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Monday
March 16, 1998

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–113–2]

Mexican Fruit Fly Regulations; Addition of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations by adding California to the list of quarantined States and by designating a portion of Los Angeles County, CA, as a regulated area. The interim rule was necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The interim rule also restricted the interstate movement of regulated articles from the regulated area in California.

EFFECTIVE DATE: The interim rule was effective on November 10, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective November 10, 1997, and published in the **Federal Register** on November 17, 1997 (62 FR 61213–61215, Docket No. 97–113–1), we amended the Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10) by adding California to the list of quarantined States in § 301.64(a) and by designating a portion of Los Angeles County, CA, as a regulated area in § 301.64–3(c). The interim rule was necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The interim rule also restricted the interstate movement of regulated articles from the regulated area in California.

Comments on the interim rule were required to be received on or before January 16, 1998. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

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

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR 301 and that was published at 62 FR 61213–61215 on November 17, 1997.

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

Done in Washington, DC, this 9th day of March 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6589 Filed 3–13–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–084–2]

Change in Disease Status of the Dominican Republic Because of Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations governing the importation of swine, pork, and pork products by removing the Dominican Republic from the list of regions in which hog cholera is not known to exist. We took this action based on reports we received from the Dominican Republic's Ministry of Agriculture that an outbreak of hog cholera had occurred in the Dominican Republic. As a result of this action, there are additional restrictions on the importation of pork and pork products into the United States from the Dominican Republic, and the importation of swine from the Dominican Republic is prohibited.

EFFECTIVE DATE: The interim rule was effective on August 4, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective August 4, 1997, and published in the **Federal Register** on August 18, 1997 (62 FR 43924–43925, Docket No. 97–084–1), we amended the regulations governing the importation into the United States of pork, pork products, and swine by removing the Dominican Republic from the lists in §§ 94.9(a) and 94.10(a) of regions in which hog cholera is not known to exist.

Comments on the interim rule were required to be received on or before October 17, 1997. We received one comment by that date. The comment was from a meat processing facility

located in the Dominican Republic. The commenter proposed changes to § 94.9 pertaining to the importation of pork and pork products from regions in which hog cholera is known to exist. We are considering the suggestions made by the commenter. If we decide to amend § 94.9 as suggested, we will publish a proposal in the **Federal Register**. The commenter did not dispute the determination that an outbreak of hog cholera has occurred in the Dominican Republic. Therefore, the facts presented in the interim rule still provide a basis for the rule.

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

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

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations in 9 CFR part 94 by removing the Dominican Republic from the list of regions in which hog cholera is not known to exist. We took this action based on a report by the Dominican Republic's Ministry of Agriculture that an outbreak of hog cholera had occurred in that country. As a result of the interim rule, the importation of swine from the Dominican Republic is prohibited, and pork and pork products from the Dominican Republic are not eligible for entry into the United States unless cooked or cured and dried in accordance with the regulations.

To comply with the Regulatory Flexibility Act, we considered this rule's likely economic impact on small entities. The entities likely to be impacted by the removal of the Dominican Republic from the list of regions in which hog cholera is not known to exist are entities that either produce or import swine or swine products.

The impact of the interim rule on U.S. producers of swine in general is expected to be minimal because the swine industry of the Dominican Republic is small compared to the enormous U.S. market. In 1996, pig stocks in the Dominican Republic totaled 950,000 head, whereas pig stocks in the United States totaled more than 58 million head. No live pigs were exported from the Dominican Republic to the United States in 1996, and exports of swine germ plasm are very limited.

The Small Business Administration's (SBA) definition of a ''small entity'' in the production of swine is an entity whose sales total less than $0.5 million annually. The vast majority (96.3 percent in 1992) of U.S. swine producers qualify as small entities. However, as discussed above, the impact on these producers should be minimal.

The effect of the interim rule on the importation of pork in general should be minimal as well. The Dominican Republic produces limited amounts of pork; in 1996, the Dominican Republic produced 62,000 metric tons of pork products, which is less than 1 percent of U.S. production. The United States is the second largest pork producer in the world, following only China. Declining farm numbers (but almost stable production), persistent competitive pressure on producers to adopt least-cost production methods, competitive pork prices relative to other meats, and a declining U.S. trade deficit in pork are indicators that U.S. pork producers hold a strong comparative advantage in pork production with respect to most countries in the world. The United States expanded its pork exports by more than nine times from 1986 to 1995 to reach 263,895 metric tons; at the same time, the United States decreased its pork imports by approximately 36 percent to 274,415 metric tons in 1995. Of the decreasing quantity of pork imports that do come into the United States, the majority come from Canada, which accounted for nearly 75 percent of U.S. pork imports in 1996.

The SBA's guidelines state that a ''small'' producer of fresh pork, part of Standard Industrial Classification (SIC) 2011, meat packing plants, or of sausages and other processed meats, SIC 2013, is one employing fewer than 500 workers. Establishments that conduct slaughtering activities, exclusively, as well as establishments that conduct both slaughtering and processing activities are included in SIC 2011. In 1992, 97 percent of 1,367 meat packing establishments in SIC 2011 in the United States were small. These plants accounted for approximately 40 percent of the $50.4 billion total value of pork produced by the industry. That year, 86 establishments were classified as strictly working with fresh, processed, and cured pork, and these establishments accounted for 26 percent of the total value of pork produced. Of 1,264 establishments in SIC 2013 in 1992, 98 percent were small. These producers accounted for 84 percent of the total value of pork produced by the industry, $19.97 billion. In addition, there were 121 operations classified as producing processed or cured pork products in SIC 2013, and these operations accounted for 21 percent of the total value of pork production of this industry. However, the rule should lead to, at most, a minimal change in the importation of fresh pork products and, therefore, will have a minimal impact on small or large domestic producers of pork products.

The Dominican Republic is a significant source of mixed-sausage (sausage that contains some pork) imports into the United States, supplying 621 metric tons of a total 1,751 metric tons imported in 1996. However, this supply of sausage should not be altered by this rule change. All of the sausage that was imported into the United States in 1996 from the Dominican Republic was cooked, and labels placed on the sausage, as well as on cooked salami, at the exporting plants show that these products are cooked in accordance with U.S. Department of Agriculture regulations. Therefore, these products would remain eligible to be imported into the United States. With regard to other pig products, the Dominican Republic is a minor producer in the world market, and, therefore, an abundance of alternative sources are available to importers.

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 94 and that was published at 62 FR 43924–43925 on August 18, 1997.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 9th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6588 Filed 3–13–98; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantees; Pilot Preferred Surety Bond Guarantee Program

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule revises 13 CFR part 115 to conform it to Section 503 of the Small Business Reauthorization Act of 1997 which was approved on December 2, 1997. This Act extends the period of the Pilot Preferred Surety Bond (PSB) Guarantee Program to September 30, 2000. Since this rule only implements the cited statute, it is published in final form without opportunity to comment.

DATES: Effective March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Robert J. Moffitt, Associate Administrator, Office of Surety Guarantees, (202) 205–6540.

SUPPLEMENTARY INFORMATION: Since this rule only extends the period of the Pilot PSB Program from September 30, 1997, to September 30, 2000, and makes no substantial change to the current regulation, SBA is not required to determine if this change constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U. S. C. 601 et seq), or to do a Federalism Assessment pursuant to Executive Order 12612. SBA certifies that these changes will not impose an annual record keeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U. S. C. ch. 35). Finally, for purposes of E. O. 12778, SBA certifies that this rule, is drafted, to the extent practicable, in accordance with standards set forth in Section 2 of that order.

SBA is publishing this regulation as a final rule without opportunity for public comment pursuant to 5 U. S. C. 553 (b) (A).

List of Subjects in 13 CFR Part 115

Claims, Small businesses, Surety bond.

For the reasons set forth above, part 115 of Title 13, Code of Federal Regulations (CFR) is amended as follows.

PART 115—SURETY BOND GUARANTEES

1. The Authority citation for Part 115 is revised to read as follows:

Authority: 5 U. S. C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b; Pub. L 105–135.

2. Amend § 115.61 by removing the date ''1997'' both times it appears, and replacing it with the date ''2000''.

Dated: February 27, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–6677 Filed 3–13–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–124–AD; Amendment 39–10391; AD 98–06–13]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Models 228–100, 228–101, 228–200, and 228–201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Dornier Luftfahrt GmbH (Dornier) Models 228–100, 228–101, 228–200, and 228–201 airplanes equipped with certain main landing gear (MLG). This action requires replacing the MLG axle assembly with an MLG axle assembly of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent main landing gear failure, which, if not corrected, could result in loss of control of the airplane during landing operations.

DATES: Effective June 15, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–124–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Dornier Luftfahrt GmbH, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–124–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Models 228–100, 228–101, 228–200 and 228–201 airplanes equipped with MLG axle assemblies that have part numbers (P/N) A–511000D00F, A–521000D00F, A–511000E00F, and A–521000E00F, or FAA-approved equivalent part numbers. The LBA has received two incident reports of failed MLG axles. The investigation of these reports reveals that extreme operating loads will fatigue these MLG axles, which can lead to cracking and failure. These fatigue cracks are a result of manufacturing defects (grooves) along the inside radius of the axle. This condition, if not corrected, could result in loss of control of the airplane during landing operations.

Relevant Service Information

Dornier has issued Service Bulletin No. SB–228–214, dated January 28, 1994, which specifies procedures for removing the MLG axle assembly (P/N's A–511000D00F, A–521000D00F, A–511000E00F, and A–521000E00F), and installing a new MLG axle assembly of improved design.

The LBA classified this service bulletin as mandatory and issued German AD 94–042 Dornier, dated February 9, 1994, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Dornier Models 228–100, 228–101, 228–200, and 228–201 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires removing the MLG axle assembly and installing a new MLG axle assembly of improved design. Accomplishment of the actions of this AD would be required in accordance with the previously referenced service bulletin.

Cost Impact

The FAA estimates that 3 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 16 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 per work hour. Parts will be provided at no charge. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $960 per airplane; however, the FAA has been informed that as of June 1997, all airplanes in the U.S. registry have been modified.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17) unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–124–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–13 Dornier Luftfahrt GMBH: Amendment 39–10391; Docket No. 97–CE–124–AD.

Applicability: Models 228–100, 228–101, 228–200, and 228–201 (all serial numbers) airplanes, certificated in any category, equipped with a main landing gear (MLG) axle housing assembly that has part numbers (P/N) A–511000D00F, A–521000D00F, A–511000E00F, and A–521000E00F (or FAA-approved equivalent part numbers).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent main landing gear failure, which, if not corrected, could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Replace the main landing gear (MLG) axle housing assembly (P/N's A–511000D00F, A–521000D00F, A–511000E00F, and A–521000E00F, or FAA-approved equivalent part numbers), with a new MLG axle housing assembly of improved design in accordance with Dornier 228 Service Bulletin No. SB–228–214, dated January 28, 1994.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) The replacement required by this AD shall be done in accordance with Dornier 228 Service Bulletin No. SB–228–214, dated January 28, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Luftfahrt GmbH, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 94–042 Dornier, dated February 9, 1994.

(e) This amendment becomes effective on June 15, 1998.

Issued in Kansas City, Missouri, on March 5, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6452 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–26–AD; Amendment 39–10383; AD 98–06–06]

RIN 2120–AA64

Airworthiness Directives; GKN Westland Helicopters Ltd., 30 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to GKN Westland Helicopters Ltd. (Westland) 30 series helicopters. This action requires determining the total hours time-in-service (TIS) of the six tail rotor drive shafts (drive shafts), creating a component history card or an equivalent record for each shaft, and replacing those drive shafts that exceed a certain TIS with an airworthy drive shaft. This amendment is prompted by findings of drive shaft attachment flange cracks on similar British military model helicopters. This condition, if not corrected, could result in failure of the drive shaft coupling attachment flanges that could result in loss of power to the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective March 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1998.

Comments for inclusion in the Rules Docket must be received on or before May 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–26–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from GKN Westland Helicopters Ltd., Customer Support Division, Yeovil, Somerset BA20 2YB, England, telephone (01935) 703884, fax (01935) 703905. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone 817–222–5296, fax 817–222–5961.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on Westland 30 series helicopters. The UK CAA advises that two incidents of drive shaft attachment flange cracking occurred on the Lynx model helicopters, the UK military version of the Westland 30 helicopters. Consequently, the appropriate drive shaft lives for the Westland 30 series helicopters have been reconsidered.

Westland has issued GKN Westland Helicopters Ltd. Service Bulletin (SB) Nos. W30–65–48, dated November 29, 1995, and W30–65–48, Annex A, dated November 8, 1996, which specify the procedure to establish the current TIS of the Westland 30 series helicopters' drive shafts, the hours at which the drive shafts should be replaced or inspected, and the inspection procedure. The UK CAA classified these SB's as mandatory and issued UK CAA AD 013–11–95, dated January 31, 1996, to ensure the continued airworthiness of these helicopters in the UK.

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

Since an unsafe condition has been identified that is likely to exist or develop on other Westland 30 series helicopters of the same type design eligible for registration in the United States, this AD is being issued to prevent failure of the drive shaft coupling attachment flanges that could result in loss of power to the tail rotor and the subsequent loss of control of the helicopter. This AD requires that the TIS of each of the six drive shafts be determined from the helicopter records and that a component history card or an equivalent record be created for each drive shaft. If drive shaft No. 1, 2, 3, 4, or 5 exceeds 1,000 hours TIS or drive shaft No. 6 exceeds 500 hours TIS,

replacement with an airworthy drive shaft in accordance with the SB is required. Alternatively, inspection of any drive shaft (No. 1, 2, 3, 4, or 5) with over 1,000 hours TIS and drive shaft No. 6 with over 500 hours TIS is required in accordance with GKN Westland Helicopters Ltd. SB No. W30–65–48, paragraph 2.B.(3), dated November 29, 1995, prior to further flight and thereafter at intervals not to exceed 3 hours TIS. The actions are required to be accomplished in accordance with the SB's previously described.

None of the Westland 30 series helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register, it will require approximately 2 work hours to accomplish each required inspection at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD will be $1200 per helicopter for accomplishment of 10 drive shaft flange inspections.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–26–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that notice and public comment are unnecessary in promulgating this regulation, that the regulation can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–06–06 GKN Westland Helicopters Ltd.: Amendment 39–10383. Docket No. 97–SW–26–AD.

Applicability: Westland 30 Series Helicopters, certificated in any category.

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

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the tail rotor drive shaft (drive shaft) coupling attachment flanges that could lead to loss of tail rotor drive and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 7 calendar days after the effective date of this AD:

(1) Determine from the helicopter records the total hours time-in-service (TIS) for drive shaft number (No.) 1, 2, 3, 4, 5, and 6.

(2) Create a component history card or an equivalent record for each drive shaft in accordance with paragraph 2.A.(2) of GKN Westland Helicopters Ltd. Service Bulletin No. W30–65–48, dated November 29, 1995.

(b) Before further flight and at intervals not to exceed 3 hours TIS thereafter, inspect the drive shaft attachment flanges for cracks in accordance with paragraph 2.B.(3) of the Accomplishment Instructions of GKN Westland Helicopters, Ltd. Service Bulletin (SB) W30–65–48, dated November 29, 1995, as follows:

(1) Drive shaft No. 1, 2, 3, 4, or 5 that has exceeded 1,000 hours TIS;

(2) Drive shaft No. 6 that has exceeded 500 hours TIS; and

(3) Any drive shaft identified by serial number or flange serial number in Annex A to GKN Westland Helicopter, Ltd. SB W30–65–48, dated November 8, 1996, that has exceeded 500 hours TIS.

No more than 10 repetitive inspections are permitted for any affected drive shaft.

(c) If a crack is found as a result of the inspections required by paragraph (b) of this AD, before further flight, replace the drive shaft with an airworthy drive shaft.

(d) Before further flight, or after 10 repetitive inspections have been accomplished, replace with an airworthy drive shaft any drive shaft that has reached or exceeded the applicable TIS stated in paragraph (b) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate.

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

(f) Special flight permits will not be issued.

(g) The inspection shall be done in accordance with GKN Westland Helicopters Ltd. Service Bulletin No. W30–65–48, dated November 29, 1995, and Annex A, dated November 8, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from GKN Westland Helicopters Ltd., Customer Support Division, Yeovil, Somerset BA20 2YB, England, telephone (01935) 703884, fax (10935) 703905. Copies may be inspected at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 31, 1998.

Note 3: The subject of this AD is addressed in Civil Aviation Authority (United Kingdom) AD 013–11–95, dated January 31, 1996.

Issued in Fort Worth, Texas, on March 4, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–6450 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–64–AD; Amendment 39–10397; AD 98–06–19]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This action requires draining and sealing of the ground spoiler and speed brake actuators. This action also requires replacement of the spoiler actuator assembly and the speed brake actuator assembly with modified actuator assemblies. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent asymmetric deployment of the speed brakes during flight and consequent reduced controllability of the airplane; or failure of the ground spoilers to deploy during landing or rejected takeoff, which could result in increased aircraft stopping distances.

DATES: Effective March 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 31, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 15, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berryman, Systems Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6066; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that it has received reports indicating that the ground spoilers and/or speed brakes may fail to deploy. The cause of these failures has been attributed to moisture penetration into the respective actuators in combination with freezing temperatures, which can result in jamming of the actuators. These conditions, if not corrected, can result in asymmetric deployment of the speed brakes during flight and consequent reduced controllability of the airplane; or failure of the ground spoilers to deploy during landing or rejected takeoff, which could result in increased aircraft stopping distances.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–27–0029, dated November 10, 1997, which describes procedures for draining and sealing of the ground spoiler and speed brake actuators.

EMBRAER has also issued Service Bulletins 145–27–0013 and 145–27–0014, both dated August 20, 1997, which describe procedures for replacement of the spoiler actuator assembly and the speed brake actuator assembly with modified actuator assemblies. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 97–10–04 (undated) in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent asymmetric deployment of the speed brakes during flight and consequent reduced controllability of the airplane; or failure of the ground spoilers to deploy during landing or rejected takeoff, which could result in increased aircraft stopping distances. This AD requires accomplishment of the actions specified in the service bulletins described previously.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–64–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–19 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–10397. Docket 98–NM–64–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145018 inclusive; equipped with a speed brake actuator assembly having part number 360540–1001, or a spoiler actuator assembly having part number 360440–1001; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetric deployment of the speed brakes during flight and consequent reduced controllability of the airplane; or failure of the ground spoilers to deploy during landing or rejected takeoff, which could result in increased aircraft stopping distances; accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, drain and seal the ground spoiler and speed brake actuators in accordance with EMBRAER Service Bulletin 145–27–0029, dated November 10, 1997.

(b) Within 90 days after the effective date of this AD, replace the spoiler actuator assembly and the speed brake actuator assembly with modified actuator assemblies in accordance with EMBRAER Service Bulletins 145–27–0013, and 145–27–0014, both dated August 20, 1997.

(c) Airplanes on which the replacements required by paragraph (b) of this AD are performed within the compliance time specified in paragraph (a) of this AD are not required to accomplish the action required by paragraph (a).

(d) As of the effective date of this AD, no person shall install a ground spoiler actuator assembly having part number 360440–1001, or speed brake actuator assembly having part number 360540–1001, on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who

may add comments and then send it to the Manager, Atlanta ACO.

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

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

(g) The actions shall be done in accordance with EMBRAER Service Bulletin 145–27–0029, dated November 10, 1997; EMBRAER Service Bulletin 145–27–0013, dated August 20, 1997; and EMBRAER Service Bulletin 145–27–0014, dated August 20, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–10–04 (undated).

(h) This amendment becomes effective on March 31, 1998.

Issued in Renton, Washington, on March 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6499 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–38–AD; Amendment 39–10393; AD 98–06–15]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the return filter diaphragm assemblies on hydraulic systems 1 and 2 with modified filter units having new diaphragms. This amendment is prompted by a report of insufficient running clearance of the brake units due to overpressure in the hydraulic return system; this condition could lead to brake overheating. The actions specified by this AD are intended to prevent too high pressure in the hydraulic return system during the selection of subsystem(s), which could result in inadvertent braking and/or blown tires.

DATES: Effective April 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on May 25, 1995 (60 FR 27704). That action proposed to require replacement of the return filter diaphragm assemblies on hydraulic systems 1 and 2 with modified filter units having new diaphragms.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Withdraw Proposed AD

The Air Transport Association (ATA) of America, on behalf of one member, requests that the proposed AD be withdrawn because the corrective action specified in the referenced Fokker Service Bulletin SBF100–29–025, dated December 31, 1993, is ineffectual in preventing overpressure of the subject hydraulic return system.

The FAA does not concur with the commenter's request to withdraw the proposal. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has advised the FAA that there have been no additional reports of discrepancies in the system since the service bulletin was issued. In addition, the commenter provides no justification to substantiate the claim that the corrective action is ineffectual. Based on this information, the FAA has determined that the modification specified in Fokker Service Bulletin SBF100–29–025, dated December 31, 1993, adequately addresses the unsafe condition.

Request To Extend Compliance Time

One commenter requests an extension of the proposed compliance time of 6 months, but provides no specific extension time. The commenter's request is based on the number of airplanes in its fleet and the time required to accomplish the action. The commenter expresses concern that it may not be able to modify all airplanes in 6 months.

The FAA does not concur with the request for an extension of the compliance time. In developing the compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules. In consideration of all these factors, and the time since the Notice of Proposed Rulemaking (NPRM) was published, the FAA has determined that the compliance time, as proposed, represents an appropriate interval to complete the necessary replacement.

Request to Revise Unsafe Condition

One commenter, the manufacturer, requests that the description of the cause of the addressed unsafe condition that appeared in the proposed AD be clarified. The unsafe condition that appears in the proposal reads as follows: ''* * * to prevent overpressure in the hydraulic return system which could result in reduced braking performance and/or blown tires due to brake overheating.'' The commenter suggests that a more accurate description would be ''* * * to prevent too high pressure in the hydraulic return system during the selection of the subsystem(s), which could result in inadvertent braking and/or blown tires.'' The manufacturer states that its service bulletin was issued following an incident in which all four tires blew on touchdown. During a taxi check, following the replacement of several components, inspections revealed a brake problem. It was found that the brakes locked as soon as the flaps moved to a new position and unlocked as soon as the flaps stopped moving.

The FAA concurs. Based on the information provided by the manufacturer following further investigation into the incident, the FAA has revised the unsafe condition in this final rule to reflect the commenter's suggestion.

Request for Inclusion of Operator Modification as Alternative Method of Compliance

One commenter requests that the FAA revise the proposed AD to include its own modification as an acceptable alternative method of compliance for replacing the diaphragms with filter element retaining spacers. The commenter, in collaboration with Fokker and PALL–APME, has developed a new modification, which it believes satisfactorily addresses the safety objective of the proposed AD. The commenter is of the opinion that if an AD is issued, it should include that modification as an acceptable means of compliance. The commenter also states that the applicability of the proposed AD should not include those aircraft on which units having modified part numbers designated by –1 are installed.

The FAA does not concur that the modification suggested by the commenter should be incorporated in this final rule, or that airplanes on which the modified part numbers designated by ''–1'' are installed should be excluded from the applicability. The FAA does not consider it appropriate to include various provisions in an AD applicable to a single operator's unique modification. However, paragraph (c) of this AD contains a provision for requesting approval of an alternative method of compliance to address these types of individual circumstances.

Request To Revise Cost Impact Information

One commenter, the manufacturer, requests that the cost impact information, below, be revised to reflect that only 79 airplanes of U.S. registry are affected by the proposed AD. The change is requested based on the most current information available to the manufacturer.

The FAA concurs and has revised the cost impact information, below, accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 79 Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the parts manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $9,480, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–15 Fokker: Amendment 39–10393. Docket 95–NM–38–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Aircraft Porous Media Europe (APME) Limited hydraulic return filter assemblies having part numbers (P/N) QA07236 and QA07237, all serial numbers; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent too high pressure in the hydraulic return system during the selection of subsystem(s), which could result in inadvertent braking and/or blown tires, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the return filters, P/N's QA07236 and QA07237, on hydraulic systems 1 and 2, respectively, with modified return filter units, in accordance with Fokker Service Bulletin SBF100–29–025, dated December 31, 1993.

(b) As of the effective date of this AD, no person shall install on any airplane a return filter unit, P/N QA07236 or QA07237, on hydraulic system 1 or 2, respectively, unless that unit has been modified in accordance with Fokker Service Bulletin SBF100–29–025, dated December 31, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Fokker Service Bulletin SBF100–29–025, dated December 31, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 94–024 (A), dated January 28, 1994.

(f) This amendment becomes effective on April 20, 1998.

Issued in Renton, Washington, on March 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6502 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–193–AD; Amendment 39–10395; AD 98–06–17]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Aviation Model Mystere Falcon 900 series airplanes, that requires replacement of the water heater control relays with improved relays having high-power contactors; the addition of a testing and monitoring circuit for each contactor; and installation of improved electrical bonding of the potable water tank. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent overheating of the water heaters for the galley or the washbasin, which could result in damage to the water heater and nearby electrical wiring, and consequent smoke in the cabin.

DATES: Effective April 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere Falcon 900 series airplanes was published in the **Federal Register** on January 5, 1998 (63 FR 171). That action proposed to require replacement of the water heater control relays with improved relays having high-power contactors; the addition of a testing and monitoring circuit for each contactor; and installation of improved electrical bonding of the potable water tank.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,300 per airplane. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $7,740.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–17 Dassault Aviation: Amendment 39–10395. Docket 97-NM–193-AD.

Applicability: Model Mystere Falcon 900 airplanes; equipped with l'HOTELLIER water

system gauges having part number (P/N) 5250, 5251, 5250–1 or 5251–1; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the water heaters for the galley or the washbasin, which could result in damage to the water heater and nearby electrical wiring, and consequent smoke in the cabin, accomplish the following:

(a) Within 7 months or 330 flight hours after the effective date of this AD, whichever occurs first: Replace the water heater control relays with improved relays; add a testing and monitoring circuit for each contactor; and install improved electrical bonding of the potable water tank; in accordance with Dassault Service Bulletin F900–181 (F900–38–12), dated December 4, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Dassault Service Bulletin F900–181 (F900–38–12), dated December 4, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–279–018(B), dated December 4, 1996.

(e) This amendment becomes effective on April 20, 1998.

Issued in Renton, Washington, on March 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6500 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–245–AD; Amendment 39–10396; AD 98–06–18]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0070 and Mark 0100 series airplanes, that requires replacement of the operating handles of the overwing emergency exits with improved handles that have self-illumination. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure that the operating handles of the overwing emergency exits are clearly visible during an emergency evacuation.

DATES: Effective April 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0070 and Mark 0100 series airplanes was published in the **Federal Register** on October 17, 1997 (62 FR 53976). That action proposed to require replacement of the operating handles of the overwing emergency exits with improved handles that have self-illumination.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter simply points out that the proposed AD is not applicable to the airplanes in its fleet.

One commenter requests that the compliance time for accomplishing the removal and installation proposed by this AD be reduced from the proposed 12 months to 6 months, unless materials are not available. The commenter states that these actions appear to be simple and the material should be available within a 6-month time frame.

The FAA does not concur. After consideration of all the available information, the FAA cannot conclude that a reduction of the proposed compliance time, without prior notice and opportunity for public comment, is warranted. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the removal and installation. Further, the proposed compliance time of 12 months was arrived at with operator, manufacturer, and FAA concurrence. To reduce the compliance time of the proposal would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that procedure may be as long as four additional months. In comparing the actual compliance date of the final rule after completing such a procedure to the compliance date of this final rule as issued, the increment in time is minimal.

In light of this, and in consideration of the amount of time that has already

elapsed since issuance of the original notice, the FAA has determined that further delay of this final rule action is not appropriate. However, if additional data are presented that would justify a shorter compliance time, the FAA may consider further rulemaking on this issue.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 127 Fokker Model F28 Mark 0100 series airplanes and 4 Fokker Model F28 Mark 0070 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $23,580, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–18 Fokker: Amendment 39–10396. Docket 97–NM–245–AD.

Applicability: Model F28 Mark 0070 and Mark 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–52–060, dated October 10, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the operating handles of the overwing emergency exits are clearly visible during an emergency evacuation, accomplish the following:

(a) Within 12 months after the effective date of this AD, remove the operating handle assemblies of the overwing emergency exits, having part number (P/N) D32965–403, and install new self-illuminating handle assemblies, having P/N D32965–407, in accordance with Fokker Service Bulletin SBF100–52–060, dated October 10, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–52–060, dated October 10, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Netherlands airworthiness directive BLA 1995–104 (A), dated October 31, 1995.

(e) This amendment becomes effective on April 20, 1998.

Issued in Renton, Washington, on March 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6501 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–162–AD; Amendment 39–10392; AD 98–06–14]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model CN–235 series airplanes, that requires installation of a contactor and relocation of the existing fuse in the battery circuit. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the battery circuit due to a burned fuse, and

consequent inability to restart the engine using batteries during flight.

DATES: Effective April 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all CASA Model CN–235 series airplanes was published in the **Federal Register** on August 7, 1997 (62 FR 42432). That action proposed to require installation of a contactor and relocation of the existing fuse in the battery circuit.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 CASA Model CN–235 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 58 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,960, or $5,480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–14 Construcciones Aeronauticas, S.A. CASA: Amendment 39–10392. Docket 97–NM–162–AD.

Applicability: All Model CN–235 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fuse in battery number 1 during battery starting of engines, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a contactor in the battery circuit and relocate the existing fuse in accordance with CASA Service Bulletin SB–235–24–07M, dated June 4, 1995; or Revision 1, dated January 25, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The installation and relocation shall be done in accordance with CASA Service Bulletin SB–235–24–07M, dated June 4, 1995, or CASA Service Bulletin SB–235–24–07M, Revision 1, dated January 25, 1996. CASA Service Bulletin SB–235–24–07M, Revision 1, dated January 25, 1996, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3–36	Original	June 4, 1995.
2	1	January 25, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Spanish airworthiness directive 09/96, dated December 9, 1996.

(e) This amendment becomes effective on April 20, 1998.

Issued in Renton, Washington, on March 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6503 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–114–AD; Amendment 39–10394; AD 98–06–16]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires modification of the electrical circuits for certain avionics by rewiring and adding electrical devices. This amendment is prompted by reports indicating that failure of an engine or direct current (DC) generator during takeoff and landing, coupled with an open DC tie, could cause the avionics to fail. The actions specified by this AD are intended to prevent the failure of those avionics during takeoff and landing, which consequently could result in the inability of the flight crew to respond to and control the associated systems during these critical phases of flight.

DATES: Effective April 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on December 5, 1996 (61 FR 64492). That action proposed to require modification of the electrical circuits for certain avionics by rewiring and adding electrical devices.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter requests that paragraph (a) of the proposed AD be revised to include Dornier Service Bulletin SB–328–00–053 as an additional source of service information for accomplishment of the proposed modification. The commenter states that, in the ''References'' Section of Dornier Service Bulletin SB–328–24–062, Revision 1, dated June 27, 1995 (which is referenced in the proposed AD as the appropriate source of service information), it states that, ''an alternate means of compliance is by accomplishment of SB–328–00–053.'' The commenter also states that it has data to show compliance with Dornier Service Bulletin SB–328–00–053.

The FAA does not concur. The FAA has not reviewed Dornier Service Bulletin SB–328–00–053; and considerable time could be required to obtain a copy of the service bulletin and review its technical contents. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original notice, the FAA has determined that further delay of this final rule action is not appropriate. However, affected operators may request approval to use Dornier Service Bulletin SB–328–00–053 as an alternative method of compliance, under the provisions of paragraph (b) of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 9 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 220 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $118,800, or $13,200 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–06–16 Dornier: Amendment 39–10394. Docket 96–NM–114–AD.

Applicability: Model 328–100 series airplanes having serial numbers 3005 through 3024 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure, during takeoff and landing, of the No. 2 primary flight and multiple function displays, or the autopilot/yaw damper servos, which consequently could result in the inability of the flight crew to respond to and control the systems associated with these avionics during these critical phases of flight, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the wiring that supplies power from the non-essential bus 2 to the bus 2 avionics circuit, and from the non-essential bus 1 to the bus 1 avionics circuit, in accordance with Dornier Service Bulletin SB–328–24–062, Revision 1, dated June 27, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The modification shall be done in accordance with Dornier Service Bulletin SB–328–24–062, Revision 1, dated June 27, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 95–284, dated August 4, 1995.

(e) This amendment becomes effective on April 20, 1998.

Issued in Renton, Washington, on March 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6504 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–04]

Revision of Class E Airspace; Bristow, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Bristow, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Bristow Hospital Heliport, Bristow, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective: 0901 UTC, June 18, 1998. Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–04, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Bristow, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Bristow Hospital Heliport, Bristow, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does not receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments

as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–04.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Bristow, OK [Revised]

Bristow, Jones Memorial Airport, OK
(Lat. 35°48′25″N., long. 96°25′19″W.)
Bristow Hospital Heliport, OK
Point In Space Coordinates
(Lat. 35°49′30″N., long. 96°24′48″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Jones Memorial Airport and within 3.1 miles each side of the 183° bearing from the airport extending from the 6.3-mile radius to 8.8 miles south of the airport and that airspace within a 6-mile radius of the Point In Space serving Bristow Hospital Heliport.

* * * * *

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6639 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–11]

Revision of Class E Airspace; Miami, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Miami, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Baptist Regional Health Center Heliport, Miami, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective: 0901 UTC, June 18, 1998. Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–11, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Miami, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Baptist Regional Health Center Heliport, Miami, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comment were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–11.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Miami, OK [Revised]

Miami Municipal Airport, OK
(Lat. 36°54′33″N., long. 94°53′15″W.)
Baptist Regional Health Center Heliport, OK Point In Space Coordinates
(Lat. 36°52′29″N., long. 94°54′05″W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Miami Municipal Airport and that airspace within a 6-mile radius of the Point In Space serving Baptist Regional Health Center Heliport.

* * * * *

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6638 Filed 3–13–98; 8:45am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–09]

Revision of Class E Airspace; Idabel, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Idabel, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to MC Curtain Memorial Hospital Heliport, Idabel, OK has made this rule necessary. This

action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective: 0901 UTC, June 18, 1998. Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–09, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Idabel, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to MC Curtain Memorial Hospital Heliport, Idabel, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–09.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Idabel, OK [Revised]

Idabel Airport, OK

(Lat. 33°54′17″N., long. 94°50′43″W.)
McCurtain Memorial Hospital Heliport, OK
Point In Space Coordinates
Lat. 33°52′35″N., long 94°47′13″W.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Idabel Airport and that airspace within a 6-mile radius of the Point In Space serving McCurtain Memorial Hospital Heliport.

* * * * *

Issued in Fort Worth, TX, on February 18, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6637 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–08]

Revision of Class E Airspace; Henryetta, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Henryetta, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Henryetta Medical Center Heliport, Henryetta, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective: 0901 UTC, June 18, 1998. Comments mut be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–08, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Henryetta, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Henryetta Medical Center Heliport, Henryetta, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an averse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–08.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a

Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Henryetta, OK [Revised]

Henryetta Municipal Airport, OK
(Lat. 35°24′25″N., long. 96°00′57″W.)
Henryetta Medical Center Heliport, OK
Point In Space Coordinates
(Lat. 35°26′19″N., long. 96°01′49″W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Henryetta Municipal Airport and that airspace within a 6-mile radius of the Point In Space serving Henryetta Medical Center Heliport.

* * * * *

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6636 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–10]

Revision of Class E Airspace; McAlester, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at McAlester, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to McAlester Regional Health Center Heliport, McAlester, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998. Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–10, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at McAlester, OK. The development of a GPS SIAP, Helicopter Point in Space Approach, to McAlester Regional Health Center Heliport, McAlester, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–10.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 McAlester, OK [Revised]

McAlester Regional Airport, OK
(Lat. 34°52′57″ N., Long. 95°47′00″ W.)
McAlester VORTAC
(Lat. 34°50′58″ N., Long. 95°46′56″ W.)
Wampa LOM
(Lat. 34°47′52″ N., Long. 95°49′15″ W.)
McAlester Regional Health Center Heliport, OK Point In Space Coordinates
(Lat. 34°55′29″ N., Long. 95°44′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of McAlester Regional Airport and within 1.3 miles each side of the 002° radial of the McAlester VORTAC extending from the 6.5-mile radius to 11.9 miles north of the airport and within 4 miles east and 8 miles west of the 172° radial of the McAlester VORTAC extending from the 6.5-mile radius to 17.5 miles south of the airport and within 4 miles east and 8 miles west of the 200° bearing from the Wampa LOM extending from the 6.5-mile radius to 21.4 miles southwest of the airport and that airspace within a 6-mile radius of the Point In Space serving McAlester Regional Health Center Heliport, excluding that airspace within the McAlester Class E Surface airspace area.

* * * * *

Issued in Forth Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6635 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–02]

Establishment of Class E Airspace; Pawnee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Pawnee, OK. The development of a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Pawnee Municipal Hospital Heliport has made this rule necessary. This action is intended to establish Class E airspace for Instrument Flight Rules (IFR) operations to the heliport.

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

Comment date: Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–02, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR establishes Class E airspace at Pawnee, OK. The development of a new GPS SIAP, Helicopter Point In Space Approach, to Pawnee Municipal Hospital Heliport has made this rule necessary. This action is intended to establish Class E airspace for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10,

1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–02.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Pawnee, OK [New]

Pawnee Municipal Hospital Heliport, OK
Point In Space Coordinates
(Lat. 36°19′50″N., long. 96°47′02″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Pawnee Municipal Hospital Heliport.

* * * * *

Issued in Fort Worth, TX, on February 18, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6651 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–29]

Establishment of Class E Airspace; Cleveland, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Cleveland, OK. The development of a new Global Positioning system (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Cleveland Area Hospital Heliport has made this rule necessary. This action is intended to establish Class E airspace for Instrument Flight Rules (IFR) operations to the heliport.

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

Comment date: Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest

Region, Docket No. 97–ASW–29, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes Class E airspace at Cleveland, OK. The development of a new GPS SIAP, Helicopter Point In Space Approach, to Cleveland Area Hospital Heliport has made this rule necessary. This action is intended to establish Class E airspace for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–29.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40102, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Cleveland, OK [New]

Cleveland Area Hospital Heliport, OK
Point in Space Coordinates
(lat. 36°18′34″ N., long. 96°29′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Cleveland Area Hospital Heliport.

* * * * *

Issued in Fort Worth, TX on February 18, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6649 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–28]

Revision of Class E Airspace; Bartlesville, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Bartlesville, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Jane Phillips Medical Center Heliport, Bartlesville, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–28, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Bartlesville, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Jane Phillips Medical Center Heliport, Bartlesville, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ASW–28.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Bartlesville, OK [Revised]

Bartlesville Municipal Airport, OK
(lat. 36°45′45″N., long. 96°00′40″W.)
Bartlesville VOR/DME
(lat. 36°50′03″N., long. 96°01′06″W.)
Dewie LOM
(lat. 36°50′22″N., long. 96°00′50″W.)
Jane Phillips Medical Center Heliport, OK
Point In Space Coordinates
(lat. 36°44′24″N., long. 95°56′32″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Bartlesville Municipal Airport and within 1.6 miles each side of the 176° radial of the Bartlesville VOR/DME extending from the 6.8-mile radius to 11.3 miles south of the airport and within 2.2 miles each side of the 359° bearing from the Dewie LOM extending from the 6.8-mile radius to 11.7 miles north of the airport and within 1.6 miles each side of the 355° radial of the Bartlesville VOR/DME extending from the 6.8-mile radius to 11.4 miles north of the airport and that airspace within a 6-mile radius of the Point In Space serving Jane Phillips Medical Center Heliport, excluding that airspace within the Bartlesville Class E Surface airspace area.

* * * * *

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6648 Filed 3–13–98; 8:45 am]

BILLING CODE 4913–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–12]

Revision of Class E Airspace; Muskogee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Muskogee, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Muskogee Regional Medical Center at Heliport, Muskogee, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–12, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Muskogee, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Muskogee Regional Medical Center Heliport, Muskogee, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–12.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have stustantial 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 level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does no warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Muskogee, OK [Revised]

Muskogee, Davis Field, OK
(lat. 35°39′ 28″N., long. 95°21′ 42″W.)
Muskogee RBN
(lat. 35°35′ 41″N., long. 95°17′ 14″W.)
Davis VOR
(lat. 35°39′ 47″N., long. 95°22′ 04″W.)
Muskogee Regional Medical Center Heliport, OK
Point In Space Coordinates
(lat. 35°44′ 21″N., long. 95°24′ 22″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Davis Field and within 2.1 miles each side of the 135° bearing from the Muskogee RBN extending from the 6.9-mile radius to 10.5 miles southeast of the airport and within 4 miles north and 8 miles south of the 138° radical of the Davis VOR extending from the 6.9-mile radius to 16 miles southeast of the VOR and that airspace within a 6-mile radius of the Point In Space serving Muskogee Regional Medical Center Heliport.

* * * * *

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6647 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR PART 71

[Airspace Docket No. 98–ASW–01]

Establishment of Class E Airspace; Coalgate, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E airspace at Coalgate, OK. The development of a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Mary Hurley Hospital Heliport has made this rule necessary. This action is intended to establish Class E airspace for Instrument Flight Rules (IFR) operations to the heliport.

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

Comment date: Comments must be received on or before April 30, 1997.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–01, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes Class E airspace at Coalgate, OK. The development of a new GPS SIAP, Helicopter Point In Space Approach, to Mary Hurley Hospital Heliport has made this rule necessary. This action is intended to establish Class E airspace for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible

adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an diverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–01.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Coalgate, OK [New]

Mary Hurley Hospital Heliport, OK
Point In Space Coordinates
(lat. 34°31′37″ N., long. 96°13′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Mary Hurley Hospital Heliport.

* * * * *

Issued in Fort Worth, TX, on February 18, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6650 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–15]

Revision of Class E Airspace; Stillwater, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Stillwater, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Stillwater Medical Center Heliport, Stillwater, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–15, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours

at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Stillwater, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Stillwater Medical Center Heliport, Stillwater, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–15.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Stillwater, OK [Revised]

Stillwater Municipal Airport, OK
(lat. 36°09′37″N., long. 97°05′09″W.)
Stillwater VOR/DME
(lat. 36°13′27″N., long. 97°04′53″W.)
Stillwater Medical Center Heliport, OK
Point In Space Coordinates
(lat. 36°05′59″N., long. 97°05′04″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stillwater Municipal Airport and within 8 miles east and 4 miles west of the 005° radial of the Stillwater VOR/DME extending from the 6.5-mile radius to 16 miles north of the VOR/DME and within 1.7 miles each side of the 183° radial of the VOR/DME extending from the 6.5-mile radius to 12.2 miles south of the airport and that airspace within a 6-mile radius of the Point In Space serving Stillwater Medical Center Heliport.

* * * * *

Issued in Forth Worth, TX, on February 18, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6646 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–14]

Revision of Class E Airspace; Pryor, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Pryor, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Grand Valley Hospital Heliport, Pryor, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rules in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–14, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Pryor, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Grand Valley Hospital Heliport, Pryor, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–14.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Pryor, OK [Revised]

Pryor, Mid-America Industrial Airport, OK
(lat. 36°13′31″N., long. 95°19′48″W.)
Grand Valley Hospital Heliport, OK
Point In Space Coordinates
(lat. 36°19′13″N., long. 95°17′52″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Mid-America Industrial Airport and that airspace within a 6-mile radius of the Point In Space serving Grand Valley Hospital Heliport.

