that each offense is punishable by up to 5 years imprisonment and a fine under Title 18, United States Code.*

*I further certify that I have not been convicted in U.S. Federal or State courts, after September 1, 1989, of any offense involving the distribution or possession of controlled substances, or that if I have been so convicted, that I am not ineligible to receive U.S. Federal benefits, either by court order or operation of law, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862).*

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Relationship to applicant, e.g., President or Owner)

Issued on: April 27, 2001.

**Brian M. McLaughlin,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 01-11035 Filed 5-1-01; 8:45 am]

BILLING CODE 4910-22-C

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 385

[Docket No. FMCSA-98-3299]

RIN 2126-AA35

#### Safety Monitoring System and Compliance Initiative for Mexican Motor Carriers Operating in the United States

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FMCSA proposes to implement a safety monitoring system and compliance initiative to help determine whether Mexican-domiciled carriers conducting operations anywhere in the United States comply with applicable safety regulations and conduct safe operations. This NPRM would revise the safety fitness regulations at 49 CFR part 385 to implement a safety oversight program designed to evaluate the safety fitness of Mexican carriers within 18 months after receiving conditional authority to operate in the United States. This proposal is necessary to implement the entry provisions of the North American Free Trade Agreement (NAFTA).

**DATES:** We must receive your comments by July 2, 2001.

**ADDRESSES:** You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001 FAX (202) 493-2251, on-line at <http://dmses.dot.gov/submit>. You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at <http://dms.dot.gov/search.htm> and typing the last four digits of the docket number

appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

**FOR FURTHER INFORMATION CONTACT:**

Valerie Height, (202) 366-1790, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

#### Background

Under the Bus Regulatory Reform Act of 1982 (Public Law No. 97-261, 96 Stat. 1103), Congress imposed a two-year moratorium on the former Interstate Commerce Commission's (ICC) issuance of new grants of U.S. operating authority to motor carriers domiciled in a foreign country, or owned or controlled by persons of a foreign country. The legislation authorized the President to remove or modify the moratorium upon a determination that such action was in the national interest. As a result of legislative and executive extensions, Mexican carriers have been subject to this moratorium since 1982. Since that time, most Mexican motor carriers of property seeking to initiate operations in the United States have been restricted to operating in the municipalities in the United States on the United States-Mexico border or within the commercial zones of such municipalities. Additional information on the implementation of NAFTA is set out in the preamble to the NPRM entitled *Application by Certain Mexican Motor Carriers to Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*, which addresses revisions to the part 365 application process and the OP-1(MX) application form and is published elsewhere in today's **Federal Register**. As we discussed in the NPRM addressing part 365, commercial motor vehicle safety in the United States is regulated under a comprehensive system of regulations designed to ensure that drivers are medically qualified;

meet applicable licensing standards; can read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals in the English language, to respond to official inquiries and to make entries on reports and records; and do not operate vehicles while impaired by drugs or alcohol or excessive fatigue. Our regulations also require carriers to equip every commercial motor vehicle with certain standard safety-related equipment and that vehicles be regularly inspected and maintained to ensure that they remain in safe operating condition. These regulatory requirements are enforced through roadside inspections and on-site compliance reviews. Roadside inspections focus on potentially unsafe vehicle and driver violations that may pose a threat to public safety unless the vehicle or driver is placed out of service. A compliance review comprises an examination of carrier records (including driver logbooks and drug and alcohol testing information), roadside vehicle inspection data, accident records and other safety related information to determine whether a motor carrier meets safety fitness standards as defined in the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations.

The U.S. DOT has consulted extensively with Mexican transportation officials in their efforts to strengthen Mexican vehicle safety regulations, and significant progress has been made in this area. Mexico has agreed to utilize the Commercial Vehicle Safety Alliance (CVSA) out-of-service criteria and has issued final regulations based on these criteria. These standards cannot be fully effective unless complemented by an adequate safety oversight program, including systematic roadside inspections, to ensure compliance with and enforcement of the criteria. U.S. DOT officials have worked extensively with Mexican transportation officials, but Mexico has not yet completed implementation of a comprehensive safety inspection program.

With the exception of the border commercial zone drayage operations, most Mexican carriers have little or no experience operating under regulations comparable to the FMCSRs. Accordingly, the FMCSA must be prepared to evaluate the safety fitness of motor carriers having no experience operating under our comprehensive system of safety regulations.

#### Proposed Safety Oversight Program

In this NPRM, the FMCSA proposes a safety oversight program to address U.S.

concerns about Mexican motor carrier safety. The initial stage of this program would entail review of safety information submitted by Mexican motor carriers when applying for authority under 49 CFR part 365 or registering under 49 CFR part 368 to operate within the U.S. municipalities and commercial zones along the U.S.-Mexico border. The FMCSA proposes to amend Form OP-2 (Application for Mexican Certificate of Registration for Foreign Motor Carriers and Foreign Private Carriers Under 49 U.S.C. 13902) and Form OP-1(MX) (Application to Register Mexican Carriers for Motor Carrier Authority Under the North American Free Trade Agreement (NAFTA)) to require additional safety related information and certifications of compliance. Mexican carriers would be required to submit, concurrently with the application, completed copies of the Form BOC-3 (Designation of Agents—Motor Carriers, Brokers and Freight Forwarders) and Form MCS-150 (Motor Carrier Identification Report, Application for U.S. DOT Number). These proposals are discussed in two notices published elsewhere in today's **Federal Register**. The requirement to submit a completed Form MCS-150 with the application would ensure that the Mexican carrier obtains a U.S. DOT number and is placed in the FMCSA safety system before it begins operations in the United States.

The FMCSA will conduct workshops and also provide written material, such as handbooks, to help the Mexican applicants understand the various regulatory requirements and the proper way to complete the applications. Once Mexican-domiciled carriers commence operations within the United States, they would be subject to intensified roadside monitoring through the vehicle inspection process. Data generated as a result of these inspections would be evaluated frequently to identify carriers with serious safety problems that warrant immediate attention. We propose to require that, as a condition of registration, all Mexican new entrant carriers undergo at least one satisfactory safety review within 18 months after receiving authority to operate within the United States. The proposed safety review is designed to enable the FMCSA to identify any Mexican carriers that may be conducting unsafe operations or that may lack the basic safety management controls necessary to ensure protection of the public safety.

Registrations issued to Mexican carriers under 49 CFR parts 365 and 368 would be expressly conditioned upon the carrier successfully completing the safety oversight program. The safety

review component of the program would evaluate a Mexican carrier's safety performance and basic safety management controls by reviewing performance-based safety information in the FMCSA's Motor Carrier Management Information System (MCMIS) and documents required to be maintained by motor carriers under the Federal Motor Carrier Safety Regulations, including records related to driver medical qualifications, driver hours of service, drug and alcohol testing and vehicle inspection, maintenance and repair. Specific procedures for the safety review, including the necessary documentation to be made available for review, are still being developed and would be provided to carriers when they get approval to operate. We also contemplate that the safety review process would be further refined as the result of a future rulemaking proceeding implementing a safety review requirement for all new entrant motor carriers under section 210 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748).

We also propose that the safety reviews be conducted either by reviewing records at the carrier's business premises or by requesting that Mexican carriers bring designated records to alternative locations, such as border inspection facilities. If the safety review determines that the carrier does not satisfactorily exercise basic safety management controls, its registration would be suspended. The carrier would then be required to submit a plan for corrective action within a specified time frame. Upon receipt of the corrective action plan, the FMCSA would promptly conduct a targeted follow-up safety review, if necessary, to determine whether the deficiencies have been corrected. If the carrier satisfactorily corrects the problem(s), the suspension would be lifted and the carrier would be allowed to resume operating within the United States. If the carrier fails to submit a corrective action plan, or if the follow-up safety review determines that the carrier has not satisfactorily corrected the problem, the carrier's registration would be revoked in accordance with the condition of its issuance.