* * * * *

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6645 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–13]

Revision of Class E Airspace; Poteau, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E Airspace at Poteau, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Eastern Oklahoma Medical Center Heliport, Poteau, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–13, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Poteau, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Eastern Oklahoma Medical Center Heliport, Poteau, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–13.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routing amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant regulatory action'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Poteau, OK [Revised]

Poteau, Robert S. Kerr Airport, OK
(lat. 35°01′18″ N., long. 94°37′17″ W.)
Rich Mountain VORTAC
(lat. 34°40′50″ N., long. 94°36′32″ W.)
Eastern Oklahoma Medical Center Heliport, OK
Point In Space Coordinates
(lat. 35°02′13″ N., long. 94°36′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Robert S. Kerr Airport and within 1.5 miles each side of the 358° radial of the Rich Mountain VORTAC extending from the 6.4-mile radius to 10.4 miles south of the airport and that airspace within a 6-mile radius of the Point In Space serving Eastern Oklahoma Medical Center Heliport.

* * * * *

Issued in Fort Worth, TX, on February 18, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6644 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–16]

Revision of Class E Airspace; Tahlequah, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Tahlequah, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Tahlequah City Hosptial Heliport, Tahlequah, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–16, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Tahlequah, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Tahlequah City Hospital Heliport, Tahlequah, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and

a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–16.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Tahlequah, OK [Revised]

Tahlequah Municipal Airport, OK
(lat. 35°55′44″N., long. 95°00′16″W.)
Tahlequah City Hospital Heliport, OK
Point In Space Coordinates
(lat. 35°55′14″N., long. 94°57′47″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tahlequah Municipal Airport and that airspace within a 6-mile radius of the Point In Space serving Tahlequah City Hospital Heliport.

* * * * *

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6643 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR part 71

[Airspace Docket No. 98–ASW–07]

Revision of Class E Airspace; Grove, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Grove, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Grove General Hospital Heliport, Grove, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more about this surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–07, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises

the Class E airspace at Grove, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Grove General Hospital Heliport, Grove, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–07.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Grove, OK [Revised]

Grove Municipal Airport, OK
(lat. 36°36′19″ N., long. 94°44′19″ W.)
Grove General Hospital Heliport, OK
Point In Space Coordinates
(lat. 36°34′20″ N., long. 94°45′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Grove Municipal Airport and within 2 miles each side of the 180° bearing from the Grove Municipal Airport extending from the 6.3-mile radius to 7.3 miles south of the airport and within 2 miles each side of the 310° bearing from the Grove Municipal Airport extending from the 6.3-mile radius to 7.3 miles north of the airport and that airspace within a 6-mile radius of the Point In Space serving Grove General Hospital Heliport.

* * * * *

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6642 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–06]

Revision of Class E Airspace; Shawnee, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Shawnee, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Cushing Regional Hospital Heliport, Cushing, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–06, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Shawnee, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Cushing Regional Hospital Heliport, Cushing, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–06.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

*****

ASW OK E5 Shawnee, OK [Revised]

Shawnee Municipal Airport, OK
(lat. 35°21′26″N., long. 96°56′34″W.)
Seminole Municipal Airport, OK
(lat. 35°16′29″N., long. 96°40′31″W.)
Prague Municipal Airport, OK
(lat. 35°28′55″N., long. 96°43′07″W.)
Prague RBN
(lat. 35°31′00″N., long. 96°43′07″W.)
Chandler Municipal Airport, OK
(lat. 35°43′26″N., long. 96°49′13″W.)
Tilghman RBN
(lat. 35°43′20″N., long. 96°49′07″W.)
Cushing Municipal Airport, OK
(lat. 35°57′00″N., long. 96°46′23″W.)
Cushing RBN
(lat. 35°53′24″N., long. 96°46′31″W.)
Cushing Regional Hospital Heliport, OK
Point In Space Coordinates
(lat. 35°57′58″N., long. 96°45′12″W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Shawnee Municipal Airport and within a 6.4-mile radius of Seminole Municipal Airport and within a 6.5-mile radius of Prague Municipal Airport and within 2 miles each side of the 360° bearing from the Prague RBN extending from the 6.5-mile radius to 8.9 miles north of the airport and within a 6.4-mile radius of Chandler Municipal Airport and within 2.5 miles each side of the 352° bearing from the Tilghman RBN extending from the 6.4-mile radius to 7.3 miles north of the airport and within a 6.5-mile radius of Cushing Municipal Airport and within 2.1 miles each side of the 185° bearing from the Cushing RBN extending from the 6.5-mile radius to 9.3 miles south of the airport and that airspace within a 6-mile radius of the Point In Space serving Cushing Regional Hospital Heliport.

*****

Issued in Fort Worth, TX, on March 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6641 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–05]

Revision of Class E Airspace; Claremore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Claremore, OK. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Claremore Regional Hospital Heliport, Claremore, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

DATES: Effective 0901 UTC, June 18, 1998.

Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–05, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 871–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Claremore, OK. The development of a GPS SIAP, Helicopter Point In Space Approach, to Claremore Regional Hospital Heliport, Claremore, OK has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–05.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Claremore, OK [Revised]

Claremore Municipal Airport, OK
(lat. 36°17′40″N., long. 95°28′47″W.)
Claremore Regional Hospital Heliport, OK
Point In Space Coordinates
(lat. 36°18′23″N., long. 95°38′26″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Claremore Municipal Airport and that airspace within a 6-mile radius of the Point In Space serving Claremore Regional Hospital Heliport.

* * * * *

Issued in Fort Worth, TX, on February 18, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6640 Filed 3–13–98; 8:45 am]

BILLING CODE 4919–13–M

DEAPRTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–03]

Establishment of Class E Airspace; Wagoner, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Wagoner, OK. The development of a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), Helicopter Point In Space Approach, to Wagoner Community Hospital Heliport has made this rule necessary. This action is intended to establish Class E airspace for Instrument Flight Rules (IFR) operations to the heliport.

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

Comment date: Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–03, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes Class E airspace at Wagoner, OK. The development of a new GPS SIAP, Helicopter Point In Space Approach, to Wagoner Community Hospital Heliport has made this rule necessary. This section is intended to establish Class E airspace for Instrument Flight Rules (IFR) operations to the heliport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless

a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ASW–03.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

ASW OK E5 Wagoner, OK [New]

Wagoner Community Hospital Heliport, OK
Point In Space Coordinates
(lat. 35°58′24″ N., long. 95°23′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Wagoner Community Hospital Helicopter.

* * * * *

Issued in Fort Worth, TX, on February 18, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–6652 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–10]

RIN 2120–AA66

Realignment of Colored Federal Airway; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies Colored Federal Airway Amber 1 (A–1), located in Alaska, due to the decommissioning of the Puntilla Lake and Farewell Lake nondirectional beacons (NDB) and their subsequent removal from the National Airspace System (NAS). This action realigns Colored Federal Airway A–1 by providing a direct route between the Campbell Lake NDB and Takotna River NDB, AK.

EFFECTIVE DATE: 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

History

On December 12, 1997, the FAA proposed to amend 14 CFR part 71 (part 71) to modify Colored Federal Airway A–1 by providing a direct route between the Campbell Lake NDB and Takotna River NDB (62 FR 65383). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes this amendment is the same as that proposed

in the notice. Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The colored Federal airway listed in this document will be published subsequently in the Order.

The Rule

The FAA is amending part 71 to realign Colored Federal Airway A–1, located in Alaska, due to the decommissioning of the Puntilla Lake and Farewell Lake NDB's and their subsequent removal from the NAS. This rule realigns this airway between Campbell Lake NDB and Takotna River NDB, AK, by providing a direct route between Campbell Lake NDB, AK, and the Takotna River NDB, AK.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6009(c)—Amber Federal Airways

* * * * *

A–1 [Revised]

From Sandspit, BC, Canada, NDB 96 miles 12 AGL, 102 miles 35 MSL, 57 miles 12 AGL, via Sitka, AK, NDB; 31 miles 12 AGL, 50 miles 47 MSL , 88 miles 20 MSL, 40 miles 12 AGL, Ocean Cape, AK, NDB; INT Ocean Cape NDB 283° and Hinchinbrook, AK NDB 106° bearings; Hinchinbrook NDB; INT Hinchinbrook 286 and Campbell Lake, AK. NDB 123° bearings; Campbell Lake NDB; Takotna River, AK, NDB; 24 miles 12 AGL, 53 miles 55 MSL; 51 miles 40 MSL, 25 miles 12 AGL, North River, AK NDB; 17 miles 12 AGL, 89 miles 25 MSL, 17 miles 12 AGL, to Fort Davis, AK, NDB. Excluding that airspace within Canada.

* * * * *

Issued in Washington, DC, on March 6, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–6632 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8766]

RIN 1545–AV98

Consolidated Returns—Limitations on the Use of Certain Credits; Overall Foreign Loss Accounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary amendments to the consolidated return regulations. The temporary amendments modify the date temporary regulations apply as published in the **Federal Register** on January 12, 1998, relating to the use of tax credits of a consolidated group and its members. The amendments provide guidance to consolidated groups that have a taxable year beginning on or after January 1, 1997, for which the income tax return is due on or before March 13, 1998. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective dates:* These amendments are effective March 13, 1998.

Applicability dates: For dates of application, see the Effective Dates portion of the preamble under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Roy A. Hirschhorn, (202) 622–7770.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On January 12, 1998, the IRS and Treasury published in the **Federal Register** final, temporary and proposed regulations (''the January 12, 1998, regulations'') relating to limitations on the use of certain tax credits and related attributes by corporations filing consolidated income tax returns. In general, the January 12, 1998, regulations relate to the separate return limitation year provisions (and certain consolidated return changes in ownership) for general business credits, alternative minimum tax credits, foreign tax credits and overall foreign loss accounts. The January 12, 1998, regulations were generally applicable to consolidated return years beginning on or after January 1, 1997. IRS and Treasury have determined that the appropriate effective date of those regulations should be for consolidated return years for which the due date (without extensions) of the income tax return is after March 13, 1998. In lieu of applying this effective date, a consolidated group may choose to apply the effective date provisions as published in the January 12, 1998, regulations. Taxpayers making this choice must apply all of those effective date provisions for all relevant years. Thus, such taxpayers may not choose to apply one provision of the January 12, 1998, regulations and not another.

Effective Dates

The temporary amendments are applicable to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. As explained in the Background portion of this preamble, taxpayers may instead choose to apply the effective date provisions of the January 12, 1998, regulations (i.e., generally taxable years beginning on or after January 1, 1997).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact

that these regulations principally affect corporations filing consolidated federal income tax returns that have carryover or carryback of credits from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have credit carryovers or carrybacks, and thus even fewer of these filers have credit carryovers or carrybacks that are subject to the separate return limitation year rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It has also been determined that under section 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) these regulations should be effective immediately because they involve the applicability of regulations that modify the limitations on the use of certain tax attributes for taxable years beginning on or after January 1, 1997. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking accompanying these regulations is being sent to the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Roy A. Hirschhorn of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1502–3 is amended by revising paragraphs (c)(3), (d)(2) and (e)(3) to read as follows:

§ 1.1502–3 Consolidated investment credit.

* * * * *

(c) * * *

(3) *Special effective date.* This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See § 1.1502-3T(c) for the rule that limits the group's use of a section 38 credit carryover or carryback from a SRLY for a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998. For taxable years not subject to § 1.1502–3T(c), prior law applies. See § 1.1502–3(c) in effect prior to January 12, 1998 (§ 1.1502–3(c) as contained in the 26 CFR part 1 edition revised April 1, 1997) for prior law. See also § 1.1502–3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (c) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(d) Examples. * * *

(2) *Example (2)* and *Example (3)* of this paragraph (d) do not apply to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, see § 1.1502–3T(d).

(e) * * *

(3) *Special effective date.* This paragraph (e) applies only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See § 1.1502–3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (e) inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

* * * * *

Par. 3. Section 1.1502–3T is amended by revising paragraphs (c)(3) and (d)(2) and adding a new paragraph (c)(4) to read as follows:

§ 1.1502–3T Consolidated investment credit (temporary).

* * * * *

(c) * * *

(3) *Effective date.* This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. However, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (c). See also § 1.1502–3(c).

(4) *Optional effective date of January 1, 1997.* In lieu of paragraphs (c)(3) and (d)(2) of this section and §§ 1.1502-3(c)(3), (d)(2) and (e)(3) (relating to the general business credit), 1.1502–4(f)(3) and (g)(3), 1.1502–4T(f) and (g)(3) (relating to the foreign tax credit), 1.1502–9(a) (the next to last sentence), 1.1502–9T(b)(1)(v) (relating to overall foreign losses), and 1.1502–55T(h)(4)(iii)(C) (relating to the alternative minimum tax credit), a consolidated group may apply such paragraphs as they appear in 1998–10 I.R.B. 23 (see § 601.601(d)(2) of this chapter). A consolidated group making this choice must apply all such paragraphs for all relevant years.

(d) * * *

(2) This paragraph (d) applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See also § 1.1502–3(d) for years for which the due date of the income tax return (without extensions) is on or before March 13, 1998.

* * * * *

Par. 4. Section 1.1502–4 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 1.1502–4 Consolidated foreign tax credit.

* * * * *

(f) * * *

(3) *Special effective date ending SRLY limitation.* See § 1.1502–4T(f) for the rule that ends the SRLY limitation with respect to foreign tax credits for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See also § 1.1502–3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (f) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(g) * * *

(3) *Special effective date for CRCO limitation.* See § 1.1502–4T(g)(3) for the rule that ends the CRCO limitation with respect to a consolidated return change of ownership that occurs on or after the first day of a taxable year for which the due date of the income tax return (without extensions) is after March 13, 1998. See also § 1.1502–3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (g) inapplicable if the consolidated return change of ownership occurred on or

after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

* * * * *

Par. 5. Section 1.1502–4T is amended by revising paragraphs (f) and (g)(3) to read as follows:

§ 1.1502–4T Consolidated foreign tax credit (temporary).

* * * * *

(f) *Limitation on unused foreign tax carryover or carryback from separate return limitation years.* Section 1.1502–4(f) does not apply for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, a group shall include an unused foreign tax of a member arising in a SRLY without regard to the contribution of the member to consolidated tax liability for the consolidated return year. See also § 1.1502–3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (f) applicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

* * * * *

(g)(3) *Special effective date for CRCO limitation.* Section 1.1502–4(g) applies only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See also § 1.1502–3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (g)(3) applicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

Par. 6. In § 1.1502–9, paragraph (a) is amended by removing the last sentence and adding two sentences in its place to read as follows:

§ 1.1502–9 Application of overall foreign loss recapture rules to corporations filing consolidated returns.

(a) * * * See § 1.1502–9T(b)(1)(v) for the rule that ends the separate return limitation year limitation for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See also § 1.1502–3T(c)(4) for an optional effective date rule (generally making the rules of paragraphs (b)(1)(iii) and (iv) of this section inapplicable for a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

* * * * *

Par. 7. Section 1.1502–9T is amended by revising paragraph (b)(1)(v) to read as follows:

§ 1.1502–9T Application of overall foreign loss recapture rules to corporations filing consolidated returns (temporary).

* * * * *

(b)(1)(v) *Special effective date for SRLY limitation.* Sections 1.1502–9(b)(1)(iii) and (iv) apply only to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, the rules of § 1.1502–9(b)(1)(ii) shall apply to overall foreign losses from separate return years that are separate return limitation years. For purposes of applying § 1.1502–9(b)(1)(ii) in such years, the group treats a member with a balance in an overall foreign loss account from a separate return limitation year on the first day of the first consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998, as a corporation joining the group on such first day. An overall foreign loss that is part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998, shall be added to the appropriate consolidated overall foreign loss account in the year that it is absorbed. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, similar principles apply to overall foreign losses when there has been a consolidated return change of ownership (regardless of when the change of ownership occurred). See also § 1.1502–3T(c)(4) for an optional effective date rule (generally making this paragraph (b)(1)(v) applicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

* * * * *

Par. 8. Section 1.1502–55T is amended by revising paragraph (h)(4)(iii)(C) to read as follows:

§ 1.1502–55T Computation of alternative minimum tax of consolidated groups (temporary).

* * * * *

(h)(4) * * *

(iii) * * *

(C) *Effective date.* This paragraph (h)(4)(iii) applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. However, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii). See § 1.1502–3T(c)(4) for an optional effective date rule (generally making this paragraph (h)(4)(iii) applicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

Approved: March 9, 1998.

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–6561 Filed 3–13–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 55, 72, 178 and 179

[T.D. ATF–396; Ref: T.D. ATF–363 and Notice No. 807; T.D. ATF–383 and Notice No. 833]

RIN 1512–AB35

Implementation of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (94F–022P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: These final regulations implement the provisions of Public Law 103–322, the Violent Crime Control and Law Enforcement Act of 1994. This Treasury decision adopts the regulations substantially as proposed in Notice No. 807, as amended by Notice No. 833.

The temporary regulations published in the **Federal Register** on April 6, 1995

(T.D. ATF–363) and July 29, 1996 (T.D. ATF–383), are adopted as final upon the effective date of this final rule.

EFFECTIVE DATE: This rule is effective on May 15, 1998.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1994, Public Law 103–322 (108 Stat. 1796) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44), and Title XI of the Organized Crime Control Act of 1970, as amended (18 U.S.C. Chapter 40). The provisions of Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (hereafter, ''the Act''), became effective upon the date of enactment.

Temporary Rule (T.D. ATF–363) and Notice of Proposed Rulemaking

On April 6, 1995, ATF published in the **Federal Register** a temporary rule implementing the provisions of the Act (T.D. ATF–363, 60 FR 17446). The temporary regulations implemented the law by restricting the manufacture, transfer, and possession of certain semiautomatic assault weapons and large capacity ammunition feeding devices, with certain exceptions. Regulations were also prescribed with regard to reports of theft or loss of firearms from a licensee's inventory or collection, new requirements for Federal firearms licensing, responses by firearms licensees to requests for gun trace information, and possession of firearms by persons subject to restraining orders. Except as otherwise provided, the temporary regulations became effective upon the date of publication in the **Federal Register**.

On April 6, 1995, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 807, 60 FR 17494). The comment period for Notice No. 807 closed on July 5, 1995.

Temporary Rule (T.D. ATF–383) and Notice of Proposed Rulemaking

ATF received 129 comments in response to Notice No. 807. Fifty-two commenters, representing 40 percent of the total comments received, objected to ATF's interpretation of the law as restricting the importation of large capacity ammunition feeding devices after the date of enactment regardless of the date of manufacture of such devices. They also contended that the marking requirements prescribed in the regulations pursuant to T.D. ATF–363 (§ 178.92(c)) only apply to large capacity ammunition feeding devices manufactured after the effective date of the statute. Similar objections and arguments were raised in litigation challenging ATF's interpretation of the law.

After analyzing the comments received and in light of the above-mentioned litigation, ATF re-examined the Act and determined that feeding devices with a capacity of more than 10 rounds manufactured on or before September 13, 1994, are not subject to the restrictions of the law. Consequently, on July 29, 1996, ATF published in the **Federal Register** another temporary rule reflecting this position (T.D. ATF–383, 61 FR 39320). The temporary rule also provided guidance to importers on acceptable evidence that magazines sought to be imported were manufactured on or before September 13, 1994.

On July 29, 1996, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 833, 61 FR 39372). The comment period for Notice No. 833 closed on October 28, 1996.

Analysis of Comments—Notice No. 807

ATF received 129 comments in response to Notice No. 807. Fifty-seven comments, representing 44 percent of the comments received, expressed general support for the temporary regulations. However, these commenters requested that the final rule include a number of changes.

One commenter recommended that the term ''pistol grip'' be defined so that it includes so-called thumbhole stocks. The term ''semiautomatic assault weapon'' is defined in the Act as including semiautomatic rifles and semiautomatic shotguns which have 2 or more of the features specified in the law. One of the features specified is a ''pistol grip that protrudes conspicuously beneath the action of the weapon.'' The commenter stated that thumbhole stocks function in the same manner as pistol grips and, therefore, should be included within the definition of this term.

ATF agrees with the commenter that replacing a separate pistol grip with a thumbhole stock does not remove the pistol grip as a feature. A semiautomatic rifle or semiautomatic shotgun with a thumbhole stock and one or more of the other features specified in the law would be a ''semiautomatic assault weapon'' as defined. However, ATF does not believe it is necessary to provide a separate definition of ''pistol grip'' or any of the other features listed in the statute.

Several commenters recommended that Federal firearms licensees be required to swear under penalties of perjury that semiautomatic assault weapons and large capacity ammunition feeding devices will be transferred only to lawful recipients. The regulations in 27 CFR 178.40 and 178.40a provide that manufacturers and dealers may manufacture and deal in semiautomatic assault weapons and large capacity ammunition feeding devices manufactured after September 13, 1994, upon obtaining evidence that the weapons and devices will only be disposed of to law enforcement agencies and law enforcement officers.

ATF does not believe that imposing such a requirement on licensees is necessary. Pursuant to 18 U.S.C. § 922(m), it is unlawful for any licensee to make a false entry in any required record. A violation of this section can result in revocation of the license or in criminal prosecution. ATF believes these sanctions are adequate to deter most licensees from falsifying documents. Accordingly, ATF is not adopting the changes recommended by the commenters.

ATF also received comments concerning the wording of the export marking requirement for semiautomatic assault weapons and large capacity ammunition feeding devices. The commenters recommended that the wording of the present regulatory requirement, ''FOR EXPORT ONLY,'' be changed to read ''DOMESTIC SALE UNLAWFUL, FOR EXPORT ONLY.'' The commenters stated their belief that this language more adequately conveys the fact that such weapons and devices are highly restricted and are illegal for domestic sale.

ATF believes that the wording of the current export marking requirement provides sufficient notice that these weapons and devices are not intended for domestic sale. Furthermore, to ATF's knowledge, the current marking requirement has not resulted in any confusion among the general public. Accordingly, the Bureau has determined that the proposed amendment is unwarranted and would impose an unnecessary burden on the industry.

Several commenters stated that variances from the marking requirements imposed on semiautomatic assault weapons and large capacity ammunition feeding devices should not be allowed. Current regulations provide that the Director may authorize other means of

identifying assault weapons and feeding devices when such other identification is reasonable and will not hinder the effective administration of the regulations. The commenters contend that marking variances could be used by manufacturers to create confusion as to the legal status of post-ban weapons and feeding devices.

ATF is not adopting the commenters' suggestion. The decision to allow marking variances for semiautomatic assault weapons and large capacity ammunition feeding devices is consistent with that for other firearms. In the case of such weapons and devices, ATF has authorized variances from the marking requirements only for law enforcement and military purposes where there is a demonstrated need for such a variance.

One commenter states that the current regulations requiring that assault weapons be marked ''RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY'' raises concerns in the case of weapons that are reconfigured so that they no longer meet the definition of ''semiautomatic assault weapon.'' The commenter raised the case of an assault weapon transferred to a law enforcement officer upon retirement, which is permissible under the law. If the retiree subsequently decides to remove features from the weapon so that it is no longer subject to the restrictions of the law, he may have difficulty selling it, due to the restrictive marking. To address this potential problem, the commenter recommends that ATF amend the regulations to require only that the date of manufacture be marked on the weapon.

ATF maintains that the restrictive language required in the current regulations clearly provides notice to law enforcement officers and the general public that semiautomatic assault weapons may be lawfully possessed only by Government agencies and law enforcement personnel. ATF does not believe that placing the date of manufacture on the weapons provides this information. Accordingly, ATF is not adopting this comment.

To address the commenter's concern about reconfiguration of an assault weapon, if the weapon has been modified so it no longer meets the definition of ''semiautomatic assault weapon,'' it is not subject to the restrictions of the law. However, ATF would caution that a dealer obtaining assault weapons by falsely representing that the weapons are for resale to law enforcement, but who actually intends to reconfigure the weapons so they no longer meet the definition of assault weapon, would possess the weapons in violation of 18 U.S.C. § 922(v). The Federal firearms licenses of such dealers would also be subject to revocation.

The same commenter concerned about reconfiguration also had recommendations concerning the documentation required for law enforcement officers to acquire assault weapons for official use. The regulations at 27 CFR 178.132 require licensees to obtain written statements, under penalty of perjury, from the purchasing officer and a supervisory officer, stating that the weapon is for use in performing official duties and is not being acquired for personal use or for purposes of transfer or resale. The commenter requests that ATF amend the regulations to permit officers to obtain semiautomatic assault weapons for purposes of familiarization, marksmanship, and training. The commenter also contends that the regulation appears to prevent the officer from reselling the weapon, even if reconfigured so that it no longer meets the definition of ''semiautomatic assault weapon.''

It is unnecessary to amend section 178.132 to include familiarization, marksmanship, and training as valid purposes for law enforcement officers obtaining semiautomatic assault weapons. If these activities are part of a law enforcement officer's official duties and a supervisor is willing to submit a statement certifying to such duties, the weapon may be lawfully acquired for such purposes. ATF does not believe it is necessary to spell out every possible official use in the regulation.

As for the comment concerning resale, neither the law nor the regulation prevents future resale of the weapon by the purchasing officer. The regulation merely requires the officer to state, under penalty of perjury, that the weapon is not being acquired for purposes of transfer or resale. The regulation merely requires that the officer acquire the weapon for official use and not for purposes of transfer or resale. The issue concerning reconfiguration is discussed above.

Several clarifying amendments have been made to § 178.132. The regulation is being amended to provide that the written statement prepared by the purchaser's supervisor must be on agency letterhead. The regulation is also being revised to provide that this section applies to the transfer of assault weapons and large capacity ammunition feeding devices to employees or contractors of nuclear facilities.

Analysis of Comments—Notice No. 833

ATF received one comment in response to Notice No. 833. This commenter objected to ATF requiring an import permit for ammunition feeding devices manufactured on or before September 13, 1994, as specified in § 178.119.

In order to ensure compliance with the provisions of the law and to enforce the marking requirements of the statute, ATF has determined that it is necessary to require importers to obtain import permits for feeding devices manufactured on or before September 13, 1994. ATF maintains that this requirement is necessary in order to determine whether the devices are subject to the restrictions of the law. Since import permits for such devices are already required pursuant to the Arms Export Control Act, 22 U.S.C. § 2778, and implementing regulations in 27 CFR Part 47, the burden imposed by this requirement is minimal. Accordingly, the Bureau is adopting the regulation as proposed in Notice No. 833.

Miscellaneous Amendments to Regulations

Section 923(g)(7) of the GCA and its implementing regulation in 27 CFR 178.25a require Federal firearms licensees to respond to requests for firearms trace information within 24 hours after receipt of the request. Personnel at the National Tracing Center have had problems with licensees providing the requested trace information on crime guns within the required 24-hour period. A question has arisen whether the licensee must provide the requested trace information within the 24-hour period or whether licensees would comply with the requirement by simply acknowledging the request and providing the requested information at a later time. The statute and regulation require licensees to provide the requested trace information within the 24-hour period. To ''respond'' to a trace request within the meaning of the statute and regulation means to provide the information. Interpreting the statute otherwise gives the statute no meaning and defeats its purpose, to enable ATF to obtain trace information quickly by telephone. Accordingly, § 178.25a is being amended to clarify that licensees must provide the requested trace information within the 24-hour period. A technical amendment is also being made at the end of this section to include the control number assigned by the Office of Management and Budget (OMB).

A technical amendment is also being made to the marking requirements in 27 CFR 178.92. Language has been added to § 178.92(c)(1)(iii), relating to markings for large capacity ammunition

feeding devices, to make it clear that importers who import such devices for purposes of export shall mark them ''FOR EXPORT ONLY.''

Finally, ATF is making a technical amendment to the definition of ''firearm'' in 27 CFR 179.11 with respect to the sentence describing barrel length measurement. The amendment makes it clear that measurements do not apply to revolvers. It also clarifies that the method specified does not apply to revolving cylinder shotguns.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this final rule. Accordingly, this final rule is not subject to the analysis required by this Executive order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control numbers 1512–0017, 1512–0018, 1512-0019, 1512–0526, and 1512–0387. Other collections of information contained in this final rule have been approved under control numbers: 1512–0522 and 1512-0523 (§ 178.47); 1512–0524 (§ 178.39a); and 1512–0525 (§ 178.52). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collections of information in this final regulation are in 27 CFR 178.25a, 178.40(c), 178.40a(c), 178.119, 178.129(e), 178.132, and 178.133. This information is required by ATF to ensure compliance with the provisions of Pub. L. 103–322 (108 Stat. 1796). The likely respondents and recordkeepers are individuals and businesses. The estimated average annual burden associated with the collections of information in this regulation is 6 minutes per respondent for control numbers 1512–0017, 1512–0018, and 1512–0019, and 2.52 hours per respondent or recordkeeper for control number 1512–0526.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503.

Disclosure

Copies of the temporary rules, the notices of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

Accordingly, 27 CFR Parts 55, 72, 178 and 179 are amended as follows:

Paragraph 1. The temporary rule published April 6, 1995 (60 FR 17446), amended July 29, 1996 (61 FR 39320) and further amended February 25, 1997 (62 FR 8374) is adopted as final.

Paragraph 1a. The temporary rule published July 29, 1996 (61 FR 39320) is adopted as final.

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1b. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.25a is amended by revising the second sentence and by adding a parenthetical text at the end of the section to read as follows:

§ 178.25a Responses to requests for information.

* * * The requested information shall be provided orally to the ATF officer within the 24-hour period. * * *

(Approved by the Office of Management and Budget under control number 1512–0387)

§ 178.92 [Amended]

Par. 3. Section 178.92(c)(1)(iii) is amended by adding the words ''or imported'' after the words ''in the case of devices manufactured''.

Par. 4. Section 178.132 is revised to read as follows:

§ 178.132 Dispositions of semiautomatic assault weapons and large capacity ammunition feeding devices to law enforcement officers for official use and to employees or contractors of nuclear facilities.

Licensed manufacturers, licensed importers, and licensed dealers in semiautomatic assault weapons, as well as persons who manufacture, import, or deal in large capacity ammunition feeding devices, may transfer such weapons and devices manufactured after September 13, 1994, to law enforcement officers and to employees or contractors of nuclear facilities with the following documentation:

(a) *Law enforcement officers.* (1) A written statement from the purchasing officer, under penalty of perjury, stating that the weapon or device is being purchased for use in performing official duties and that the weapon or device is not being acquired for personal use or for purposes of transfer or resale; and

(2) A written statement from a supervisor of the purchasing officer, on agency letterhead, under penalty of perjury, stating that the purchasing officer is acquiring the weapon or device for use in official duties, that the firearm is suitable for use in performing official duties, and that the weapon or device is not being acquired for personal use or for purposes of transfer or resale.

(b) *Employees or contractors of nuclear facilities.* (1) Evidence that the employee is employed by a nuclear facility licensed pursuant to 42 U.S.C. 2133 or evidence that the contractor has a valid contract with such a facility.

(2) A written statement from the purchasing employee or contractor under penalty of perjury, stating that the weapon or device is being purchased for one of the purposes authorized in

§§ 178.40(b)(7) and 178.40a(b)(3), i.e., on-site physical protection, on-site or off-site training, or off-site transportation of nuclear materials.

(3) A written statement from a supervisor of the purchasing employee or contractor, on agency or company letterhead, under penalty of perjury, stating that the purchasing employee or contractor is acquiring the weapon or device for use in official duties, and that the weapon or device is not being acquired for personal use or for purposes of transfer or resale.

(Approved by the Office of Management and Budget under control number 1512–0526)

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Par. 5. authority citation for 27 CFR Part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 179.11 is amended by revising the third sentence in the definition of ''Firearm'' to read as follows:

§ 179.11 Meaning of terms.

* * * * *

Firearm. * * * For purposes of this definition, the length of the barrel having an integral chamber(s) on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breech block when closed and when the shotgun or rifle is cocked. * * *

* * * * *

Signed: July 25, 1997.

John W. Magaw,

Director.

Approved: August 11, 1997.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)

Editorial note: This document was received at the Office of the Federal Register on March 10, 1998.

[FR Doc. 98–6591 Filed 3–13–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 31, 32, 36, 70, and 75

RIN 1219–AA27

Approval, Exhaust Gas Monitoring, and Safety Requirements for the Use of Diesel-Powered Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; corrections.

SUMMARY: This document corrects errors in MSHA's regulations for the approval, exhaust gas monitoring, and safety requirements for the use of diesel-powered equipment in underground coal mines.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances; 703–235–1910.

SUPPLEMENTARY INFORMATION:

On October 25, 1996, MSHA published a final rule that established approval, exhaust gas monitoring, and safety requirements for the use of diesel-powered equipment in underground coal mines (61 FR 55412). This notice corrects an editorial error in that final rule for § 75.1906(g) and the corresponding preamble language.

The preamble to the final rule, on page 55454, third column, first sentence, currently reads:

Paragraph (g) requires non-self-propelled diesel fuel transportation units equipped with electric components for dispensing fuel that are connected to a source of electrical power be provided with a fire suppression device that meets the requirements of existing §§ 75.1107–3 through 75.1107–6, §§ 75.1107–8, *and* § 75.1107–16. * * * [emphasis added]

This section should read:

Paragraph (g) requires non-self-propelled diesel fuel transportation units equipped with electric components for dispensing fuel that are connected to a source of electrical power be provided with a fire suppression device that meets the requirements of existing §§ 75.1107–3 through 75.1107–6, *and* §§ 75.1107–8 *through* 75.1107–16. * * * [emphasis added]

Section 75.1107, as a whole, specifies requirements for fire suppression devices for both attended and unattended equipment used in underground coal mines. The various subsections in § 75.1107 address different types of fire suppression devices so as to allow flexibility in the choice of a fire suppression system. This flexibility enables the mine operator to choose a fire suppression device that is appropriate for the type of equipment or installation where it will be used.

When this existing regulation was incorporated by reference in the final rule for the use of diesel-powered equipment in underground coal mines, MSHA's intent was to reference all sections of the existing fire suppression requirements that would provide effective fire suppression capability for the combined hazards presented by the storage of diesel fuel in conjunction with electrical components. Because water can spread, rather than suppress, a diesel fuel fire, water deluge type devices are inappropriate for fighting diesel fuel fires at electrical installations. MSHA's intent was to exclude only the use of water deluge type devices, described by § 75.1107–7, when fighting diesel fuel fires, and to allow the use of all other types of fire suppression devices addressed in the other subsections of § 75.1107. An appropriate fire suppression device for non-self-propelled diesel fuel transportation units, therefore, must meet the requirements for underground equipment with the exception of those that use water.

This notice corrects the final rule and corresponding preamble language for § 75.1906(g) by replacing ''and'' with ''through'' to reflect that non-self-propelled diesel fuel transportation units that are connected to a source of electrical power require fire suppression devices that are effective for the hazard.

List of Subjects in 30 CFR Part 75

Diesel-powered equipment, Mine safety and health, Underground coal mines. Reporting and recordkeeping requirements.

Dated: March 9, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, chapter I of title 30, Code of Federal Regulations is amended as follows:

PART 75—[AMENDED]

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 75.1906(g), is corrected to read as follows:

§ 75.1906 Transport of diesel fuel.

* * * * *

(g) Non-self-propelled diesel fuel transportation units with electrical components for dispensing fuel that are connected to a source of electrical power must be protected by a fire suppression device that meets the requirements of §§ 75.1107–3 through 75.1107–6, and §§ 75.1107–8 through 75.1107–16.

* * * * *

[FR Doc. 98–6582 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–139–FOR]

Indiana Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana abandoned mine land reclamation plan (hereinafter referred to as the ''Indiana plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Indiana plan pertaining to procedures for ranking and selecting reclamation projects, coordination with other programs, reclamation of private land, public participation policies, organization of designated agency, Applicant/Violator System (AVS) requirements, flora and fauna of southwestern Indiana, and the emergency response reclamation program. The amendment is intended to revise the Indiana plan to be consistent with the corresponding Federal regulations and SMCRA.

EFFECTIVE DATE: March 16, 1998.

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

SUPPLEMENTARY INFORMATION:

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

I. Background on the Indiana Plan

On July 29, 1982, the Secretary of the Interior approved the Indiana plan. Background information on the Indiana plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the July 26, 1982, **Federal Register** (47 FR 32110). Subsequent actions concerning the Indiana plan and amendments to the plan can be found at 30 CFR 914.20 and 914.25.

II. Submission of the Proposed Amendment

By letter dated July 23, 1997 (Administrative Record No. IND–1579), Indiana submitted a proposed amendment to its plan pursuant to SMCRA. Indiana submitted the proposed amendment in response to a September 26, 1994, letter (Administrative Record No. IND–1583) that OSM sent to Indiana in accordance with 30 CFR 884.15(d) and at its own initiative.

OSM announced receipt of the proposed amendment in the August 8, 1997, **Federal Register** (62 FR 42713), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on September 8, 1997.

During its review of the amendment, OSM identified some editorial errors relating to citation references, agency references, subparagraph notations, and typographical errors. OSM notified Indiana of these concerns by letter dated September 16, 1997 (Administrative Record No. IND–1589). By letter dated February 4, 1998 (Administrative Record No. IND–1594), Indiana notified OSM that the changes would be made and a copy of the corrected plan submitted to OSM. Indiana also requested that OSM proceed with publication of a final rule in the **Federal Register**. Because the corrections needed are nonsubstantive in nature, the Director is proceeding with publication of the final decision on the proposed amendment.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15 finds that the proposed plan amendment meets the requirements of the corresponding Federal regulations and is in compliance with SMCRA. Revisions not specifically discussed below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Miscellaneous Changes

At sections 884.13(c)(4), 884.13(c)(5), and 884.13(c)(6), Indiana changed statute citation references to reflect re-codification of the Indiana Surface Coal Mining and Reclamation Act under House Enrolled Act No. 1047. This re-codification was approved by OSM on April 8, 1996 (61 FR 15378).

The Director finds that the above proposed revisions do not alter the substance of the previously approved Indiana plan.

2. Reclamation Project Ranking and Selection Procedures, 884.13(c)(2)

a. At section 884.13(c)(2), Indiana added a new subcategory to its Priority II objective concerning abandoned mine land (AML) problems which adversely impact the public health, safety, or general welfare. Potential sites may now include any water body adversely affected by acid drainage derived from coal mine sources which has reduced recreational or aesthetic value and for which there is local support for reclamation. Indiana's existing plan at section 884.13(c)(2) requires Indiana to ensure that priority is given to those eligible post-1997 sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community in accordance with section 402(g)(4)(C) of SMCRA.

Section 403(a)(2) of SMCRA defines a Priority II site as one where reclamation is needed to protect the public health, safety, and general welfare from adverse effects of coal mining practices. The Federal regulation at 30 CFR 884.13(c)(2) requires State reclamation plans to include the specific criteria, consistent with section 403 of SMCRA, for ranking and identifying projects to be funded. The Director finds that the addition of the proposed subcategory for Indiana's Priority II objective meets the requirement of 30 CFR 884.13(c)(2) and is not inconsistent with the requirement of section 403(a)(2) of SMCRA.

b. At section 884.13(c)(2), Indiana deleted its former Priority IV objective concerning AML problems which present a potential for research and demonstration projects related to mine reclamation and renumbered former Priority V and VI as priority IV and V, respectively.

The Energy Policy Act of 1992 amends SMCRA on October 24, 1992, by deleting the fourth priority regarding research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques originally found in section 403(a) of SMCRA. Therefore, the Director finds that Indiana's removal of its former Priority IV objective is in compliance with the amended objectives of section 403(a) of SMCRA.

c. At section 884.13(c)(2), Indiana added a new provision entitled ''Remined Sites.'' Any site that is eligible for AML reclamation fund expenditures, that is remined or reaffected by mining, remains eligible for AML reclamation after bond release

or bond forfeiture. Indiana's existing provision entitled ''Bond Forfeiture'' provides that eligibility of bond forfeiture sites to receive AML funding will be determined consistent with all Federal laws and regulations including sections 401 through 411 of SMCRA.

The Energy Policy Act of 1992 amended SMCRA on October 24, 1992, by revising section 404 of SMCRA to extend eligibility for AML reclamation fund expenditures to lands which are eligible for remining. The revision to section 404 of SMCRA provides that surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration after the release of the bond or deposit. In the event the bond or deposit is forfeited, available funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement. On May 31, 1994, OSM added a new provision at 30 CFR 874.12(h) to implement this requirement. The Director finds that Indiana's proposed revision for remined sites in conjunction with its existing provision for bond forfeiture sites is consistent with the provisions of section 404 of SMCRA and CFR 874.12(h) of the Federal regulations concerning remining operations.

3. Coordination with Other Programs, 884.13(c)(3)

In its provision entitled ''Natural Resources Conservation Service—Rural Abandoned Mine Program,'' Indiana: (1) changed references from ''Soil Conservation Service (SCS)'' to ''Natural Resources Conservation Service (NRCS)'' and from ''SCS'' to ''NRCS'' to reflect that Federal agency's name change; (2) changed references from ''AML program grants personnel'' to ''Indiana Restoration Program'' to reflect changes in the State organization; and (3) removed the language ''Division of Reclamation annual plans will be developed with SCS as funding is made available.'' In its provision entitled ''Emergency Policy,'' Indiana removed the existing language and added the following new language: ''Indiana's implementation of the Emergency Reclamation Program is defined in the attached Amendment E.R.P.''.

The Director finds that the revisions proposed by Indiana either correct or clarify existing provisions. Therefore, this section of the State plan continues to meet the Federal requirements at 30 CFR 884.13(c)(3) to describe coordination of reclamation work among the State reclamation program, the Rural Abandoned Mine Program, the reclamation programs of any Indian tribes, and OSM's reclamation programs.

4. Reclamation of Private Land, 884.13(c)(5)

a. Indiana removed the minimum 30-day time period for allowing the landowner to prepay the amount of a proposed lien. The revised provision now requires that prior to the time of actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved. The Director finds that Indiana's revised provision is substantively identical to the counterpart Federal provision at 30 CFR 882.13(b) and meets the requirement of 30 CFR 884.13(c)(5) that a State reclamation plan include policies and procedures regarding reclamation on private land under 30 CFR part 882.

b. Indiana added a new provision that allows the landowner, within 60 days of the lien being filed, to petition under local law to determine the increase in market value of the land as a result of the reclamation work. The Director finds that this provision is substantively identical to the counterpart Federal provision at 30 CFR 882.13(c) and meets the requirement of 30 CFR 884.13(c)(5).

5. Public Participation Policies, 884.13(c)(7)

a. Indiana added a new public participation policy provision which states that ''the publication 'Citizens Guide to Indiana's Abandoned Mine Land Program' is widely circulated to all interested citizens.'' Indiana revised its provision concerning how the Department of Reclamation (DoR) responds to public concerns regarding private property located over abandoned deep mined areas by specifying that the DoR staff responds ''by investigating complaints, providing technical information and recommending alternatives for action.'' The existing provision did not require the DoR staff to provide technical information.

The Director finds that the proposed revisions serve to enhance Indiana's public participation policy and meet the requirement of 30 CFR 884.13(7) that a State plan include public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

b. Indiana removed the existing language pertaining to its intergovernmental review process pursuant to Executive Order (E.O.) 12372, and added a statement that its direct contact provisions have replaced the E.O. 12372 requirements. Indiana's existing provisions for intergovernmental review include direct contact with elected officials on the Federal, State, county, township, and municipal level. The contact includes a description of the reclamation work planned for each site within the official's area of concern, maps that aid all reviewers in locating proposed sites, and a questionnaire which gives the recipient the opportunity to participate indirectly in the AML reclamation program's planning process prior to submission to OSM for authorization to proceed with each project. Indiana also requires that detailed descriptions of proposed reclamation sites and construction activities be distributed to various State and Federal agencies prior to funding an application in order to allow inter-agency review to provide guidance in designated specialized fields to more fully meet the concerns and intent of State and Federal regulations such as the National Fish and Wildlife Coordination Act and the National Endangered Species Act.

The Director finds that Indiana's existing direct contact provisions meet the requirements of E.O. 12372 for intergovernmental review, and is approving the removal of the E.O. 12372 process provision.

c. Indiana revised its plan to require that direct contact be made with elected officials on the Federal, State, county, township, and municipal and/or town level before it requests authorization from OSM to proceed with each project. Indiana revised its plan to require that detailed descriptions of proposed reclamation sites and construction activities be distributed to various State and Federal agencies prior to funding an application. Indiana revised its public meeting provision to provide that meetings be held prior to requesting OSM's authorization to proceed. Indiana also revised its plan to require that when a construction site is selected, the Project Manager contacts the affected land owners. In the existing plan these contacts were required prior to submission of a grant application. The Director finds that these revisions reflect revised grant procedures implemented by OSM that do not require specific project submissions or approvals at the time of grant application or issuance, and is approving them.

d. Indiana deleted the existing paragraphs specifying its public meeting policy and format, and added the following revised public meeting policy:

Public participation and awareness of a proposed reclamation project may be carried out through public meetings prior to requesting authorization to proceed. The

meetings may be held at any location in order to satisfy the concerns of citizens over a specific proposed site, or any group of sites. Locations are selected for the meetings based upon special requests or in response to citizen inquiry. Public notices are published once per week for two consecutive weeks in a general circulation newspaper within the county where the proposed site is located. A thirty day comment period is allowed for response to these public notices prior to requesting authorization to proceed.

Indiana's previous provision did not allow for a specific thirty day comment period. The Director finds that the revised public meeting provision enhances Indiana's public participation policy and meets the requirement of 30 CFR 884.13(c)(7).

6. Organization of the Designated Agency, 884.13(d)(1)

Indiana proposed several revisions to this section to reflect its current organization for conducting the reclamation program including the following:

Indiana deleted the paragraph on the ''Geological Survey Division'' to reflect the survey being separated from the Department of Natural Resources into an institute of the Indiana University. The organizational chart of the Department of Natural Resources was revised to reflect the current organization. The Division of Reclamation organizational chart and organization references throughout the plan were revised to reflect the current organization. Indiana revised the current organizational structure for management of the Indiana abandoned mined lands reclamation program by changing the name of the AML Section to Restoration Program. The Restoration Program was re-aligned into three functions designated Technical Services, Project Design, and Project Management directly under the Restoration Program Coordinator. A new position for Emergency Coordinator was added and the Field Operations Coordinator position was moved directly under the Restoration Program Coordinator. The Program Planning function was changed to the Technical Services Manager function. The Environmental Specialist, Inventory Specialist, and Financial Officer position were changed to Technical Manager positions. The surveyor positions were realigned from under the Chief Engineer to under the Construction Supervisor. An Applicant/Violator System (AVS) Coordinator position was added under the Regulatory Program function.

The Director finds that the proposed revisions meet the Federal requirement at 30 CFR 884.13(d)(1) that a State reclamation plan include a description of the organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity.

7. Personnel Staffing Policies, 884.13(d)(2)

Indiana changed its reference to ''DoR and the AML Section'' to ''DoR and the Restoration Program'' in order to reflect the current organizational structure.

The Director finds that this proposed revision meets the Federal requirement at 30 CFR 884.13(d)(1).

8. Purchasing and Procurement, 884.13(d)(3)—Applicant/Violator System (AVS) Requirements

Indiana added a new provision, entitled ''Indiana AML Applicant/Violator System (AVS) Program,'' to address requirements and procedures for AVS checks on potential AML contractors. This new provision was required by OSM in a letter sent to Indiana dated September 26, 1994, pursuant to 30 CFR 884.15(d). The Federal regulations at 30 CFR 874.16 and 875.20 provide that to receive AML funds, every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1), at the time of contract award, to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSM's automated Applicant/Violator System for each contract to be awarded. Indiana developed a procedure within the State contracting process to satisfy these requirements. All successful bidders on AML federally funded projects must comply with 30 CFR 874.16, 875.20, and 773.15(b)(1). Specifically, all successful low bidders being awarded federally funded AML contracts over $25,000 and all subcontractors that will be performing over $25,000 of a contract shall be cleared through the AVS. An AVS Entity Check Form will be included with each of these bid packages. All contractors submitting a bid will be required to fill out this form and submit it with their bids. The contractor is also to submit this form for any applicable known subcontractors. An AVS Contractor Certification Form will be included with each bid package. The contractor certifies on this form that he will comply with the AVS requirements. An AVS Contractor Waiver Form will also be included with each bid package. This form may be completed by the bidder and applicable subcontractors if that company and its owners and controllers have never owned or controlled a surface coal mining permit. After confirmation through the AVS that the company and its owners and controllers are not linked to any surface coal mining permit with any outstanding violations, future AVS clearance checks would not be necessary unless the ownership or control of the contractor or subcontractor changes. The low bidder and applicable subcontractors will be checked through the AVS system by the Division of Reclamation AVS Coordinator as soon as possible following bid opening and prior to issuing the Bid Report. If a contractor or subcontractor has an unresolvable AVS problem, a decision will be made whether to rebid the project or go to the next low bidder. In order to prevent excessive delays, a contractor will normally be allowed only seven days to clear an AVS ''deny'' decision. Emergency program contractors will also be required to meet Indiana's AVS clearance requirements. A check after-the-fact will be performed if the Emergency Response Coordinator determines there is an overriding need to proceed prior to being able to make an AVS check. The results of this after-the-fact check could be a basis for future contract denials.

The Director finds that Indiana's requirements for confirming bidder eligibility by OSM's automated Applicant/Violator System are consistent with the Federal requirements at 30 CFR 874.16 and 875.20.

9. Flora and Fauna of Southwestern Indiana, 844.13(f)(3)

Indiana revised this section to require the wildlife biologist to evaluate sites to determine the presence of wetlands, endangered species, or other environmental concerns. Indiana's existing plan required the wildlife biologist to evaluate Priority II sites to determine the presence of wetlands only. Indiana's provision concerning a significant features review was revised to clarify interaction with other Divisions in identifying important natural features and to clarify policy on potential conflicts with endangered species or unique natural features. A location map and proposed scope of work for each reclamation site is routed to the Division of Nature Preserves (DNP) for review. The DNP searches the Indiana Natural Heritage Program database for each site to determine whether there are any important natural features recorded at or near the proposed project. The Restoration Program attempts to resolve any potential conflicts with endangered species or unique natural features by designing the project to avoid the

critical habitat or natural feature. Projects that cannot be designed for avoidance will be coordinated with the DNP and the Division of Fish and Wildlife to develop a plan to minimize disturbance and mitigate any losses. Indiana also made various revisions to the reclamation review checklist which is completed by the Division of Nature Preserves for the Division of Reclamation. These revisions include adding the consideration of impacts to State Nature Preserves, State Forests, State Reservoirs, and State endangered or threatened species.

The Director finds that Indiana's proposed revisions meet the Federal requirements of 30 CFR 884.13(f)(3) that a State reclamation plan include a general description of the conditions prevailing in the different geographic areas of the State where reclamation is planned relating to endangered and threatened plant, fish, and wildlife and their habitat.

10. Amendment E.R.P. (Emergency Reclamation Program)

Indiana revised its emergency response reclamation program provisions to clarify that the policies and procedures for emergency reclamation on private and public lands will be the same as for other AML reclamation activities that are detailed in the approved State plan. The description of the Emergency Program Coordinator position was changed to reflect that the position has been established.

The Director finds that the revisions to the Indiana plan relating to its emergency response reclamation program meet the requirements of 30 CFR 884.13 (c) and (d) and are in compliance with SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 884.14(a)(2) and 884.15(a), the Director solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Indiana plan by letter dated August 4, 1997 (Administrative Record No. IND–1585.) By letter dated August 20, 1997 (Administrative Record No. IND–1586), the U.S. Fish and Wildlife Service responded that the proposed program amendment would have no significant effect on wetlands and would not affect any Federally endangered species, that other project impacts would be minor in nature, and that the U.S. Fish and Wildlife Service had no objections to the proposed amendment.

V. Director's Decision

Based on the above findings, the Director approves the proposed plan amendment as submitted by Indiana on July 23, 1997.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standard without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

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

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 5, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

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

PART 914—INDIANA

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

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

2. Section 914.25 is amended in the table in paragraph (a) by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 914.25 Approval of Indiana abandoned mine land reclamation plan amendments.

(a) * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
July 23, 1997	March 16, 1998	Indiana plan §§ 884.13(c)(2) through (7), (d)(1) through (3), (f)(2), (3); emergency response reclamation program.

* * * * *

[FR Doc. 98–6687 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–5979–1]

Identification of Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On January 16, 1998, the EPA published a proposed rule (63 FR 2804) and a direct final rule (63 FR 2726) announcing EPA's decision to identify areas, designated under the national ambient air quality standard (NAAQS) for ozone, where the 1-hour NAAQS is no longer applicable because there has been no current measured violation of the 1-hour standard in such areas. The EPA is withdrawing the final rule due to adverse comments and will summarize and address all relevant public comments received in a subsequent final rule (based upon the proposed rule cited above).

EFFECTIVE DATE: This withdrawal of the direct final rule will be effective March 16, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–97–42, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5246/5238.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 11, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–6776 Filed 3–13–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1305

RIN 0970 AB53

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is amending the requirements on eligibility, recruitment, selection, enrollment and attendance in Head Start in six areas affecting Head Start programs serving specific populations. These amendments address new language in the Head Start Act of 1994 and add a new definition for Indian Tribe; amend the definition of migrant family; add the requirement that migrant programs give priority to children from families that relocate most frequently; expand the definition of a service area for Head Start programs operated by Indian Tribes to include near-reservation designations; expand the family income criteria for Indian grantees meeting certain conditions; and amend the enrollment and reenrollment criteria for children in Head Start and for children enrolled in an Early Head Start program.

EFFECTIVE DATE: This rule is effective April 15, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start, as authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*), is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. In addition, section 645A of the Head Start Act provides authority for programs serving low-income pregnant women and families with infants and toddlers. Programs funded under this section are referred to as Early Head Start programs. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1997, Head Start served over 752,000 children through a network of 2,000 grantee and delegate agencies.

While Head Start is designed primarily to serve children whose families have incomes at or below the poverty line or who receive public assistance, the Head Start regulations permit up to ten percent of the children in local programs to be from families who do not meet these low-income criteria. Additionally, as provided in this rule, Indian Tribes meeting certain conditions may enroll additional over-income children above the ten percent limitation. The Act also requires that a minimum of ten percent of the enrollment opportunities in each program be made available to children with disabilities. These children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Purpose of the Final Rule

The purpose of this rule is to implement the new provisions in sections 637, 640, 645 and 645A of the Head Start Act (42 U.S.C. 9801 *et seq.*), as amended by Public Law 103–252, Title I of the Human Services Amendments of 1994.

Section 637 contains a new definition for ''Indian Tribe'' which has been incorporated into this rule. It also contains a new definition for ''migrant Head Start program'' which impacts on the current definition of ''migrant family'' found at 45 CFR 1305.2(l). The definition of ''migrant family'' has been amended in this rule to include families who have changed their residence from one geographical area to another in the preceding two-year period for the purpose of engaging in agricultural work.

Several technical amendments have also been made to this section. The definition of ''Head Start eligible'' at 45 CFR 1305.2(g) has been revised to state that Indian Tribes meeting the conditions specified in 45 CFR 1305.4(b)(3) are exempted from the limitation that no more than ten percent of the enrolled children may be from families that exceed the low-income guidelines. Finally, the definition of ''Income'' at 45 CFR 1305.2(i) has been revised to refer to the other sources of income contained in the definition of ''income'' in the U.S. Bureau of the Census, Current Population Reports, Series P–60–185, and as provided in the annual Family Income Guidelines issued by the Head Start Bureau.

Section 641(b) expands the definition of a community to include Indians in any area designated as near-reservation. The expanded definition of a service area for Indian Tribal Head Start grantees has been incorporated into 45 CFR 1305.3(a) in this rule to permit Tribes to include in their service areas all or parts of areas designated as near-reservation by the Bureau of Indian Affairs (BIA). In order to provide similar flexibility to Tribes which do not have a BIA designation, but which face the same need to serve Indian children and families living near the reservation, the rule also provides that a Tribe, with the approval of the Tribe's governing council, may propose to define its service area to include near-reservation areas in which Indian people native to its reservation reside. Additionally, a new paragraph (b) has been added to this section to clarify that, except in situations where an expanded service area has been approved for a Tribe, a grantee's service area may not overlap with that of other Head Start grantees.

Section 645(d) expands eligibility for participation in Head Start programs operated by Indian Tribes to permit them to enroll additional children, beyond ten percent, from families that exceed the income-eligibility guidelines, when specific conditions are met. These conditions are that (1) all children from Indian and non-Indian families living in the Tribe's approved service area that meet the low-income guidelines who wish to be enrolled in Head Start are served by the program, including children from income-eligible families living in near-reservation communities if those communities are approved as part of the Tribe's service area; (2) the Tribe does not use funds awarded to expand Head Start services for this purpose; and (3) the program predominantly serves children from families who meet the low-income criterion. ''Predominantly'' has been defined in this rule to mean at least 51 percent of the children enrolled in the Head Start program. Tribal Head Start programs meeting these conditions must annually set criteria that are approved by the Policy Council and the Tribal Council for selecting over-income children who would benefit from participation in the Head Start program. Changes have been made in 45 CFR 1305.4(b) in this rule to conform with these new provisions.

Section 645(d) also requires that the Secretary specify, in regulation, the requirements contained in this section after consultation with Indian Tribes. Three meetings with members of the Indian community were held during 1995 to obtain input in developing this section of the rule.

Section 640(k)(1) requires that the Secretary give priority to migrant Head Start programs that serve the children of migrant families whose work requires them to relocate most frequently. Accordingly, paragraph (b) under 45 CFR 1305.6, Selection process, has been expanded in this rule to include the requirement that migrant programs must give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period.

The regulation at 45 CFR 1305.7(c), Enrollment and re-enrollment, currently states that, once a child has been found to be income-eligible, he or she remains eligible for the current and succeeding enrollment year. This paragraph has been amended to address eligibility for infants and toddlers who are enrolled in an Early Head Start program funded under the authority of section 645A of the Head Start Act. In order to assure continuity of services once income eligibility has been determined, such children remain eligible while they are enrolled in Early Head Start. In addition, this paragraph has been amended to include specific reference to Section 645A(b)(7), which states that an agency which operates both a Head Start program and an Early Head Start program must ensure that children enrolled in Early Head Start and their families receive services through the age of mandatory school attendance of the child.

Minor technical amendments have also been made in 45 CFR 1305.4(a) and 45 CFR 1305.6(c). The amendment to 45 CFR 1305.4(a) substitutes Early Head Start for Parent and Child Center programs as an example of an exception to the requirement that children served by Head Start programs must be at least three years old. The amendment to 45 CFR 1305.6(c) references Early Head Start and Individualized Family Service Plans (IFSP) for infants and toddlers with disabilities. The IFSP is defined in 45 CFR 1304.3 of the revised Head Start Program Performance Standards.

III. Section-by-Section Discussion of the Final Rule

The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (60 FR 54648) on October 25, 1995 with a 30 day comment period. Twenty-seven letters, containing approximately 85 separate comments, were received. While most of the comments were supportive, a number expressed concerns about specific sections of the NPRM. We have carefully reviewed all of the comments received, and have modified some sections of the NPRM based upon these comments. The comments, and, as applicable, the rationale for making a change or keeping the language as used in the NPRM, are discussed below.

Section 1305.2: Definitions

One comment was received, which supported the new definition of ''Indian Tribe'' provided in paragraph (k). No changes were made in the definition.

A few comments were received regarding the amended definition of ''Migrant family'' in paragraph (m). One commenter supported the revision, stating that the change, along with the new requirement that priority be given to children from families whose agricultural work requires them to relocate most frequently, will improve the continuity of services to migrant families and children. Another commenter suggested that the definition of agricultural work be expanded beyond involvement in the production and harvesting of tree and field crops to

include subsistence activities such as fishing and hunting. We did not change the definition to incorporate this suggestion, however, because the language used conforms both with the description of agricultural work contained in the current definition of a migrant family provided at 45 CFR 1305.2(l) and with common usage of the term.

Section 1305.3: Determining Community Strengths and Needs

A few respondents supported the expanded meaning of a service area for Head Start grantees that are Indian Tribes in paragraph (a) to include areas designated as near-reservation, stating that this change was long overdue and would help improve the continuity of education for Indian children, increase access to Tribal Head Start programs, and enable children to attain a greater appreciation of their heritage.

Several commenters from Oklahoma requested clarification about how the term ''near-reservation'' would affect Indian Tribes in the State, as they reside on trust lands, not on reservations. We have not changed the language from the NPRM because we do not believe that such clarification is needed. Both the Senate and the House Reports on the Human Services Amendments of 1994 clearly state that this amendment ''* * * will also make it possible for federally recognized tribes which do not have reservations to provide Indian Head Start services, and to make it possible for consortia of small tribes on small reservations to provide Indian Head Start services to their children'' (Senate Report No. 251, 103rd Congress, 2nd Session, pp. 30–31; House Report No. 483, Part 1, 103rd Congress, 2nd Session, p. 46). Therefore, we believe that latitude can be used in interpreting the term ''reservation'' to include Indian trust lands and other such designations.

Some of these commenters also questioned the effect that expanding Tribal service areas would have on non-Tribal Head Start programs which provide services in the same counties, and suggested that the term ''near-reservation'' be limited to areas where no other Tribal or non-Tribal Head Start program is providing services. Areas of concern included the confusion that exists regarding how Tribal service areas were determined, since they were funded after the non-Tribal programs were operative; the need for processes to resolve potential conflicts that might arise in instances where overlap exists between the Tribal and non-Tribal Head Start service areas; and the need to provide advanced notice and planning time to non-Tribal grantees whose existing service areas would be affected by this provision.

While we appreciate the commenters' concerns, in this regard, we have not made any changes in the final rule. Limiting the definition of ''near-reservation'' to an area not currently served by a Head Start program would clearly go against the intent of the Congress. The reports of both the Senate and the House of Representatives state that the amendment clarifies ''* * * that children living near the reservation should be included in the Indian programs' service area'' (Senate Report No. 251, 103rd Congress, 2nd Session, p. 30; House Report No. 483, Part 1, 103rd Congress, 2nd Session, p. 46). Moreover, when the near-reservation area is located within the service area of a non-Tribal grantee, this provision enables Tribal Head Start grantees to serve only a specific population of children—Tribal children who are native to the reservation and are living within the designated near-reservation area. Finally, we would fully expect, as this provision is exercised, that discussions and negotiations between the Tribal Head Start grantee and the non-Tribal grantee whose service area includes the non-reservation area to be designated would occur as a matter of course.

One respondent expressed concern about the term ''native to the reservation,'' finding it not only vague, but also, if interpreted in its strictest sense, referring only to Indian people born on the reservation. The phrase ''socially, culturally and economically affiliated with the Tribe and its reservation'' was proposed as being more appropriate. While we understand the respondent's concern, we have not changed the language from the NPRM. The term ''native'' is commonly used to refer not only to the place of birth, but also to an association with a particular place or location and, as such, is appropriate within the context used in this regulation.

However, we have made a few clarifying changes in section 1305.3 in order to make it consistent with the changes in section 1305.4(b)(3)(ii).

Section 1305.4: Age of Children and Family Income Eligibility

This section of the NPRM generated the most comments. A number of respondents supported the new provision amending the family income eligibility requirements for Head Start programs operated by Indian Tribes to permit them to enroll additional children, beyond ten percent, from families that exceed the low-income guidelines. Commenters stated that the change would assist Indian programs in maintaining their enrollment and in expanding their programs; that many Native American children are in need of Head Start services which emphasize their native cultures even though their family incomes may not be as low as those of other families; and that meeting income guidelines is an important, but not the only, factor impacting negatively on Indian children and families. Respondents also cited factors, such as fluctuating economies in many Tribal communities, which result in Head Start enrollment patterns varying greatly from year to year, as justifying the need for the change.

Concerns were raised, however, regarding the condition in paragraph (b)(3)(i) that all children, both Indian and non-Indian, who are living on the reservation and whose families meet the low-income guidelines and wish them to be served by Head Start must be enrolled prior to increasing the number of over-income Indian children served above ten percent. Commenters stated that non-Indian families should not be served over Indian families, as Indian Head Start was established to serve Indian children; that the modification was designed to ensure that Tribal families would not be penalized for moving off welfare and going to work; and that income-eligible non-Indian families can be served by a non-Tribal Head Start program, while the only place for over-income Indian families is the Indian Head Start program. One respondent objected to the use of Indian set-aside funds to provide services to non-Indian children when Indian children who might benefit from Head Start are denied services simply because their family income is not considered to be at the poverty level; and pointed out that, on most reservations, Head Start is the only comprehensive early childhood program available.

We did not change this condition for several reasons. First, this requirement is consistent with the language of section 645(d)(1)(B) of the Head Start Act of 1994, which states, as one of the conditions which must be met before enrolling over-income children in Tribal Head Start programs, that the Tribe ''enrolls as participants in the program all children in the community served by the tribe (including a community with a near-reservation designation, as defined by the Bureau of Indian Affairs) from families that meet the low-income criteria specified under subsection (a)(1)(A).'' Moreover, income-eligible non-Indian children living on the reservation would not be eligible for the services provided by a non-Tribal Head

Start program because they reside within the service area of the Tribal Head Start program. Therefore, denying these children the opportunity to enroll in the Tribal program would preclude them from receiving Head Start services.

In order to be consistent, and for the same reasons specified in the paragraph above, we have modified paragraph (b)(3)(ii) to clarify that, prior to serving over-income Indian children, Tribal grantees that include non-Reservation areas in their service area, in addition to serving income eligible Indian children, must serve non-Indian income eligible children, whose families wish to enroll them in Head Start, in those instances in which the non-Reservation area is not served by another, non-Tribal, Head Start program. (At the time that the Tribal grantee proposes to include the non-Reservation area in its service area, ACF will make it clear whether the Tribal grantee will be required to serve non-Indian income eligible children in an unserved non-Reservation area along with Indian children.) This requirement also parallels the language in section 645(d)(1)(B) of the Head Start Act; and, similar to income-eligible non-Indian children living on the reservation, these children would be deprived of the opportunity to participate in Head Start if the Tribal program did not enroll them, since that program would be the only Head Start program in the service area. The changes in wording from the NPRM at §§ 1305.4(b)(3)(ii) and 1305.3(a) and (b) were done to provide greater clarity and consistency between these two sections.

One commenter raised the concern that, due to factors such as the lack of space at Head Start centers located in small communities and the isolated location of family homes, it may not be feasible for a Tribal Head Start grantee to serve all of the income-eligible Indian children, resulting in vacant slots and the Tribe's inability to exceed the ten percent over-income guideline. Another respondent had the diametrically opposed concern that, on large reservations where Tribal lands and communities are not contiguous, and which have a large number of income-eligible non-Indian children who meet the on or near-reservation status, a Tribe could conceivably find itself operating an Indian Head Start program with a majority of non-Indian children. We agree that, especially on ''checkerboard'' reservations, Tribes may not be serving all of the income-eligible children or may be serving a high percentage of non-Indian children. However, because Head Start is a means-based program, with family income and the age of the child being the primary determinants of eligibility, grantees must use the income guidelines established annually by the Office of Management and Budget as a principal basis for enrolling children in the program.

Several respondents questioned what assurances would be in place to document that every income-eligible family was contacted prior to enrolling over-income children. Tribal grantees would be expected to carry out the recruitment procedures required under 45 CFR 1305.5 of this regulation, and recruitment practices would be reviewed and discussed as part of the on-site monitoring process.

One respondent questioned the condition in paragraph (b)(3)(iii) that the Tribe must have the resources to enroll over-income children, and that no funds provided by the Department of Health and Human Services (HHS) to expand Head Start services may be used for this purpose, stating that the position appears to be inconsistent. If, on the one hand, HHS is acknowledging the need for greater participation by Indian children in Head Start, it would seem that the Department would also ensure that the children receive these services. Additionally, the respondent pointed out that Tribes which have developed a sound economic base predicated on gaming revenues would be at a distinct advantage, as they could afford to supplement their Head Start programs, while poorer Tribes would not have the resources to do so. As this condition was established by section 645(d)(3) of the Head Start Act of 1994, it cannot be amended or eliminated in the final rule. A minor edit was made for clarification purposes by adding the phrase ''from families whose incomes exceed the low-income guidelines.''

Another respondent expressed concern about increasing income eligibility for up to 49 percent of the children enrolled in Indian Head Start programs, while non-Indian programs may enroll only ten percent, stating that many of the families on the program's waiting list are over the income guidelines by anywhere from $100 to $1,000. Several other commenters also advocated that the authorization to exceed the ten percent over-income limitation be extended to non-Tribal Head Start grantees, such as grantees which are currently serving all of the income-eligible children in their service areas and grantees located in small rural communities, especially when there are no other comparable services available for children in those communities. While we understand these concerns, this provision is legislatively-based and, therefore, cannot be extended to non-Tribal Head Start grantees.

One respondent stated that Indian Tribes should not be limited to serving a certain percentage of low-income children but, rather, that decisions regarding participation in the local Head Start program should be made by the Tribal Head Start Policy Council and the Tribal Council. Two factors were cited as being relevant: first, this position would be consistent with the concept of Indian Self-Determination and would acknowledge Tribal sovereignty; and, secondly, it would address the primary issue that Head Start is so important for Tribal children, who, because they are raised on somewhat isolated reservation environments, need opportunities to increase their socialization skills regardless of family income.

We have not made any change in the requirement that 51 percent of the children must be from families whose incomes are below the low-income guidelines. Section 645(d)(1)(C) of the Head Start Act states, as one of the conditions that Tribal Head Start programs must meet in order to enroll over-income children beyond ten percent, that ''. . . the program predominantly serves children who meet the low-income criteria.'' We defined the term ''predominantly'' in the NPRM to mean at least 51 percent of the children enrolled in the program in order to give Tribes as much flexibility as possible. As described in the preamble to the NPRM, this position was strongly supported by the Tribal representatives who participated in the consultation sessions that were held in developing this regulation.

Section 1305.6: Selection Process

A few respondents raised concerns about the new requirement in paragraph (b) that migrant programs must give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period. One commenter expressed the concern that the ''revolving door'' that could result is more likely to be detrimental to the overall quality of migrant Head Start programs than it is to benefit the very frequently moving children who would be given priority under the proposed rule; and suggested that grantees be directed to consider whether the overall effectiveness and quality of their programs can be maintained if the centers are filled with children who would be there for only very short periods of time.

Another respondent requested guidance or clarification on the priority change; expressed the concern that children in an upstream migrant program are enrolled on a first come,

first served basis, with the pool of applicants in June being totally different from that in August or September, resulting, by September, in families who truly migrate frequently being left on the waiting list; and stated the assumption that the intent of the change is not to displace enrolled children with those who come along later but, rather, to apply the criterion as openings become available.

In response to the concerns that were raised, we have made a minor change in the wording of 45 CFR 1305.6(b) from that in the NPRM and have added the word ''also'' (''Migrant programs must also give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period''). This change is designed to more clearly convey that the frequency of a family's move is not the only criterion to be considered when selecting the children and families to be served by a migrant Head Start program. Other factors, such as the family's income and the age of the child, as well as the recruitment priorities established by the program pursuant to the requirements of 1305.3(c)(6), should also be taken into account. We also wish to clarify that it is not the intent of this requirement that children already enrolled in a migrant program be displaced by children whose parents relocated more frequently within the previous two-year period. Rather, this priority, along with the other enrollment priorities, is to be exercised as openings become available in a program.

Section 1305.7 Enrollment and Re-enrollment.

A number of commenters supported the amendment to paragraph (c) of this section in the NPRM, which extended the income eligibility of children enrolled in Early Head Start for the time that the child is enrolled in the Early Head Start program, but required that the family's income be reverified if the parents wished to enroll their child in a Head Start program serving children between the ages of three to compulsory school attendance and it had been two or more years since this had been done. Respondents stated that this amendment would enable families to be provided with an early, continuous, intensive and comprehensive child development program; that if, after a child reaches the age of three years, a family is over income, it would be preferable to provide the opportunity to participate in Head Start to another low-income family; that the continuity of services that is afforded has proven beneficial for a significant number of families and provides a readily available population on which to focus Head Start recruitment and enrollment efforts; and that it would help ensure that children of the lowest income and children at risk would have the opportunity to fill Head Start slots when otherwise they might not have the chance to do so.

One respondent stated that the proposed rule created a fair balance in terms of income eligibility for infant and toddlers, citing, among other reasons, that it would enable Early Head Start programs to track outcomes for participating children and their families, thereby enhancing the value of the findings from these demonstrations; that excluding families who experience some degree of economic success would be a disincentive for them to pursue such achievements; and that the limited alternatives for adequate and affordable day care in Early Head Start communities could affect a parent's ability to retain employment.

Another respondent recommended that the verification of family income be required of all families transitioning from Early Head Start to Head Start, regardless of how many years since this was done, as it would provide a clear break from one program to the next; simplify the tracking of when individual families need to provide income verification information; and ensure that families who did not participate in Early Head Start, but rank high in terms of need, have an equal opportunity to enroll in Head Start.

A number of commenters, however, expressed concerns about the recertification requirement, advocating that, once a child is certified for participation in Early Head Start, the certification should continue through Head Start until the age of enrollment in the public school system. Several of these commenters stated that income is only one criterion for eligibility, and that Early Head Start children and families have a continuing need for the services provided by Head Start. One respondent supportive of this position stated, based upon experience with the Comprehensive Child Development Program, that the level of intervention needed by families often intensifies as the families achieve employment. Similarly, another commenter stated that an array of issues seriously affects the achievement of wellness and self-sufficiency for families; that Head Start should be considered a program serving children from birth to age five; and that, if income is regarded as the only criterion for eligibility at mid-point in the program, a large number of very vulnerable families would immediately lose all of their needed support services. Other commenters expressed concerns that Early Head Start families found ineligible for Head Start, in addition to not receiving the continuity of services they need, would also have to seek day care services, which would be costly and would defeat the purpose of becoming self-sufficient; and that the removal of a child from Head Start for income reasons could have negative consequences on the child's psychological development, as the child could view his or her not being able to attend Head Start as a sign that he or she had failed in some way.

Several respondents proposed alternative procedures for consideration if the income redetermination policy for Early Head Start families could not be waived. One commenter suggested that these families be given priority for the available ten percent over income enrollment in Head Start programs; and another recommended that 150 percent of poverty be used as the criterion in order to acknowledge the vulnerability of families moving from dependency to self-sufficiency.

Other respondents urged that the extended eligibility for infants and toddlers enrolled in Early Head Start should also be applied to infants and toddlers enrolled in migrant Head Start programs, as these children and families also need continuity of services and should not be treated differently.

We have modified this section of the rule, primarily to clarify the eligibility of children enrolled in an Early Head Start program. In addition to the provision that children enrolled in Early Head Start remain eligible while they are in that program, we have added specific reference to Section 645A(b)(7) of the Head Start Act, which requires that an agency which operates both an Early Head Start program and a Head Start program must ensure that children and families receive services until the child reaches the age of mandatory school attendance. Regarding ensuring Head Start services, the phrase ''whenever possible'' has been added to address situations where grantees simply do not have slots, in accordance with 45 CFR 1305.4(b), to accommodate all children leaving its Early Head Start program whose parents wish to enroll them in its Head Start program. The provision on reverification of family income when a child moves from a program serving infants and toddlers to a Head Start program serving children age three and older has been retained with minor edits made for clarity.

IV. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This final rule implements the new statutory requirements established in sections 637, 640, 641, 645 and 645A of the Head Start Act (42 U.S.C. 9801 *et seq.*), as amended by Public Law 103–252, Title I of the Human Service Amendments. It adds a new definition for Indian Tribe and changes the definition of a migrant family to give priority to families that relocate most frequently. It also authorizes Head Start grantees that are Indian Tribes to include near-reservation areas when recruiting children for Head Start services and, under certain circumstances, to enroll additional children from families with incomes that exceed the low-income guidelines above the ten percent limitation. Finally, it clarifies the eligibility of children enrolled in an Early Head Start program receiving funds under the authority of section 645A of the Head Start Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. CH. 6) requires that the Federal government anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a ''significant economic impact on a substantial number of small entities,'' an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While this regulation would affect small entities, it would not affect a substantial number as we estimate that approximately 413 small businesses will be affected. This number includes Head Start migrant programs, Indian tribal programs Early Head Start programs, and delegate agencies. The approximate number of Head Start programs are 2000. For this reason, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This final rule does not contain any information collection or record keeping requirements.

List of Subjects in 45 CFR Part 1305

Disabilities, Education of disadvantaged, Grant programs—social programs, Head Start enrollment, Preschool education.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: February 23, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

For the reasons set forth in the preamble, 45 CFR Part 1305 is amended to read as follows:

PART 1305—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

2. Section 1305.2 is amended by revising paragraphs (g) and (i); redesignating current paragraphs (k) through (r) as paragraphs (l) through (s); adding a new paragraph (k); and revising newly redesignated paragraph (m) to read as follows:

§ 1305.2 Definitions.

* * * * *

(g) *Head Start eligible* means a child that meets the requirements for age and family income as established in this regulation or, if applicable, as established by grantees that meet the requirements of section 645(a)(2) of the Head Start Act. Up to ten percent of the children enrolled may be from families that exceed the low-income guidelines. Indian Tribes meeting the conditions specified in 45 CFR 1305.4(b)(3) are excepted from this limitation.

* * * * *

(i) *Income* means gross cash income and includes earned income, military income (including pay and allowances), veterans benefits, Social Security benefits, unemployment compensation, and public assistance benefits. Additional examples of gross cash income are listed in the definition of ''income'' which appears in U.S. Bureau of the Census, Current Population Reports, Series P–60–185.

* * * * *

(k) *Indian Tribe* means any Tribe, band, nation, pueblo, or other organized group or community of Indians, including any Native village described in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)) or established pursuant to such Act (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

(m) *Migrant family* means, for purposes of Head Start eligibility, a family with children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the preceding two years for the purpose of engaging in agricultural work that involves the production and harvesting of tree and field crops and whose family income comes primarily from this activity.

* * * * *

3. Section 1305.3 is amended by revising paragraph (a), redesignating current paragraphs (b) through (f) as paragraphs (c) through (g), and adding a new paragraph (b) to read as follows:

§ 1305.3 Determining community strengths and needs.

(a) Each Early Head Start grantee and Head Start grantee must identify its proposed service area in its Head Start grant application and define it by county or sub-county area, such as a municipality, town or census tract or a federally-recognized Indian reservation. With regard to Indian Tribes, the service area may include areas designated as near-reservation by the Bureau of Indian Affairs (BIA) or, in the absence of such a designation, a Tribe may propose to define its service area to include nearby areas where Indian children and families native to the reservation reside, provided that the service area is approved by the Tribe's governing council. Where the service area of a Tribe includes a non-reservation area, and that area is also served by another Head Start grantee, the Tribe will be authorized to serve children from families native to the reservation residing in the non-reservation area as well as children from families residing on the reservation.

(b) The grantee's service area must be approved, in writing, by the responsible HHS official in order to assure that the service area is of reasonable size and, except in situations where a near-reservation designation or other expanded service area has been approved for a Tribe, does not overlap with that of other Head Start grantees.

* * * * *

4. Section 1305.4 is amended by revising the last sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 1305.4 Age of children and family income eligibility.

(a) * * * Examples of such exceptions are programs serving children of migrant families and Early Head Start programs.

(b)(1) At least 90 percent of the children who are enrolled in each Head Start program must be from low-income families.

(2) Except as provided in paragraph (b)(3) of this section, up to ten percent of the children who are enrolled may be children from families that exceed the low-income guidelines but who meet the criteria that the program has established for selecting such children and who would benefit from Head Start services.

(3) A Head Start program operated by an Indian Tribe may enroll more than ten percent of its children from families whose incomes exceed the low-income guidelines when the following conditions are met:

(i) All children from Indian and non-Indian families living on the reservation that meet the low-income guidelines who wish to be enrolled in Head Start are served by the program;

(ii) All children from income-eligible Indian families native to the reservation living in non-reservation areas, approved as part of the Tribe's service area, who wish to be enrolled in Head Start are served by the program. In those instances in which the non-reservation area is not served by another Head Start program, the Tribe must serve all of the income-eligible Indian and non-Indian children whose families wish to enroll them in Head Start prior to serving over-income children.

(iii) The Tribe has the resources within its Head Start grant or from other non-Federal sources to enroll children from families whose incomes exceed the low-income guidelines without using additional funds from HHS intended to expand Head Start services; and

(iv) At least 51 percent of the children to be served by the program are from families that meet the income-eligibility guidelines.

(4) Programs which meet the conditions of paragraph (b)(3) of this section must annually set criteria that are approved by the Policy Council and the Tribal Council for selecting over-income children who would benefit from such a program.

* * * * *

5. Section 1305.6 is amended by revising paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 1305.6 Selection process.

* * * * *

(b) In selecting the children and families to be served, the Head Start program must consider the income of eligible families, the age of the child, the availability of kindergarten or first grade to the child, and the extent to which a child or family meets the criteria that each program is required to establish in § 1305.3(c)(6). Migrant programs must also give priority to children from families whose pursuit of agricultural work required them to relocate most frequently within the previous two-year period.

(c) * * * An exception to this requirement will be granted only if the responsible HHS official determines, based on such supporting evidence he or she may require, that the grantee made a reasonable effort to comply with this requirement but was unable to do so because there was an insufficient number of children with disabilities in the recruitment area who wished to attend the program and for whom the program was an appropriate placement based on their Individual Education Plans (IEP) or Individualized Family Service Plans (IFSP), with services provided directly by Head Start or Early Head Start in conjunction with other providers.

* * * * *

6. Section 1305.7 is amended by revising paragraph (c) to read as follows:

§ 1305.7 Enrollment and re-enrollment.

* * * * *

(c) If a child has been found income eligible and is participating in a Head Start program, he or she remains income eligible through that enrollment year and the immediately succeeding enrollment year. Children who are enrolled in a program receiving funds under the authority of section 645A of the Head Start Act (programs for families with infants and toddlers, or Early Head Start) remain income eligible while they are participating in the program. When a child moves from a program serving infants and toddlers to a Head Start program serving children age three and older, the family income must be reverified. If one agency operates both an Early Head Start and a Head Start program, and the parents wish to enroll their child who has been enrolled in the agency's Early Head Start program, the agency must ensure, whenever possible, that the child receives Head Start services until enrolled in school.

[FR Doc. 98–6710 Filed 3–13–98; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 24, 26, 27, 90 and 95

[WT Docket No. 97–82, ET Docket No. 94–32; FCC 97–413]

Competitive Bidding Proceeding

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects portions of the Commission's rules that were published in the **Federal Register** of January 15, 1998 (63 FR 2315).

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Josh Roland or Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document adopting uniform competitive bidding rules for all future auctions in the **Federal Register** of January 15, 1998 (63 FR 2315). This document makes minor corrections to the text of and final rules adopted in the *Third Report and Order, Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660–4685 MHz, as they appeared in the* **Federal Register** of January 15, 1998.

1. On page 2320, in the first column, the next to the last sentence of paragraph 32 is revised to include an omitted word to read as follows:

Once a small business definition is adopted for a particular service, eligible businesses will benefit if they are able to refer to a schedule in our Part 1 rules to determine the level of bidding credit available to them.

2. On Page 2328, in the second column, the text following the example in paragraph 77 is corrected to conform to § 1.2110(f)(4) to read as follows:

As we proposed in the Notice, the late fees we adopt will accrue on the next business day following the payment due date. We emphasize that at the close of non-delinquency or grace period, a licensee must submit the required late fee(s), all interest accrued during the non-delinquency period, and the appropriate scheduled payment with the first payment made following the conclusion of the non-delinquency period or grace period. Payments made at the close of any grace period will first be applied to satisfy any lender advances as required under each licensee's ''Note and Security Agreement.'' Afterwards, payments will be

applied in the following order: late charges, interest charges, principal payments. As part of our spectrum management responsibilities, we wish to ensure that spectrum is put to use as soon as possible. We also believe that licensees should be working to obtain the funds necessary to meet their payment obligations before they are due and, accordingly, that the non-delinquency and grace periods we adopt should be used only in extraordinary circumstances. Thus, as we emphasized in the Notice, a licensee who fails to make payment within 180 days sufficient to pay the late fees, interest, and principal, will be deemed to have failed to make full payment on its obligation and will be subject to license cancellation pursuant to § 1.2104(g)(2) of the Commission's rules.

3. On page 2330, in the third column, the last sentence of paragraph 88 is corrected to conform to § 1.2110(f)(4)(iv) to read as follows:

Accordingly, upon default on an installment payment, a license will automatically cancel without further action by the Commission and the Commission will initiate debt collection procedures against the licensee and accountable affiliates.

4. On page 2343, in the first column, § 1.2107(c) of the Commission's rules is corrected by adding a cross reference to § 1.2112 of the Commission's rules to read as follows:

§ 1.2107 Submission of down payment and filing of long-form applications.

* * * * *

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the ''long-form application'') pursuant to the rules governing the service in which the applicant is the high bidder. Notwithstanding any other provision in title 47 of the Code of Federal Regulations to the contrary, high bidders need not submit an additional application filing fee with their long-form applications. Specific procedures for filing applications will be set out by Public Notice. Ownership disclosure requirements are set forth in § 1.2112. Beginning January 1, 1999, all long-form applications must be filed electronically. An applicant that fails to submit the required long-form application under this paragraph and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in § 1.2104.

5. On page 2345, in the third column, § 1.2110(f)(2) of the Commissions rules is corrected by adding additional language to conform to the text of the *Third Report and Order* to read as follows:

§ 1.2110 Designated entities.

* * * * *

(f)

* * * * *

(2) Within ten (10) days of the conditional grant of the license application of a winning bidder eligible for installment payments, the licensee shall pay another ten (10) percent of the high bid, thereby commencing the eligible licensee's installment payment plan. If a winning bidder eligible for installment payments fails to submit this additional ten (10) percent of its high bid by the applicable deadline as specified by the Commission, it will be allowed to make payment within ten (10) business days after the payment deadline, provided that it also pays a late fee equal to five percent of the amount due. When a winning bidder eligible for installment payments fails to submit this additional ten (10) percent of its winning bid, plus the late fee, by the late payment deadline, it is considered to be in default on its license(s) and subject to the applicable default payments. Licenses will be awarded upon the full and timely payment of second down payments and any applicable late fees.

* * * * *

6. On Page 2349, in the second column, paragraph (c) of § 24.712 is correctly designated as paragraph (b) and instruction paragraph 22 is corrected to read as follows:

22. Section 24.712 is amended by revising paragraph (b) to read as follows:

7. On page 2349, in the third column, instruction paragraph 32 is corrected to read as follows:

32. Section 95.816 is amended by redesignating paragraph (e)(2) as paragraph (d)(5) and by revising paragraphs (c)(6) and (e) to read as follows:

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–6653 Filed 3–13–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 191, 192, and 195

[Docket No. RSPA 97–2096; Amdt. 191–12; 192–81; 195–59]

RIN 2137–AC99

Pipeline Safety: Regulations Implementing Memorandum of Understanding With the Department of the Interior

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Confirmation of effective date of direct final rule.

SUMMARY: This document confirms the effective date of the direct final rule that excluded from DOT safety regulations producer-operated gas and hazardous liquid pipelines located on the Outer Continental Shelf (OCS) upstream from where operating responsibility transfers to a transporting operator. Also, in response to comments from interested persons, RSPA has clarified the applicability of the direct final rule.

DATES: The effective date of the direct final rule published November 19, 1997, at 62 FR 61692 is confirmed to be March 19, 1998.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick at (202) 366–5523, or at leherrick@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: With the signing on December 10, 1996, of a memorandum of understanding (MOU), the Department of the Interior (DOI) and DOT agreed to a new division of their respective safety regulatory responsibilities over offshore pipelines on the OCS (62 FR 7037; February 14, 1997). Under the MOU, DOT will establish and enforce design, construction, operation, and maintenance regulations and investigate certain accidents for all pipelines located downstream of the point at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator. DOI will regulate those producer-operated OCS pipelines located upstream of this point. The MOU also provides that individual operators of production and transportation facilities may define the boundaries of their respective facilities.