The FMCSA proposes to take expedited action if a Mexican carrier engages in conduct that poses a potentially serious threat to public safety. Such conduct would include:

(1) Using drivers not possessing, or operating without, a valid *Licencia Federal de Conductor* (LFC) or Commercial Driver's License (CDL). A non-valid LFC or CDL would include

one that is falsified, revoked, expired, or without a Hazardous Materials endorsement, when required.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria without making required repairs.

(3) Being involved in, due to carrier act or omission, a hazardous materials incident within the United States involving a highway route controlled quantity of any of the following, as defined in 49 CFR 173.403, 173.50, 173.115, 173.132, and 173.133:

(a) a Class 7 (radioactive) material,  
 (b) a Class 1, Division 1.1, 1.2, or 1.3 explosive, or  
 (c) a poison inhalation Hazard Zone A or B material.

(4) Being involved in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed above and defined in 49 CFR chapter I.

(5) Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by 49 CFR part 387.

(7) Having an aggregate operations out of service rate of 50 percent based upon three inspections occurring within a consecutive 90-day period.

The FMCSA believes that these violations pose the greatest threat to public safety and raise serious questions about a carrier's willingness and ability to conduct safe operations. FMCSA would take expedited action either by issuing a deficiency letter requesting a written response demonstrating that appropriate corrective action has been taken or scheduling an expedited safety review. Failure to respond to the deficiency letter or undergo the expedited safety review would result in the suspension of the carrier's registration. Checking for these activities would require our State partners to expand the scope of the roadside inspection and to collect additional safety data.

The Mexican carrier applicants would remain subject to this oversight program for the entire 18-month initial operations period, even if they demonstrate compliance with our regulations by undergoing a satisfactory safety review before the expiration of the period. If a carrier has not undergone a safety review within 18 months of receiving authority to operate in the United States, it would retain its conditional registration status until a satisfactory safety review is conducted.

The carrier would also remain within the safety oversight program for more than 18 months if it received an unsatisfactory safety review within 18 months but needed additional time beyond the 18-month period to demonstrate that necessary corrective action was taken.

This proposal is consistent with the new motor carrier entrant requirements under section 210(a) of the MCSIA, which, among other things, directs the Secretary of Transportation to require each owner and each operator granted new operating authority to undergo a safety review within the first 18 months after beginning operations under that authority.

Under one of the companion NPRMs appearing in today's **Federal Register**, *Revision of Regulations and Application Form for Mexican-Domiciled Motor Carriers to Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border*, Mexican carriers currently operating in the U.S. border commercial zones under Certificates of Registration would be required to re-register by submitting revised application forms with expanded carrier safety assessment information, even if not changing the scope of their existing operations. These carriers would also be subject to the safety monitoring system proposed in this NPRM.

Finally, we wish to emphasize that the safety oversight program is intended to supplement, not replace, the regular safety fitness compliance and enforcement procedures applicable to all motor carriers within our jurisdiction.

#### Section-By-Section Analysis

Proposed § 385.21 describes the safety oversight program for Mexican-domiciled carriers and its components, including the safety review. The proposed safety review could be conducted at a designated location in the United States. Failure to provide the necessary documentation in connection with a safety review may result in the suspension of the carrier's registration until the documents are produced.

Section 385.23 would identify seven categories of serious safety violations which, when identified through roadside inspections or other means, would cause the FMCSA to take expedited action. Expedited action could take the form of a safety review or the issuance of a deficiency letter requesting proof of corrective action for the violations identified in the roadside inspection. Failure to submit an adequate written response to the deficiency letter would result in

suspension of the carrier's authority until the carrier makes the required showing of corrective action.

Section 385.25 would provide for the suspension of a Mexican carrier's registration if the safety review determines that it does not exercise basic safety management controls necessary to ensure safe operations. If the carrier then fails to take necessary corrective action, either by failing to submit a corrective action plan or by submitting an inadequate plan, the carrier's registration could be revoked after notice and an opportunity for a proceeding. This section would clarify that the carrier would also be subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repetitive violations of DOT regulations governing its operations.