RSPA published a direct final rule amending the DOT pipeline safety regulations in 49 CFR parts 191, 192, and 195 consistent with the MOU (62 FR 61692; November 19, 1997). The direct final rule excluded from these DOT regulations OCS pipelines upstream from the point where operating responsibility transfers from a producing operator to a transporting operator. Also, operators were required to durably mark the specific points at which operating responsibility transfers or, if it is not practicable to durably mark a transfer point, to depict the transfer point on a schematic maintained near the transfer point.

The procedures governing issuance of direct final rules are in 49 CFR 190.339. These procedures provide for public notice and opportunity for comment subsequent to publication of a direct final rule. They also provide that unless an adverse comment or notice of intent to file an adverse comment is received within a specified comment period, the Administrator will issue a confirmation document advising the public that the direct final rule will either become effective on the date stated in the direct final rule or at least 30 days after the publication date of the confirmation. If an adverse comment or notice of intent

to file an adverse comment is received, RSPA will issue a timely notice in the **Federal Register** to confirm that fact and withdraw the direct final rule in whole or in part. According to the procedures, an adverse comment is one that explains why the rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. Comments that are frivolous or insubstantial are not adverse. A comment recommending a rule change in addition to the rule is not an adverse comment, unless the commenter states why the rule would be ineffective without the additional change.

As discussed below, we received six comments on the direct final rule. We do not consider any of the comments to be adverse comments under the direct final rule procedures. Consequently, we are publishing this document to confirm the effective date announced in the direct final rule.

The Chevron Pipe Line Company and the American Petroleum Institute commended the action. However, the other four commenters, though supportive of the direct final rule in concept, expressed concerns about application of the new rules.

The Southern Natural Gas Company and its affiliate, Sea Robin Pipeline Company (hereafter collectively ''SONAT''), noted that new rules intended to exclude certain producer-operated OCS pipelines from DOT regulations would conflict with existing rules that already exclude certain offshore pipelines. Because the direct final rule did not alter these existing rules, SONAT recommended changes to them to remove the conflict. For example, SONAT suggested we revise 49 CFR 192.1(b)(1), which excludes from DOT regulations offshore gas pipelines located upstream from certain production facilities, to apply only shoreward of the OCS.

In its comments, SONAT did not describe the conflict it perceived, and we believe that none exists. The new OCS exclusionary rules are fully compatible with the existing offshore exclusionary rules. Each exclusion applies independently. So, if a producer-operated OCS pipeline is excluded from DOT regulation by a new OCS exclusionary rule, that exclusion is not negated if the pipeline is not also excluded by an existing offshore exclusionary rule. Further, the existing offshore exclusionary rules are needed to maintain the jurisdictional limits of DOT regulations over those producer-operated offshore pipelines not covered by the MOU and the direct final rule.

In addition, SONAT suggested we revise the new OCS exclusionary rules, each of which was inserted in a list of other exclusions, to be ''grammatically harmonious'' with the list. SONAT recommended word changes to make the new entries responsive to the introductory clause of the list. Although we appreciate the need for these suggested changes, they are editorial in nature and not essential to make the direct final rule effective or substantively valid. We will make the necessary editorial changes in a future rulemaking action.

Finally, SONAT pointed out that the new rules on identifying transfer points did not provide a compliance deadline for installing durable markers. The preamble of the direct final rule mentioned that operators would have 60 days after the rules become final to durably mark transfer points. SONAT suggested we revise the rules so the deadline for marking transfer points not identifiable by durable marking—September 15, 1998—applies to marking all identified transfer points. This single deadline, SONAT said, would eliminate confusion, simplify the rules, and provide enough time for consultation and proper marking. We agree that the rules text is somewhat at variance with the preamble, but not in a way that increases the burden on operators. In the absence of a specific deadline for installing durable markers, we construe the new rules on identifying transfer points to require that all identified points be marked, either durably or schematically, by September 15, 1998.

The Offshore Operators Committee, representing 87 companies, and the Chevron U.S.A. Production Company commented on a situation not covered by the MOU or the direct final rule: namely, producer-operated pipelines that run from the OCS to state territory with no transfer of operating responsibility. There is no question the state portion of these producer-operated pipelines comes under DOT regulations. But these commenters thought the direct final rule was unclear whether DOT or DOI regulations cover the OCS portion. The commenters asked that we revise the direct final rule to clarify that DOT regulations cover the OCS portion of the producer-operated pipelines so that DOT regulations apply to the entire pipeline.

The direct final rule applies only to OCS pipelines on which there is a transfer of operating responsibility from a producing operator to a transporting operator. So producer-operated OCS pipelines regulated by DOT on which there is no transfer of operating responsibility will remain under DOT regulations and may also be subject to DOI regulations. But DOI has indicated it is modifying its MOU implementation rule to address the potential dual regulation of pipelines extending downstream (shoreward) of production facilities on the OCS. Also, the commitment of DOT and DOI to develop more compatible regulations should serve to mitigate regulatory problems that arise when OCS pipelines cross the jurisdictional boundary between the two agencies. Therefore, although the commenters' suggestions are beyond the scope of the direct final rule and are not necessary to make the rule effectual, in view of the cooperative efforts of the two agencies, we believe the difficulties the commenters foresaw will be minimal.

Only the Administrator of RSPA has been delegated authority to issue final rules on pipeline safety. The direct final rule on OCS pipelines was issued by the Associate Administrator for Pipeline Safety. My signature below affirms that I subscribe to that action and to the direct final rule.

Issued in Washington, D.C. on March 10, 1998.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98–6629 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–98–3387]

RIN 2127–AF96

Federal Motor Vehicle Safety Standards; Stability and Control of Medium and Heavy Vehicles During Braking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of final rules that amended Standard No. 105, *Hydraulic Brake Systems,* to require medium and heavy vehicles to be equipped with an antilock brake system (ABS). In response to the petitions, this document permits hydraulically-braked vehicles with a gross vehicle weight rating (GVWR) greater than 10,000 pounds but less than 19,501 pounds to be equipped with a single wheel speed sensor in the driveline to control wheel

slip at the drive axle and permits rear tag axles to lock up. Additionally, this document allows motor homes with a GVWR of 22,500 pounds or less to use a single rear drive axle wheel speed sensor if they are manufactured before March 1, 2001, after which date new motor homes must meet the same ABS requirements as other hydraulically-braked trucks and buses.

DATES: *Effective Dates:* The amendments to 49 CFR 571.105 are effective March 1, 1999. Petitions for Reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than April 30, 1998.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above referenced docket numbers and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Jr., Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590; Telephone (202) 366–4921, Fax (202) 366–4329.

SUPPLEMENTARY INFORMATION:

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B. Application of ABS to Non-Powered, Rear Tag Axles
C. ABS Malfunction Lamp Activation Protocol

I. Background

Section 4012 of the Motor Carrier Act of 1991[1] directed the Secretary of Transportation to initiate rulemaking concerning methods for improving the braking performance of new commercial motor vehicles, including trucks, tractors, trailers, and dollies. Congress specifically directed that such a rulemaking examine antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. The Act required that the rulemaking be consistent with the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136) and be carried out pursuant to, and in accordance with the National Traffic and Motor Vehicle Safety Act of 1966.[2]

On March 10, 1995, NHTSA issued final rules requiring medium and heavy vehicles[3] to be equipped with an antilock brake system (ABS) to improve their directional stability and control during braking. (60 FR 13216, 60 FR 13297) These final rules also reinstated stopping distance requirements for air-braked heavy vehicles and established stopping distance requirements for hydraulically-braked heavy vehicles. In addition to the ABS requirement, the March 1995 final rule specified requirements about the electrical powering of trailer ABS and ABS malfunction indicators. In response to petitions for reconsideration of these requirements, NHTSA published a final rule that affirmed its decision to require these features. (60 FR 63965, December 13, 1995).

II. Petitions for Reconsideration of the December 1995 Final Rule

NHTSA received petitions for reconsideration of the December 1995 amendments to the final rule from the American Trucking Associations (ATA), which represents trucking fleets, the National Private Truck Council (NPTC), which represents private trucking fleets, the Truck Manufacturers Association (TMA)[4], which represents truck manufacturers, the Truck Trailer Manufacturers Association (TTMA), which represents trailer manufacturers, the Heavy Duty Brake Manufacturers Council (HDBMC)[5], which represents heavy duty brake component manufacturers, Midland-Grau, Kelsey-Hayes, Rockwell WABCO, Vehicle Enhancement Systems (VES), AlliedSignal, General Motors (GM), Ford, and the Recreational Vehicle Industry Association (RVIA).

Most of the petitions focused on issues associated with Standard No. 121's requirements on the electrical powering of trailer ABS and the in-cab display of trailer ABS malfunctions. Those issues were addressed in a final rule published on February 15, 1996. (61 FR 5949)

Petitions submitted by Ford, GM, Kelsey-Hayes, and RVIA addressed issues associated with Standard No. 105, including the control of rear wheel slip, the application of ABS to non-powered rear tag axles, and the ABS malfunction lamp protocol. The February 1996 final rule stated that it was deferring a response to these petitions because they addressed issues associated with Standard No. 105. Today's notice addresses the concerns raised by those petitioners.

III. NHTSA's Response to Petitions for Reconsideration Related to Standard No. 105

A. Control of Rear Wheel Slip

In the March 1995 final rule, NHTSA required that each hydraulically-braked vehicle with a GVWR greater than 10,000 pounds be ''equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle.''

In the December 1995 final rule that responded to petitions for reconsideration from Chrysler, Kelsey-Hayes, and the American Automobile Manufacturers Association (AAMA), NHTSA amended Section S5.5.1 by adding the following provision: ''On each vehicle with a GVWR greater than 10,000 pounds but not greater than 12,000 pounds, the antilock brake system may also directly control the wheels of the drive axle by means of a single sensor in the driveline.'' Chrysler stated that all its pickup trucks in the 10,000–12,000 pound GVWR class had successfully used the driveline wheel speed sensor arrangement. Notwithstanding NHTSA's decision to allow this sensing arrangement on hydraulically-braked trucks up to 12,000 pounds, the agency emphasized that such an arrangement would not be appropriate for heavier air-braked trucks, because greater braking efficiency is typically required at the rear wheels of such air-braked vehicles than on medium vehicles. This is because air-braked vehicles typically are heavier and have greater load carrying capacity.

In response to the December 1995 final rule, GM, Ford, and Kelsey-Hayes asked NHTSA to revise section S5.5.1 of Standard No. 105. Ford first requested that the 12,000-pound limit allowing driveline wheel speed sensors be raised to 17,500 pounds and then to 20,500 pounds. Kelsey-Hayes requested a 17,500-pound limit for driveline sensors. GM requested a 16,500-pound limit; that company also cited the April 1995 AAMA petition for reconsideration requesting that the agency either exempt all hydraulically-braked vehicles from the requirement for two independent rear wheel sensors, or exempt all hydraulically-braked vehicles under

[1] The Motor Carrier Act is part of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Pub. L. 102–240.

[2] Now codified as 49 U.S.C 30101 *et seq.* (Safety Act)

[3] The document uses the term heavy vehicles to refer to medium and heavy vehicles.

[4] TMA member companies include Ford, Freightliner, General Motors, Mack Trucks, Navistar International, PACCAR, and Volvo GM Heavy Truck.

[5] HDBMC member companies include Abex, AlliedSignal, Eaton, Midland-Grau, Ferodo America, Haldex, Lucas, MGM Brakes, Motion Control/Carlisle, Rockwell, Rockwell WABCO, and Spicer/Dana.

16,500 pounds GVWR from the ABS mandate.

Each petitioner stated that the 12,000-pound limit for allowing driveline sensors was not high enough to include their medium trucks that have the same type of driveline sensor as Chrysler's sensor. Ford stated that its F-Series chassis, including the F–350, the E–350, and the E–Super duty vehicles have GVWRs up to 11,000, 12,500, and 14,050 pounds, respectively. GM stated that its GMC Sierra 3500 HD chassis cab and the Chevrolet 3500 HD chassis cab can be configured to GVWRs up to 15,000 pounds, while its P–30 forward control chassis will soon be available up to 16,500 pounds GVWR. Kelsey-Hayes stated that it has supplied a single driveline sensor to GM since 1992 for use on trucks with GVWRs up to 17,500 pounds.

In June 1996, GM and Ford [6] supplemented their January 1996 petitions for reconsideration, with additional information about driveline sensors. They asked that the upper GVWR limit be eliminated completely and that all ABS-equipped hydraulically-braked vehicles, regardless of GVWR, be allowed to have a single sensor in the driveline to control wheel slip at both rear wheels. In support of their position, GM and Ford tested a light duty truck that was configured and equipped to have a 20,500 pound GVWR. The truck was fitted with a three-sensor, three-modulator (3S/3M) ABS that uses a single driveline rear wheel speed sensor. The vehicle was lightly loaded to 8838 pounds (the worst case condition) and subjected to a 30-mph brake-in-a-curve test similar to, but more stringent than Standard No. 121's brake-in-a-curve test for air-braked truck tractors. The petitioner's testing was more stringent given that it was conducted on a curve with a lower radius of curvature (a 420-foot radius curve rather than a 500-foot one), and on a slippier road surface (a surface with a 0.39 peak friction coefficient (PFC) rather than a 0.50 PFC one). The testing indicated that the single driveline sensor provided an acceptable reading of the individual rear wheel speeds, resulting in the vehicle remaining stable and within the lane throughout the test.

NHTSA agrees with the petitioners that these test results demonstrate that a 3S ABS with a single rear driveline sensor provides satisfactory safety performance for medium duty hydraulically-braked vehicles. The agency has added the term ''rear'' to the sentence in S5.5.1 addressing ABS requirements to assure that a single drive axle sensor is not installed on a front driveline axle. However, the agency is not willing to eliminate the GVWR limit since there are hydraulically-braked trucks with a GVWR in excess of 26,000 pounds and the petitioners provided no 3S ABS braking stability and control test data to support the allowance of 3S ABS for these trucks. The petitioners' test results indicate that the braking stability and control of hydraulically-braked trucks with relatively high GVWRs, up to 20,500 pounds, is not compromised if a manufacturer uses an ABS control strategy that employs a single rear driveline wheel speed sensor in lieu of a control strategy employing direct control of each individual rear wheel.

Accordingly, this rule permits 3S ABS on hydraulically-braked vehicles up to 19,500 pounds GVWR, a breakpoint in the existing vehicle weight class system used by State vehicle inspectors and the trucking industry generally. A GVWR of 19,500 pounds, the upper limit of Class 5, will avoid introducing a unique breakpoint for this 3S ABS requirement that differs from the breakpoints used for other regulatory requirements. The 19,500-pound GVWR limit chosen for this requirement is also slightly less than the test weight of the vehicle used in braking stability and control tests cited by the petitioners.

By allowing 3S ABS on hydraulically-braked vehicles up to 19,500 pounds GVWR, NHTSA has addressed almost all the concerns expressed by the petitioners. However, the American Automobile Manufacturers Association (AAMA) provided additional information in a letter and videotape forwarded to the agency on July 29, 1997. The tape shows a motor home with a GVWR of 22,500 pounds ballasted to 26,000 pounds (the breakpoint for Class 6 vehicles) successfully completing braking-in-a-curve testing similar to the braking stability and control testing required in Standard No. 121 for truck tractors. This testing was performed on dry asphalt and wet jennite by Kelsey-Hayes at its vehicle development center. NHTSA staff followed this up by attending a supplementary demonstration of motor home stability and control during braking at General Motors' test track in November 1997.

The AAMA originally asked that these test results be used to permit extending 3S ABS to all Class 6 hydraulically-braked vehicles (GVWR of up to 26,000 pounds). However, when NHTSA asked for information about what difficulties were posed by using the generally-required 4S ABS for Class 6 vehicles, AAMA responded that the problems were for motor homes only, not other Class 6 vehicles. GM provided information for its P-chassis, which is used for 9,000 to 10,000 motor homes annually. The P-chassis, which currently uses a 3S ABS, can be used to manufacture a completed motor home with a 22,500-pound GVWR. GM will modify this chassis to use a 4S ABS system, but the modifications won't be ready for production chassis for a few years. In the meantime, GM would have to stop offering this chassis for use by the motor home industry. Since there are no substitute motor home chassis in this GVWR range that offer 4S ABS, these vehicles would in effect be temporarily forced out of the market. RVIA argued that this would be an unfair burden, because these motor homes are produced in very limited quantities (9,000–10,000 per year) by small businesses. RVIA also argued that these vehicles are generally driven only for vacationing and camping.

In response to these arguments and information, NHTSA believes it is appropriate to allow motor homes with a GVWR greater than 19,500 pounds to use a 3S ABS system. To prevent the economic hardship of forcing motor home manufacturers to discontinue production for a few years until appropriate 4S ABS chassis are available, the agency will allow 3S ABS motor homes for a limited period of time. However, NHTSA has no information indicating any difficulties for vehicles other than motor homes in the 19,500 to 26,000 pound GVWR range (Class 6 vehicles) in meeting the 4S ABS requirements. Hence, all Class 6 vehicles other than motor homes will be required to provide 4S ABS.

For the purposes of this 3S ABS rulemaking, NHTSA is defining the term ''motor home'' the same way that term has been defined in Standard No. 208. Thus, a ''motor home'' for purposes of Standard No. 105 will mean ''a motor vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110–125 volt electric power supply and/or an LP gas supply.''

NHTSA believes it can accommodate the needs of motor home manufacturers while assuring that these vehicles will transition quickly to the same braking systems as other vehicles in their GVWR

[6] Kelsey-Hayes and RVIA have stated their concurrence with this position.

range for the following reasons. First, the GM P-chassis, with a GVWR of 22,500 pounds, is the largest hydraulically-braked motor home chassis to use a 3S ABS. Any greater capacity motor home chassis would be newly designed. NHTSA believes it is reasonable to require newly designed Class 6 chassis to use a 4S ABS system. Second, the motor home industry needs a transition period to move from 3S ABS on Class 6 vehicles to 4S ABS on those vehicles. GM, the manufacturer of the P-chassis, has stated to NHTSA that GM will move to install 4S ABS on this vehicle in the next few years. Given these circumstances, NHTSA will permit motor homes with a GVWR between 19,501 pounds and 22,500 pounds to use a 3S ABS system on vehicles manufactured before March 1, 2001. This will give GM and other motor home chassis manufacturers three years to develop and install 4S ABS, thus minimizing the burden on both vehicle chassis and motor home manufacturers. All new motor homes manufactured on or after March 1, 2001 with a GVWR of more than 19,500 pounds will be required to provide the 4S ABS system required on other vehicles.

Since 3S ABS will be allowed on motor homes with a GVWR between 19,500 pounds and 22,500 pounds, it is important that the incomplete vehicle manufacturer of a chassis equipped with 3S ABS include in the statement of specific conditions of final manufacturer (Part 568.4(a)(7)(ii)) that only if the completed vehicle is a motor home, will it conform to the standard. Completed vehicles in the specified GVWR range, other than motor homes, will not conform to the standard, if the incomplete chassis is equipped with a 3S ABS.

B. Application of ABS to Non-Powered, Rear Tag Axles

In its January 29, 1996 petition, RVIA requested that the ABS requirement not apply to hydraulically-braked motor homes with tag axles and GVWRs greater than 10,000 pounds. Tag axles are non-liftable, non-powered axles that are fitted, either in front of or behind the rear axle of the vehicle, by the second-stage vehicle manufacturer. Tag axles improve a vehicle's balance and increase its carrying capacity. RVIA stated that there is no way to apply antilock capability to tag axles added to a vehicle chassis by second-stage vehicle manufacturers, such as RVIA members. RVIA stated that less than 3000 vehicles per model year have a tag axle. It further stated that brake and tag axle manufacturers are reluctant to design, develop, and test ABS systems for such a limited application.

In its June 24, 1996 supplement to its original petition, RVIA stated that it would support a requirement for ABS on hydraulically-braked motor homes, provided that a single driveline rear wheel speed sensor is permitted and that the no-wheel-lockup requirement did not apply to tag axles. With respect to tag axles, RVIA cited tests conducted by GM and Kelsey/Hayes on a GM P–30 motor home chassis with a GVWR of 19,500 pounds. In the tests, the vehicle was lightly loaded (16,500 pounds), and driven at a speed of 25 mph (75 percent of the vehicle's maximum drive-through speed) through a 500-foot radius curve on a wetted jennite surface. The vehicle was also tested fully loaded, on a high to low coefficient of friction transition test (asphalt to ice). While the vehicle's tag axle (which was not controlled by ABS) locked when brakes were applied, the vehicle's ABS modulated the brakes and wheel speeds on the vehicle's powered drive axle and its steering axle. The vehicle remained stable and under control throughout both stops, despite the fact that the tag axle's wheels were locked.

The agency has received many requests for clarification of the ABS requirements for heavy-duty, single unit vehicles with regard to the number of axles that require ABS sensors. For heavy-duty single unit vehicles, the standard requires ABS control on only one rear axle, regardless of the number of rear axles and regardless of whether the axles are installed as a tag or pusher axle by a final stage manufacturer. To clarify this, the agency has added a definition for the term ''tandem axle,'' which means an arrangement of axles, drive or non-drive, in close proximity to each other. Hence, if a manufacturer chooses to install ABS on the drive axle of a tandem but not on the non-drive (tag or pusher) axle, the wheel lock restrictions would still be able to be met without ABS on the tag or pusher axle. The current wheel lock restrictions allow any two wheels on a tandem axle (including two wheels on the tag axle) to lock-up for any duration. Based on the foregoing, and on the test results mentioned by RVIA, the agency has determined that it is not necessary to equip a tag axle with ABS to comply with the wheel lock restriction requirements. The agency notes that, even though the tag axle wheels locked when the motor home's brakes were applied, the vehicle remained stable within the travel lane throughout the stopping maneuvers. As RVIA stated, tag axles that are added to these type vehicles typically do not carry a significant portion of the vehicle's overall weight. These considerations indicate that there are no negative stability consequences if such axles lock-up.

C. ABS Malfunction Lamp Activation Protocol

In its January 1996 petition for reconsideration, Kelsey-Hayes requested that NHTSA reconsider the final rule's activation protocol requirements for ABS malfunction warning lamps. That company requested that the malfunction warning lamp be allowed to remain activated (i.e., ''on'' or lighted) during a low speed drive away to verify that the vehicle's wheel speed sensors were properly functioning.

NHTSA has decided not to amend the ABS activation lamp protocol. The agency notes that in support of its request, Kelsey-Hayes did not provide any new data or reasoning, beyond that which was available to the agency prior to the issuance of the March 10, 1995 final rule. At that time, the agency noted that it had considered all the information available on this issue, and had concluded that standardization of the activation protocol was warranted for the following reasons. First, a standardized protocol would enable Federal and State safety inspection personnel to determine the operational status of ABSs without having to move the vehicle. Second, it would preclude confusion among heavy vehicle drivers relative to how this type of lamp functions. Third, standardization would be consistent with ECE requirements on this subject and would, therefore, be consistent with the goal of international harmonization. Given that there is no new information to reverse its previous decision, the agency has decided not to modify the activation protocol requirements.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impacts of this rulemaking action and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. In connection with the March 1995 final rules, the agency prepared a Final Economic Assessment (FEA) describing the economic and other effects of this rulemaking action. Summary discussions of those effects were provided in the ABS final rule. For persons wishing to examine the full analysis, a copy is in the docket.

The amendments in today's final rule do not make those effects any more stringent, and in some respects, they make it easier for a manufacturer to comply with them. Specifically, by allowing the use of a single driveline sensor to control rear wheel speeds and allowing wheels on tag axles to lock during testing, vehicle manufacturers will have more flexibility to comply with the requirements of this rule and, as a result, costs could be reduced.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of both this final rule and the original final rule under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a final regulatory flexibility analysis.

NHTSA concluded that the March 1995 final rule had no significant impact on a substantial number of small entities. Thus, today's final rule, which could potentially reduce costs associated with the March 1995 final rule, will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 105, *Hydraulic Brake Systems* in Title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50. CFR 1.50.

2. Section 571.105 is amended by adding the definitions of ''motor home'' and ''tandem axle'' in S4 and by revising S5.5.1, to read as follows:

§ 571.105 Standard No. 105; Hydraulic and electric brake systems.

* * * * *

S4. Definitions.

* * * * *

Motor home means a motor vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110–125 volt electric power supply and/or an LP gas supply.

* * * * *

Tandem axle means a group of two or more axles placed in close arrangement one behind the other with the center lines of adjacent axles not more than 72 inches apart.

* * * * *

S5.5.1 Each vehicle with a GVWR greater than 10,000 pounds, except for any vehicle with a speed attainable in 2 miles of not more than 33 mph, shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle. On each vehicle with a GVWR greater than 10,000 pounds but not greater than 19,500 pounds and motor homes with a GVWR greater than 10,000 pounds but not greater than 22,500 pounds manufactured before March 1, 2001, the antilock brake system may also directly control the wheels of the rear drive axle by means of a single sensor in the driveline. Wheels on other axles of the vehicle may be indirectly controlled by the antilock brake system.

* * * * *

Issued on: February 23, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–6522 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC63

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Five Freshwater Mussels and Threatened Status for Two Freshwater Mussels From the Eastern Gulf Slope Drainages of Alabama, Florida, and Georgia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines five freshwater mussels, the fat threeridge (*Amblema neislerii*), shinyrayed pocketbook (*Lampsilis subangulata*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), and oval pigtoe (*Pleurobema pyriforme*) to be endangered species, and two freshwater mussels, the Chipola slabshell (*Elliptio chipolaensis*) and purple bankclimber (*Elliptoideus sloatianus*) to be threatened species under the Endangered Species Act of 1973, as amended (Act). These mussels are endemic to eastern Gulf Slope streams draining the Apalachicolan Region of southeast Alabama, southwest Georgia, and north Florida. Their center of distribution is the Apalachicola-Chattahoochee-Flint (ACF) River basin of southeast Alabama, southwest Georgia, and northwest Florida, and the Ochlockonee River system of southwest Georgia and northwest Florida. They are currently known from restricted portions of from one to four independent river systems. These species inhabit stable sandy and gravelly substrates in medium-sized streams to large rivers, often in areas swept free of silt by the current. The abundance and distribution of the seven mussel species decreased historically from habitat loss associated with reservoir construction, channel construction and maintenance, and

erosion. These habitat changes have resulted in significant extirpations (localized loss of populations), restricted and fragmented distributions, and poor recruitment of young.

DATES: *Effective:* April 15, 1998.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien at the above address, or 904/232–2580, ext. 106.

SUPPLEMENTARY INFORMATION:

Background

Introduction

The fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, Chipola slabshell, and purple bankclimber are freshwater mussels of the family Unionidae found only in eastern Gulf Slope streams draining the Apalachicolan Region, defined as streams from the Escambia to the Suwannee river systems, and occurring in southeast Alabama, southwest Georgia, and north Florida (Butler 1989). The Apalachicolan Region is known for its high level of endemicity, harboring approximately 30 species of endemic (found only in the region) mussels (Butler 1989). The Region drains primarily the Coastal Plain Physiographic Province. Only the headwaters of the Flint and Chattahoochee rivers, in the Apalachicola-Chattahoochee-Flint (ACF) River system, occur above the Fall Line in the Piedmont Physiographic Province in west-central Georgia.

The decline of some of the species included in this rule was evident decades ago. The fat threeridge, oval pigtoe, Chipola slabshell, and purple bankclimber were considered rare, but locally abundant, in the 1950's (Clench and Turner 1956). The Gulf moccasinshell, oval pigtoe, and purple bankclimber were recognized in a list of rare species in 1970 (Athearn 1970), and the fat threeridge was added to the list of regionally rare mussels a year later (Stansbery 1971a).

General Biology

Freshwater mussel adults are filter-feeders, positioning themselves in substrates to facilitate siphoning of the water column for oxygen and food (Kraemer 1979). Their food includes primarily detritus, plankton, and other microorganisms (Fuller 1974).

As a group, freshwater mussels are extremely long-lived, with life spans of up to 130 years for certain species (Neves and Moyer 1988, Bauer 1992). Life spans of these seven species are unknown. Based on the longevity of a congener of the fat threeridge (the threeridge [*Amblema plicata*]; Stansbery 1971b), the longevity of thick-shelled species (Stansbery 1961), and the large size attained by the fat threeridge and purple bankclimber (see ''Species Accounts'' in this section), the latter two species probably have long lifespans.

Freshwater mussels generally have separate sexes. The age of sexual maturity is variable (Gordon and Layzer 1989), usually requiring from three (Zale and Neves 1982) to nine (Smith 1979) years, and may be sex dependent (Smith 1979). Males expel sperm into the water column, while females draw in the sperm with the in-current water flow (Gordon and Layzer 1989). Spawning appears to be temperature dependent (Zale and Neves 1982, Bruenderman and Neves 1993), but may also be influenced by stream flow (Hove and Neves 1994). Fertilization rates are dependent on spatial aggregation of reproductive adults (Downing *et al.* 1993). Fertilization takes place inside the shell; the fertilized eggs develop into larvae called glochidia. After an incubation period, mature glochidia are expelled into the water column and must come into contact with specific species of fish whose gills and fins they temporarily parasitize (Gordon and Layzer 1989).

The shinyrayed pocketbook utilizes largemouth bass (*Micropterus salmoides*) and spotted bass (*M. punctulatus*) as primary host fishes. The latter species appears to have been introduced into the ACF River system (Lee *et al.* 1980). The Gulf moccasinshell utilizes the brown darter (*Etheostoma edwini*) and blackbanded darter (*E. nigrofasciata*); the sailfin shiner (*Pteronotropis hypselopterus*) serves as the host fish for the oval pigtoe (O'Brien 1996). Glochidia for the purple bankclimber transformed on mosquitofish (*Gambusia holbrooki*) and blackbanded darter, but these species were not considered by O'Brien (1996) to be the primary hosts for this mussel.

Host fishes for the fat threeridge, Ochlockonee moccasinshell, and Chipola slabshell are unknown. The lampsiline Ochlockonee moccasinshell probably uses darters as host fish, as does its congeners, the Alabama moccasinshell (*Medionidus acutissimus*) (W.R. Haag, U.S. Forest Service, pers. comm.), Cumberland moccasinshell (*M. conradicus*) (Zale and Neves 1982), and Gulf moccasinshell (O'Brien 1996). Several host fish families have been identified for the threeridge, a congener of the fat threeridge, and include eight species of centrarchids (the sunfish family) (Fuller 1974, Hoggarth 1992). Centrarchids have also been determined to be fish hosts for species of *Elliptio* (Fuller 1974, Hoggarth 1992), and may also serve as host for the Chipola slabshell and possibly the purple bankclimber, which, genetically, is very similar to *Elliptio* spp. (M. Mulvey, Savannah River Ecology Laboratory, pers. comm.). Minnows (Cyprinidae) may serve as hosts for the fat threeridge and Chipola slabshell.

The complex life cycle of mussels increases the probability that weak links in their life history will preclude successful reproduction and recruitment (Neves 1993). Egg formation and fertilization are critical phases in the life history; mussels may fail to form eggs (Downing *et al.* 1989), or have incomplete fertilization (Matteson 1948). Fertilization success has been shown to be strongly correlated with spatial aggregation, which either influences the rate of egg formation, improves fertilization rates of individuals, or both (Downing *et al.* 1993).

Status Survey

These seven mussels were considered to be potential candidates for listing in 1989 (see Previous Federal Actions section). The Service requested its former National Fisheries Research Center (now the Florida-Caribbean Science Center of Biological Resources Division of the U.S. Geological Survey (USGS), subsequently referred to as ''Center'') in Gainesville, Florida, to survey these species in 1991. The Center surveyed for mussels in both the ACF (324 sites) and Ochlockonee (77 sites) river systems from 1991 to 1993. Information gathered during the status survey was summarized by Butler (1993). Three criteria were used to select status survey sampling sites—(1) to obtain a thorough and even coverage of the basins, (2) to survey sites where, based on suitable habitat, there was a maximum chance of finding one or more of the target species; and (3) to resurvey as many of the historical sites as possible. The survey was designed to estimate species distributions and population status, not to determine all existing populations.

Numerous sites were surveyed in every major river in these watersheds. Every major tributary was also sampled, and generally at least one sample was taken on other sizable tributaries in these river systems. A total of 183

mainstem, 189 tributary, and 39 reservoir sites were sampled in the ACF and Ochlockonee River systems. Additional sites were collected in the Santa Fe River system (Suwannee River system; three sites) and in Econfina Creek (Bay County, Florida; six sites). Highway bridge crossings and boat ramps were often used to provide direct access to sampling sites and to sections of river to be sampled by boat.

The survey technique generally used was hand-picking or grubbing, which involves a methodical search of the substrate for siphons or partially exposed specimens, trails, or other signs. Low-visibility conditions require crawling or lying down on the bottom, and feeling for shells by running fingers through the substrate. SCUBA and/or snorkeling were used at about two-thirds of the study sites, supplemented by hand-picking in shallow water at most sites. Over 95 percent of the collection sites were sampled by four or more people, spending an average of two hours total effort per sampling site. All habitat types at each site were sampled for mussels, but efforts focused on habitats likely to support the target species.

The Center surveyed 150 to 250 meters (m) (492 to 820 feet (ft)) of a stream reach at most sites. A primary goal was to collect at each site until there was a high probability that all species occurring there were found. Small streams were surveyed from bank to bank and were sampled for longer linear distances than large rivers. Shoals with high habitat complexity were surveyed more intensively and over longer distances than slackwater sites with little variation in substrate. Sites where mussels were uncommon or where only a few common species were present were sampled for a shorter time and distance. Information important for establishing baseline mussel population status at each site was recorded either in the field or during laboratory analyses, including stream characteristics (e.g., width, depth, water clarity, substrate), species present, number of live and dead specimens per species, length of each live mussel, reproductive condition of female specimens, and condition of dead shells. Most of these specimens were retained for voucher material, and temporarily stored at the Center in Gainesville, Florida. After studies unrelated to the status survey are conducted, the material will be donated to the mollusk collection of an appropriate museum for curation.

Over 2,300 historical records for mussels in the ACF and Ochlockonee River systems were also gathered from eight United States museums with significant mussel holdings. For the purposes of the survey, a historical collection was any collection made prior to the status survey (before 1991). Of 300 known historical sites for all mussel species from the ACF and Ochlockonee River systems, 250 are identifiable to a specific locality, and 108 harbored one or more of the seven species. Of the 108 sites with at least one of the species, 100 were in the ACF River system and eight in the Ochlockonee River system. The ACF River system historical sites include the following—Flint River system—39 sites, Chipola River system—31 sites, Chattahoochee River system—20 sites, and Apalachicola River system—10 sites. Additional information on historical mussel populations was gathered from the scientific literature, unpublished technical reports, and field records and notes of various collectors.

Previously unknown sites of occurrence for most of the species were discovered during the status survey in the ACF and Ochlockonee River systems. The Service believes that historic populations of these mussels occupied most or all available habitat, and that habitat for all seven species has declined. The newly discovered sites, therefore, represent previously unsampled sites. This accounts for the purple bankclimber being located at more sites during the status survey than it was known from historically (see ''Species Accounts'' below in this section). Since mussels are long-lived, these recently discovered populations have probably existed for at least the past century, as only a few generations would have elapsed from that time until the present.

Species Accounts

Fat Threeridge—*Amblema Neisleri* (Lea, 1858)

The fat threeridge is a medium-sized to large, subquadrate, inflated, solid, and heavy shelled mussel that reaches a length of 102 millimeters (mm) (4.0 inches (in)). Older, larger individuals are so inflated that their width approximates their height. The umbos are in the anterior quarter of the shell. The dark brown to black shell is strongly sculptured with seven to eight prominent horizontal parallel ridges. Internally, there are two subequal pseudocardinal teeth in the left valve and typically one large and one small tooth in the right valve. The nacre is bluish white to light purplish and very iridescent. The Service considers *Unio neislerii* Lea, 1858 to be a synonym of *Amblema neislerii.* This taxon was incorrectly assigned to the genera *Quadrula* and *Crenodonta* by Simpson (1914) and Clench and Turner (1956), respectively. Subsequent investigators (e.g., Turgeon *et al.* 1988) have correctly placed the fat threeridge in the genus *Amblema.*

The fat threeridge was described from the Flint River, Macon County, Georgia. This species, endemic to the ACF River system, historically occurred in the mainstems of the Flint, Apalachicola, and lower Chipola rivers (Clench and Turner 1956, Butler 1993). Clench and Turner (1956) indicated that this species was generally rare, but locally abundant. In the Chipola River system, van der Schalie (1940) reported 17 specimens from two sites (average of 8.5 per site). Clench and Turner (1956) documented ten to 15 mussels per m (0.9 to 1.4 mussels per ft) square over a 200 m (656 ft) stretch of Dead Lake (Chipola River) shoreline.

For the status survey, 86 sites were sampled within the historical range of the fat threeridge, including eight of the 12 (67 percent) known historical sites. The fat threeridge was found at six of the 86 (7 percent) sampled sites, three each on the Apalachicola and lower Chipola rivers. Only one of the eight (13 percent) historical sites still had live individuals. An average of 6.4 live individuals were found per site.

No live fat threeridge mussels have been found since 1981 in the Flint River; the species is apparently extirpated from Georgia. Apparently common in Dead Lake in 1967 (H.G. Lee, amateur malacologist, pers. comm.), this species was not found live there in 1974 (W.H. McCullagh, amateur malacologist, pers. comm.), nor during the status survey.

The smallest live fat threeridge found during the survey was 43 mm (1.7 in) long. Richardson and Yokley (1996) found evidence of juvenile fat threeridge at a site in the lower Apalachicola River thought to have the best extant population of this species (J. Brim Box, USGS, pers. comm.), where it was the second most common mussel species encountered. Three fat threeridges under 50 mm (2.0 in) in length were found employing total substratum removal from six 0.25 m (2.7 ft) square quadrats. Richardson and Yokley (1996) stated that the smallest specimens had fewer than the five presumed annual growth rings that might be indicative of juveniles. A fresh dead individual measured 24 mm (0.9 in) in length and had two to three growth rings. In 1996, three live specimens ranging from 40 to 50 mm (1.6 to 2.0 in) in length were located in the same bed (C.A. O'Brien, USGS, pers. comm.). These data

indicate that the fat threeridge is experiencing limited recruitment at the site representing its best known population.

Shinyrayed Pocketbook—*Lampsilis Subangulata* (Lea, 1840)

The shinyrayed pocketbook is a medium-sized species that reaches approximately 85 mm (3.3 in) in length. The shell is subelliptical, with broad, somewhat inflated umbos and a rounded posterior ridge. The shell is fairly thin but solid. The surface is smooth and shiny, light yellowish brown with fairly wide, bright emerald green rays over the entire length of the shell. Older individuals may appear much darker brown with obscure raying. Female specimens are more inflated postbasally, whereas males appear to be more pointed posteriorly. Internally, the pseudocardinal teeth are double and fairly large and erect in the left valve, and one large tooth and one spatulate tooth in the right valve. The nacre is white, with some individuals exhibiting a salmon tint in the vicinity of the umbonal cavity. The Service recognizes *Unio subangulatus* Lea, 1840 and *Unio kirklandianus* Wright, 1897 as synonyms of *Lampsilis subangulata.*

The shinyrayed pocketbook was described from the Chattahoochee River, Columbus, Georgia. Historically, this mussel occurred in mainstems and tributaries throughout the ACF River system, and in larger streams of the Ochlockonee River system (Clench and Turner 1956, Butler 1993). Van der Schalie (1940) found this species to be generally rare, but locally abundant, documenting 94 specimens at eight Chipola River system sites (average of 11.8 per site).

During the status survey, 380 sites within the historical range of the shinyrayed pocketbook were sampled, including 28 of 54 (52 percent) known historical sites. Live individuals were found at 23 of the sample sites, including one site in a Chattahoochee River tributary in Alabama, 13 sites (12 on tributaries) in the Flint River system, one locality in the Chipola River, and eight sites (seven mainstem) in the upper half of the Ochlockonee River system. An average of 2.9 live individuals were found per site. Live individuals were located at six (21 percent) of the historical sites. This species has apparently been eliminated from all but one site in the Chattahoochee River system in Alabama, and from much of the Chipola River system.

During unrelated studies subsequent to the completion of the status survey, ten additional sites for the shinyrayed pocketbook were located in the ACF River system. Eight of these new occurrences were from five Flint River tributaries; one each occurred in tributaries of the Chattahoochee and Chipola rivers (Butler and Brim Box 1995, J. Brim Box, USGS, pers. comm.). The latter two records represent streams where the species had not been previously collected. The Flint River system records include one stream where the species had never been collected (a small tributary of a stream where live specimens were found during the status survey), and another stream where it was found during the status survey as a single dead shell; the remaining sites are in tributaries where it was found live during the status survey.

The smallest shinyrayed pocketbook specimen recorded during the status survey in the Ochlockonee River system, possibly an older juvenile, measured 41 mm (1.6 in) in length. In the ACF River system, the three smallest specimens, measuring 55 to 57 mm (2.17 to 2.24 in) in length, were gravid females. In 1995, four live, apparently juvenile, specimens from 30 to 40 mm (1.2 to 1.6 in) in length were located in a Flint River tributary (C.A. O'Brien, USGS, pers. comm.). O'Brien (1996) sampled the largest known bed of this species for juveniles. An 18 m (59.1 ft) by 8 m (26.2 ft) area had 37 adult shinyrayed pocketbooks (average of 2.1 per m square). Whole substratum removal of 54 0.25 m (2.7 ft) square quadrats within this bed yielded no juveniles of this species. The density of shinyrayed pocketbooks at the four other sites, where quantitative work conducted subsequent to the status survey yielded specimens, never exceeded 0.08 specimens per meter square (J. Brim Box, USGS, pers. comm.).

Gulf Moccasinshell—*Medionidus Penicillatus* (Lea, 1857)

The Gulf moccasinshell is a small mussel that reaches a length of about 55 mm (2.2 in), is elongate-elliptical or rhomboidal and fairly inflated, and has relatively thin valves. The ventral margin is nearly straight or slightly rounded. The posterior ridge is rounded to slightly angled and intersects the end of the shell at the base line. Females tend to have the posterior point above the ventral margin and are somewhat more inflated. Sculpturing consists of a series of thin, radially-oriented plications along the length of the posterior slope. The remainder of the surface is smooth and yellowish to greenish brown with fine, typically interrupted green rays. The left valve has two stubby pseudocardinal and two arcuate lateral teeth. The right valve has one pseudocardinal and one lateral tooth. Nacre color is smokey purple or greenish and slightly iridescent at the posterior end. The Service recognizes *Unio penicillatus* Lea, 1857 and *Unio kingi* Wright, 1900 as synonyms of *Medionidus penicillatus.*

The recent taxonomic history of *Medionidus* species in the Apalachicolan Region is complex. In the Chipola River system, van der Schalie (1940) recorded two species of *Medionidus—M. kingi* and *M. penicillatus.* Clench and Turner (1956) synonymized *M. kingi* and two other nominal species, the Ochlockonee moccasinshell and Suwannee moccasinshell (*M. walkeri* [Wright, 1897]) under the Gulf moccasinshell, an arrangement also followed by Burch (1975). Johnson (1970) erroneously reported both the Gulf moccasinshell and Suwannee moccasinshell from the ACF River system and the Suwannee moccasinshell from the Ochlockonee and Suwannee rivers as well. Johnson (1977) recognized the validity of the Gulf moccasinshell, Ochlockonee moccasinshell, and Suwannee moccasinshell from Apalachicolan Region streams based on shell characters. The validity of the three allopatrically distributed Apalachicolan Region *Medionidus* species is also recognized by Turgeon *et al.* (1988).