Section 385.27 would establish a procedure for administrative review if a Mexican-domiciled carrier believes a suspension under §§ 385.23 and 385.25 is unwarranted. The request for review would be submitted to the Chief Safety Officer, who would be required to complete the review within 10 days after the carrier submits its request.

Section 385.29 would set forth that a Mexican-domiciled carrier would remain in the safety oversight program for 18 months after issuance of its conditional registration or Certificate of Registration. At the end of 18 months, the carrier's authority would become permanent, provided its most recent safety review was satisfactory. If the carrier has not undergone a safety review during the 18-month period, the carrier would remain in the program until a safety review is conducted. If a carrier's registration is under suspension at the end of the 18-month period, it would remain in the safety oversight program until it took the necessary corrective action or its registration was revoked under § 385.25 (b).

Section 385.31 would clarify that Mexican-domiciled carriers are subject to the general safety fitness procedures of subpart A of part 385 during the time they are in the safety oversight program.

#### Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and Department of Transportation Regulatory Policies and Procedures*

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26,

1979). The Office of Management and Budget has reviewed this document. This proposal is based upon existing statutory authority and serves to a large extent as notice to the affected carriers of procedures that would be used to enforce the Federal Motor Carrier Safety Regulations. The anticipated economic impact of this rulemaking would be minimal for carriers that do not violate applicable safety regulations while operating in the United States. No additional requirements would be imposed on carriers that conduct lawful operations in compliance with these regulations.

Nevertheless, the subject of safe operations by Mexican carriers in the United States will likely generate considerable public interest within the meaning of Executive Order 12866. The manner in which the FMCSA carries out its safety oversight responsibilities with respect to this international motor carrier transportation may be of substantial interest to the domestic motor carrier industry, the Congress, and the public at large. A regulatory evaluation was completed for the three companion NPRMs (published elsewhere in today's **Federal Register**) that implement the NAFTA entry provisions and our proposed safety monitoring system for Mexican-domiciled carriers conducting operations in the United States. This evaluation concluded that anywhere between (high estimate), to 10,000 (medium estimate) to 5,000 (low estimate) Mexican carriers would file for authority in the first year after the moratorium is lifted. The FMCSA estimates that in the first year (in the high estimate scenario), only 3,200 of these carriers would be new applicants, dropping to 2,500 in subsequent years. In the medium or low estimate scenarios, only 500 of the first-year applicants would be new, dropping to 200 in subsequent years. This is because most of the 15,000 to 5,000 Mexican carriers already are operating in the United States. Please refer to the Regulatory Evaluation for a detailed discussion on how these estimates were derived. A copy of the Regulatory Evaluation is in the docket.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (Pub. L. 96-354) (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Public Law 104-121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact

on a substantial number of small entities.

The FMCSA is issuing this document because of the planned implementation of the NAFTA's motor carrier access provisions. A NAFTA dispute resolution tribunal recently ruled that the United States violated NAFTA by failing to allow Mexican carriers greater access to the United States.

Mexican carriers would be subject to the same safety regulations as domestic carriers when operating in the United States. The objective of this proposal, in conjunction with the two companion NPRMs published elsewhere in today's **Federal Register**, is to help determine the capability of Mexican carriers to operate safely in the United States. This proposal describes a safety oversight program applicable to Mexican-domiciled carriers for the 18-month period beginning at the time they receive authority to operate in the United States.

A review of the MCMIS census file reveals that the vast majority of Mexican carriers are small. For Mexican carriers with any trucks, the mean number of trucks was 5.1. That mean was pulled up by a small number of large carriers. Seventy-five (75) percent of Mexican carriers had three or fewer trucks, and the 95th percentile carrier had only 15 trucks. These proposals should not have any impact on small U.S.-based motor carriers.