The Gulf moccasinshell was described from three sites in the ACF River system in Georgia—the Chattahoochee River near Columbus and near Atlanta, and the Flint River near Albany. The historical ACF River system distribution included tributaries and mainstems of the Flint, Chattahoochee, and Chipola rivers, and the mainstem Apalachicola River. More western localities in the Apalachicolan Region included Econfina Creek (Bay County, northwest Florida), the Choctawhatchee River system, and the Yellow River (Johnson 1977; Butler 1989, 1993). Clench and Turner (1956) considered this species rare, but locally abundant. Van der Schalie (1940) reported 166 specimens from 11 sites, including 130 from two sites in the Chipola River system, an average of 15.1 per site.

During the status survey, 330 sites within the historic range of the Gulf moccasinshell were sampled, including 13 of 31 (42 percent) known historical sites. This species was found at eight sites (two percent), including only one of the historical sites. It was found at seven sites (including one mainstem site) in the middle Flint River system, and at one Econfina Creek site. An average of 1.4 live individuals was

found per site. All Alabama populations of the Gulf moccasinshell appear to be extirpated, and no specimens were found in the Chipola River system during the status survey. The species has not been collected in the Choctawhatchee River system since the early 1930's and in the Yellow River since 1963 (Williams and Butler 1994).

Six new sites for the Gulf moccasinshell from tributaries of the ACF River system were found subsequent to the status survey (Butler and Brim Box 1995, J. Brim Box, USGS, pers. comm.). Three sites were streams from which this species had never been found (one tributary each in the Chattahoochee, Flint, and Chipola rivers), two were streams (both Flint River system) where this species was found live during the status survey, and one site was a stream in the Chattahochee River system where a single dead shell had been located during the status survey.

Densities of Gulf moccasinshells at two sites where quantitative work was conducted were under 0.4 specimens per meter square (J. Brim Box, USGS, pers. comm.). All specimens located during and subsequent to the status survey were adults; no specimens less than 50 mm (2.2 in) were located.

Ochlockonee Moccasinshell—*Medionidus Simpsonianus* Walker, 1905

The Ochlockonee moccasinshell is a small species, generally under 55 mm (2.2 in) in length. It is slightly elongate-elliptical in outline, the posterior end obtusely rounded at the shell's median line and the ventral margin broadly curved. The posterior ridge is moderately angular and covered in its entire length with well developed, irregular ridges. Sculpture may also extend onto the disk below the ridge. Surface texture is smooth. The color is light brown to yellowish green, with dark green rays formed by a series of connected chevrons or undulating lines across the length of the shell. Internal characters include thin straight lateral teeth and compressed pseudocardinal teeth. There are two laterals and two pseudocardinals in the left valve and one lateral and one pseudocardinal in the right valve. The nacre is bluish white. A summary of the taxonomic history of the genus *Medionidus* follows the Gulf moccasinshell description above.

The Ochlockonee moccasinshell was described from the Ochlockonee River, Calvary, Grady County, Georgia. This Ochlockonee River system endemic was known historically from the mainstem and the Little River (Johnson 1977, Butler 1993). Museum records for this species sometimes numbered in the dozens of individuals at sites above Talquin Reservoir.

During the status survey, eight sites were sampled within the historic range of the Ochlockonee moccasinshell, including three of six (50 percent) known historical sites. Live individuals were found at two sites (one specimen at each site); one of these was a historic site. Another specimen was located in 1995 (J. Brim Box, USGS, pers. comm.) at a site previously sampled during the status survey. Only three live individuals are known to have been collected since 1974 despite concerted efforts by numerous investigators; none were juveniles.

Oval Pigtoe—*Pleurobema Pyriforme* (Lea, 1857)

The oval pigtoe is a small to medium-sized species that attains a length of about 60 mm (2.4 in). The shell is suboviform compressed, with a shiny smooth epidermis. The periostracum is yellowish, chestnut, or dark brown, rayless, and with distinct growth lines. The posterior slope is biangulate and forms a blunt point on the posterior margin. The umbos are slightly elevated above the hingeline. As is typical of the genus, no sexual dimorphism is displayed in shell characters. Internally, the pseudocardinal teeth are fairly large, crenulate, and double in both valves. The lateral teeth are somewhat shortened, arcuate, and double in each valve. Nacre color varies from salmon to bluish white and is iridescent posteriorly. Variation in this species has led to the description of various nominal species. The Service currently recognizes *Unio pyriformis* Lea, 1857, *Unio modicus* Lea, 1857, *Unio bulbosus* Lea, 1857, *Unio amabilis* Lea, 1865, *Unio reclusum* Wright, 1898, *Unio harperi* Wright, 1899, and *Pleurobema simpsoni* Vanatta, 1915 as synonyms of *Pleurobema pyriforme.*

The oval pigtoe was described from the Chattahoochee River, near Columbus, Georgia. Historically, this species was one of the most widely distributed and common mussels endemic to the Apalachicolan Region. It occurred throughout the mainstems and several tributaries of both the Flint and Chipola River systems, in the lower Chattahoochee River mainstem and several of its tributaries, in the Apalachicola River mainstem, and in the upper portion of the Ochlockonee River system. The oval pigtoe was also known from a single Suwannee River mainstem site and the confluent Santa Fe River system, and in Econfina Creek (Clench and Turner 1956, Butler 1993). Once a species of localized abundance (Clench and Turner 1956), oval pigtoe populations sometimes numbered in the hundreds (van der Schalie 1940). In the Chipola River system, van der Schalie (1940) reported 470 specimens from 9 sites (an average of 52.2 per site).

During the status survey, 410 sites were sampled within the historic range of this species, including 20 of 50 (40 percent) known historical sites. The oval pigtoe was found at 24 (6 percent) of the sample sites, including seven of the historic sites, with an average of 5.2 live individuals per site. The species was found at one mainstem site and seven tributary sites in the Flint River system, six mainstem Chipola River sites, six mainstem sites and one tributary site in the upper Ochlockonee River system, one site in the New River (upper Santa Fe River system), and two sites in Econfina Creek. The oval pigtoe has apparently been extirpated from the Chattahoochee River system in Alabama and much of the Chipola River system.

Subsequently, five new occurrences of the oval pigtoe were located in three ACF River system tributaries. One occurrence was from a stream in the Chipola River system not previously known to have harbored this species. The other four occurrences were in two streams (two sites in each stream), that are tributaries to the Chattahoochee and Flint rivers where the species had been recorded during the status survey (Butler and Brim Box 1995; J. Brim Box, USGS, pers. comm.).

Oval pigtoe density at the five new sites never exceeded 0.4 specimens per meter square (J. Brim Box, USGS, pers. comm.). The smallest individual collected during or subsequent to the status survey was 26 mm (1.0 in) in length, indicating that juveniles were not present in these collections.

Chipola Slabshell—*Elliptio Chipolaensis* Walker, 1905

The Chipola slabshell is a medium-sized species reaching a length of about 85 mm (3.3 in). The shell is ovate to subelliptical, somewhat inflated and with the posterior ridge starting out rounded, but flattening to form a prominent biangulate margin. The surface is smooth and chestnut colored. Dark brown coloration may appear in the umbonal region and the remaining surface may exhibit alternating light and dark bands. The umbos are prominent, well above the hingeline. Internally, the umbonal cavity is rather deep. The lateral teeth are long, slender, and slightly curved; two in the left and one in the right valve. The pseudocardinal teeth are compressed and crenulate; two in the left and one in the right valve. Nacre color is salmon, becoming more

intense dorsally and somewhat iridescent posteriorly.

The Chipola slabshell was described from the Chipola River, Florida. Clench and Turner (1956) restricted the type locality to the Chipola River, 1.6 km (1.0 mi) north of Marianna, Jackson County, Florida. This species was considered to be a Chipola River system endemic, occurring in the mainstem from the vicinity of Dead Lake upstream and in a few of its larger tributaries, all in Florida (van der Schalie 1940, Clench and Turner 1956). However, a historical record recently brought to light has been verified from a small tributary of the Chattahoochee River in extreme southeast Alabama (Butler 1993). Van der Schalie (1940) documented 31 specimens from six sites in the Chipola River system (an average of 5.2 per site).

During the status survey, 33 sites within the historical range of this species on the Chipola River were sampled, including 12 of 16 (75 percent) known historical sites. Live individuals were found at five sites (15 percent), including one historical site. An average of 3.7 live individuals was found per site. Live individuals were located at one of the 12 historic resurveyed sites. Populations from Spring Creek (middle Chipola River system) and the Chattahoochee River system apparently have been extirpated, with the latter loss resulting in the extirpation of the Chipola slabshell from Alabama.

No live specimens appeared to be juveniles, as the smallest live individual was 47 mm (1.9 in) in length. The Chipola slabshell has one of the most restricted ranges of any Apalachicolan Region mussel. However, it appears to be more tolerant of soft sediments than other species included in this rule, has potentially more habitat available than channel-dwelling species, and may co-occur with more silt-tolerant species in stream bank habitats with slower currents.

Purple Bankclimber—*Elliptoideus Sloatianus* (Lea, 1840)

The purple bankclimber is a large, heavy-shelled, strongly sculptured mussel reaching lengths of 200 mm (8.0 in). A well-developed posterior ridge extends from the umbos to the posterior ventral margin of the shell. The posterior slope and the disk just anterior to the posterior ridge are sculptured by several irregular ridges that vary greatly in development. Umbos are low, extending just above the dorsal margin of the shell. Internally, there is one pseudocardinal tooth in the right valve and two in the left valve. The lateral teeth are very thick and slightly curved. Nacre color is whitish near the center of the shell becoming deep purple towards the margin, and very iridescent posteriorly. The Service recognizes *Unio sloatianus* Lea, 1840, *Unio atromarginatus* Lea, 1840, *Unio aratus* Conrad, 1849, and *Unio plectophorus Conrad,* 1950 as synonyms of *Elliptoideus sloatianus.*

Elliptoideus sloatianus was included in the genus *Elliptio* until Frierson (1927) erected the subgenus *Elliptoideus* based on the presence of glochidia in all four gills instead of two gills, a characteristic of the genus *Elliptio.* Clench and Turner (1956) overlooked the work of Frierson (1927), placing the species under *Elliptio.* Subsequent investigators (e.g., Turgeon *et al.* 1988) have correctly assigned this species to the monotypic genus *Elliptoideus.*

The purple bankclimber was described from the Chattahoochee River in Georgia. The type locality was restricted to the Chattahoochee River at Columbus, Georgia, by Clench and Turner (1956). In the ACF River system, the purple bankclimber was historically found throughout the mainstem and in a few of the largest tributaries in the Flint River system, in the vicinity of Dead Lake on the lower Chipola River mainstem (although not reported by van der Schalie (1940)), and along the mainstems of the Apalachicola and Chattahoochee rivers. The species occurred in the lower two-thirds of the mainstem of the Ochlockonee River, and in the Little River (Clench and Turner 1956, Butler 1993).

During the status survey, 222 sites were sampled within the historic range of the purple bankclimber, including 14 of 27 (53 per cent) known historic sites. Live individuals were found at 41 (18 percent) sites, with an average of 54 individuals per site. The purple bankclimber was found at six of the 14 historical sites. The species was found at 17 mainstem sites and one tributary site on the lower two-thirds of the Flint River, at five sites in the Apalachicola River, and at 18 sites on the Ochlockonee River mainstem, mostly above Talquin Reservoir. Having been extirpated from the Chipola and Chattahoochee rivers, no extant populations occur in Alabama. Its range in the Flint and Ochlockonee River systems also has been reduced.

It is uncertain if purple bankclimber populations are successfully recruiting young. Two specimens <70 mm (2.8 in) in length were collected from the Ochlockonee River during the survey; they were 53 mm (2.1 in) and 59 mm (2.3 in) in length. Based upon the large size attained by this species, both were possibly juveniles. The smallest specimen found during the survey in the ACF River system was 76 mm (3.0 in) in length, a size that possibly represents a juvenile. Richardson and Yokley (1996) took six 0.25 meter (2.7 ft) square total substratum removal quadrat samples at a site below Jim Woodruff Dam in the Apalachicola River where the purple bankclimber was abundant, being the second most commonly encountered species. No specimens smaller than 133 mm (5.2 in) were found, indicating a lack of recruitment at this site.

Previous Federal Action

The fat threeridge, shinyrayed pocketbook, oval pigtoe, and purple bankclimber first appeared as category 2 species in the Service's notices of review for animal candidates that were published on January 6, 1989 (54 FR 554) and on November 21, 1991 (56 FR 58804). At that time, a category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife. Designation of category 2 species was discontinued in the February 28, 1996, **Federal Register** notice (61 FR 7596) (see also Issue 103 in the ''Summary of Comments and Recommendations'' section). The Service determined that these four species plus the Gulf moccasinshell, Ochlockonee moccasinshell, and Chipola slabshell qualified as candidate species at the time of proposal for listing. A candidate species is a species for which the Service has sufficient information to propose it for protection under the Act. All seven species have been recommended for conservation status by Williams *et al.* (1992a) and Williams and Butler (1994).

On November 18, 1993, the Service notified by mail (72 letters) potentially affected Federal and State agencies, local governments, and interested individuals that a status review was being conducted for these seven species. Ten comments were received. The Florida Division Office of the Federal Highway Administration stated that no bridge replacement projects were currently planned in northwest Florida, and that any future bridge replacement projects were not anticipated to affect these species, based on the localized and short-term impacts associated with these activities. The Federal Energy Regulatory Commission stated that they license twelve hydroelectric developments in the study area, and that issues concerning these species should be coordinated with the Office of Hydropower Licensing. The Fayette County, Georgia, Board of Commissioners expressed concern with the Service's belief that impoundments

had played such a major role in the demise of these species. The Alachua County, Florida, Environmental Protection Department indicated that none of the seven species were known or suspected to occur in that county. The Florida Game and Fresh Water Fish Commission expressed concern with how their plan to dredge the mouths of several silted in streams along the Apalachicola River to improve access for striped bass (*Morone saxatilis*) might affect these mussels. The Georgia Department of Natural Resources had questions concerning the distribution of these mussels, and sent a copy of regulations addressing the commercial harvest of mussels in Georgia. The Florida Natural Areas Inventory supported Federal listing of these species, and indicated that a portion of the Econfina Creek watershed where the Gulf moccasinshell and oval pigtoe occur is on a list for land purchase by the State of Florida. Three individuals with knowledge of freshwater mussels supported Federal listing of these species.

The processing of this final rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This rule falls under Tier 2. Presently, there are no pending Tier 1 actions in Region 4 and this is the Region's last outstanding Tier 2 action. Additionally, the guidance states that ''effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3'' (61 FR 64480). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond FY 1997 until such time as new guidance is published.

In the development of this final rule, the Service has conducted an internal review of a draft of this rule and other Service-generated information. Based on this review, the Service has determined that there is no new information that would substantively affect these listing decisions and that additional public comment is not warranted.

Summary of Comments and Recommendations

In the August 3, 1994, proposed rule (59 FR 39524), and through associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated August 18, 1994, and were requested to comment. Legal notices were published in the following newspapers—the *Albany Herald*, Albany, Georgia, on August 20, 1994; the *Atlanta Journal-Constitution*, Atlanta, Georgia, on August 21, 1994; the *Columbus Ledger-Enquirer*, Columbus, Georgia, on August 21, 1994; the *Macon Telegraph*, Macon, Georgia, on August 20, 1994; the *Thomasville Times-Enterprise*, Thomasville, Georgia, on August 19, 1994; *The Gainesville Sun*, Gainesville, Florida, on August 18, 1994; the *Jackson County Floridan*, Marianna, Florida, on August 21, 1994; the *Tallahassee Democrat*, Tallahassee, Florida, on August 21, 1994; and *The News-Herald*, Panama City, Florida, on August 22, 1994.

In response to twelve formal requests during the first public comment period, the Service scheduled five public hearings in the three-State area within the historical range of these seven species. Prior to the hearings, the Service held five public informational meetings at the same sites as the public hearings. A notice of public meetings, public hearings, and reopening of the comment period was published in the **Federal Register** on December 12, 1994 (59 FR 63987), and in legal notices in the following newspapers—the *Albany Herald*, Albany, Georgia on January 6, 1995; The *Atlanta Journal-Constitution*, Atlanta, Georgia on January 8, 1995; the *Columbus Ledger-Enquirer*, Columbus, Georgia on January 5, 1995; the *Dothan Eagle*, Dothan, Alabama on January 7, 1995; the *Montgomery Advertiser*, Montgomery, Alabama on January 5, 1995; the *Tallahassee Democrat*, Tallahassee, Florida on January 6, 1995; the *Jackson County Floridan*, Marianna, Florida on January 8, 1995; and the *Fayette News*, Fayetteville, Georgia, on January 11, 1995. The comment period for the proposal closed on February 10, 1995.

Public meetings were held at the Fayette County High School in Fayetteville, Georgia on January 5, 1995; at Chipola Junior College in Marianna, Florida on January 9, 1995; at the Opera House in Dothan, Alabama on January 10, 1995; at the Albany Civic Center in Albany, Georgia on January 11, 1995; and at the Convention and Trade Center in Columbus, Georgia on January 12, 1995. Public hearings were held at the same facilities in Fayetteville, Georgia on January 19, 1995; Dothan, Alabama on January 23, 1995; Marianna, Florida on January 24, 1995; Albany, Georgia on January 25, 1995; and Columbus, Georgia, on January 26, 1995.

In a **Federal Register** notice dated April 24, 1995 (60 FR 20072), the Service reopened the comment period on this proposal until May 5, 1995, to allow for consideration of numerous comments received after the previous deadline (February 10, 1995) and to provide an opportunity for further comment. Legal notices were published in the following newspapers—the *Albany Herald*, Albany, Georgia on April 21, 1995; The *Atlanta Journal-Constitution*, Atlanta, Georgia on April 24, 1995; the *Columbus Ledger-Enquirer*, Columbus, Georgia on April 21, 1995; the *Dothan Eagle*, Dothan, Alabama on April 26, 1995; the *Montgomery Advertiser*, Montgomery, Alabama on April 22, 1995; the *Tallahassee Democrat*, Tallahassee, Florida on April 23, 1995; the *Jackson County Floridan*, Marianna, Florida on April 26, 1995; and the *Fayette News*, Fayetteville, Georgia on April 26, 1995.

During the April 10, 1995, to April 26, 1996, listing moratorium, studies involving some of these proposed species were conducted in the ACF River system. To accept this new information, the Service published a notice in the **Federal Register** (61 FR 36020) on July 9, 1996, reopening the comment period until July 26, 1996. Legal notices were published in the following newspapers—the *Albany Herald*, Albany, Georgia on July 14, 1996; *The Atlanta Journal-Constitution*, Atlanta, Georgia on July 17, 1996; the *Columbus Ledger-Enquirer*, Columbus, Georgia on July 14, 1996; the *Dothan Eagle*, Dothan, Alabama on July 14, 1996; the *Montgomery Advertiser*, Montgomery, Alabama on July 14, 1996; the *Tallahassee Democrat*, Tallahassee, Florida on July 14, 1996; the *Jackson County Floridan*, Marianna, Florida on July 14, 1996; and the *Fayette News*, Fayetteville, Georgia on July 14, 1996.

The Service received hundreds of written comments and many oral statements presented at the public hearings and received during the comment periods. All pertinent comments have been considered in the formulation of this final rule. The proposed listings were supported by the U.S. Forest Service, the Environmental Protection Agency (EPA), and the States of Alabama (Department of Conservation and Natural Resources) and Florida (Department of Environmental Protection and Game and Fresh Water Fish Commission [FGFWFC]). The congressional delegations of the three States opposed the proposed listings. The following is

a summary of the comments, concerns, and questions (referred to as ''Issues'' for the purposes of this summary) and the Service's response to each. Comments of similar content have been grouped together.

Issue 1: Numerous commenters thought that the status survey was insufficient to make listing determinations for these seven species. Issues of concern included sampling methodologies, specimens collected, sites sampled, interpretation of historical data, whether sampling for juveniles had been adequate, and evidence of recent reproduction and recruitment. Other issues raised included the need for quantitative sampling, the percentage of historical sites sampled, how historical sites were selected for sampling, the evidence for the decline of these species, whether newly discovered sites represented new colonization by these mussels, and the reproductive viability of remaining populations.

Response: Explanations of sampling methodology, specimens collected, sites sampled, and analysis of historical data have been included under ''Status Survey'' and ''Species Accounts'' in the Background section. Other issues associated with the status survey are discussed below.

Quantitative sampling is not essential to determine the status of rare riverine mussel species (Miller and Payne 1988). Mussel populations are often distributed non-randomly (Downing and Downing 1992). Even where habitats appear to be uniform, mussels tend to be distributed unevenly (Downing 1991). For these reasons, random transect-type quantitative sampling is less efficient than choosing sites based on criteria such as available habitat (G.L. Warren, FGFWFC, *in litt.* 1995).

The Service compiled 300 historical site records from the ACF and Ochlockonee River systems; 108 of these sites had records of one or more of these proposed species. Research into historical mussel collections since the status survey was completed has yielded additional historical sites not reported in Butler (1993). The percentage of historical sites in the ACF and Ochlockonee River systems resurveyed for the seven species during the status survey ranged from 40 to 75 percent, while the percentages of resurveyed historical sites in the ACF and Ochlockonee River systems that still supported live specimens of the seven species ranged from eight to 43 percent. Detailed analyses of these data are presented under ''Status Survey'' and ''Species Accounts'' in the ''Background'' section. Many historical sites had been visited more than once by other researchers or collectors prior to the status survey. If evidence indicated the species had disappeared from a historical site, and there was little probability of currently finding it, survey efforts were not expended there.

The Service believes the newly discovered sites do not represent newly colonized sites, but sites that have existed historically but have not been previously sampled by collectors (see ''Status Survey'' under Background).

The fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, and oval pigtoe were historically considered rare, but widespread and locally abundant (Clench and Turner 1956). Mussel populations were decimated in the Chattahoochee River in the vicinity of Columbus, Georgia, by the early part of this century (Clench and Turner 1956). The river-dependent mussel species along the entire Chattahoochee River mainstem now appear to be extirpated (Butler 1993).

Determination of sexual maturity in these species would require sectioning to locate mature gametes; determining age would require sectioning the shells (Neves and Moyer 1988); this was not within the scope or intent of the status survey. The Service considered shells to represent juveniles if they were less than one-quarter of the maximum size for each species. Based on the adult sizes typical of these seven mussel species, very few juvenile specimens were located during the status survey. While substrate samples were not taken, the survey biologists located thousands of smaller species of bivalves and snails. These included the ubiquitous Asian clam (*Corbicula fluminea*), pleurocerid (*Elimia* spp.) and other snails, and the iridescent lilliput (*Toxolasma paulus*), a mussel species rarely exceeding 32 mm (1.25 in) in total length. The Service believes that if significant recruitment was occurring in the seven species, more juvenile and small shells would have been located.

Juveniles were also represented in some museum collections. Specimens of purple bankclimber as small as 26 mm (1.0 in) in length were represented in museum collections while the smallest specimen located during the status survey was 53 mm (2.1 in). The occurrence of juvenile specimens in museum collections substantiated population viability and indicated recent reproduction at the time the historical collection was made.

Richardson and Yokley (1996) employed total substratum removal of six 0.25 m (2.7 ft) quadrats at each of three sites. They found three juvenile individuals of the fat threeridge in the lower Apalachicola River, but no evidence of recruitment of the purple bankclimber below Jim Woodruff Dam on the same river. These two species were both common and represented the second most abundant species at their respective sites. The fat threeridge population sampled is the largest known (J. Brim Box, USGS, pers. comm.). These data indicate that the fat threeridge is experiencing limited recruitment, but that there is no evidence of recruitment in the purple bankclimber at these sites.

Brim Box and Dorazio (in press) took 2,867 substrate core samples (representing a composite 4.23 m (45.5 ft) square) for mussels at 30 sites in the ACF system. No specimens of any of the 7 species in this rule were located in the 2,867 core samples, although juveniles of a few common species were found. Brim Box and Dorazio (in press) also took 2,867 0.25 m (2.7 ft) square quadrat samples, without total substratum removal, for mussels. No juveniles of the seven species were found.

Richardson and Yokley (1996) stated that their work demonstrated that unequivocal evidence of recruitment can be found with minimal sampling effort. However, most literature on this subject demonstrates that the collection of juveniles is a low probability event (Kat 1982, Neves and Widlak 1987, Stansbery 1995). Quadrat sampling has consistently been determined to be inadequate for rare species (Neves *et al.* 1980, Kovalak *et al.* 1986, Neves and Odum 1989). The extreme patchiness of mussel distributions makes quantitative surveys expensive, time consuming, and not the best method to determine the population status of rare species (Miller and Payne 1988). The large number of substratum samples necessary to confirm recent recruitment is also disruptive to the stable benthic habitat essential to these and other riverine species (A.E. Bogan, North Carolina State Museum, pers. comm.).

Issue 2: Several commenters said that the author of the proposed rule stated in a published paper that major portions of the Apalachicola and Ochlockonee rivers were ''virtually unsurveyed.''

Response: What that statement referred to was that few historical sampling sites existed on the Apalachicola and lower Ochlockonee rivers at that time (Butler 1989). Subsequent surveys on the Apalachicola (35 sites) and Ochlockonee River (24 sites) mainstems have provided adequate information to evaluate the status of the species considered in this rule.

Issue 3: A few respondents asserted that comparing historical survey sites

with status survey sites is difficult because of differing collection techniques and the dynamic nature of streams (what was suitable habitat decades ago could now be very unsuitable due to various factors). One commenter urged the Service to use collection methods employed by early collectors to thoroughly sample streams.

Response: The Service agrees that there may have been changes in habitat suitability over time. To compensate for this factor, Center biologists surveyed upstream and downstream of historical sites. While streams are dynamic, the proportions of riffle, run, and pool habitats remain fairly constant. Based on human influences over the past two centuries, the Service believes that available habitat for these mussels has diminished significantly (see Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 4: One malacologist (mussel expert) asked if it would be possible to time-code the map symbols in the status survey report so that the distribution found in this study could be distinguished from that of earlier collections.

Response: The distributional data could be time-coded; however, time-coding collections was not essential to determine the status of the seven mussels.

Issue 5: Two malacologists suggested that some of these species have always been rare according to the literature, and that population declines could not be proven. One respondent questioned how many of the species existed historically compared to now.

Response: Van der Schalie (1940) gathered data on Chipola River mussels from collections taken between 1915 to 1918 and included actual numbers of mussels from various sites in the drainage. A comparison of this historical data with the status survey results indicates a significant reduction in the numbers of at least two species in the Chipola River. Historically, 470 oval pigtoe specimens were collected from nine sites (an average of 52 per site) in the Chipola River versus 35 specimens collected from six sites (an average of six per site) during the status survey. Historically, 166 specimens of the Gulf moccasinshell were known taken from eleven sites (an average of 15 per site) versus no specimens collected in the status survey.

Clench and Turner (1956) indicated that some species (e.g., the fat threeridge and oval pigtoe) were rare and only locally abundant. They documented 10 to 15 specimens/meter (0.9 to 1.4 specimens/ft) square of fat threeridge over a 200 m (656 ft) stretch of Dead Lake (Chipola River). The fat threeridge apparently disappeared over 20 years ago in Dead Lake and was not found live there during the status survey. Except for the purple bankclimber, which is abundant at a few sites, these species are now rare range-wide and are not abundant at any known sites (see ''Species Accounts'' in the ''Background'' section).

Issue 6: Two respondents stated that Federal listing of the purple bankclimber was not warranted because the species was abundant at some sites in the lower Flint and upper Ochlockonee rivers. One of these individuals further stated that he was confident that juveniles of this species were common.

Response: The purple bankclimber is the most abundant of the seven mussels; however, no additional information on purple bankclimber abundance or recruitment was provided to the Service by these commenters. Recent sampling efforts on the Apalachicola River (Richardson and Yokley 1996) located only large individuals, indicating a lack of recruitment in this species.

Issue 7: One commenter indicated that the Gulf moccasinshell still exists at several sites in the Chipola River system.

Response: Van der Schalie (1940) reported 166 Gulf moccasinshells taken from eleven sites (an average of 15 specimens per site) in the Chipola River system, but none were located during the status survey. The Service received information on a recently discovered population in Baker Creek, in the Chipola River system, after publication of the proposal (see ''Species Accounts'' in the ''Background'' section), but the commenter provided no specific location or other information.

Issue 8: Several commenters questioned the Service's statements regarding impoundments, including status survey efforts in impoundments, impact of impoundments upon these species, and the purple bankclimber's tolerance of impoundments.

Response: Much riverine habitat in the ACF system has been converted to slack-water impoundments, particularly in the Chattahoochee River; however, verifiable pre-impoundment records of these species are uncommon (see Factor A in the ''Summary of Factors Affecting the Species'' section). Museum records confirm that some of the Ochlockonee River mussel fauna was inundated and lost at the upper end of Talquin Reservoir. Many historical collections came from the Chattahoochee River in the vicinity of Columbus, Georgia. Although exact locality data is generally lacking, several impoundments in this reach of river permanently reduced available riverine habitat for mussels.

During the status survey, 39 reservoir sites were surveyed; none of the seven species were found in permanently impounded river reaches. None of these species are known to successfully reproduce and recruit under impoundment conditions. The reference to the purple bankclimber's tolerance of impounded conditions was based on a mussel relocation project funded by the U.S. Army Corps of Engineers (Corps). Purple bankclimbers from the Apalachicola River survived twelve months in laboratory tanks at the USGS research facility in Gainesville, Florida (Hamilton *et al.* 1996). However, the mussels were maintained in flow-through tanks with currents. The experiment does not indicate that the purple bankclimber can survive and reproduce under impounded conditions.

Issue 9: Two commenters questioned the expertise of the Center biologists who carried out the status survey.

Response: The project leader of the status survey has 20 years experience with mussel research and surveys. The field leader has an M.S. degree in aquatic sciences and seven years field experience in aquatic biology. Field biologists, with one exception, had education in aquatic biology ranging from the B.S to Ph.D. level. Two scientists associated with the project have published scientific papers on mussel surveys and endangered species. The Service believes that all individuals involved in the survey were well qualified.

Issue 10: One commenter questioned the adequacy of the sampling done by the status survey biologists, noting that various status survey field notes (*e.g.*, the water was too cold, too turbid, or too deep) indicated that sampling was inadequate and that portions of the field data should be discarded.

Response: The survey biologists employed the most appropriate sampling techniques based upon the habitat conditions present at each site. When high water precluded sampling, sites were usually revisited in lower water conditions to sample. The Service believes that the information gathered during field work is reliable and supports the determinations made in this rule.

Issue 11: One commenter assumed that when the survey biologists checked a mussel for the presence of mature glochidia the mussel was stressed or even killed. Another respondent questioned the Service's recording of laboratory data, noting that an entire collection of over one hundred

individuals of a common species was comprised of all females.

Response: During the status survey, some voucher mussels were preserved and brought to the laboratory for analysis, including inspection for glochidia. Most of the specimens were returned unharmed to the substrate from which they were collected. The species referred to by the respondent as consisting of only females were members of the genus *Elliptio*. This genus does not exhibit obvious external differences between the sexes; glochidia must either be present or gonadal tissues sectioned to determine sex. Laboratory notes on this collection stated that glochidia were not present (or ''NP'' on the data sheets) for any individual. The commenter apparently misconstrued ''NP'' as meaning ''female, glochidia not present.'' Although their sex could not be determined, it is likely that both sexes were represented in the sample.

Issue 12: Some respondents contended that the Service had not sampled the Escambia, Yellow, and Choctawhatchee rivers, where there were historical records of two of these species.

Response: There is one historical record of the Gulf moccasinshell in the Yellow River (1963) and four records from the Choctawhatchee River in the 1930's. The Service examined over 30 collections taken from these watersheds over the past few decades. The Gulf moccasinshell did not occur in any of these collections. The Service believes this species is extirpated from the Yellow and Choctawhatchee River systems.

Clench and Turner (1956) confused the shinyrayed pocketbook with the southern sandshell (*Lampsilis australis*) and erroneously stated that the shinyrayed pocketbook's range included the Choctawhatchee River. Johnson (1970), Heard (1979), and Williams and Butler (1994) clarified the range of the shinyrayed pocketbook as comprising only the ACF and Ochlockonee River systems. There are no records of any of the seven species from the Escambia River system. Collections made by the Center between 1993 and 1995 in this drainage corroborate this information.

Issue 13: One respondent commented that the Service's diving regulations precluded divers from collecting in navigable river channels, thus making it impossible to assess mussel populations there.

Response: Service diving regulations do not preclude sampling in navigable channels. Many dives using SCUBA were made in navigable channels during the status survey, and the Service believes that mussel populations in such areas were adequately sampled.

Issue 14: One commenter stated that $27,000 was not adequate to conduct the status survey for the seven proposed mussels.

Response: The Service's Jacksonville, Florida, Field Office provided $27,000 in initial funding and $12,000 during the survey. Total expenditures for the status survey were over $110,000. The Service believes the status survey was adequate to determine the status of these species.

Issue 15: Various commenters were concerned that the scientific data associated with the status survey were not subjected to proper peer review.

Response: The information supporting these determinations was extensively peer reviewed according to Service policy (see paragraph following the Service's response to Issue 107 in the ''Summary of Comments and Recommendations'' section for a discussion of peer review).

Issue 16: Several respondents stated that any decision to list these species should be deferred until data is available on habitat requirements, fish hosts, and threats to the mussels and their host fish.

Response: Although such data will be important in recovery for these species, they are not required under the listing factors under section 4(a) of the Act. To delay these listings until such data become available might preclude the species from being listed until recovery becomes less likely or extinction occurs.

Issue 17: As gravid specimens were sometimes documented, some commenters questioned the Service's use of the term ''lack of reproductive viability'' in the proposed rule.

Response: In the proposed rule, the Service stated that there was little evidence to suggest that populations of the seven mussel species were reproductively viable. This statement was based on the fact that no known juveniles were collected during the status survey. In this final rule, the Service has used the phrase ''lack of recruitment'' in its discussions of mussel reproductive status. This term more accurately defines the current status of these mussels.

Issue 18: Several commenters thought that the Service had failed to determine potential host fish status, contending that missing hosts may be the primary cause of their decline. Two malacologists stated that if their fish hosts were gone, the mussels were ''functionally extinct''; a third asked that if this were so, why spend time and effort listing them?

Response: As discussed under ''Reproductive Biology'' in the ''Background'' section, the fish hosts for some of these species are not currently known. Without specific host fish information, it would be premature to spend considerable efforts and funding on fish sampling. Population and distribution information of potential host fish is not necessary to justify listing these species.

Loss or depletion of fish host populations may be a primary factor in declines of some of the seven mussels. A loss of riverine habitat has probably also affected fish populations (see Factor A in the ''Summary of Factors Affecting the Species'' section).

If some of these seven mussel species are ''functionally extinct,'' recovery may still be possible by restoration of required fish host populations to the ecosystem. Regardless of the environmental factors responsible for the decline of these mussels, if one or more of the listing criteria are met, section 4 of the Act requires that the species be listed.

Issue 19: One commenter was not convinced that mussels were important, while numerous malacologists and other commenters stated that mussels serve as excellent water quality indicators and barometers of aquatic ecosystem health.

Response: Section 2(a) of the Act recognizes that species have intrinsic values (*i.e.*, aesthetic, ecological, educational, historical, recreational, and scientific) to the nation, and the section 4 listing criteria do not require other justifications. However, mussels are of demonstrable value to man. Their longevity, relative immobility, and filter feeding habits make them among the best available indicators of environmental quality in aquatic systems. Mussels are highly susceptible to sedimentation and pollutants and provide an early warning of the deterioration of water and habitat quality. They accumulate heavy metals and other contaminants in their tissues and shells, serving as effective test organisms for contaminants studies.

Native Americans and early settlers fed extensively on mussels, as shown by the large deposits of shell material in middens (Parmalee *et al.* 1982). In the first half of this century, mussels supported a large pearl button industry in the United States (McGregor and Gordon 1992). The cultured pearl industry harvests thousands of tons of shell from eastern rivers (Baker 1993), and cultured pearls are a multi-billion dollar global industry. Mussels are important organisms for biological studies, particularly because of their diverse methods of attracting host fish.

Mussels serve an important ecological function by filtering excess nutrients from the water, improving water clarity so sunlight may promote rooted aquatic vegetation growth, thereby increasing habitat complexity and species diversity. Several vertebrate species, including mammals, birds, turtles, and fish feed regularly on mussels (Fuller 1974). Their shells provide substrate diversity and a place for many types of invertebrates to colonize. This function is particularly important in homogenous sandy coastal plain rivers where hard surfaces are rare.

Issue 20: Two malacologists questioned the Service's statements regarding the impacts of various human activities on the mussels, whereas other malacologists thought that their imperilment was easily documented given the extensive available literature. Others questioned the use of personal communications and subjective terms (e.g., maybe, unknown) in the proposed rule and at public meetings.

Response: Additional references documenting Service conclusions have been added in this final rule (see ''Background'' and ''Summary of Factors Affecting the Species'' sections). The Service believes it appropriate to consider reliable unpublished reports, non-literature documentation, and personal communications with experts in making listing determinations.

Issue 21: Several commenters thought that natural factors (e.g., floods) and not just the factors of human origin, should be considered in the species' imperilment.

Response: Natural factors were considered in terms of threats to these species (see Factors C and E in the ''Summary of Factors Affecting the Species'' section).

Issue 22: Two commenters questioned the Service's statement concerning lack of adequate flushing on the Ochlockonee River to rid the channel of silt and detritus below Talquin Reservoir.

Response: One survey site in the Ochlockonee River below Talquin Reservoir had silt and detritus deposits extending from bank to bank. Under normal conditions, these materials are confined to slackwater areas, where they settle out in low or no-flow conditions. Low flow releases from Talquin Reservoir may be contributing to this situation.

Issue 23: One commenter stated that these species' lack of reservoir tolerance may be incorrect, and that it was possible that mussels had not had enough time to reestablish themselves in the newly created benthic habitat created by Chattahoochee River impoundments.

Response: There is no evidence that any of these seven mussels can successfully reproduce and recruit under impoundment conditions. Their habitat requirements generally consist of stable substrates, usually gravel, and other rocky materials in stream channels with currents. Habitat conditions created in impounded rivers consist of softer sediments (i.e., silt, mud, sand) and minimal currents (except at reservoir heads). Impoundments also change other physical and chemical characteristics of rivers (see Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 24: Numerous commenters maintained that the results of a Corps-sponsored study on mussel translocation were relevant to the proposed listings, and that the comment period should have been extended until study results were available for public scrutiny.

Response: The Corps investigated the feasibility of translocating four mussel species, including the purple bankclimber, in the Apalachicola River below Jim Woodruff Dam (Hamilton *et al.* 1996). This study will not provide additional information on the status of these species and does not justify further extension of the comment period.

Issue 25: Several respondents stated that the Service cannot prove which, if any, human activities actually affect mussels. Conversely, a few malacologists stated that determining the direct relationship of these impacts would be a waste of research time and taxpayer dollars.

Response: Although the precise role of the factors causing the decline of these species will never be known, there is information available on how human activities affect these and other species of mussels (see ''Background'' section and Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 26: A few malacologists questioned the rationale for distinguishing between endangered and threatened; one of them criticized the lack of criteria for making such distinctions. One malacologist wondered how the Service determined that the narrowly distributed Chipola slabshell was threatened and not endangered. They also wondered at what point information was sufficient to list a species.

Response: The Act defines an endangered species as a species threatened with extinction throughout all or a significant portion of its range, and a threatened species as a species in danger of becoming endangered throughout all or a significant portion of its range within the foreseeable future. The decision to propose a species as endangered or threatened is based solely on the best scientific and commercial data available after conducting a review of the status of the species. For the application of these definitions to the seven mussels in general, and the Chipola slabshell in particular, see ''Summary of Factors Affecting the Species'' and ''Species Accounts,'' respectively.

Issue 27: One commenter stated that these seven species were imperiled in 1970, and if the species are still extant, these listings are long overdue.

Response: The Service believes that the status survey was essential to determine the current status of these species before proposing them for listing. The Service carries out status surveys and listing actions, subject to a priority system published in the **Federal Register** on September 21, 1983 (48 FR 43098), and contingent on the availability of funding, personnel, and supportive information.

Issue 28: Several commenters thought that the Service had overstated potential commercial utilization and take by biological supply companies of two species, that Georgia harvest regulations aiding in conservation had been understated, and that mussel identification training courses were needed.

Response: Much of the commercial shell harvest in the southeast now takes place in west Tennessee and north Alabama. Although shells from the ACF River system are of poor quality, some have been included in shell shipments (J. Brim Box, USGS, pers. comm.). Demand for shell in recent years has pushed prices high enough that collectors have searched widely for unexploited shellbeds. The fat threeridge and purple bankclimber are so similar to the more common threeridge and washboard (*Megalonaias nervosa*) that take is a potential problem. Training and the development of educational materials will be considered as tasks when the recovery plan is prepared for these species.

The Service agrees that the practice of dissecting mussels in introductory laboratory courses is no longer widespread. However, large species, such as the fat threeridge and purple bankclimber, may still be collected for this purpose (see factor B under ''Summary of Factors Affecting the Species'').

Regulation of commercial harvest in Georgia has changed since the proposed rule was drafted; this has been

addressed in the final rule (see Factor D in the ''Summary of Factors Affecting the Species'' section for discussion of State regulations affecting these species).

Issue 29: One commenter thought it was inappropriate for Service staff to recommend that no mussels should be harvested from the ACF and Ochlockonee River systems when some of the seven species were abundant.

Response: Although some of these species occur in large numbers at a few sites, the Service believes the current status of the species does not justify a harvest.

Issue 30: One commenter stated that much field data is gathered by amateurs, and the Service should recognize the value of this information. Two malacologists thought that we overestimated the number of shell clubs and amateurs, and accordingly overstated their threat to these species from collecting.

Response: The Service acknowledges the significant role amateur malacologists have played in the development of our current knowledge of freshwater mussels. Most early mussel collections, including most of the type material used to describe these seven species, were collected by amateur naturalists. Amateurs continue to make important contributions to the knowledge of mussels. The Service agrees that the potential threat from shell club collectors is minimal (see Factor C in the ''Summary of Factors Affecting the Species'' section).

Issue 31: Two malacologists commented that the Service may have taken an alarmist view with the proposal. One malacologist believed the Service was proposing to list aquatic snails that were abundant and unthreatened, and doubted the data used to support the listing of the mussels.

Response: Based on the best available scientific and commercial data and peer review, the Service believes that listing under the Act is appropriate for these species (see ''Summary of Factors Affecting the Species'' section).

Issue 32: A few respondents stated that the taxonomy of these species deserved further attention as the taxonomy of some species in the region was unresolved, and speculated that we may have been confused regarding which species we actually proposed.

Response: Although the genetics of various mussel genera in the Apalachicolan Region are little known (Butler 1989), the species included in this final rule have been recognized by the malacological community for nearly a century. All meet the Act's definition of ''species.''

Issue 33: One commenter wanted to know why one mussel species addressed in the status survey report was omitted from the proposed rule.

Response: The status survey included the round washboard (*Megalonaias boykiniana*). In December 1993, the Service learned of molecular genetics studies (Mulvey *et al.* in press) indicating that the round washboard might be conspecific with the widespread and common washboard. Based on this taxonomic uncertainty, this species was not proposed for listing. The same study, however, confirmed that the fat threeridge (*Amblema neisleri*) was a distinct species from the threeridge (*A. plicata*).

Issue 34: One commenter suggested that mussel populations in the relatively pristine, undisturbed Econfina Creek should be thriving because conditions for mussels are optimal.

Response: Econfina Creek retains high water quality, but has been altered by Deer Point Reservoir on the lower portion of the creek. Although Gulf moccasinshell and oval pigtoe populations survive in this stream, the populations appear to be small. Other factors may explain why these two species occur in small numbers. Econfina Creek represents the western-most stream within the historical range of the oval pigtoe, and the Gulf moccasinshell's western-most extant population. Peripheral populations in a species' range are often small and scattered.