The FMCSA cannot exempt small carriers from these proposals without seriously diminishing the agency's ability to ensure the safe operations of Mexican carriers. The majority of Mexican carriers operating in the U.S. would be small; exempting them would have the same impact as not issuing these proposals. The safety oversight plan simply places Mexican carriers on notice concerning the manner in which the FMCSA would be enforcing compliance with the FMCSRs. Therefore, FMCSA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

#### **Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local or tribal government, or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various

assessments, estimates, and descriptions that are delineated in the Act.

Under this proposal, State law enforcement personnel in the four border States currently performing roadside inspections under the Motor Carrier Safety Assistance Program (MCSAP) will target for inspection Mexican carriers whose operations within the United States were previously limited to U.S. municipalities and commercial zones along the U.S.-Mexico border. Although the number of carriers subject to inspection will increase as a result of liberalized entry into the United States, additional Federal funds have been earmarked for increased inspection activity in the border States. The FMCSA has determined that the changes proposed in this rulemaking would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

#### *Executive Order 12988 (Civil Justice Reform)*

This action 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.

#### *Executive Order 13045 (Protection of Children)*

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

#### *Executive Order 12630 (Taking of Private Property)*

This proposed rule would 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.

#### *Executive Order 13132 (Federalism)*

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policy making discretion of the States.

Comments on this conclusion are welcome and should be submitted to the docket.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) [49 U.S.C. 3501-3520], Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and, if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor or require through regulations. The FMCSA has determined that this proposed regulation does not constitute an information collection with the scope or meaning of the PRA.

The FMCSA performs safety compliance assessments and enforcement activities as required by statutes and the FMCSRs. Implementation of this proposal would create no additional paperwork burden on Mexican carriers that comply with the FMCSRs. Any safety data that the FMCSA solicits from individual motor carriers regarding deficiency and/or non-compliance is not considered a collection of information because this type of response is required of such carriers as part of the usual and customary compliance and enforcement practice under the FMCSRs. Accordingly, the FMCSA has determined that this proposed action would not affect any requirements under the PRA.

#### *National Environmental Policy Act*

The agency has analyzed this proposal under of the National Environmental Policy Act of 1969 as amended [42 U.S.C. 4321 *et seq.*] and has determined under DOT Order 5610.1C (September 18, 1979) that the proposed action does not require any environmental assessment. An environmental impact statement is, therefore, not required.

#### **List of Subjects**

##### *49 CFR Part 385*

Highway Safety, Highways and roads, Motor carriers, Motor vehicle safety, and Safety fitness procedures.

For the reasons stated in the preamble, the FMCSA proposes to

amend 49 CFR part 385 as set forth below:

### **PART 385—SAFETY FITNESS PROCEDURES**

1. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 13901–13905, 31136, 31144, 31502, and 49 CFR 1.73.

2. Sections 385.1 through 385.19 are designated as Subpart A—General, and a new subpart B is added consisting of new §§ 385.21 through 385.31 to read as follows:

#### **Subpart B—Safety Monitoring System for Mexican Carriers**

Sec.

385.21 Safety oversight program.

385.23 Expedited action.

385.25 Suspension and revocation of Mexican carrier registration.

385.27 Administrative review.

385.29 Duration of enhanced safety oversight program.

385.31 Applicability of safety fitness and enforcement procedures.

#### **Subpart B—Safety Monitoring System for Mexican Carriers**

##### **§ 385.21 Safety oversight program.**

(a) Mexican-domiciled carriers issued registrations pursuant to 49 CFR part 365 subpart E or certificates of registration pursuant to 49 CFR part 368 are subject to a safety fitness oversight program to help determine that they comply with applicable Federal Motor Carrier Safety Regulations, Motor Vehicle Safety Standards, and Hazardous Materials Regulations and conduct safe operations. This program includes intensified monitoring through frequent roadside inspections and an evaluation of the carrier's compliance with the applicable safety regulations through a safety review conducted within 18 months after the carrier is issued a new registration or Certificate of Registration.

(b) The safety review under this section may be conducted either at the carrier's business premises or at an alternative location in the United States designated by the FMCSA. When the safety review is conducted in the United States, the carrier must make available for inspection at the designated location all records determined to be necessary to adequately evaluate the carrier's compliance with the applicable regulations.

(c) Failure to provide necessary documents upon reasonable request in connection with a safety review conducted under this section or § 385.23 will result in the suspension of the

carrier's operating authority until the documents are produced.

##### **§ 385.23 Expedited action.**

(a) A Mexican motor carrier committing any of the following violations identified through roadside inspections, or by any other means, may be subjected to an expedited safety review or issued a deficiency letter identifying the violations and directing the carrier to submit a written response demonstrating corrective action:

(1) Using drivers not possessing, or operating without, a valid Licencia Federal de Conductor (LFC) or Commercial Driver's License (CDL). A non-valid LFC or CDL includes one that is falsified, revoked, expired, or without a Hazardous Materials endorsement, when required.

(2) Operating vehicles that have been placed out of service for violations of the Commercial Vehicle Safety Alliance (CVSA) North American Standard Out-of-Service Criteria without making the required repairs.

(3) Involvement in, due to carrier act or omission, a hazardous materials incident within the United States involving a highway route controlled quantity of any of the following, as defined in 49 CFR 173.403, 173.50, 173.115, 173.132, and 173.133:

(i) A Class 7 (radioactive) material,  
(ii) A Class 1, Division 1.1, 1.2, or 1.3 explosive, or  
(iii) A poison inhalation Hazard Zone A or B material.

(4) Involvement in, due to carrier act or omission, two or more hazardous material incidents occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section and defined in 49 CFR chapter I.

(5) Using a driver who tests positive for drugs or alcohol or who refuses to submit to required drug or alcohol tests.

(6) Operating within the United States a motor vehicle that is not insured as required by 49 CFR part 387.

(7) Having an aggregate operations out of service rate of 50 percent based upon three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to the deficiency letter by submitting a written response demonstrating corrective action will result in the suspension of the carrier's registration until the required showing of corrective action is submitted to the FMCSA.

##### **§ 385.25 Suspension and revocation of Mexican carrier registration.**

(a) If a safety review conducted under § 385.21 determines that a Mexican carrier does not exercise the basic safety

management controls necessary to ensure safe operations, the carrier's registration will be suspended until the FMCSA determines that the carrier has taken appropriate corrective action necessary to remedy the violations discovered in the safety review.

(b) If a safety review conducted under § 385.21 determines that a Mexican carrier does not exercise the basic safety management controls necessary to ensure safe operations, and the carrier fails to take necessary corrective action as directed by the FMCSA, or fails to submit a plan for taking necessary corrective action, the carrier's registration may be revoked after notice and an opportunity for a proceeding.

(c) If a carrier operates in violation of a suspension order issued under this subpart, its registration may be revoked after notice and an opportunity for a proceeding.

(d) Notwithstanding any provision of this subpart, a Mexican carrier is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier regulations.

##### **§ 385.27 Administrative review**

(a) A Mexican-domiciled motor carrier may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in suspending the carrier's registration under this subpart.

(b) The motor carrier's request must explain the error it believes the FMCSA committed in suspending its registration and include any information or documents that support its argument.

(c) The motor carrier must submit its request in writing to the Chief Safety Officer, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(d) Administrative review shall occur no later than 10 days after the carrier submits its request for review.

##### **§ 385.29 Duration of enhanced safety oversight program.**

(a) Mexican-domiciled carriers subject to this subpart will remain in the enhanced safety oversight program for 18 months from the date their conditional registration or Certificate of Registration is issued, except as provided in paragraphs (c) and (d) of this section.

(b) If, at the end of this 18-month period, the carrier's most recent safety review was satisfactory and no additional actions are pending under this subpart, the carrier's conditional registration or Certificate of Registration will become permanent.

(c) If, at the end of this 18-month period, the carrier has not undergone a

safety review, it will remain in the enhanced safety oversight program until a safety review is conducted. If the results of this safety review are satisfactory, the carrier's conditional registration or Certificate of Registration will become permanent.