Issue 53: One malacologist stated that Clench and Turner's (1956) survey of Apalachicolan Region streams referred to the mussel fauna as being depauperate, whereas the Service claimed that the region was well known for its high level of endemicity.

Response: Clench and Turner (1956) stated ''* * * [the mussel] fauna of [the Apalachicolan Region] has been derived from the west, is depauperate (not rich in species), and must be fairly old.'' When compared to adjacent drainages to the west (e.g., Mobile Basin) and north (e.g., Tennessee River system), the fauna is relatively low in species diversity. However, the Apalachicolan Region has many endemic species (see ''Introduction'' in the Background section). About 30 of the 60 mussel species known from the region are endemic (Butler 1989, Williams and Butler 1994).

Issue 54: Two malacologists suggested that disease and predators are not threats to these mussels, and unless information is otherwise available, references to these factors should be deleted.

Response: Factor C (''Disease or Predation'') in the ''Summary of Factors Affecting the Species'' section notes that there is no specific information available on how disease and predation affect these mussels.

Issue 55: One commenter believed that mussels were more common than indicated in the proposed rule, because hundreds, if not thousands, of mussels are eaten by muskrats in the vicinity of his property on the Chattahoochee River.

Response: No populations of these seven species currently occur in the Chattahoochee River. The mussels in question may be the Asian clam (*Corbicula fluminea*), a well-known food of muskrats, or reservoir-tolerant native mussels.

Issue 56: One commenter questioned the relationship between mussel populations and habitat quality.

Response: Many mussels require water free from excessive levels of sediments and contaminants (Fuller 1974, Havlik and Marking 1987). As benthic inhabitants, they are readily affected by sedimentation, and as filter feeders, they are highly susceptible to various contaminants (see Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 57: Two malacologists questioned these mussels' decline when other species in the same habitat had viable populations. Another commenter thought the Service assumed that all seven mussels had similar reproductive characteristics.

Response: Species occurring in the same habitat typically have differences in life histories or ecological requirements (e.g., in the case of mussels, different host fishes) that permit them to coexist. These species would not be expected to respond in the same way to ecological stress. The specific reproductive biologies of the seven mussels is largely unknown, but would not be expected to be the same.

Issue 58: One commenter thought these mussels were always rare, and thus served a limited ecosystem function, and further stated that the Asian clam could fill their niche, thus minimizing a potential chain reaction from loss of the mussels in the ecosystem.

Response: Historical information indicates that some of these species were once locally abundant; the purple bankclimber still occurs abundantly at a few sites. The introduced Asian clam has been common in Apalachicolan Region rivers since 1960 (Schneider 1967) (see Factor E in the ''Summary of

Factors Affecting the Species'' section). Although the Asian clam may have become an increasingly important food for some predators (e.g., the muskrat), the long-term ecological consequences of its colonization are unknown.

Issue 59: One respondent stated that data were not provided to substantiate claims that the Asian clam may be responsible for the imperilment of the Ochlockonee moccasinshell.

Response: Sickel (1973) and Bass and Hitt (1974) indicate that Asian clam populations are dense in the ACF River system. This final rule contains additional information on how Asian clams may be impacting these seven species (see Factor E in the ''Summary of Factors Affecting the Species'' section).

Issue 60: Several malacologists predicted that the exotic zebra mussel (*Dreissena polymorpha*) will inevitably increase the probability of extinction for the seven species based upon the impacts of this non-native species in midwestern river systems.

Response: If the zebra mussel invades the ACF system, it may be a serious threat to these species (see Factor E in the ''Summary of Factors Affecting the Species'' section).

Issue 61: One commenter stated there is scientific evidence that certain dredging, navigation, waste water discharges, silvicultural, and agricultural activities may actually benefit filter feeders through nutrient enrichment, flow regime modification, and temperature modulation.

Response: The commenter provided no specific references. The Service believes significant changes in water quality, including large increases in sediments, decrease in flow due to impoundments, and nutrient increases, have been generally detrimental to the native mussel fauna (Weber 1981, Sheehan *et al.* 1989, Goudreau *et al.* 1993).

Issue 62: One commenter stated that, in certain parts of the world, mussels were used to clean up toxic waste waters, and wondered why these species seemed to be more susceptible to toxins when all they had to cope with were agricultural runoff and waste water treatment plant effluents. The individual wanted to know what chemicals were the most toxic to mussels.

Response: Mussels are filter feeders that continually pass large volumes of water through their bodies. Mussels take in heavy metals and other contaminants and store them in their tissues or incorporate them into their shells. This allows them to effectively filter pollutants from water, but only if the species' toxicity threshold is not exceeded or its reproductive capacity is not impaired.

Cadmium may be the most toxic heavy metal to mussels (Havlik and Marking 1987). Other heavy metals, ammonia, and chlorine also appear to be particularly toxic to mussels, especially in the early life stages.

Issue 63: Several respondents questioned the mussel listings if many of their populations are non-viable. If so, not only was recovery impossible, but the Service should not have expended funds for mussel surveys.

Response: These mussel populations have been significantly reduced in numbers and now exist only as fragmented populations in altered habitats (see ''Species Accounts'' in the ''Background'' section). Although some populations may not be viable, this does not preclude listing. Such populations could be augmented with juveniles produced through artificial propagation or with reproducing adults from another population.

Issue 64: Several respondents stated that because the Service's recovery record was poor, additional species should not be listed. Another implied that the proposal did not contain data needed to effect recovery or predict the species' recovery potential.

Response: A species' recovery potential is not a factor in making a listing determination. Most endangered and threatened species reached that status over many decades due to habitat loss and other complex causes. Recovery of these species should not be expected to be rapid or easy. Recovery planning and implementation occur following a species' listing, as required by section 4(f) of the Act.

Issue 65: A few malacologists thought that it was the Service's responsibility to see that life history studies on these species and research on the well-being of river ecosystems should be conducted.

Response: In preparing the recovery plan for these species, the Service will consider the need for such research and incorporate it in the plan as appropriate.

Issue 66: Numerous commenters believed these listings would significantly impact economies of the three States. One respondent stated that the Service had ''juggled'' the numbers regarding section 7 consultations to mislead the public.

Response: Based on its experiences with the Act and listed mussels, the Service does not believe the listing of these species will have a significant effect on the economy of the three States where they occur. A 1992 General Accounting Office audit found that 99.9 percent of all projects (18,211) that were reviewed under the Act between 1988 and 1992 went forward unchanged or with only minor modifications. Only six projects were halted due to endangered species considerations.

Issue 67: Numerous respondents stated that channel maintenance and barge navigation in the ACF River system would be shut down or severely curtailed if these species were listed.

Response: Through the section 7(a)(4) conference requirement of the Act addressing species proposed for listing, the Service and the Corps have agreed on measures regarding channel maintenance operations that will avoid jeopardizing the mussel species present. These measures will continue to be implemented once the species are listed (see ''Available Conservation Measures'' section).

Issue 68: One respondent wanted the Service to guarantee that there would be no financial hardship to industry, or that such costs should be borne by the Service. Another wanted to know the if Service would provide assurances regarding minimal potential impacts and restrictions resulting from these listings. Several respondents requested that the Service provide an analysis of the potential economic impacts of listing these species.

Response: Under Section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''* * * based solely on biological criteria and to prevent nonbiological considerations from affecting such decisions * * *'' H.R. Rep. No. 97–835, 97th Cong., 2d Sess. 19 (1982). As further stated in the legislative history, ''* * * economic considerations have no relevance to determinations regarding the status of species * * *'' *Id.* at 20. Because the Service is specifically precluded from considering economic impacts, either positive or negative, in a final decision on a proposed listing, the Service need not consider the economic impacts of listing these species.

Issue 69: The Corps disagreed with the statement that channelization was a primary cause of habitat loss. They stated that sediment instability in maintained channels made these areas too unstable to maintain mussel communities.

Response: The impacts of channel modifications are addressed in Factor A in the ''Summary of Factors Affecting the Species'' section.

Issue 70: The Corps stated that turbidity from dredging is not as detrimental to benthic habitats as is runoff from streams along the Apalachicola River after thunderstorms.

Response: Regardless of origin, impacts from sedimentation, siltation, and turbidity sources may continue to be a problem in portions of the ACF River system (see Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 71: The Corps stated that the proposal did not provide evidence for the statement that dredging activities resuspend toxicants bound to sediments.

Response: While organochlorine insecticides were detected in less than 10 percent of sediment and tissue samples taken in the ACF River system during 1992 and 1993, such compounds were formerly widely used in the basin (Buell and Couch 1995), are persistent in the environment, toxic to aquatic life, and partitioned into both sediments and the lipid reservoir of organisms (Day 1990, Burton 1992).

Issue 72: One respondent stated that the proposals did not explain why impoundments were considered a primary cause of habitat loss. Another stated that if impoundments are implicated, dams would be required to be removed.

Response: Reservoir impacts on mussels are well documented, and there is no evidence that any of the seven species can reproduce and successfully recruit in impoundments (see Factor A in the ''Summary of Factors Affecting the Species'' section). Although other factors contributed to the mussels' decline, the Service believes reservoirs were a significant factor. Since few if any of these species still occur in reservoirs, dam removal is not a Service goal, nor would the Act require such an action.

Issue 73: One commenter feared that the listings would affect ACF River system water allocations under the Tri-State Water Study (TSW). The Department of Energy's Southeastern Power Administration was concerned that the mussel listings would require changes in reservoir operations that might ultimately affect power generation capabilities. Another individual thought the species were proposed at this time to impact the on-going TSW study.

Response: The Service has no flow recommendations for these seven mussels. The listing proposal was prepared after the completion of the status survey according to normal listing priorities, and had no connection with the TSW. However, a review of potential effects from any proposed water allocation formula will be needed (see ''Available Conservation Measures'' section).

Issue 74: Two malacologists stated that every human activity affecting these species and their habitats should not have been mentioned in the proposed rule; the Service should have focused on specific factors (i.e., sedimentation, suspended solids, pollution) with objective, supporting evidence.

Response: The information in the ''Summary of Factors Affecting the Species'' section has been revised to emphasize the factors believed most important in the decline of these mussels.

Issue 75: Some commenters disagreed with the Service's assertions regarding the inadequacy of riparian buffers, particularly for silvicultural activities. Another commenter stated that the Service overlooked the fact that the State of Georgia had a law protecting streamside buffers.

Response: The discussion of riparian buffers has been modified to incorporate these comments (see Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 76: Several commenters questioned the proposed rule's implication of poor silvicultural practices as contributing to the mussels' demise. One commenter feared there could be an impact to the industry, whereas others requested that data be made available to document habitat reduction as a result of these activities.

Response: Normal silvicultural activities on private lands should not be affected by these listings (see ''Available Conservation Measures'' section). The discussion of silvicultural activities has been clarified in this final rule (see Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 77: One commenter stated that timber is a long-term crop and clear-cutting leaves land generally undisturbed for 25 years or more.

Response: Although clear-cutting may be conducted on a long-term basis, best management practices for silvicultural activities are important to protect stream habitats long after such activities have occurred (see Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 78: One respondent stated that if the mussels were listed, subsequent recovery plans would restrict land use practices and private property rights. Another stated that if these species are listed, private individuals and businesses could be subject to sections 7, 9, and 10 of the Act.

Response: Recovery plans include reasonable actions that the Service believes necessary to bring species back to the point they no longer need protection under the Act. They do not restrict land use practices and private property rights. The recovery planning process is designed to allow potentially affected segments of the public to participate in decision making and allows the special local knowledge of affected communities to be fully considered. Draft plans are made available for public review and comment, and all affected or interested individuals and groups are encouraged to participate.

Listing will provide these species the protection of sections 7 (Federal agency actions and consultations) and 9 (prohibitions) of the Act. Section 9 ''taking'' exemptions are available under both sections 7 and 9. Section 7(b)(4) of the Act provides for incidental take involving Federal actions if such take is not likely to jeopardize listed species and if reasonable and prudent measures are implemented to minimize such take. For further discussion of Federal activities associated with these listings, see the ''Available Conservation Measures'' section.

Section 10 of the Act provides for the issuance of permits to conduct otherwise prohibited activities. Through section 10 habitat conservation planning (HCP) there is an opportunity to provide species protection and habitat conservation for non-Federal development and land use activities that may result in incidental take of a listed species. For landowners and local governments, it provides long-term assurances that their activities will be in compliance with the requirements of the Act. Biologically, it provides the Service with a tool to offset the incidental take of listed, proposed, candidate, and other species by reconciling species conservation with economic development.

Issue 79: One respondent wanted a clarification of the Service's term ''poor land-use practices.''

Response: Poor land-use practices in the proposed rule referred to activities that cause excessive erosion and contribute to stream sedimentation, siltation, and turbidity. These include activities such as clearing or plowing to the edge of stream banks, or carrying out upland development without adequate silt screens or erosion control.

Issue 80: Several respondents stated that the species' decline resulted from historical disturbances, and that present conditions had improved, making listing unnecessary. Another respondent realized the role of historical impacts,

but supported the listings and felt more should be done to protect the remaining populations.

Response: Historical human activities have contributed to these species' current status, and some factors may continue to threaten these mussels (see Factor A in the ''Summary of Factors Affecting the Species'' section). Although certain factors affecting these species have improved, continuing threats to these species qualify them for listing. Listing will provide the Act's protective and recovery measures.

Issue 81: Several respondents thought the agricultural community was being directly implicated in poor land use practices. Other respondents felt better documentation was needed concerning agricultural impacts, and believed that normal agricultural practices would be impacted from the listings.

Response: Listing of these mussels should not affect normal agricultural practices (see ''Available Conservation Measures'' section). Implementation of agricultural best management practices has reduced erosion in the Apalachicolan Region, and the percentage of agricultural lands has declined as second-growth forest has replaced formerly cultivated lands (Couch *et al.* 1996). If best management practices are followed, the Service believes that agricultural activities will be compatible with the continued survival of these seven mussels.

Issue 82: Several respondents stated that listing the mussels would adversely impact the gravel-mining industry.

Response: Large-scale mining of stable substrate inhabited by these mussels would be detrimental to them. The mining of unsuitable habitat (i.e., unconsolidated substrates, substrates within impoundments) would not be likely to affect them. Gravel mining in the Chattahoochee River should be unaffected (see Factor A in the ''Summary of Factors Affecting the Species'' section).

Issue 83: One commenter feared that these listings could cause modification, significant construction cost increases, or even abandonment of existing and planned waste water treatment plants. Another commenter wanted to know what would happen to municipalities that discharged effluents into streams inhabited by these species.

Response: The Service has no information showing that current water quality standards threaten these species. At the time water quality standards for particular states are reviewed under section 402 of the Clean Water Act, the EPA will be required to consult with the Service on any standards that may affect listed species. In the course of the EPA review of Alabama's water quality standards, the Service's biological opinion (dated October 8, 1996) resulting from consultation with EPA determined that there was not sufficient information to determine whether the standards were likely to jeopardize the continued existence of some of the listed species found in Alabama. The opinion anticipated incidental take for a number of listed species, required modification of water quality standards to protect listed species, and specified monitoring and research conditions to determine if changes in the standards were necessary. The Service anticipates that future water quality standard consultations will follow a similar approach.

Issue 84: The Corps recommended that a statement in the proposed rule regarding the prolonged release of toxic chemicals from a Department of Defense facility should be revised, and that the Service should have considered the long-term dilution factor.

Response: A facility near Albany, Georgia, discharged an estimated 3.6 billion liters (l) (0.95 billion gallons (g)) of rinse, stripping, cleaning, and plating solutions through a short canal into the Flint River from 1955 to 1977. The Corps stated that the flow rate in the Flint River provided an average dilution rate of 1:127,555 l (1:33,700 g) over the 22-year period. Many of these toxicants were heavy metals used in plating solutions. Regardless of this dilution factor, the Service believes the long-term release of this effluent likely had, and may continue to have, a chronic toxic effect on Flint River mussel populations (see Factor A in the ''Summary of Factors Affecting the Species'' section) and deserves additional study.

Issue 85: A few commenters questioned the threat of toxic chemical spills on highway and railway bridges over streams. Some commenters thought that any listing would hamper efforts to rebuild bridges washed out during major floods.

Response: Toxic chemical spills can occur at highway, railway, and pipeline crossings, and industrial sites (see Factor A in the ''Summary of Factors Affecting the Species'' section). Section 7 consultations for bridge replacements are performed on a regular basis for aquatic species throughout the southeast; occasionally, species surveys are requested prior to construction. Most such projects do not affect, or have minimal effects on, listed species. These listings are not expected to affect bridge replacement.

Issue 86: One commenter wanted to know why Federal protection was necessary if the listings would not affect individual activities.

Response: The Act requires listing based on the five criteria in section 4(a) and does not allow for consideration of impacts, or a lack thereof, on individual activities as part of a listing decision.

Issue 87: The Corps stated that the proposal provided minimal evidence to prioritize human activities that may have affected mussel habitat.

Response: Additional information on such human activities has been provided in Factor A in the ''Summary of Factors Affecting the Species'' section.

Issue 88: One respondent requested information relating to cost/benefit ratios associated with recovery actions.

Response: Costs associated with implementation of recovery tasks will be estimated when the recovery plan is developed for these species. Cost/benefit ratios are not calculated in recovery plans.

Issue 89: One respondent asked what effect the listing would have on commercial fishermen.

Response: The use of these mussels for bait would be a violation of section 9 of the Act. No other effects on commercial fishermen are anticipated.

Issue 90: Several commenters believed the Service had misrepresented the science in the proposed rule, based upon an internal Service memorandum. Some individuals felt the Service had changed its position on the importance of human impacts after the proposed rule was published.

Response: The Service believes the proposed rule was scientifically sound, as was confirmed by peer review. Regardless of editing changes in the draft, the proposed rule signed by the Service Director and published in the **Federal Register** on August 3, 1994 (59 FR 39524), represented the Service's position on the various threats to the seven mussels. In formulating this final rule, the Service has considered all substantive comments and re-examined these threats (see the ''Summary of Factors Affecting the Species'' section).

The perception that the Service changed its position was apparently based on the description in the proposed rule of human activities (e.g. agriculture and forestry) that had impacted these species, versus the Service's explanation at public meetings that the listing would have little impact on such activities. Most of these activities are not directly regulated or monitored by the Service or other Federal agencies, and are, therefore, unlikely to be affected. Secondly, many human activities result in effects that are non-point in origin (e.g., erosion)

and are not easily attributable to a particular source. The ways in which these listings are expected to affect human activities are discussed in the ''Available Conservation Measures'' section below.

Issue 91: EPA requested that the Service clarify the following statement in the proposal—''Existing authorities available to protect aquatic systems, such as the Clean Water Act [CWA] administered by EPA and the [Corps], have not been fully utilized and may have led to the degradation of aquatic environments in the Southeast Region, thus resulting in a decline of aquatic species.'' EPA also requested that the Service identify deficiencies in their implementation of the CWA regarding State adopted narrative and numeric water quality criteria, State water use classifications by streams occupied by these species, aquatic life criteria guidance values; and National Pollutant Discharge Elimination System (NPDES) permit procedures. Several respondents questioned the need to improve regional water quality, suggesting that existing regulations are adequate to protect the species, and that poor water quality had been corrected since the passage of the CWA.

Response: Through implementation of the CWA, water quality has improved following the construction of advanced waste water treatment plants. Water quality criteria, however, were developed without specific knowledge of the tolerances of these seven mussels and previously listed mussels, which may be more sensitive than the species typically used to test waste water (Keller and Zam 1991, Keller 1993). Some mussel populations continue to decline even in areas that appear to have suitable physical habitat. Environmental factors including contaminants may still be adversely affecting the growth, reproduction, recruitment, and/or survival of these populations (see Factors A and E in the ''Summary of Factors Affecting the Species'' section). Little is known about the potential impacts of contaminants on fresh water mussels. Research is needed to address the lethal and sublethal effects of acute and chronic exposure to toxins for all life stages of mussels. This research will entail identifying appropriate surrogate species, devising test protocols, and conducting studies to evaluate the effectiveness of these criteria. The Service is currently working with EPA to develop a memorandum of agreement (MOA) that will address how EPA and the Service will interact relative to CWA water quality criteria, standards, and NPDES permits within the Service's Southeast Region. Until the MOA is developed and data are available to fully evaluate the effectiveness of current national water quality standards, the Service believes it is premature to attempt, in this final rule, to address any specific deficiencies and/or inadequacies that may exist in EPA's implementation of the CWA regarding the protection of water quality.

Issue 92: One respondent questioned if the Service had complied with the National Environmental Policy Act in the development of this rule.

Response: See ''National Environmental Policy Act'' section.

Issue 93: A few respondents stated that current State and Federal laws, interagency regulations, permit guidelines, and voluntary programs governing land usage were sufficient to protect the mussels, and thus, questioned the need to provide additional protection when private property rights would be compromised.

Response: The Service agrees that current State and Federal laws and regulations governing land use practices, if fully implemented, provide significant protection for these species. However, the current status of these seven species meets the listing criteria of the Act. Listing will provide the additional protective and recovery provisions of the Act.

Issue 94: Several respondents stated that listing these species could be considered an unfunded mandate if State and local governmental agencies are required to expend funds to satisfy permit requirements for their protection.

Response: The Act does not mandate State participation in the recovery of listed species, but the Service recognizes and is sensitive to the fact that costs of some projects may increase as a result of these listings. However, the decision to list the species is based on biological factors regarding status and threats.

Issue 95: One respondent stated that the Service had not considered the benefits that the erosion control practices required by the U.S. Food Security Act have had on the aquatic environment.

Response: The Service agrees that these requirements have benefitted mussels by reducing silt loads in streams.

Issue 96: One respondent stated that if these species are listed, the public will not know when they are in violation of the Act until ''after the fact.''

Response: See the ''Available Conservation Measures'' section for activities the Service believes would likely constitute violations of section 9 of the Act.

Issue 97: One commenter stated that if the Service reintroduced mussel populations, the public would not know where the reintroductions occurred, or the regulatory impacts resulting from these efforts.

Response: Section 4(f)(4) of the Act requires the Service to provide public notice and an opportunity for public review and comment on all draft recovery plans. Establishment of an experimental population under section 10(j) of the Act would be done by regulation, thus, requiring the Service to identify the location of the population and provide for a public comment period. Any population determined to be an experimental population is treated as if it were listed as threatened for purposes of establishing protective regulations under section 4(d) of the Act. The special rule for the experimental population would contain the prohibitions and exceptions for that population.

Issue 98: Numerous commenters stated that the Service had limited the public's opportunity to comment on the proposal by planning public hearings outside the affected area, during the Thanksgiving holidays, and at facilities too small to accommodate the public. They also stated that comment periods were too short, that the Service might refuse to pay for public hearing facilities, or had not planned to hold public meetings.

Response: Section 4(b)(5) of the Act requires that one public hearing be held on proposed listing regulations, if requested. Meetings are discretionary and are held dependent on public interest and need. In conjunction with the proposed rule, the Service held five public information meetings followed by five public hearings in three States throughout the range of the mussels (see first part of ''Summary of Comments and Recommendations'' section). Meetings and hearings were scheduled to avoid holidays or other conflicts. Meeting and hearing sites contained seating well beyond the attendance needs at all events. Comments were accepted at the hearings and by mail; the comment period was opened four times, over a period of two years (59 FR 39524, 59 FR 63987, 60 FR 20072, 61 FR 36020). The Service, therefore, believes there was adequate opportunity for public comment.

Issue 99: Several commenters stated that the Service had made the determination to list these species prior to public consideration, based on the term ''final rule'' having been used by Service employees at a public meeting.

Response: The Service recognizes that during the proposal period, the proper

terms relating to a regulatory decision are ''final decision'' and ''final decision document.'' This final rule has been prepared after full consideration of all relevant comments and information received during the comment period.

Issue 100: One respondent believed the Service had preconceived ideas and conclusions as to the species' status prior to conducting the status survey.

Response: The seven species were considered to be category 2 species prior to the status survey (see ''Previous Federal Action'' section), but this did not mean a decision had been made to list them. Many species for which status surveys are carried out are found not to meet the listing criteria of the Act.

Issue 101: Several respondents stated that the Service does not use good science in the listing process; one respondent stated that the listings would be arbitrary and capricious. Several respondents believed that the Service had violated the Administrative Procedure Act, the Act's ''best scientific and commercial data available'' standard, and Constitutional guarantees of equal protection and due process.

Response: The Service believes that this final rule incorporates the best available scientific and commercial information and complies with the Administrative Procedures Act.

Issue 102: One individual stated that he was not provided an opportunity to comment on the status survey report and the proposed rule.

Response: The comment periods, public meetings, and public hearings associated with the proposed rule (see ''Previous Federal Action'' section and the response to issue 98) provided extensive opportunities for interested parties to comment on or to request copies of Service documents.

Issue 103: One respondent commented that the Service was under pressure to list as many as possible of the 3,000 species on the annual notices of review.

Response: On February 28, 1996, (61 FR 7596) the Service revised its candidate species list, replacing an old system that listed nearly 4,000 ''candidate'' species under three separate categories (see also ''Previous Federal Action'' section). The old system led many people to the mistaken conclusion that the addition of thousands of species to the Federal List of Endangered and Threatened Wildlife and Plants was imminent. Under the revised list, only those species for which there is enough information to support a listing proposal are called ''candidates.'' These were formerly known as ''category 1'' species. The proposal to list these seven mussels followed the Service's normal priorities and procedures.

Issue 104: Several respondents stated that the Service already protects too many species and the country does not need any more listed species.

Response: Section 4(a) of the Act requires species to be listed based on the five listing factors. The Act sets no limit on the number of species to be recognized as endangered or threatened.

Issue 105: A few commenters stated that the Service had failed to designate critical habitat or was planning to designate critical habitat for these species. One respondent feared that designating critical habitat would halt navigation channel maintenance, whereas another thought the Service should determine the critical habitat necessary for their survival and then conduct an economic impact study.

Response: Section 4(a)(3) of the Act requires the Service to designate critical habitat to the maximum extent prudent and determinable at the time a species is listed. The Service has determined that the designation of critical habitat for these seven species is not prudent (see ''Critical Habitat'' section).

Issue 106: One commenter believed that any effort to delist a mussel once it was placed on the Federal list would require volumes of detailed data and be at the expense of local governments.

Response: The Act provides the same criteria to reclassify or delist species as to list them. Subsequent to a listing, section 4(f) of the Act requires the Service to develop and implement recovery plans for all listed species. Recovery plans include goals for reclassification and delisting. Section 4(c)(2) of the Act further requires the Service to review the status of listed species every five years to determine if reclassification or delisting is appropriate. There is no obligation for local governments or other parties to provide information on the status of listed species or to initiate reclassification or delisting actions.

Issue 107: One respondent claimed the Service missed the administrative deadline for publishing a final rule for these species. Based on our **Federal Register** notice of July 9, 1996, (61 FR 36021) to reopen the comment period, this commenter was unclear as to whether the mussels faced ''imminent threat'' on the basis of the Service statement that the proposals were a ''Tier 2 priority'' for listing.

Response: The congressional moratorium on final decisions on proposed listings, from April 1995 to April 1996, precluded publication of a final rule for these species by the Act's administrative deadline of August 3, 1995 (see ''Previous Federal Action'' section). The Service published listing priority guidance to address the backlog of listing activities as a result of the moratorium (March 11, 1996 (61 FR 9651), May 16, 1996 (61 FR 24722), September 17, 1996 (61 FR 48962), December 5, 1996 (61 FR 64475), and October 23, 1997 (62 FR 55268). The guidance assigned the processing of a final decision for these seven mussels to Tier 2 (resolving the listing status of outstanding proposed rules).

The Service also solicited the expert opinions of 60 scientists with knowledge of mussels and sampling methodologies, including most North American malacologists. They were asked to comment on the adequacy of the status survey in supporting the proposed rule. Responses were received from 37 individuals and pertinent comments were incorporated into this final rule.

Generally, the independent reviewers strongly supported the listing proposal. Many agreed with the Service's concerns about the threats to these species, including loss of riverine habitat, vulnerability of specific stages of the life histories, and impaired reproduction. Seven malacologists stated that the status survey was one of the most comprehensive studies they were aware of.

Two malacologists suggested that the Service withdraw the proposed rule and conduct further studies, but provided no specific information justifying the withdrawal of the listing proposal. However, in a written statement read at two of the public hearings, one of these malacologists stated that ''* * * the integrity of the current study is not questioned * * *'' (P.Yokley, Jr., University of North Alabama, *in litt.* 1995).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, and oval pigtoe should be classified as endangered species, and the Chipola slabshell and purple bankclimber should be classified as threatened species. Procedures found at Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to

the fat threeridge (*Amblema neislerii*), shinyrayed pocketbook (*Lampsilis subangulata*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), Chipola slabshell (*Elliptio chipolaensis*), and purple bankclimber (*Elliptoideus sloatianus*) are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Historically, mussel faunas in the United States have declined extensively as an unintended consequence of human development (Havlik and Marking 1987, Neves 1993). The mussel fauna in much of the Apalachicolan Region has been negatively impacted by impoundments, siltation, channelization, and by water pollution. The cumulative effect of these factors on the aquatic ecosystems of the ACF River basin has not been systematically evaluated; an ongoing USGS National Water Quality Assessment is currently addressing this task (Couch *et al.* 1996).

Impoundments have permanently altered a significant portion of the ACF River system, which has 16 mainstem impoundments. Impoundments affect mussels by altering current, substrate (Sickel 1981, Holland-Bartels and Waller 1987), and water chemistry (Allan and Flecker 1993, Stansbery 1995), factors which are important to riverine mussels. Lack of mussel recruitment in impoundments may be due to loss of glochidia in the substrate, attacks on glochidia by microorganisms, or the juveniles' inability to survive in silt (Ellis 1929, Scruggs 1960, Williams 1969, Fuller 1974).

The Chattahoochee River has 13 dams, including three locks and dams along its lower half; the lower mainstem is inundated for approximately 400 km (248 mi). An additional 85 km (53 mi) of mainstem habitat are impounded upstream of Atlanta, making approximately 485 km (301 mi) of the mainstem's 700 km (434 mi) total length (69 percent) impounded. The lower portions of many tributaries were permanently flooded because of these reservoirs, including a known site for the shinyrayed pocketbook in Walter F. George Reservoir (Clench and Turner 1956).

Impoundments have altered approximately 175 km (109 mi) of 600 km (372 mi), or 29 percent, of mainstem riverine habitat on the Flint River. Preimpoundment records from Seminole and Blackshear reservoirs exist for the fat threeridge and oval pigtoe (one site each), the Gulf moccasinshell and purple bankclimber (two sites each), and the shinyrayed pocketbook (three sites) (Clench 1955, Clench and Turner 1956).

Talquin Reservoir inundated approximately 32 km (20 mi) of riverine habitat (of a total of 278 km [172 mi] of mainstem, or 12 percent impounded) in the middle portion of the Ochlockonee River and the lower 5 km (3 mi) of the Little River, its largest tributary. Preimpoundment records exist for four of these species from a site at the upstream end of Talquin Reservoir (Clench and Turner 1956). This impoundment may have flooded habitat for the Ochlockonee arcmussel, believed to be extinct (Williams and Butler 1994), and may block potential host fish movements for other mussels. The shinyrayed pocketbook, Ochlockonee moccasinshell, and oval pigtoe were absent downstream of the dam. Only occasional populations of the purple bankclimber were found in this portion of the river.

Populations of the shinyrayed pocketbook, Gulf moccasinshell, and purple bankclimber have been isolated due to major impoundments on the Apalachicola, Flint, and Ochlockonee rivers. Smaller impoundments on tributary streams in the region have resulted in further population isolation of some of the species.

A navigation channel is maintained on the Chattahoochee and Apalachicola rivers from Columbus, Georgia, to the Gulf Coast, a distance of approximately 325 km (200 mi), and the lower 50 km (30 mi) of the Flint River. River habitat and stable benthic substrates have been altered in significant portions of this system. None of these seven mussels occur in the navigation channels of the Chattahoochee or Flint rivers. The fat threeridge and the purple bankclimber occur in portions of the Apalachicola River that have a navigation channel. The Corps and the Service have agreed on procedures to minimize impacts to these species when navigation maintenance is carried out (see ''Available Conservation Measures'' section).

Many regional streams have increased turbidity levels due to siltation. These seven mussels probably attract host fishes with visual cues. Such a reproductive strategy depends on clear water. Turbidity is a limiting factor impeding sight-feeding fishes (Burkhead and Jenkins 1991), and may have contributed to the decline of these seven species.

Light to moderate levels of siltation are common in many Apalachicolan Region streams with populations of these seven species, while heavy siltation has occurred in the Piedmont, which is well known for its highly erodible soils. Most of the topsoil in the Piedmont was eroded by 1935 (Wharton 1978). Clench (1955) attributed the decline of the rich mussel fauna of the Chattahoochee River to erosion from intensive farming before the Civil War. The steep slopes characteristic of the Fall Line Hills and the Piedmont result in higher erosion rates than slopes on more level lands (Pimentel *et al.* 1995).

Couch *et al.* (1996) indicated that all parts of the ACF Basin have been subject to alteration of forest cover. They attributed severe historical erosion and sedimentation in the Blue Ridge Province to mining and logging. The Service believes that while deforestation historically represented a threat to these mussels, current silvicultural activities following best management practices are compatible with the continued existence of the species (see Available Conservation Measures' section).

Because of their sedentary characteristics, mussels are extremely vulnerable to toxic effluents (Sheehan *et al.* 1989; Goudreau *et al.* 1993). There are discharges from 137 municipal waste water treatment facilities in the ACF River basin. Although the quality of effluents has improved since the 1980's due to improved waste water treatment and a 1990 phosphate detergent ban in Georgia, two-thirds of the 938 stream miles in the Georgia portion of the ACF River basin do not meet the designated water use classifications under the requirements of the Clean Water Act (Couch *et al.* 1996).

Agricultural influences include nutrient enrichment from confined feeding of poultry and livestock (primarily in the Piedmont Province), and inputs of pesticides and fertilizers from row crop agriculture (primarily in the Coastal Plain) (Couch *et al.* 1996).

An estimated 3.6 billion liters (0.95 billion gallons) of chemical-laden rinse, stripping, cleaning, and plating solutions were discharged through a short canal into the Flint River from 1955 to 1977 at a Department of Defense facility in Albany, Georgia (P. Laumeyer, Fish and Wildlife Service, pers. comm.). The Service believes the long-term release of this effluent likely had, and may continue to have, a chronic toxic effect on Flint River mussel populations. The canal and other portions of the facility are a Superfund site.

Abandoned battery salvage operations affect water quality in the Chipola River. Concentrations of heavy metals (e.g., chromium and cadmium) in Asian clams and sediments increased in samples taken downstream from two

operations (Winger *et al.* 1985). Dead Lake, on the lower mainstem, was considered a contaminant sink. Chromium was found at levels known to be toxic to mussels (Havlik and Marking 1987) in sediment samples from Dead Lake downstream (Winger *et al.* 1985). A large population of the fat threeridge has been extirpated in Dead Lake, possibly from such contamination.

Residential development in Georgia is resulting in the conversion of farmland to subdivisions in areas relatively distant from the cities of Albany, Atlanta, and Columbus. Development and land clearing increases siltation from erosion, runoff and transport of pollutants from stormwater, and municipal waste water facility effluents. Lenat and Crawford (1994) found that in Piedmont drainages, urban catchments had higher maximum average concentrations of heavy metals than agricultural or forested catchments. Urban waterways may harbor human-produced contaminants in concentrations sufficient to significantly affect fish health (Ostrander *et al.* 1995).

Additional water supply impoundments may be planned to satisfy expanding urban and suburban demand. Any impoundments on streams that support these species may have impacts on their long-term survival. Impoundments on streams that do not harbor these species could be designed in ways to minimize or eliminate potential impacts to these mussels and their habitat downstream. Future impoundments, particularly in the metropolitan Atlanta area, could impact stream habitats where small populations of the shinyrayed pocketbook, Gulf moccasinshell, and oval pigtoe exist.

In-stream and near-stream gravel mining has occurred in various portions of the Apalachicolan Region. Jenkinson (1973) recorded the shinyrayed pocketbook, oval pigtoe, Gulf moccasinshell, and ten other species in Little Uchee Creek, a tributary of the Chattahoochee River in Alabama. The creek had supported in-stream gravel mining; only a few shell fragments were found at Jenkinson's site in the status survey, although living shiny-rayed pocketbooks were found at another site in Little Uchee Creek. Gravel mining operations in the Chattahoochee River do not pose a threat to these mussels since no populations exist there now. However, where in-stream gravel operations are conducted in the vicinity of populations of these species, mussels may be displaced, crushed, or covered by bottom materials.

Some artifact and fossil collectors have used suction dredges to scour benthic habitats in the ACF system. This can destroy mussel habitat at the collection site and resuspend silt, impacting downstream areas. In a study on the effects of suction dredging for gold on stream invertebrates, Harvey (1986) concluded that impacts from suction dredges can be expected to be more severe in streams with softer substrates (e.g., sand, gravel), as is typical for most Apalachicolan Region streams.

Many of the impacts discussed above occurred in the past as unintended consequences of human development in the Apalachicolan Region. Improved understanding of these consequences has led to regulatory (e.g., the Clean Water Act) and voluntary measures (e.g., best management practices for agriculture and silviculture) and improved land use practices that are generally compatible with the continued existence of these mussels. Nonetheless, the seven mussel species currently are highly restricted in numbers and distribution and show little evidence of recovering from historic habitat losses.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The threeridge (a relative of the fat threeridge) and the washboard (*Megalonaias nervosa*), which is superficially similar to both the fat threeridge and purple bankclimber, are heavily utilized as sources of shell for nuclei in the cultured pearl industry. The Service has been informed by commercial shell buyers that shells from the ACF River system are of poor quality. However, shell material from this area may be used as ''filler'' for higher quality material from elsewhere (J. Brim Box, USGS, Gainesville, Florida, pers. comm.). In the 1980's, the price of shell increased, resulting in increased competition for the harvesting of shell beds in the Apalachicolan Region.

Biological supply companies have used the Flint River and possibly the Ochlockonee River as sources for large mussel specimens, including the purple bankclimber and possibly the fat threeridge, to sell to academic institutions for use in laboratory studies. The practice of dissecting mussels in introductory laboratory courses is no longer widespread, and the threat posed to large species such as the fat threeridge and purple bankclimber is probably decreasing.

Nonetheless, harvest of the fat threeridge and purple bankclimber for these purposes could decimate their remaining populations (see Factor D in this section). The increasing rarity of these mussels potentially makes them more appealing to shell collectors. Revealing specific stream reaches harboring these species could pose a threat from collectors (see ''Critical Habitat'' section below).

State regulations now in effect should deter or prevent the threat from commercial collecting (see Factor D below).

C. Disease or Predation

Diseases of mussels are virtually unknown; this factor is not currently known to affect these seven species.

Juvenile and adult mussels may serve as prey for various animals, mostly fishes, turtles, birds, and mammals (Fuller 1974). The muskrat has been implicated in potentially jeopardizing recovery of federally listed mussels (Neves and Odum 1989). Although muskrats are not common within the range of these species, Piedmont populations of the shinyrayed pocketbook, Gulf moccasinshell, and oval pigtoe in the upper Flint River system may be subject to some degree of muskrat predation.

D. The Inadequacy of Existing Regulatory Mechanisms

A scientific collecting permit is required in the State of Georgia to collect mussels for scientific purposes. Commercial harvest in Georgia is allowed only for the washboard. Mechanical harvest of mussels is illegal. Commercially harvested mussels in Georgia must be large enough to not pass through a 102 mm (4.0 in) ring. The harvest season is from April 1 to August 31. Hand-picking mussels requires a resident or non-resident fishing license. Despite permit requirements, enforcement is difficult and there are no present restrictions on sites of harvest or quantity taken in Georgia. Although not a target species, the purple bankclimber is superficially similar to the commercially exploited washboard to be potentially threatened (see Factor B in this section). The fat threeridge is probably extirpated from Georgia (Butler 1993).

Mussel harvest in Florida is deemed non-profitable due to the absence of large populations of desirable species and poor shell quality, but there is potential for harvest of the fat threeridge and purple bankclimber. In July 1996, the State of Florida enacted a moratorium on commercial mussel harvest (G.L. Warren, FGFWFC, pers. comm.). Limited collection of mussels under a State permit is allowed for scientific or other non-commercial purposes. Alabama has commercial harvest guidelines, including species

size limits, restricted harvest areas, and closed seasons. Of these seven mussels, only the shinyrayed pocketbook is found in Alabama, and it is not a commercially sought species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Because of slow growth and relative immobility, mussel recolonization of impacted river reaches is a lengthy process, achieved by dispersal of newly metamorphosed juveniles via infected host fish, passive adult movement downstream (Neves 1993), and active migration or passive movement downstream of small individuals (Kat 1982). Establishment of self-sustaining populations requires decades of immigration and recruitment, even for common species that may occur in high densities (Neves 1993). A mussel species should be considered stable only when active population recruitment is demonstrated and a significant number of viable populations exists (A.E. Bogan, North Carolina State Museum, *in litt.* 1995).

The exotic Asian clam (*Corbicula fluminea*) has invaded all of the rivers where these seven mussels occur. First reported from the Apalachicolan Region about 1960 (Schneider 1967), this species may compete with native mussels for nutrients and space (Clarke 1983, 1986). Densities of Asian clams are sometimes high in Apalachicolan Region streams, with estimates ranging from approximately 100/m (9/ft) square (Flint River, Sickel 1973) to over 2,100/m (195/ft) square (Santa Fe River, Bass and Hitt 1974). In some streams, the substrate has changed from homogenous silty sand or sand to one with a gravel-like component comprised of huge numbers of live and dead Asian clams.

Buttner and Heidinger (1981) estimated that an Asian clam could filter an average of 347 milliliters (12.1 ounces) of water per hour. Clarke (1983) hypothesized that at a density of 250/m (22/ft) square in a 1 m (3.3 ft) deep river flowing at 1.6 km (1 mi) per hour, Asian clams could filter 95 percent of the phytoplankton out of the water over 38 river km (24 river mi). Clarke (1986) believed the Asian clam posed a threat to the survival of the endangered Tar spinymussel (*Elliptio steinstansana*) in North Carolina. Heard (1977) noted the disappearance of local ACF River system mussel populations concurrent with colonization of the Asian clam. Kraemer (1979) stated that the Asian clam may outcompete native mussels in altered streams.

Another introduced bivalve, the zebra mussel (*Dreissena polymorpha*), has caused the extirpation of numerous native mussel populations and may pose a threat to these mussels in the future. Introduced into the Great Lakes in the late 1980's, this exotic species has been rapidly expanding its range in the South, but has not been reported yet from Apalachicolan Region streams.

The complex life cycle of mussels increases the probability that weak links in their life history will preclude successful reproduction and recruitment (Neves 1993). Egg formation and fertilization are critical phases in the life history, because many mussels fail to form eggs (Downing *et al.* 1989) or fertilization is incomplete (Matteson 1948). Fertilization success has been shown to be strongly correlated with spatial aggregation; excessively dispersed populations may have poor success (Downing *et al.* 1993). The need for specific fish hosts and the difficulty in recolonizing areas where mussels have been decimated are other life history attributes which make them vulnerable (see ''General Biology'' in the ''Background'' section).

These seven species have been rendered vulnerable to extinction due to significant habitat loss, range restriction, and population fragmentation and size reduction. Most of their populations have been extirpated from the Piedmont portion of their historical ranges, four of five species are extirpated from Alabama, and none of the species remain in the Chattahoochee River. The restricted distribution of these seven species also makes localized populations susceptible to catastrophic events and collection.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these seven mussels in determining to make this final rule. Based on this evaluation, the preferred action is to list the fat threeridge, shinyrayed pocketbook, oval pigtoe, Gulf moccasinshell, and Ochlockonee moccasinshell as endangered species, and the Chipola slabshell and purple bankclimber as threatened species.

The fat threeridge, shinyrayed pocketbook, oval pigtoe, Gulf moccasinshell, and Ochlockonee moccasinshell are in danger of extinction throughout all or a significant part of their range as follows:

Fat threeridge: This species historically occurred in the Flint, Apalachicola, and Chipola rivers, and is currently known from six sites on the latter two rivers. It has been extirpated from the Flint River, which included most of its historic range. It has disappeared from most of the historical sites where it was formerly found, and only seven percent of sampled sites within the historic range still have live individuals. Limited recruitment of young appears to be occurring only at one site on the lower Apalachicola River.

Shinyrayed pocketbook: This species historically occurred in the ACF, Chipola, and Ochlockonee River systems. It now occurs at only 21 percent of the historical sites sampled, and is extirpated from the mainstems of the ACF rivers. Populations have declined significantly in the Chipola River. The species occurs at 29 sites in tributaries of the ACF rivers and the Chipola and Ochlockonee rivers. Only two sites show evidence of recruitment; however, the largest known population shows no signs of recruitment.

Gulf moccasinshell: This species historically occurred in the ACF, Chipola, Choctawhatchee, and Yellow River systems and in Econfina Creek. It is no longer present at most of the historical sites sampled, and is apparently extirpated from the Apalachicola, Choctawhatchee, and Yellow rivers. There are 13 known sites, none showing evidence of recruitment.

Ochlockonee moccasinshell: This species occurred historically only in the Ochlockonee River system. It was formerly known from eight sites. It is now known only from two sites, where there is no evidence of recruitment. Only three live individuals have been found since 1974.

Oval pigtoe: This species was historically found throughout the ACF, Chipola, Ochlockonee, and Suwannee River systems, and in Econfina Creek. It occurred at one-third of the historical sites sampled. It has been extirpated from the mainstem of the Chattahoochee River, representing a significant portion of its historical range; occurrences in the Flint and Suwannee River systems have decreased from 32 to 12. The species is currently known to occur at 26 sites, with no evidence of recruitment.

The Chipola slabshell and purple bankclimber are likely to become endangered species in the foreseeable future throughout all or a significant part of their range:

Chipola slabshell: This species occurred historically at eight sites in the Chipola River and one site in the Chattahoochee River system. It is currently known from five sites in the Chipola River. This species appears to have some tolerance of soft sediments and, therefore, has more habitat potentially available than the other species in this rule. It was, however, found only at nine percent of the sites sampled within its historic range, and

there is no current evidence of recruitment.

Purple bankclimber: This species historically occurred in the ACF, Chipola, and Ochlockonee River systems. It currently occurs in the Apalachicola, Flint, and Ochlockonee rivers, with 41 sites known. It may be extirpated from the Chattahoochee and Chipola rivers. There is some evidence of recruitment at one site in the Apalachicola River.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service's regulations at 50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for these species. Such a determination would result in no known benefit to these species, and designation of critical habitat could further pose a threat to them through publication of their site-specific localities.

Critical habitat designation, by definition, directly affects only Federal agency actions. Since these seven mussel species are aquatic throughout their life cycles, Federal actions that might affect these species and their habitats include those with impacts on stream channel geometry, bottom substrate composition, water quantity and quality, and stormwater runoff. Such activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. The fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, Chipola slabshell and purple bankclimber have become so restricted in distribution that any significant adverse modification or destruction of their occupied habitats would likely jeopardize their continued existence. This would also hold true as the species recovers and its numbers increase. As part of the development of this final rule, Federal and State agencies were notified of the mussels' general distributions, and they were requested to provide data on proposed Federal actions that might adversely affect the species. Should any future projects be proposed in areas inhabited by these mussels, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action, and if needed, more specific distributional information would be provided. Therefore, habitat protection for these seven species can be accomplished through the section 7 jeopardy standard and there is no benefit in designating currently occupied habitat of these species as critical habitat.

Recovery of these species will require the identification of unoccupied stream and river reaches appropriate for reintroduction. The Service is currently working with the State and other Federal agencies to periodically survey and assess habitat potential of stream and river reaches for listed and candidate aquatic species within the ACF and Ochlockonee river systems and the Yellow and Santa Fe rivers. (For the Apalachicola River, for example, see the discussion under ''Available Conservation Measures'' below.) This process provides up-to-date information on instream habitat conditions in response to land use changes within watersheds. Information generated from surveys and assessments is disseminated through Service coordination with other agencies. The Service will work with State and Federal agencies, as well as private property owners and other affected parties, through the recovery process to identify stream reaches and potential sites for reintroduction of these species. Thus, any benefit that might be provided by designation of unoccupied habitat as critical will be accomplished more effectively with the current coordination process and is preferable for aquatic habitats which change rapidly in response to watershed land use practices. In addition, the Service believes that any potential benefits to critical habitat designation are outweighed by additional threats to the species that would result from such designation, as discussed below.

Though critical habitat designation directly affects only Federal agency actions, this process can arouse concern and resentment on the part of private landowners and other interested parties. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity or controversy accompanying critical habitat designation may increase the potential for vandalism as well as other collection threats (See Factor B under ''Summary of Factors Affecting the Species''). For example, in 1993 the Alabama sturgeon was proposed for endangered status with critical habitat (59 FR 33148). Critical habitat included the lower portions of the Alabama, Cahaba, and Tombigbee rivers in south Alabama. The proposal generated thousands of comments with the primary concern that the actions would devastate the economy of the State of Alabama and severely impact adjoining States. There were reports from State conservation agents and other knowledgeable sources of rumors inciting the capture and destruction of Alabama sturgeon. A primary contributing factor to this controversy was the proposed designation of critical habitat for the sturgeon.

The seven mussel species addressed in this proposal are especially vulnerable to vandalism. They all are found in shallow shoals or riffles in restricted stream and river segments and are relatively immobile and unable to escape collectors or vandals. They inhabit remote but easily accessed areas, and they are sensitive to a variety of easily obtained commercial chemicals and products. Because of these factors, vandalism or collecting could be undetectable and uncontrolled.

All known populations of these seven mussel species occur in streams flowing through private lands. One threat to all surviving populations of these seven species appears to be pollutants in stormwater runoff that originate from private land activities (see Factor A). Therefore, the survival and recovery of these mussels will be highly dependent on landowner cooperation in reducing land use impacts. Controversy resulting from critical habitat designation has been known to reduce private

landowner cooperation in the management of species listed under the Act (e.g., spotted owl, golden cheeked warbler). The Alabama sturgeon experience suggests that critical habitat designation could affect landowner cooperation within watersheds occupied by these seven mussels.

Based on the above analysis, the Service has concluded critical habitat designation would provide little additional benefit for these species beyond those that would accrue from listing under the Act.

The Service also concludes that any potential benefit from such a designation would be offset by an increased level of vulnerability to vandalism or collecting, and by a possible reduction in landowner cooperation to manage and recover these species. The designation of critical habitat for these seven mussel species is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs which could affect these species. Navigation maintenance on the Apalachicola River has the potential to impact the fat threeridge and purple bankclimber. These species are concentrated in two short reaches of the Apalachicola River that have only minimal dredging requirements. The Service and the Corps have agreed on the following criteria to address potential navigational impacts—(1) dredging and dredge material disposal can continue without further coordination with the Service in all areas where these mussels were not found during the status survey and in areas where the Corps has dredged or disposed dredge material since 1991; and (2) in areas that do not meet the first criterion, the Corps will consult further with the Service to determine if modifications of their channel maintenance activities are needed to protect the species. These further consultations may require the Corps to conduct additional mussel surveys prior to initiating channel maintenance activities. The Corps and the Service have established an effective working relationship on this issue, and will make every effort to continue navigation maintenance while protecting listed mussels. If conflict arises, potential measures for resolution include relocation of the channel alignment, disposal areas, or mussels.

A water supply reservoir is under consideration on Line Creek in the upper Flint River system, in Cowetta and Fayette counties, Georgia. This project would inundate historical habitat for the shinyrayed pocketbook and oval pigtoe. The project applicant, Fayette County, will need to secure a permit pursuant to section 404 of the CWA. In survey efforts made subsequent to the status survey, however, none of these seven species were found, and there is very little suitable habitat in the area to be affected by the proposed dam and reservoir. One live shinyrayed pocketbook was found several miles downstream of the proposed dam site, but the Service does not believe the proposed project will affect this area. Therefore, listing of this species will not affect the project.

The Corps is responsible for operating the reservoirs and channel structures in the ACF Basin for a variety of purposes, including navigation, flood control, water supply, fish and wildlife resources, recreation, and hydropower. Water allocation formulae are being developed in conjunction with an Interstate Water Compact involving the States of Alabama, Florida, and Georgia, to provide for the needs of these States. Any allocation formula that might affect the seven mussels will require section 7 consultation between the Corps and the Service.

No other specific Federal actions were identified that would likely affect any of the species. Federal activities for which potential effects to the species would be reviewed include the issuance of permits for reservoir construction, stream alterations, waste water facility development, water withdrawal projects, pesticide registration, agricultural assistance programs, mining, road and bridge construction, Federal loan programs, water allocation, and hydropower relicensing. However, it has been the experience of the Service that nearly all section 7 consultations have been resolved so that the species has been protected and project objectives met.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service (59 FR 34272) to identify at the time of listing, to the maximum extent practicable, those activities that would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of these listings on proposed and ongoing activities within a species'

range. During the public comment period, comments were received questioning the effect these listings would have on private landowners (see response to Issues 69, 76, and 81 in the ''Summary of Comments and Recommendations'' section), normal agricultural activities (see response to Issue 84), silvicultural practices (see response to Issue 79), and commercial fishing (see response to Issue 92). The Service believes, based on the best available information as outlined in the ''Summary of Comments and Recommendations'' section of this rule, that the aforementioned actions will not result in a violation of section 9 provided the activities are carried out in accordance with any existing regulations, permit requirements, and best management practices. The Service also believes that most other human activities will not result in a section 9 violation. These include use of the river by boaters, anglers, and other existing recreational uses.

Activities that the Service believes could potentially result in ''take'' of these mussels include, but are not limited to, (1) unauthorized collection or capture of the species; (2) unauthorized destruction or alteration of the species' habitat (e.g., in-stream mining, channelization, discharge of fill material); (3) violation of any discharge or water withdrawal permit; and (4) illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting these species.

Activities not identified in the above two paragraphs will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may have occurred. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Jacksonville, Florida Field Office (see **ADDRESSES** section) or the Field Supervisor of the Service's Panama City, Florida Field Office (U.S. Fish and Wildlife Service, 1612 June Avenue, Panama City, Florida 32405, telephone 904/769–0552). Requests for copies of the regulations on listed species and inquiries regarding prohibitions and permits should be addressed to the U.S Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345–3301 (404/679–7313).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the NEPA of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the OMB under 44 U.S.C. 3501 et seq.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this final rule is Mr. Robert S. Butler, U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801 (704/258–3939).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CLAMS							
*	*	*	*	*	*	*	
Bankclimber, purple	*Elliptoideus sloatianus.*	U.S.A. (AL, FL, and GA).	NA	T	633	NA	NA
*	*	*	*	*	*	*	
Moccasinshell, Gulf	*Medionidus penicillatus.*	U.S.A. (AL, FL, and GA).	NA	E	633	NA	NA
Moccasinshell, Ochlockonee.	*Medionidus simpsonianus.*	U.S.A. (FL and GA)	NA	E	633	NA	NA
*	*	*	*	*	*	*	
Pigtoe, oval	*Pleurobema pyriforme.*	U.S.A. (AL, FL, and GA).	NA	E	633	NA	NA
*	*	*	*	*	*	*	
Pocketbook, shinyrayed.	*Lampsilis subangulata.*	U.S.A. (AL, FL, and GA).	NA	E	633	NA	NA
*	*	*	*	*	*	*	
Slabshell, Chipola	*Elliptio chipolaensis*	U.S.A. (AL and FL)	NA	T	633	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Threeridge, fat	*Amblema neislerii* ...	U.S.A. (FL and GA)	NA	E	633	NA	NA
*	*	*	*	*	*	*	

Dated: January 23, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–6493 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[I.D. 021998C]

North and South Atlantic Swordfish Fishery; Directed Fishery Closure

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

ACTION: Closure.

SUMMARY: NMFS has projected that the directed fishery quota for the second semiannual 1997 North and South Atlantic swordfish season (December 1, 1997, to May 31, 1998) will be reached on or before March 31 and April 15, 1998, respectively. Consequently, NMFS closes the directed fishery for the North Atlantic swordfish fishery effective March 31, 1998, and for the South Atlantic swordfish fishery effective April 15, 1998. The intent of this closure is to prevent overharvest of the quotas established by the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the directed North and South Atlantic Swordfish Fishery.

DATES: The closure is effective at 6 p.m., local time, on March 31 through May 31, 1998, for the North Atlantic swordfish fishery, and at 6 p.m., local time, on April 15 through May 31, 1998, for the South Atlantic swordfish fishery.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, 301-713-2347, or Buck Sutter, 813-570-5447.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

The regulations governing the Atlantic swordfish fisheries at § 630.24 provide for a specified annual quota to be landed by the directed fishery. The annual quota is divided into two semiannual quotas for each of the 6-month periods, June 1 through November 30, and December 1 through May 31. NMFS is required, under § 630.25(a)(1), to monitor the catch and landings statistics and, on the basis of these statistics, to project a date when the catch will equal the quota, and to announce the closure by publication in the **Federal Register**. ICCAT delineates Atlantic swordfish stocks north and south of 5° N. lat. On October 24, 1997 (62 FR 55357), consistent with ICCAT's recommendations, NMFS established a U.S. quota for the North Atlantic swordfish fishery of 2,464 metric tons dressed weight (mt dw), established a U.S. quota for the South Atlantic swordfish fishery of 188 mt dw, and implemented the same management measures for the South Atlantic swordfish fishery as were in place for the North Atlantic swordfish fishery (i.e., logbook reporting, permitting, minimum size, transfer-at-sea, etc.).

New ICCAT Compliance Measures

In 1996, ICCAT recommended compliance measures in which member nations could be subject to restrictive trade measures and reduced quotas equal to a minimum of 125 percent of the excess harvest if North Atlantic swordfish quotas are repeatedly exceeded. These measures were recommended to be extended to the South Atlantic by ICCAT in 1997.

Closure of the North Atlantic Swordfish Fishery

The 1997 quota for the North Atlantic swordfish fishery of 2,464 mt dw is divided between the directed fishery (2,164 mt dw) and the incidental fishery (300 mt dw). The annual quota for the directed fishery is subdivided into longline/harpoon and drift gillnet quotas, with allocations of 2,121.2 and 42.8 mt dw, respectively. A final rule issued under the Endangered Species Act closed the drift gillnet sector of the swordfish fishery until August 1, 1998, to avoid jeopardizing the continued existence of the North Atlantic right whale (62 FR 63467, December 1, 1997). The longline/harpoon quota is further divided into two equal semiannual quotas (1,060.6 mt dw) for the periods June 1 through November 30, and December 1 through May 31. Based on actual landings for December 1997 (169.5 mt dw) and January 1998 (208 mt dw), and using the highest reported landings during the period between 1995 to 1997 for February (365.8 mt dw) and March (250.8 mt dw), this would give a total of 994.2 mt dw projected through the end of March, 1998, or 90.73 percent of the quota. Based on logbook and tally sheet data from previous years, it is expected that the second semiannual North Atlantic harvest quota will be reached in mid-April, 1998. However, NMFS must account for delayed reporting and unpredictable catch levels and fishing effort to reduce the risk of exceeding U.S. swordfish quotas, which could invoke ICCAT penalties. Due to late reporting, which may take up to 6 months to correct, an additional factor of 65 mt dw is added to this estimate, giving a total of 1,059.2, or 99.86 percent of the quota. Therefore, NMFS announces that the directed North Atlantic swordfish fishery will close at 6 p.m., local time, on March 31, 1998. All swordfish in excess of the incidental catch limit must be offloaded by the time of the closure.

Closure of the South Atlantic Swordfish Fishery

The 1997 quota for the South Atlantic swordfish fishery is allocated solely to the directed longline fishery quota and is divided into two equal semiannual quotas of 94 mt, one for the period June 1 through November 30, and the other for the period December 1 through May 31, with no incidental harvest allowed following a closure of the fishery. Landings of swordfish in the South Atlantic swordfish fishery in the second semiannual season totaled 20.12 mt dw as of January, 1998. Reporting of swordfish landings by U.S.-flagged vessels in Atlantic waters south of 5° N

lat. was not required until the 1997 fishing year; therefore, past fishing effort is difficult to estimate. However, limited logbook data from 1996 and 1997 indicate that a significant increase in landings may be expected during February and March. Accounting for delayed reporting (based on experience in closures of the North Atlantic swordfish fishery) and the anticipated levels of harvest due to the closure of the North Atlantic swordfish fishery and previous harvest levels, it is expected that the second semiannual South Atlantic harvest quota will be reached on or about April 15, 1998. The estimate is conservative to reduce the risk of exceeding U.S. swordfish quotas, which could invoke ICCAT penalties. Therefore, NMFS announces that the directed South Atlantic swordfish fishery will close at 6 p.m., local time, on April 15, 1998. All swordfish must be offloaded by the time of the closure.

Incidental Catch Limits

The annual quota for the North Atlantic incidental swordfish fishery is 300 mt dw. The incidental quota is needed to allow for incidental landings of swordfish with commercial fishing gears during the closure of the North Atlantic swordfish fishery. After the closure, only up to 15 swordfish can be possessed if taken incidentally when fishing with longline gear for other pelagic fish species, until the incidental quota is reached.

Delayed Offloading Pilot Program

On January 23, 1998, NMFS issued a letter to all permit holders and sent a notice via the Highly Migratory Species (HMS) fax network announcing a pilot program to allow for delayed offloading. Vessel owners who wish to participate in the NMFS delayed offloading pilot program must contact NMFS (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the directed fishery closure to obtain an exempted fishing permit (EFP). Vessels maintaining a Vessel Monitoring System (VMS) on board and complying with the terms of the EFP may offload swordfish at any time after the closure, provided they do not fish for any species during that time.

This closure announcement provides more than the minimum 14-day advance notice of closure required by regulation. To provide advance notice of the closure as early as possible, NMFS issued a notice to the industry on January 23, 1998, that, based on the landings at that time, a closure was anticipated about mid-March, 1998. This advance notice period will allow swordfish vessel owners to plan their fishing, offloading, and sale of swordfish catch prior to the date of closure. It will also allow swordfish vessel owners to obtain a VMS and apply for an EFP to be eligible for delayed offloading.

All fishery management actions are announced by publication in the **Federal Register**. In addition, announcements are made on the HMS FAX Network, on the HMS Information Line (301–713–1279), and over NOAA Weather and Coast Guard radio channels.

Classification

This action is taken under 50 CFR 630.24 and 50 CFR 630.25(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 10, 1998.

Gary C. Matlock,

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

[FR Doc. 98–6711 Filed 3–11–98; 4:56 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 031098A]

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-water Species Fishery by Vessels using Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the first seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 10, 1998, until 1200 hrs, A.l.t., April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7447.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch allowance of Pacific halibut for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (published on March 12, 1998) for the first season, the period January 20, 1998, through March 31, 1998, as 100 mt.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 1998 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep water flatfish, Rex sole, arrowtooth flounder, and sablefish.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the first seasonal apportionment of the 1998 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The first seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught. Further delay would only result in overharvest which would disrupt the FMP's objective of apportioning Pacific halibut bycatch allowances throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

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

Dated: March 10, 1998

Bruce C. Morehead,

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

[FR Doc. 98–6599 Filed 3–11–98; 9:38 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 112097B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 1998 Harvest Specifications for Groundfish

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

ACTION: Final 1998 specifications for groundfish and associated management measures; apportionment of reserves.

SUMMARY: NMFS announces final 1998 harvest specifications, prohibited species bycatch allowances, and associated management measures for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 1998 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI.

DATES: The final 1998 harvest specifications and associated apportionment of reserves are effective at 1200 hrs, Alaska local time (A.l.t.), March 11, 1998 through 2400 hrs, A.l.t., December 31, 1998. Comments on the apportionment of reserves must be submitted by March 31, 1998.

ADDRESSES: The final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis prepared for the 1998 Total Allowable Catch Specifications may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling 907–586–7229. Comments on the apportionment of reserves may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, at the same address. The final 1998 Stock Assessment and Fishery Evaluation (SAFE) Report, dated November 1997, is available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Regulations under § 679.20(c)(1) further require NMFS to publish annually and solicit public comment on proposed annual TACs, prohibited species catch (PSC) allowances, seasonal allowances of the pollock TAC, and amounts for the Community Development Quota (CDQ) and Prohibited Species Quota (PSQ) reserves. The final specifications set forth in Tables 1 through 7 of this action satisfy these requirements. For 1998, the sum of the TAC is 2 million mt.

The proposed BSAI groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 15, 1997 (62 FR 65638), and corrected on December 17, 1997 (62 FR 67041). Comments were invited through January 14, 1998. Five comments were received and are summarized and responded under in the Response to Comments section. Public consultation with the Council occurred during the December 1997 Council meeting in Anchorage, AK. After considering public comments received, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 1998 specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each proposed PSC allowance established under § 679.21, and the first seasonal allowances of pollock become available at 0001 hours Alaska local time (A.l.t.), January 1, on an interim basis and remain in effect until superseded by the final specifications. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification either for sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota management plan. NMFS published the interim 1998 specifications in the **Federal Register** on December 15, 1997 (62 FR 65626). The final 1998 groundfish harvest specifications and prohibited species bycatch allowances contained in this action supersede the interim 1998 specifications.

Acceptable Biological Catch (ABC) and TAC Specifications

The specified ABC and TAC for each species are based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the BSAI at their September and December 1997 meetings. This information was compiled by the Council's BSAI Groundfish Plan Team (Plan Team) and is presented in the final 1998 SAFE report for the BSAI groundfish fisheries, dated November 1997. The SAFE report, produced annually by the Plan Team, reviews the latest scientific analyses and estimates of each species' biomass and of other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

The ABC amounts adopted by the Council for the 1998 fishing year are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABC and overfishing levels involves sophisticated statistical analyses of fish populations and is based on a successive series of six levels, or tiers, of reliable information available to fishery scientists. Details of the Plan Team's recommendations for 1998 overfishing and ABC amounts for each species are provided in the final 1998 SAFE report.

At its September 1997 meeting, the SSC, AP, and Council reviewed the Plan Team's preliminary recommendations for the 1998 proposed ABC amounts.

The preliminary ABCs for each species for 1998 and other biological data from the September 1997 draft SAFE report were provided in the discussion supporting the proposed 1998 specifications (62 FR 65638, December 15, 1997). Based on the SSC's comments concerning technical methods and new biological data not available in September, the Plan Team revised its ABC recommendations in the final SAFE report. The revised ABC recommendations were again reviewed and endorsed by the SSC, AP, and Council at their December 1997 meetings. The final ABCs as adopted by the Council are listed in Table 1.

The Council adopted the AP's recommendations for TAC amounts. These recommendations were based on the final ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required OY range of 1.4 million to 2.0 million mt. None of the Council's recommended TACs for 1998 exceeds the final ABC for any species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

The Council recently adopted Amendment 36 to the FMP, which would establish a new species category for forage fish species. A notice of availability of Amendment 36 was published in the **Federal Register** on November 12, 1997 (62 FR 60682). A proposed rule to implement Amendment 36 was published in the **Federal Register** on December 12, 1997 (62 FR 65402). As approved by NMFS on February 6, 1998, Amendment 36 removes capelin, eulachon, and smelt from the ''other species'' category and places them in a new forage fish species category. However, this action does not affect the TAC for the remaining species in the ''other species'' category. Under Amendment 36, ABC and TAC amounts would not be specified for forage fish species. Instead, these species would be placed on permanent bycatch status with a maximum retainable bycatch amount of 2 percent.

Table 1 lists the 1998 ABC, TAC, ITAC, and CDQ reserve amounts, overfishing levels, and initial apportionments of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—1998 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA (BS) AND ALEUTIAN ISLANDS AREA (AI) [1]

Species	Area	ABC	TAC	ITAC [2 3]	CDQ reserve	Overfishing level
Pollock	BS	1,110,000	1,110,000	943,500	83,250	2,060,000
	AI	23,800	23,800	20,230	1,785	31,700
	Bogoslof District	6,410	1,000	850	75	8,750
Pacific cod	BSAI	210,000	210,000	178,500	15,750	336,000
Sablefish [4]	BS	1,300	1,300	553	179	2,160
	AI	1,380	1,380	293	233	2,230
Atka mackerel [5]	Total	64,300	64,300	54,655	4,823	134,000
	Western AI	27,000	27,000	22,950	2,025	.....
	Central AI	22,400	22,400	19,040	1,680	.....
	Eastern AI/BS	14,900	14,900	12,665	1,118	.....
Yellowfin sole	BSAI	220,000	220,000	187,000	16,500	314,000
Rock sole	BSAI	312,000	100,000	85,000	7,500	449,000
Greenland turbot	Total	15,000	15,000	12,750	1,125	22,300
	BS	.....	10,050	8,543	754	.....
	AI	.....	4,950	4,208	371	.....
Arrowtooth flounder	BSAI	147,000	16,000	13,600	1,200	230,000
Flathead sole	BSAI	132,000	100,000	85,000	7,500	190,000
Other flatfish [6]	BSAI	164,000	89,434	76,019	6,708	253,000
Pacific ocean perch	BS	1,400	1,400	1,190	105	3,300
	AI Total	12,100	12,100	10,285	908	20,700
	Western AI	5,580	5,580	4,743	419	.....
	Central AI	3,450	3,450	2,933	259	.....
	Eastern AI	3,070	3,070	2,610	230	.....
Other red rockfish [7]	BS	267	267	227	20	356
Sharpchin/Northern	AI	4,230	4,230	3,596	317	5,640
Shortraker/rougheye	AI	965	965	820	72	1,290
Other rockfish [8]	BS	369	369	314	28	492
	AI	685	685	582	51	913
Squid	BSAI	1,970	1,970	1,675	148	2,620
Other species [9]	BSAI	25,800	25,800	21,930	1,935	134,000
Total		2,454,976	2,000,000	1,698,568	150,211	4,202,451

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea and Aleutian Islands area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

[2] Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves. Except for sablefish (see footnote 3), one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see § 679.31(a)(1)).

[3] Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (see § 679.31(c)). Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only.

[4] Regulations at § 679.20(a)(4) require sablefish TACs for BSAI subareas be divided between trawl and hook-and-line/pot gear in the following proportions: BS subarea; trawl gear 50 percent, hook-and-line/pot gear 50 percent: AI subarea; trawl gear 25 percent, hook-and-line/pot gear 75 percent.

[5] Regulations at § 679.20(a)(8) require that up to 2 percent of Atka mackerel TAC specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction for reserves, be allocated to vessels using jig gear. For 1998, 1 percent of ITAC, or 127 mt, is allocated to jig gear.

[6] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.
[7] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.
[8] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.
[9] "Other species" includes sculpins, sharks, skates, and octopus.

Reserves

Fifteen percent of the TAC for each target species or species group, except the hook-and-line and pot gear allocation of sablefish, is automatically placed in a non-specified reserve (§ 679.20(b)(1)). A portion of the non-specified reserve is allocated to the CDQ reserve. The remainder of the non-specified reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

Amendment 39 to the FMP was approved by NMFS on September 12, 1997. Under amendment 39, the portion of the non-specified reserve that is placed in the CDQ reserve is increased to accommodate the multi-species CDQ program. Except for sablefish, one half of each TAC amount placed in the non-specified reserve (7.5 percent of the total TAC amount) is allocated to the CDQ reserve. Regulations at § 679.31(c) require NMFS to withhold 20 percent of the hook-and-line and pot gear sablefish allocation as CDQ reserve. Amendment 39 also requires NMFS to withhold 7.5 percent of each PSC limit as a separate PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at § 679.30 and § 679.31.

A final rule partially implementing Amendment 39 was published February 19, 1998 (63 FR 8356). The rule authorizes the establishment of multi-species CDQ reserves for those groundfish TAC categories for which there is no existing CDQ program. It does not include measures that allow fishing to begin on those reserves. The multi-species CDQ program will be implemented by a separate final rule establishing management measures for the multi-species CDQ program. Pending timely approval of the final rule and the associated Community Development Plans, multi-species CDQ fishing could take place in 1998. Under the final rule partially implementing Amendment 39, NMFS may add any amount of the 1998 CDQ reserve back to the non-specific reserve if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the amount will not be used by CDQ groups during the remainder of the 1998 fishing year.

The Council recommended that the CDQ pollock reserve be seasonally apportioned so that no more than 45 percent of the 1998 Bering Sea allocation may be harvested during the pollock roe season, January 1 through April 15. Up to 100 percent of the 1998 Aleutian Islands or of the Bogoslof District pollock CDQ allocation could be harvested during this time period. The same apportionment was recommended for the non-CDQ pollock ITAC.

Apportionment of the Nonspecified Reserve.

The Regional Administrator has determined that the ITACs specified for the species listed below need to be supplemented from the nonspecified reserve because U.S. fishing vessels have demonstrated the capacity to harvest the full TAC amounts. ITACs for these species have been supplemented from the nonspecified reserve during the past 5 years, and no reason exists to not make the full TAC amount, minus the CDQ reserves, available at the beginning of the fishing year. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the nonspecified reserve to increase the ITAC.

TABLE 2.—APPORTIONMENT OF THE NONSPECIFIED RESERVE TO ITAC CATEGORIES.

Species—area or subarea	Reserve amount (mt)
Pollock—Bering Sea	83,250
Pollock—Aleutian Islands	1,785
Atka mackerel—Western Aleutian Islands	2,025
Atka mackerel—Central Aleutian Islands	1,680
Atka mackerel—Eastern Aleutian Is. & Bering Sea subarea	1,118
Pacific ocean perch—Western Aleutian Islands	419
Pacific ocean perch—Central Aleutian Islands	259
Pacific Ocean perch—Eastern Aleutian Islands	230
Pacific cod—BSAI	15,750
Total	106,516

Seasonal Allowances of Pollock TACs

Under § 679.20(a)(5)(i)(A), the pollock ITAC for each subarea or district of the BSAI is divided into two seasonal allowances. The first allowance is made available for directed fishing from January 1 to April 15 (roe season), and the second allowance is made available from September 1 until November 1 (non-roe season). The Council recommended that the seasonal allowances for the Bering Sea pollock roe and non-roe seasons be specified at 45 percent and 55 percent of the ITAC amounts, respectively (Table 3). As in past years, 100 percent of the pollock TAC amounts specified for the Aleutian Islands subarea and the Bogoslof District will be apportioned to the roe season, with any TAC remaining following the end of roe season made available during non-roe season.

When specifying seasonal allowances of the pollock TAC, the Council and NMFS considered the factors specified in section 14.4.10 of the FMP. A discussion of these factors relative to the roe and non-roe seasonal allowances was presented in the final 1993 specifications for BSAI groundfish (58 FR 8703, February 17, 1993). At this time, the Council's findings are unchanged from those set forth for 1993, given that the relative seasonal allowances are the same.

Allocation of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 679.20(a)(6)(i) require that pollock ITAC amounts be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. Definitions of these components are found at § 679.2. The 1998 TAC specifications are consistent with these requirements (Table 3).

TABLE 3.—SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS [1]

Subarea and component	TAC	Nonspecified reserve	CDQ reserve	ITAC	Roe season [2]	Non-roe season [3]
Bering Sea	1,110,000	([4])	83,250	1,026,750	462,038	564,713
Inshore				359,363	161,713	197,649
Offshore				667,388	300,324	367,063
Aleutian Islands	23,800	([4])	1,785	22,015	22,015	([5])
Inshore				7,705	7,705	([5])
Offshore				14,310	14,310	([5])
Bogoslof District	1,000	75	75	850	850	([5])
Inshore				298	298	([5])
Offshore				553	553	([5])

[1] Based on an offshore component allocation of 0.65 (ITAC) and on an inshore component allocation of 0.35 (ITAC).
[2] January 1 through April 15—based on a 45/55 split (roe = 45 percent).
[3] September 1 until November 1—based on a 45/55 split (non-roe equals 55 percent).
[4] Released.
[5] Remainder.

Allocation of the Atka Mackerel TAC

A final rule implementing Amendment 34 to the FMP was published December 31, 1997 (62 FR 68228), and became effective January 30, 1998. This amendment requires that up to 2 percent of the Eastern Aleutian Islands district and the Bering Sea subarea Atka mackerel TAC, after subtraction for reserves, be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on the anticipated harvest capacity of the jig gear fleet. At its June 1997 meeting, the Council noted its intent to allocate 1 percent of Atka mackerel TAC in the Eastern Aleutian Islands district/Bering Sea subarea to the jig gear fleet. Based on an ITAC of 12,665 mt, the jig gear allocation is 127 mt.

Allocation of the Pacific Cod TAC

Based on information not available at the time of the publication of the proposed specifications and the use of a new, more risk adverse model for determining stock status, the final Pacific cod TAC recommended by the Council is 20 percent, or 60,000 mt lower than the amount published in the proposed specifications.

Under § 679.20(a)(7), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. The portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher processor vessels (§ 679.20(a)(7)(i)(B)). At its December 1997 meeting, the Council recommended seasonal allowances for the portion of the Pacific cod TAC allocated to the hook-and-line and pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and Pacific halibut bycatch rates are low. The Council's recommendations for seasonal apportionments are based on the following factors: (1) Seasonal distribution of Pacific cod relative to prohibited species distributions, (2) variations in prohibited species bycatch rates in the Pacific cod fisheries throughout the year, and (3) economic effects of seasonal allowances of Pacific cod on the hook-and-line and pot gear fisheries. Table 4 lists the 1998 allocations and seasonal apportionments of the Pacific cod TAC, minus the CDQ reserves. Consistent with § 679.20(a)(7)(iv)(C), any portion of the first seasonal allowance of the hook-and-line and pot gear allocation that is not harvested by the end of the first season will become available on September 1, the beginning of the third season.

TABLE 4.—1998 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD ITAC

Gear	Percent TAC	Share ITAC [1] (mt)	Seasonal apportionment		
			Date	Percent	Amount
Jig	2	3,885	Jan1-Dec 31	100	3,885
Hook-&-line/pot gear	51	99,068	Jan 1-Apr 30 [2]	71	70,735
			May 1-Aug 31	15	15,000
			Sep 1-Dec 31	13	13,332
Trawl gear	47	91,298	Jan 1-Dec 31	100	91,298
Catcher vessel (50%)		45,649			
Catcher/processor (50%)		45,649			
Total	100	194,250			

[1] ITAC for Pacific cod is equal to the TAC less the CDQ reserve.
[2] Any unused portion of the first seasonal Pacific cod allowance specified for the Pacific cod hook-and-line or pot gear fishery will be reapportioned to the third seasonal allowance.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4) require that sablefish TACs for the BSAI subareas be divided between trawl and hook-and-line/pot gear types. Gear allocations of TACs are established in the following proportions: Bering Sea subarea: Trawl gear—50 percent and hook-and-line/pot gear—50 percent; and Aleutian Islands subarea: Trawl gear—25 percent and hook-and-line/pot gear—75 percent. In addition, regulations under § 679.31(c) require NMFS to withhold 20 percent of the hook-and-line/pot gear sablefish allocation as sablefish CDQ reserve. Gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—1998 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea & gear	Percent of TAC	Share of TAC (mt)	Initial TAC (mt) [1]	CDQ Reserve
Bering Sea:				
Trawl [2]	50	650	553	49
Hook-&-line/pot gear [3]	50	650	N/A	130
Total	.....	1,300	553	179
Aleutian Islands:				
Trawl	25	345	293	26
Hook-&-line/pot gear	75	1,035	N/A	207
Total	.....	1,380	293	233

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the multi-species CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch (PSC) Limits for Halibut, Crab and Herring

Under Amendment 39, 7.5 percent of each PSC limit is reserved as a PSQ reserve for use by the multi-species CDQ program. NMFS may return any unused 1998 PSQ reserve to the non-CDQ fisheries if the Regional Administrator determines that it will not be used during the remainder of the 1998 fishing year.

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,775 mt mortality of Pacific halibut (§ 679.21(e)(1)(iii)) and for non-trawl fisheries, the limit is 900 mt mortality (§ 679.21(e)(2)). PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

For 1998, the PSC limit of red king crab in Zone 1 for trawl vessels is 100,000 crab based on the criteria set out at § 679.21(e)(1)(i). The number of mature female red king crab is estimated to be above the threshold of 8.4 million animals, and the effective spawning biomass is estimated to be greater than 14.5 million lb (6,577 mt) but less than 55 million lb (24,948 mt)(§ 679.21(e)(1)(i)(B)).

As specified under § 679.21(e)(3)(ii)(B)(*1*), vessels using nonpelagic trawl gear may engage in directed fishing for groundfish in 1998 in the red king crab savings subarea (RKCSS) because the Alaska Department of Fish and Game established a 1997 guideline harvest level for the commercial red king crab fishery in Bristol Bay. Regulations at § 679.21(e)(3)(ii)(B)(*2*) specify that the amount of the red king crab bycatch limit specified for the RKCSS, defined at § 79.21(e)(3)(ii)(B)(*1*) will not exceed an amount equivalent to 35 percent of the red king crab PSC limit for the rock sole/flathead sole/other flatfish fishery category. Based on the Council's recommendation, the 1998 red king crab bycatch allowance for the RKCSS is 24,281 crabs, or 35 percent of the red king crab bycatch allowance recommended by the Council for the rock sole/flathead sole/other flatfish fishery category. The bycatch allowance specified for the rock sole/flathead sole/other flatfish fishery category is reduced correspondingly to 45,094 crabs. When the total number of red king crab taken by trawl vessels fishing in the RKCSS reaches the specified bycatch allowance, further directed fishing for groundfish in the RKCSS by vessels using nonpelagic trawl gear will be prohibited.

The 1998 *C. bairdi* PSC limit for trawl gear is 750,000 animals in Zone 1 and 2.1 million animals in Zone 2. These numbers are based on the criteria set out at § 679.21(e)(1)(ii). In Zone 1, *C. bairdi* abundance is estimated to be greater than 150 million and less than 270 million animals (§ 679.21(e)(1)(ii)(A)(*2*)). In Zone 2, *C. bairdi* abundance is estimated to be greater than 175 million and less than 290 million animals (§ 679.21(e)(1)(ii)(B)(*2*)).

A final rule implementing Amendment 40 was published December 22, 1997 (62 FR 66829) and became effective January 21, 1998. This amendment establishes a PSC limit for *C. opilio* based on total abundance as indicated by the NMFS standard trawl survey. The *C. opilio* PSC limit is set at 0.1133 percent of the 1997 Bering Sea abundance index, with a minimum PSC of 4.5 million crabs and a maximum PSC of 13 million crabs. Based on the 1997 survey estimate of 4.1 billion crabs, the 1998 *C. opilio* PSC limit for 1998 is 4,654,000 crabs.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass (§ 679.21(e)(1)(v)). NMFS's best estimate of 1998 herring biomass is 171,450 mt. This amount was derived using 1997 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 1998 is 1,714 mt.

Regulations at § 679.21(e)(3) authorize the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the

nontrawl halibut PSC limit among five fishery categories. The fishery bycatch allowances for the trawl and nontrawl fisheries are listed in Table 6. Because actual *C. opilio* bycatch rates for trawl fisheries within the *C. opilio* bycatch limitation zone are unknown, representatives from the trawl industry and the Council's AP requested that the *C. opilio* PSC limit not be apportioned among fisheries for 1998. However, § 679.21(e)(3)(ii) requires that the PSC limit be apportioned among trawl categories. To accommodate the request of the trawl industry for 1998, NMFS apportions each of the five fisheries a bycatch allowance of *C. opilio* that, when added with the amount of *C. opilio* taken in the other four fisheries, equals 4,304,950 crabs. The remaining 349,050 crabs are allocated to the multispecies PSQ program. New recordkeeping and reporting requirements proposed for 1998 and beyond would provide information necessary to monitor and allocate the *C. opilio* PSC limit among fisheries after 1998.

Regulations at § 679.21(e)(4)(ii) authorize the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, the Council recommended that pot gear, jig gear, and sablefish hook-and-line gear fishery categories be exempt from halibut bycatch restrictions because these fisheries use selective gear types that experience low halibut bycatch mortality. In 1997, total groundfish catch for the pot gear fishery in the BSAI was approximately 22,598 mt, with an associated halibut bycatch mortality of about 14 mt. The 1997 groundfish jig gear fishery harvested about 201 mt of groundfish. Vessels in the jig gear fleet are less than 60 ft (18.3 m) length overall and are exempt from observer coverage requirements. As a result, no observer data are available on halibut bycatch in the jig gear fishery. Nonetheless, it is probable that the selective nature of this gear type and the relatively small amount of groundfish harvested with jig gear result in a negligible amount of halibut bycatch mortality.

As in past years, the Council recommended that the sablefish Individual Fishing Quota (IFQ) fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ, resulting in lowered amounts of halibut discard in the fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for the 1996 or 1997 fishery has not been calculated, but NMFS believes that it would not be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of prohibited species bycatch allowances. At its December 1997 meeting, the Council recommended that halibut bycatch allowances be seasonally apportioned as shown in Table 6. The recommended seasonal apportionments reflect recommendations made to the Council by its AP.

The Council recommended seasonal apportionments of the halibut bycatch allowances specified for the trawl flatfish fisheries to provide additional fishing opportunities in the BSAI early in the year and to reduce the incentive for trawl vessel operators to move from the BSAI to the Gulf of Alaska after the rock sole roe fishery is closed, typically by early March. Halibut bycatch allowances to the rockfish fisheries were apportioned in a manner that prevents a directed rockfish fishery from opening until July 1. This action was taken for three reasons: (1) To minimize halibut bycatch during the first half of the year; (2) to reduce bycatch of shortraker and rougheye rockfish, for which there are overfishing concerns; and (3) to help distribute effort between the Gulf of Alaska and the BSAI rockfish fisheries through concurrent July 1 openings in both areas.

The recommended seasonal apportionment of the halibut bycatch allowance for the pollock/Atka mackerel/other species category is based on the seasonal allowances of the Bering Sea pollock TAC recommended for the roe and non-roe seasons. Most of the pollock harvested during the roe season will be taken with pelagic trawl gear, which has low halibut bycatch rates. Any unused halibut bycatch mortality apportioned to the roe season will be available after the roe season.

The Council recommended three seasonal apportionments of the halibut bycatch allowance specified for the Pacific cod hook-and-line fishery. This recommendation reflects the seasonal apportionment of Pacific cod TAC shown in Table 4. It also serves to limit a hook-and-line fishery for Pacific cod during summer months when halibut bycatch rates are high. The third seasonal allowance of halibut PSC will become available September 15, even though the third seasonal allowance of Pacific cod becomes available September 1 (Table 4). As in past years, the second seasonal allowance of halibut PSC will probably be used prior to September 1. If this is the case, directed fishing for the third seasonal allowance of Pacific cod by vessels using hook-and-line gear will be prohibited until September 15. The intent of the Council's recommendation was to limit fishing for Pacific cod by vessels using hook-and-line gear during the first half of September when halibut bycatch rates are relatively high. As authorized under § 679.21(e)(5)(iv), the Council further recommended that any unused portion of the first seasonal bycatch allowance specified for the Pacific cod hook-and-line fishery be reapportioned to the third seasonal allowance to limit hook-and-line Pacific cod fishing prior to September 15.

TABLE 6.—1998 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

Trawl Fisheries	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1	C. opilio (animals) COBLZ [1]	C. bairdi (animals)	
					Zone 1	Zone 2
Yellowfin sole	930	248	9,250	.....	255,592	990,675
Jan. 20–Mar. 31	264	.....	.....	.....	.....	.....
Apr. 1–May 10	194	.....	.....	.....	.....	.....
May 11–Aug. 14	93	.....	.....	.....	.....	.....
Aug. 15 –Dec. 31	379	.....	.....	.....	.....	.....
Rocksole/oth.flat/flat sole [2]	735	20	45,094	.....	273,848	330,225
Jan. 20–Mar. 29	449	.....	.....	.....	.....	.....