(d) If, at the end of this 18-month period, the carrier's registration is suspended under § 385.25 (a), the carrier will remain in the enhanced

safety oversight program until the FMCSA either:

- (1) Determines that the carrier has taken corrective action; or
- (2) Completes measures to revoke the carrier's authority under § 385.25(b).

**§ 385.31 Applicability of safety fitness and enforcement procedures.**

At all times during which a Mexican-domiciled motor carrier is subject to the enhanced safety oversight program in this subpart, it is also subject to the

general safety fitness procedures established in subpart A of this part and to compliance and enforcement procedures applicable to all carriers regulated by the FMCSA.

Issued on: April 27, 2001.

**Brian M. McLaughlin,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 01-11036 Filed 5-1-01; 8:45 am]

**BILLING CODE 4910-22-P**



# Federal Register

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**Thursday,  
May 3, 2001**

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**Part IV**

**The President**

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**Proclamation 7431—Law Day, U.S.A.**



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# Presidential Documents

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Title 3—

Proclamation 7431 of April 30, 2001

The President

Law Day, U.S.A., 2001

By the President of the United States of America

## Proclamation

This year marks the 44th commemoration of May 1 as Law Day, U.S.A., a national day of observance to celebrate our legal heritage. On this occasion, we reflect on the role our legal system plays in the lives of every American and how the freedoms we enjoy would not be possible without a strong and independent judiciary. The theme of this year's Law Day, "Ensuring the Rights of Victims," acknowledges our gratitude for a legal system that recognizes the importance of protecting the rights of those who are victimized by crime.

This Law Day, I call upon all Americans to consider how the law, communities, and individuals can better assist and support victims of crime. We must continue to strive for a legal system in which victims receive timely and accurate information regarding offenders and relevant public proceedings. In appropriate circumstances, a victim of crime should have an opportunity for restitution. In addition, social services provided to victims of crime can give the assistance and support that victims deserve in the aftermath of crime.

We are encouraged by the progress our country has made over the last three decades toward better assisting those whose lives are affected by criminal offenses. However, government and laws cannot effectively address this issue alone. More than 10,000 State- or community-based organizations provide help and hope to crime victims. I encourage Americans to celebrate, support, and consider joining these volunteers and other workers in service to their fellow citizens.

Keeping faith with our commitment to the victims of crime also drives us to increased efforts to prevent crimes and effectively punish those who commit them, to ensure that similar violations are discouraged and law-abiding citizens are protected.

Law Day provides an opportunity to express appreciation to professionals who accept the responsibility to serve justice. From attorneys to judges to the many other professionals working in our legal system, those who serve justice uphold the rule of law on which our democracy is built. They join with law enforcement professionals to give our people confidence to live without fear for their safety.

We must each do our part to build a Nation in which civility and respect for our neighbors overwhelm the powers of injustice. As Thomas Jefferson wrote, "It is reasonable that every one who asks justice should do justice." I encourage all Americans to join with members of the legal community in protecting the rights of crime victims and in celebrating a legal system that, while not perfect, is the best the world has ever known.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1, 2001, as Law Day, U.S.A. I call upon all the people of the United States to observe

this day with appropriate ceremonies and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, sweeping initial "G" and a long, horizontal flourish at the end.

[FR Doc. 01-11359

Filed 5-2-01; 8:45 am]

Billing code 3195-01-P

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Thursday, May 3, 2001

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Animal drugs, feeds, and related products:  
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**INTERIOR DEPARTMENT****Indian Affairs Bureau**

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**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

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**LIST OF PUBLIC LAWS**

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also

available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

**H.R. 132/P.L. 107-6**

To designate the facility of the United States Postal Service located at 620 Jacaranda

Street in Lanai City, Hawaii, as the "Goro Hokama Post Office Building". (Apr. 12, 2001; 115 Stat. 8)

**H.R. 395/P.L. 107-7**

To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the "Ronald W. Reagan Post Office of West Melbourne, Florida". (Apr. 12, 2001; 115 Stat. 9)

**Last List March 21, 2001**

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