TABLE 6.—1998 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES—Continued

Trawl Fisheries	Prohibited Species and Zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1	C. opilio (animals) COBLZ [1]	C. bairdi (animals)	
					Zone 1	Zone 2
Mar. 30–June 30	120	.....	.....	.....	.....	.....
July 1–Dec. 31	167	.....	.....	.....	.....	.....
Turbot/sablefish/arrowtooth [3]	.....	.....	.....	.....	.....	.....
Rockfish	69	7	.....	.....	.....	6,475
Jan. 1–June 30	0	0	.....	.....	.....	.....
July 1–Dec. 31	69	7	.....	.....	.....	.....
Pacific cod	1,434	20	6,938	.....	123,232	180,375
Midwater pollock [4]	.....	1,146	.....	.....	.....	.....
Pollock/Atka/other [5]	324	143	6,938	.....	41,077	434,750
Jan. 20–Apr. 15	278	.....	.....	.....	.....	.....
Apr. 16–Dec 31	46	.....	.....	.....	.....	.....
RKC savings subarea [6]	.....	.....	24,281	.....	.....	.....
Total Trawl PSC	3,492	1,585	92,500	4,304,950	693,750	1,942,500
Nontrawl Fisheries						
Pacific cod	777	.....	.....	.....	.....	.....
Jan. 1–Apr. 30	458	.....	.....	.....	.....	.....
May 1–Sep. 14	37	.....	.....	.....	.....	.....
Sep. 14–Dec. 31	282	.....	.....	.....	.....	.....
Other non-trawl	56	.....	.....	.....	.....	.....
Groundfish pot & jig	([8])	.....	.....	.....	.....	.....
Sablefish hook & line	([8])					
Total Nontrawl	833	.....	.....	.....	.....	.....
PSQ Reserve [7]	351	129	7,500	349,050	56,250	157,500

[1] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21 (e)(7)(iv)(B).
[2] Rock sole, flathead sole, and other flatfish fishery category.
[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[4] Halibut and crab bycatch in the midwater pollock fishery is deducted from the allowances for the pollock/Atka mackerel/other species category. Once bycatch allowances are reached, directed fishing for Pollock with non-pelagic trawl gear is prohibited.
[5] Pollock other than midwater pollock, Atka mackerel, and ''other species'' fishery category.
[6] The red king crab savings subarea is defined at § 679.21(e)(3)(ii)(B) as the portion of the red king crab savings area between 56°00′ and 56°10′ N. lat. The amount of the red king crab bycatch limit specified for this area under § 679.21(e)(3)(ii)(B)(*2*) is not designated by fishery and, when reached, will result in closure of the subarea to directed fishing for groundfish with nonpelagic gear (§ 679.21(e)(7)(ii)(B)).
[7] 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear, or season.
[8] Exempt.

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors a fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE report.

The Council recommended that the assumed halibut mortality rates developed by staff of the International Pacific Halibut Commission for the 1997 BSAI groundfish fisheries be adopted for purposes of monitoring halibut bycatch allowances established for 1998. These rates generally are based on an average of mortality rates determined from NMFS observer data collected during the past 2 years. Assumed Pacific halibut mortality rates for BSAI fisheries for 1998 are listed in Table 7.

TABLE 7.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1998

Fishery	Assumed mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	22
Pacific cod	12
Greenland turbot	12
Sablefish	18
Other Species	12
Trawl gear fisheries:	
Midwater pollock	81
Nonpelagic pollock	76

TABLE 7.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1998—Continued

Fishery	Assumed mortality (percent)
Yellowfin sole	77
Rock sole	74
Flathead sole	64
Other flatfish	68
Rockfish	70
Pacific cod	71
Atka mackerel	83
Greenland turbot	73
Sablefish	23
Other species	71
Pot gear fisheries:	
Pacific cod	9
Other species	9

Response to Comments

Comment 1. The draft EA prepared for the 1998 specifications is an inadequate basis for a Finding of No Significant Impact. The environmental impact statement (EIS) prepared for the BSAI groundfish fishery was drafted 16 years ago. Since that time, the conduct of the fisheries has changed; new information regarding the affected groundfish species exists; and substantial and unanalyzed questions exist regarding the impact of the groundfish fisheries on the BSAI ecosystem. NMFS should prepare a supplement to the EIS which fully evaluates the potential impacts of the groundfish TACs on the BSAI ecosystem.

Response. NMFS acknowledges that the final EIS prepared for the BSAI groundfish fishery is 16 years old. A supplement to the EIS is being prepared, and a public review draft is scheduled for release in April 1998. However, NMFS believes the final EA prepared for the 1998 BSAI groundfish specifications, as well as the documents incorporated by reference into the EA, adequately support a Finding of No Significant Impact.

Comment 2. The draft EA does not adequately assess the impact of proposed 1998 fishing levels on endangered Steller sea lions or on the unlisted species also suffering population declines. The draft EA also neglects to address dramatic increases in catches of pollock and Atka mackerel in areas designated as critical foraging habitat for Steller sea lions, the increasing effort directed on spawning pollock in the winter months, and the geographic and temporal concentration of fishing in the areas of the BSAI where the greatest declines of sea lion, other marine mammals, and seabirds have occurred. The EA fails to consider a viable range of alternatives, such as reducing TACs for ecosystem based reasons and time/area restrictions for fisheries

Response. The issues of concern identified in Comment 2 are addressed in the final EA, as well as in the documents incorporated by reference into the final EA. Efforts to identify relationships between the Alaska groundfish fisheries and Steller sea lions are ongoing, but any potential linkages remain unclear. Overlaps between Steller sea lion prey and harvested species have been identified, particularly with reference to pollock and Atka mackerel stocks. However, participants in the Alaskan groundfish fisheries are not expected to alter their fishing practices significantly either spatially or temporally as a result of the 1998 groundfish specifications, nor to operate in any manner that would predictably pose impacts to Steller sea lions.

Comment 3. NMFS needs to more fully incorporate ecosystem level concerns into the TAC setting process. Harvest levels are based on single-species models that fail to adequately consider interspecies linkages and the impact of fish removal on other ecosystem components. The EA does not discuss or analyze the changing community structure of the groundfish complex resulting from disproportionate fishing pressure on a small set of commercially targeted species.

Response. NMFS acknowledges the importance of ecosystem based management for groundfish stocks. The Council's Ecosystem Committee, established in 1996, met during the December Council meeting to review the status of groundfish stocks and make recommendations to the Council. Based on ecosystem concerns, the Council has taken a precautionary approach to setting groundfish TACs. The final EA, as well as content incorporated by reference into the final EA (especially the Ecosystem Committee's chapter of the 1998 SAFE report), extensively examine ecosystem level impacts of the groundfish fisheries.

Comment 4. The recommended BSAI pollock ABC and TAC are too high and should be lowered by at least 30 percent. The SAFE document upon which the recommendation was based failed to adequately consider the potential impact of the Russian fishery on Bering Sea pollock stocks, uncertainties associated with the current pollock assessment and its dependance on a continued strong 1996 year class, and the spatial and temporal compression of the pollock harvest.

Response. NMFS believes that the recommended pollock ABC is both conservative and scientifically sound. The spawning stock remains at levels above or near the long-term expected target; the 1996 year class appears to be above average; the pollock population is estimated to remain above the level that would produce maximum sustainable yield; and the recommended ABC is based upon both a conservative projection of future year-class strength and a conservative choice of fishing mortality rate.

Comment 5. Atka mackerel harvest guidelines fail to account for potential localized depletions of Atka mackerel. The fishery is overly concentrated both temporally and spatially, and measures need to be taken to spread effort out over larger areas. The Atka mackerel assessment failed to address concentration of harvest near Steller sea lion haulouts and rookeries and its impact upon the endangered Steller sea lion.

Response. The EA and the documents incorporated into it by reference examined the potential impacts of localized depletion of the Atka mackerel resource. Because Atka mackerel tend to concentrate in large, easily targeted schools, it appears likely that such depletions do occur. It also appears that Atka mackerel are an important component of the Steller sea lion diet. However, the evidence indicates that these depletions are of short duration and that schools rapidly reform. Given this evidence, NMFS believes that the 1998 Atka mackerel fishery, as currently prosecuted, will not jeopardize the continued existence of Steller sea lions. NMFS will continue to study the interactions between the Atka mackerel fishery and Steller sea lions and, if necessary, develop management measures to minimize any impacts.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action adopts final 1998 harvest specifications for the BSAI and revises associated management measures. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry.

In many of these cases, the final specifications will allow the fisheries to continue, thus relieving a restriction. Provisions of a rule relieving a restriction under 5 U.S.C. 553(d)(1) are not subject to a delay in the effective date. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources and to give the fishing industry the earliest possible opportunity to plan its fishing operations. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA) finds there is good cause to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions and to the apportionment discussed above.

The apportionment of a portion of the unspecified reserve is necessary to provide increased ITAC to minimize the effect of a reduction in Pacific cod TAC on hook-and-line vessels, to provide for more efficient operation of intensive fast-paced fisheries for Atka mackerel and Pacific ocean perch, and to allow for the orderly conduct of pollock fisheries. Therefore, a delay for prior notice and public procedure is contrary to the public interest. Accordingly, the AA finds there is good cause to waive the requirement for prior notice under 5 U.S.C. 553(b)(3). In accordance with 50 CFR 679(b)(3), comments on the apportionment of reserves are invited by March 31, 1998.

Pursuant to section 7 of the Endangered Species Act, NMFS and the Fish and Wildlife Service have determined that the groundfish fishery operating under the 1998 BSAI TAC specifications is not likely to jeopardize the continued existence or recovery of species listed as endangered or threatened and is not likely to destroy or adversely modify critical habitat.

NMFS prepared an EA on the 1998 TAC specifications. The total harvest levels examined in the EA do not exceed the OY. The models used to derive catch levels are both conservative and based on the best scientific information available. The AA concluded that no significant impact on the human environment will result from implementation of the 1998 specifications. A copy of the EA is available (see **ADDRESSES**).

At the proposed rule stage, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for the Advocacy of the Small Business Administration that the proposed specifications would not have a significant economic impact on a substantial number of small entities. However, comments received by the Council at its December 1997 meeting, as well as changes in TAC amounts between the proposed and final specifications, led NMFS to conclude that the final specifications may have a significant impact on small entities, and a FRFA has been prepared. The analysis examines the economic effects of changes between the 1997 and 1998 specifications and concludes that, in most cases, TAC amounts are not significantly different between 1997 and 1998 and that the overall impact to the groundfish fishery will be minimal. However, the 22-percent reduction in Pacific cod TAC may cause significant economic impacts to the 100 vessel hook-and-line fleet (a mix of small and large entities) that participates in the Pacific cod fishery.

In taking this action, the Council attempted to minimize this impact by setting Pacific cod TAC equal to ABC, increasing the percentage of Pacific cod allocated to the third seasonal allowance, releasing the nonspecific reserves, and increasing Greenland turbot TAC. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: March 10, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297–8054–02; I.D. 031098C]

Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing specified groundfish fisheries in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the directed fishing allowances specified for the 1998 total allowable catch (TAC) amounts for the GOA.

DATES: Effective March 11, 1998, until 2400 hrs, A.l.t. December 31, 1998.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone of the GOA is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(d)(1)(i), if the Administrator, Alaska Region, NMFS (Regional Administrator), determines that the amount of a target species or ''other species'' category apportioned to a fishery or, with respect to pollock and Pacific cod, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA Regulatory Area or district (§ 697.20(d)(1)(iii)).

The Regional Administrator has determined that the following TAC amounts are necessary as incidental catch to support other anticipated groundfish fisheries for the 1998 fishing year:

Species	Area	TAC (mt)
Thornyhead rockfish	Entire GOA	2,000
Atka mackerel	Entire GOA	600
Sablefish	Trawl apportionment, entire GOA	1,930
''Other rockfish''	Entire GOA	2,170

Species	Area	TAC (mt)
Shortraker/rougheye rockfish	Entire GOA	1,590
Pollock	Inshore component, Statistical Area 610	7,450
	Inshore component, Statistical Area 620	12,510
	Inshore component, Statistical Area 630	9,830
Pollock	Eastern Regulatory Area	5,580
Pollock	Offshore component, entire GOA	0
Pacific cod	Offshore component, Statistical Area 610	1,745
	Offshore component, Statistical Areas 620, 630	3,239
	Offshore component, Statistical Areas 640, 650	94
Pacific cod	Inshore component, Western Regulatory Area	15,703
Pacific cod	Inshore component, Central Regulatory Area	29,153
Deep-water flatfish	Western Regulatory Area	340
Northern rockfish	Eastern Regulatory Area	10

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes these TAC amounts as directed fishing allowances.

Further, the Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these species in the specified areas.

Under authority of the interim 1998 specifications (62 FR 65622, December 15, 1998), pollock fishing opened on January 1, 1998, for amounts specified in that publication. NMFS has since closed Statistical Area 610 to directed fishing for pollock effective 1200 hrs, A.l.t., January 26, 1998 (63 FR 4600, January 30, 1998); Statistical Area 620 to directed fishing for pollock effective 1200 hrs, A.l.t., February 7, 1998 (63 FR 6881, February 11, 1998), Statistical Area 630 to directed fishing for pollock effective 1200 hrs, A.l.t., February 2, 1998 (63 FR 6111, February 6, 1998), and Statistical Areas 640 and 650 to directed fishing for pollock effective 1200 hrs, A.l.t., March 9, 1998 (to be published March 13, 1998). The closures for Statistical Areas 610, 620, and 630 will remain in effect until 1200 hrs, A.l.t., June 1, 1998. The closure for Statistical Areas 640 and 650 will remain in effect until 2400 hrs, A.l.t., December 31, 1998.

Under authority of the interim 1998 specifications (62 FR 65622, December 15, 1998), Pacific cod fishing opened on January 1, 1998, for amounts specified in that notice. NMFS has since closed Statistical Area 610 to directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area effective 1200 hrs, A.l.t., March 3, 1998 (63 FR 11160, March 6, 1998) and Statistical Areas 620 and 630 to directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area effective 1200 hrs, A.l.t., March 10, 1998 (published on March 13, 1998).

The closures in this document supersede the closures announced in, or under authority of, the 1998 interim specifications (62 FR 62622, December 15, 1997). While the closures in this document are in effect, the maximum retainable bycatch amounts at § 679.20 (e) and (f) apply at any time during a fishing trip. The closures to directed fishing in this document are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. The definitions of GOA deep-water flatfish and ''other rockfish'' species categories are provided in the **Federal Register** publication of the Final 1998 Harvest Specifications.

NMFS may implement other closures during the 1998 fishing year, as necessary for effective conservation and management.

Classification

This action is required by § 679.20 and is exempt from review under E.O. 12866.

This action responds to the TAC limitations and other restrictions on the fisheries established in the Final 1998 Harvest Specifications for Groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1998 TACs for several groundfish species in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet is currently harvesting groundfish, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: March 11, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–6712 Filed 3–11–98; 4:20 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 031198A]

Fisheries of the Exclusive Economic Zone Off Alaska; Closures of Specified Groundfish Fisheries in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing specified groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the prohibited species bycatch allowances and directed fishing allowances specified for the 1998 BSAI groundfish fisheries.

DATES: Effective March 11, 1998, through 2400 hrs, A.l.t. December 31, 1998.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by

regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(d)(1)(i), if the Administrator, Alaska Region, NMFS (Regional Administrator) determines that the amount of a target species or ''other species'' category apportioned to a fishery or, with respect to pollock, to an inshore or offshore component allocation, will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the remaining amounts of pollock in the Bogoslof District; Pacific ocean perch, ''other rockfish'', and ''other red rockfish'' in the Bering Sea subarea (BS); and sharpchin/northern rockfish, shortraker/rougheye rockfish, and ''other rockfish'' in the Aleutian Islands subarea (AI) will be necessary as incidental catch to support other anticipated groundfish fisheries for the 1998 fishing year. Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes these remaining amounts as directed fishing allowances.

Further, the Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii) NMFS is prohibiting directed fishing for these species in the specified areas and these closures will remain in effect through 2400 hrs, A.l.t., December 31, 1998.

In addition, the BSAI halibut bycatch allowance specified for the trawl rockfish fishery and the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories, defined at § 679.21(e)(3)(iv)(C) and (D), is 0 mt. In accordance with § 679.21(e)(7)(iv), therefore, NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in the BSAI and for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 1998.

Under authority of the Interim 1998 Specifications (62 FR 65626, December 15, 1998), NMFS closed directed fishing for Atka mackerel in the Eastern Aleutian District and the BS of the BSAI effective 1200 hrs, A.l.t., February 2, 1998 through 2400 hrs, A.l.t., December 31, 1998 (63 FR 6110, February 6, 1998), pollock by vessels catching pollock for processing by the offshore component in the BS of the BSAI effective 1200 hrs, A.l.t., February 20, 1998, through 1200 hrs, A.l.t., April 15, 1998 (63 FR 9745, February 26, 1998), pollock by vessels catching pollock for processing by the inshore component in the BS of the BSAI effective 1200 hrs, A.l.t., February 26, 1998, through 1200 hrs, A.l.t., April 15, 1998 (63 FR 10569, March 4, 1998), pollock by vessels catching pollock for processing by the offshore component in the AI of the BSAI effective 1200 hrs, A.l.t., February 26, 1998, through 2400 hrs, A.l.t., December 31, 1998 (63 FR 9974, February 27, 1998), and rock sole, flathead sole, and ''other flatfish'' by vessels using trawl gear in the BSAI effective 1200 hrs, A.l.t., March 5, 1998, through 1200 hrs, A.l.t., March 30, 1998 (63 FR 11629, March 10, 1998). The amount of TAC remaining under the Final Specification of groundfish following closure under the interim specifications will be taken as incidental catch in directed fishing for other species.

These closures supersede the closures announced in the 1998 interim specifications (62 FR 65626, December 15, 1997). While these closures are in effect, the maximum retainable bycatch amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Refer to § 679.2 for definitions of areas. In the BSAI, ''Other rockfish'' includes Sebastes and Sebastolobus species except for Pacific ocean perch and the ''other red rockfish'' species. ''Other red rockfish'' includes shortraker, rougheye, sharpchin, and northern rockfish.

Classification

This action is required by § 679.20 and § 679.21 and is exempt from review under E.O. 12866.

This action responds to the TAC limitations and other restrictions on the fisheries established in the Final 1998 Harvest Specifications for Groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 1998 TAC of several groundfish species in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The fleet is currently harvesting groundfish, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days.

Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: March 11, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–6770 Filed 3–11–98; 4:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 50
Monday, March 16, 1998

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, 97, 98, and 130

[Docket No. 94–106–13]

RIN O579–AA71

Importation of Animals and Animal Products; Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service will host five additional public meetings to discuss its plans for implementing a final rule and policy statement on the importation of animals and animal products that were published in the **Federal Register** on October 28, 1997.

DATES: The public meetings will be held in Riverdale, MD, on April 1, 1998; in Atlanta, GA, on April 8, 1998; in Kansas City, MO, on April 15, 1998; in Denver, CO, on April 22, 1998; and in Sacramento, CA, on April 29, 1998. Each public meeting will begin at 9:00 a.m. and is scheduled to end at 5:00 p.m.

ADDRESSES: The public meetings will be held at the following locations:

1. *Riverdale, MD:* The USDA Center at Riverside, Conference Rooms C and D, 4700 River Road, Riverdale, MD. Picture identification is required. Non-Federal personnel will be required to pass through a metal detector. Parking is available next to the building for a $2.00 fee (have quarters or $1 bills). The nearest Metro station is the College Park station on the Green Line, and is within walking distance.

2. *Atlanta, GA:* Peachtree Summit Federal Center, Conference Rooms A and B, 401 W. Peachtree Street, N.E., Atlanta, GA. Picture identification is required. Non-Federal personnel will be required to pass through a metal detector. A pay parking garage is adjacent to the building.

3. *Kansas City, MO:* Federal Building, Rooms 244 and 245, 8930 Ward Parkway, Kansas City, MO. Enter on the south side of the building. Picture identification is required. Pay parking is available on the southeast side of the building.

4. *Denver, CO:* Denver Federal Center, Building 25, Lecture Halls A and B, 6th and Kipling, Denver, CO. Enter building through door E2. Picture identification is required. Pay parking is available on the east side of the building.

5. *Sacramento, CA:* California Department of Food and Agriculture Building, Auditorium, 1220 N Street, Sacramento, CA. Picture identification is required. Pay parking is available on O Street, between 9th and 15th.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) will hold five additional public meetings to discuss its implementation of the final rule and policy statement on the importation of animals and animal products that it published in the **Federal Register** on October 28, 1997. The final rule (62 FR 56000–56026, Docket No. 94–106–9) established procedures and a regulatory framework for recognizing regions, rather than only countries, for the purpose of importing animals and animal products into the United States. The final rule also established procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status. The final rule became effective on November 28, 1997. The policy statement (62 FR 56027–56033, Docket No. 94–106–8) describes the manner in which APHIS will apply the concepts of regionalization and risk analysis to regulating the importation of animals and animal products into the United States. The policy statement and regulations are in accordance with international trade agreements entered into by the United States.

On November 21, 1997, APHIS held a public meeting in Riverdale, MD, to discuss its plans for implementing the final rule and policy statement (see 62 FR 60161). The additional public meetings will be held in Riverdale, MD, on April 1, 1998; in Atlanta, GA, on April 8, 1998; in Kansas City, MO, on April 15, 1998; in Denver, CO, on April 22, 1998; and in Sacramento, CA, on April 29, 1998. The meetings will include a discussion of the following: (1) The contents of the final rule and policy statement; (2) how APHIS has applied the principles of regionalization to individual requests to date; (3) the Agency's plans for future implementation of regionalization; and (4) a demonstration of APHIS's Geographic Information Systems. The meetings are scheduled to end at 5:00 p.m. but may conclude prior to that time if APHIS has completed its presentations and has addressed all questions from attendees.

Done in Washington, DC, this 10th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6586 Filed 3–13–98; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Parts 210 and 229

[Regulations J and CC; Docket No. R–1009]

Collection of Checks and Other Items by Federal Reserve Banks and Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board requests comment on the benefits and drawbacks associated with its same-day settlement rule, which became effective in January 1994, and the implications of potential modifications of that rule to reduce or eliminate legal disparities between the Federal Reserve Banks and private-sector banks in the presentment and settlement of checks. The same-day settlement rule requires paying banks to provide same-day settlement for checks presented by private-sector banks by

8:00 a.m. local time at specified locations. The Board is evaluating the market experience under the same-day settlement rule and is considering further modifications to that rule pursuant to its responsibility under the Expedited Funds Availability Act to regulate the receipt, payment, collection, or clearing of checks in order to carry out the provisions of that Act and to improve the check collection system. The Board is also considering whether modifications to its Regulation J, subpart A, which governs check collection by the Federal Reserve Banks, to reduce or eliminate legal disparities would enhance the efficiency of the interbank check collection market, the check collection process, and the payments system more broadly.

DATES: Comments must be submitted on or before July 17, 1998.

ADDRESSES: Comments should refer to Docket R–1009 and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. on weekdays, and to the security control room at all other times. The mail room and the security control rooms are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.12 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Louise Roseman, Associate Director (202/452–2789) or Jack Walton, Manager, Check Section (202/452–2660), Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel (202/452–3625) or Stephanie Martin, Senior Counsel (202/452–3198), Legal Division. For the hearing impaired *only,* contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Overview

The Board is evaluating the extent to which its 1994 same-day settlement rule resulted in overall improvements to the check collection system and the payments system more broadly. The Board is undertaking this evaluation in the context of deciding whether other reductions in the legal disparities between Federal Reserve Banks and private-sector collecting banks in the check collection process might result in improvements to the check collection system or the payments system. These analyses are complex. As an initial matter, the Board expects that a reduction in the legal disparities between the Federal Reserve Banks and private-sector collecting banks generally should promote competition in the provision of check collection services. This competition should, in turn, promote efficiencies and spur innovation. Any such efficiencies, however, should be evaluated in the context of the potential effects that such changes may have on other participants in the check payment process. Thus, improved competition among collecting banks and the efficiency gains derived from this competition should be weighed against any increased costs to paying banks and their check-writing customers that could result from the changes. Further, the Board would evaluate whether increases in costs to paying banks and their check-writing customers represent unwarranted increases in the overall cost of the check payment system or a mere shift in costs from other check system participants to the drawer of the check, who generally is responsible for selecting the check as a medium of payment. Shifts in payment system costs in the direction of those responsible for selecting payment media generally may result in more efficient choices of payment media and therefore may be viewed as desirable in and of themselves.

The Board notes that removing legal disparities between Federal Reserve Banks and private-sector collecting banks associated with the presentment and settlement of checks would not result in a completely level ''playing field'' in the interbank check collection market. For example, the Reserve Banks enjoy an unsurpassable credit rating that makes them an attractive service provider in times of financial stress. They also labor, however, under constraints not imposed on their private-sector competitors, such as central bank concerns regarding the adequacy of payment services in the markets and cost recovery by major service category, as well as a level of public scrutiny of price and service level determinations not shared by the private sector. The Board will assess the desirability of further reductions in the legal disparities in the presentment and settlement of checks in the context of their effect on the overall competitive environment between the Federal Reserve Banks and private-sector collecting banks.

While the scope of this notice is limited to legal disparities between the Federal Reserve Banks and private-sector collecting banks in the presentment and settlement of checks, the Board expects to evaluate other possible regulatory changes that may have the potential to improve the efficiency and integrity of the nation's payments system and may request comment on them in the future. Further analysis is required before the Board may consider certain potential regulatory changes, however, such as changes to encourage electronic check presentment and truncation. As noted in the January 1998 report to the Board on *The Federal Reserve in the Payments Mechanism* (the Rivlin Committee Report), the Federal Reserve believes that, prior to considering regulatory changes that would foster the growth of electronic check presentment and truncation, it should first determine, together with other check collection system participants and users, their cost and feasibility. If this analysis concludes that electronic check presentment and truncation have substantial potential to increase the efficiency of the check system and that the requisite investment can be justified, the Board could work with other payments system participants to identify regulatory changes that would foster their growth.

II. Background

The Federal Reserve Banks generally have the right to receive same-day settlement in the form of a debit to a bank's account on the books of a Reserve Bank for checks they present to paying banks prior to 2:00 p.m. local time.[1] [2] [3] Effective January 1994, the

[1] The term ''bank'' as used in this notice and in Regulation CC (12 CFR 229.2(e)) includes a commercial bank, savings bank, savings and loan association, credit union, and a U.S. agency or branch of a foreign bank. A ''collecting bank'' is a bank handling a check for collection, except the paying bank. A ''correspondent bank'' is an intermediary collecting bank that provides check collection services to other banks. A ''presenting bank'' is the collecting bank that presents a check to the paying bank. A ''paying bank'' generally is the bank by, at, or through which a check is payable.

[2] The Board adopted a policy in 1982 under which the Reserve Banks generally must present checks to paying banks located in Federal Reserve city availability zones by noon local time. (48 FR 79, January 3, 1983) This ''noon presentment'' policy, which provided for later presentment to city banks than was previously the case, was part of a broader program to expedite the collection of checks by establishing significantly later deposit deadlines and associated later presentment deadlines for checks drawn on city banks.

[3] The Federal Reserve Banks can obtain same-day settlement for checks presented to a paying bank before its cut-off hour of generally 2:00 p.m. or later. (12 CFR 210.9(b)(1); Uniform Commercial Code Article 4–108)

Board amended its Regulation CC to include the so-called ''same-day settlement rule.'' That rule requires paying banks to settle for checks presented by private-sector collecting banks on the day of presentment by credit to an account on a Reserve Bank's books (typically, Fedwire funds transfers) with no presentment fees if the checks are presented at the designated location of the paying bank by 8:00 a.m. local time.[4] [5] (12 CFR 229.36(f)) Previously, some paying banks refused presentments from banks other than the Federal Reserve Banks, and other paying banks imposed presentment fees on private-sector presenting banks for the right to obtain same-day settlement or imposed other restrictions to presentment.

The Board's regulatory authority to adopt the same-day settlement rule is derived from the Expedited Funds Availability Act (EFAA). That Act gives the Board the responsibility to regulate ''any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks'' in order to carry out the provisions of the Act. (12 U.S.C. 4008(c)(1)) Prior to the enactment of the EFAA, the Board generally had authority only to regulate payments that were processed by Federal Reserve Banks.

The same-day settlement rule adopted by the Board was the culmination of two requests for public comment. In April 1988, the Board first requested comment on the concept of providing private-sector collecting banks presentment rights that were equivalent to those of the Reserve Banks, i.e., to obtain same-day settlement, without presentment fees, for all checks presented by 2:00 p.m. (53 FR 11911, April 11, 1988) The Board received 1,148 comments, 95 percent of which were opposed to the concept as proposed. Approximately 70 percent of commenters were businesses that believed that the 2:00 p.m. presentment deadline would severely disrupt, if not put an end to, corporate cash management and controlled disbursement services.[6] Generally, bank commenters echoed the concerns raised by businesses. In addition, banks expressed concern about the increased cost, operational complexity, and disruption that would be caused by the receipt of checks later in the day. Reserve Banks were concerned primarily that the rule would significantly erode their check collection volume and therefore would lessen their ability to exert leadership in improving the efficiency of the check system.

In light of the concerns raised by banks and their business customers in the response to its initial request for comment, the Board proposed in February 1991 a same-day settlement rule that reduced, but did not eliminate, the disparity in presentment rights between Reserve Banks and private-sector collecting banks. The revised proposal provided for an 8:00 a.m. local time presentment deadline for private-sector collecting banks. (56 FR 4743, February 8, 1991) While this proposal was supported by many correspondent banks and some other commenters, controlled disbursement banks and their business customers voiced continuing concerns.[7] In October 1992, the Board adopted this rule in slightly revised form, effective January 1994. (57 FR 46956, October 14, 1992)

The same-day settlement rule that was adopted by the Board was designed to provide for more balanced bargaining power between presenting banks and paying banks by reducing the barriers to presentment that some paying banks previously imposed. The Board believed that the more balanced bargaining positions would improve payments system efficiency by (1) enhancing competition between private-sector banks and Reserve Banks in the provision of check collection services; (2) encouraging agreements between presenting banks and paying banks that would reduce the cost of the check system; (3) reducing inefficient intermediation in the check collection process; and (4) encouraging the migration of checks to more efficient payment mechanisms. At the same time, the rule was designed to address the concerns raised by large check drawers (i.e., businesses) and their banks that controlled disbursement arrangements not be unduly disrupted.

The Board requests comment on the effect the same-day settlement rule has had on the interbank check collection market, the check collection process, and the payments system more broadly. For example, this rule has resulted in a significant shift in check collection volume from the Federal Reserve Banks to private-sector correspondent banks or to direct presentments. Reserve Bank check volume has declined by 15 percent from 1993 to 1997, primarily due to changes in check collection patterns resulting from this rule. The Board assumes that collecting banks altered their check collection patterns in response to the same-day settlement rule in a manner that improved the efficiency of their collection process (by improving availability of funds and/or reducing the cost of collection). This improved efficiency in check collection must be weighed against additional costs the rule may have imposed on paying banks and their customers. The significant operational problems that large paying banks and their business customers believed would result from the adoption of the same-day settlement rule have not materialized to the Board's knowledge. The Board requests comment on the effect the rule has had on paying banks and their customers and on whether the rule has affected the choice of the payment mechanism used by payors.

The Board also requests comment on the benefits and drawbacks to potential further reductions in legal disparities. These changes include changes not only to the presentment deadline but also changes to the rules governing presentment location, the ability of the paying bank to impose reasonable delivery requirements, the control and timing of settlement, the obligation to settle on a non-banking day, and potentially other matters.

[4] The same-day settlement rule requires that settlement be made by the close of Fedwire on the business day the paying bank receives the check. (12 CFR 229.36(f)(2)) The scheduled closing time for Fedwire is 6:30 p.m. Eastern Time. Beginning on December 8, 1997, the Fedwire funds transfer system has opened at 12:30 a.m. Eastern Time (9:30 p.m. local time for west coast banks). Even though Fedwire re-opens on the same calendar day on the west coast, the Fedwire closing time and the settlement deadline under the same-day settlement rule will continue to be 6:30 p.m. Eastern Time (or 3:30 p.m. Pacific Time) for west coast banks.

[5] Under the Uniform Commercial Code, a private-sector presenting bank has a right to obtain same-day settlement for checks it presents by the paying bank's cut-off hour of generally 2:00 p.m. or later. Unlike a Federal Reserve Bank, however, which obtains settlement by debit to a bank's account on its books, a paying bank may settle with a private-sector collecting bank by credit to a Federal Reserve account or by cash. (UCC Article 4–108; 4–213(a)(1))

[6] Banks offering controlled disbursement services notify their corporate customers early in the day of the amount of the corporation's check payments that have been presented that day so that the corporation can invest surplus balances or borrow additional funds, as necessary, while money markets are still active. U.S. money markets become progressively less liquid after noon Eastern Time.

[7] Of the 291 commenters on this proposed rule, 130 opposed the proposal because of concerns related to the costs and operational burdens it may place on paying banks. Of the remaining commenters, 31 supported the proposal, 35 indicated support if suggested modifications were incorporated, 15 supported the Board's objectives to improve the check collection system but did not believe the proposal would achieve that objective, and 80 raised issues regarding the proposal but did not explicitly indicate whether they supported or opposed it.

Commenters' overall perspectives on the issues raised in this notice, as well as their responses to the specific questions posed below, will be useful in the Board's analysis of the desirability of further regulatory changes. These questions are designed to stimulate comment on various aspects of the issues raised and should not be interpreted as the Board's views on these issues. Comments that provide quantitative data related to the costs and benefits of the current same-day settlement rule and of potential reductions in the remaining legal disparities would further assist the Board in its analysis of these issues. The Board recognizes that commenters may not be able to address each question that is posed; for example, banks may be in a better position to address certain issues while businesses may have more information regarding certain aspects of their payment practices.

III. Presentment Deadline

Today, assuming the same level of efficiency of check collection operations, the Reserve Banks are able to provide prompter availability than that provided by correspondent banks, in part because the Reserve Banks have the right to present checks with same-day settlement as long as six hours later than their correspondent bank competitors.[8] [9] Extending the current 8:00 a.m. presentment deadline for private-sector collecting banks in the same-day settlement rule to a later time should enable correspondent banks (1) to obtain settlement on some checks that they collect one day earlier than they do today (i.e., on those checks that can be presented by the later deadline but that could not be presented as early as 8:00 a.m.); (2) to better match the availability provided by the Reserve Banks on checks they do not now collect; or (3) to avoid presentment fees on some checks now presented after 8:00 a.m. Such an expansion, however, may increase costs incurred by paying banks and may make current controlled disbursement arrangements less attractive to business customers.

The Board requests comment on the benefits and costs of its 1994 same-day settlement rule and the likely effect of further reducing the disparity in presentment deadlines between the Reserve Banks and private-sector collecting banks. Questions regarding current market practices can be answered from an overall industry perspective or from the perspective of the organization providing comments.

A. Current Bank Market Practices

1. What proportion of checks drawn on U.S. banks (in terms of volume and value) are (a) presented for same-day settlement by private-sector banks? (b) presented through clearinghouses? (c) presented by Federal Reserve Banks? (d) other? To what extent do these proportions vary from the proportions that were prevailing prior to the implementation of the same-day settlement rule? How many banks typically make and receive same-day settlement presentments?

2. Has the 1994 same-day settlement rule improved the speed and/or reduced the cost of collecting checks? Please explain.

3. Has the same-day settlement rule affected the number of banks that participate in check clearinghouses? Has it affected the volume of checks that are presented at clearinghouse exchanges?

4. To what extent has the same-day settlement rule affected the volume of checks that are collected by correspondent banks?

5. Do banks have agreements (other than clearinghouse agreements) that allow them to present checks after 8:00 a.m. and obtain settlement in same-day funds without presentment fees? If yes, how prevalent are these agreements? What offsetting benefits or considerations are provided to paying banks in the agreements? Are reciprocal late presentment privileges granted? Do the agreements impose any requirements for later presentments, such as requiring transmission of MICR data? [10] How late can banks present checks for same-day settlement? What percentage of overall same-day settlement presentments do these later-in-the-day presentments represent?

6. Has the same-day settlement rule adversely affected paying banks' operations or risks? If yes, how? Has the rule affected the manner in which banks provide controlled disbursement and other corporate cash management services to their business customers? If yes, how? Are these effects significant?

B. Current Business Disbursement Market ractices

1. For what types of check payments (e.g., payroll, expense reimbursement, dividend, vendor, other) do businesses generally use controlled disbursement accounts?

2. To what extent do businesses make payments electronically, rather than by check? Do practices differ for specific types of payments (e.g., payroll, expense reimbursement, dividend, vendor, other)?

3. Has the same-day settlement rule adversely affected the ability of businesses to manage their disbursements effectively? If so, how?

4. Has the same-day settlement rule caused businesses to rely to a greater extent on internal forecasts of daily presentments to controlled disbursement accounts rather than on presentment totals provided by the paying bank?

5. Has the same-day settlement rule influenced businesses' decisions on whether to make payments by check or by other means? If so, how and why?

C. Effect of Presentment Deadline Disparity on the Ability of Private Collecting Banks to Compete with the Federal Reserve

1. To what extent does the disparity in the presentment deadlines of the Reserve Banks and private-sector collecting banks affect the ability of the correspondent banks to compete with the Reserve Banks in the interbank check collection market?

D. Effect of Reducing or Eliminating the Presentment Deadline Disparity

1. Should the Board extend the presentment deadline for private-sector collecting banks? If so, to what time? What would be the latest presentment deadline that could be implemented for private-sector collecting banks without significantly disrupting cash management operations? without significantly disrupting paying bank operations? Please explain. What would be the implications to check depositors, collecting banks, check clearing houses, paying banks, and check drawers if the presentment deadline for private-sector banks were moved to 10:00 a.m.? noon? 2:00 p.m.? (See also question III.F.1.) Should this deadline apply to presentments by Federal Reserve Banks as well as to presentments by private-sector collecting banks? Why or why not?

2. Alternatively, should the Board impose an earlier presentment deadline on Federal Reserve Banks? If so, at what

[8] In practice, Reserve Banks present most checks substantially earlier than 2:00 p.m. For example, in November 1997, more than 45 percent of the value of all checks were presented by the Reserve Banks by 10:00 a.m. Eastern Time (ET), nearly 60 percent were presented by 11:00 a.m. ET, and almost 75 percent were presented by noon ET.

[9] Although the Federal Reserve Banks have a later-in-the-day presentment deadline for forward collection checks than do private-sector banks, the Reserve Banks and private-sector banks are subject to the same deadline for the delivery of returned checks for same-day settlement. (12 CFR 229.32(b); 12 CFR 210.9(b)(1) and 210.12(h))

[10] Magnetic Ink Character Recognition (MICR) data refer to the machine-readable information printed along the bottom of the check, and include the amount of the check, the routing number of the paying bank, and the account number of the drawer.

time? Should this deadline apply to presentments by private-sector collecting banks as well as to presentments by Federal Reserve Banks? Why or why not?

3. To what extent would an extension of the presentment deadline for private-sector collecting banks expedite the collection of checks? What categories of checks, if any (e.g., local checks, nonlocal checks drawn on RCPC endpoints, checks drawn on east coast banks that are collected by west coast banks), would get collected faster if a later presentment deadline were established? To the extent that checks would be collected faster, would the cost of collection increase materially?

4. To what extent would a further reduction or elimination of differences in the presentment deadlines of Reserve Banks and private-sector collecting banks further improve decisions regarding the collection of checks by encouraging the use of the most efficient collection path?

5. What steps would businesses take to manage their payment disbursements if early-in-the-day presentment totals were not available from their banks? Would they rely on internal forecasting of the daily value of check presentments for some or all categories of payments? rely on electronic payments to a greater degree? shift their capital market activity to later in the day? Please explain. To what extent would these steps enable businesses to continue to manage their disbursements effectively?

E. Later-in-the-day presentment deadline conditioned on electronic transmission of check information

Some private-sector representatives and Reserve Banks have suggested that if the Board were to extend the presentment deadline for private collecting banks, it should condition the later deadline on the transmission of check MICR data by some earlier deadline.[11] Proponents of this approach believe that it would minimize any potential disruptions of a later presentment deadline on business cash management operations and may foster the ultimate acceptance of electronic check presentment. Others have expressed concerns that such an approach may be very cumbersome to impose by regulation and that paying banks that desire information regarding their check presentments earlier in the day can generally obtain this information by agreement with the presenting banks.

At the time the Board adopted the same-day settlement rule, it stated that ''because the same-day settlement rule may induce agreements between paying banks and presenting banks that would allow for later presentment under certain conditions, the Board believes that it is preferable that market forces determine the development of private-sector response with respect to early electronic delivery. The Board will review the developments in the marketplace after this rule takes effect to determine whether further action may be necessary to encourage greater utilization of same-day settlement.'' (57 FR 46959, October 14, 1992)

1. If the Board were to condition a later-in-the-day presentment deadline for private-sector collecting banks on an earlier transmission of the MICR data on the checks to be presented, what would be the latest time the electronic transmission could be received by the paying bank without substantially disrupting cash management operations? What would be the latest presentment deadline for the physical checks that would not substantially disrupt paying bank operations? Explain.

2. If this approach were adopted, should the Board specify standards for the format and communication protocols for electronic transmission of the check information in Regulation CC? Would the benefits of simplicity and uniformity associated with mandated standards outweigh the negative effects on innovation that may result? If the Board were to specify these standards in regulation, what standards should be adopted? If the regulation does not incorporate these standards, should the authority to dictate the technical specifications be vested with the presenting bank or the paying bank?

3. What responsibility should be placed on the paying bank to ensure sufficient communications capacity to accept transmissions of check information, including receipt of multiple transmissions sent shortly before the electronic transmission deadline? If the presenting bank is unable to transmit the information because it cannot establish a connection with the paying bank (due to contention for communications lines or an operating outage at the paying bank), should it still have the right to present the checks at the later-in-the-day deadline? What warranties, if any, should the presenting bank provide regarding the accuracy of the information that is transmitted?

4. If the Board were to adopt a later presentment deadline for private-sector collecting banks that was *not* conditioned on the transmission of the MICR-line information earlier in the day, to what extent would presenting banks be willing to provide this information by agreement to paying banks that desired it? Do commenters believe that such agreements could be obtained at a reasonable price?

F. Federal Reserve noon presentment policy

In conjunction with its review of potential modifications to its same-day settlement rule, the Board will also consider whether it should modify or rescind its 1983 policy that established a noon local time presentment deadline for checks presented by the Reserve Banks to paying banks located in Federal Reserve city availability zones. Historically, the Reserve Banks presented checks to members of city clearinghouse associations at the clearinghouse exchange, enabling the Reserve Banks to avoid transportation expenses that would be incurred by presenting checks to each clearinghouse member at its own facility. Following implementation of the noon presentment policy, some check clearinghouses moved their exchange to later in the morning, but generally not as late as noon. In most cases, the Reserve Banks have continued to present checks to city banks at the clearinghouse exchanges. Thus, although as a matter of policy banks located in Federal Reserve city zones are treated differently than banks located in other availability zones, in practice, the difference in treatment may be less significant than it appears, because the Reserve Banks currently present checks to most paying banks in RCPC and country zones by noon. Establishing a 2:00 p.m. presentment deadline for city paying banks would allow Reserve Banks to establish significantly later deposit deadlines for city checks, which would accelerate the collection of some checks drawn on these banks.

1. Should the Board modify or rescind its noon presentment policy for checks presented to banks in city availability zones? Why or why not?

G. Effect of elimination of prohibition to pay interest on demand deposits

Congress is considering legislative proposals that would remove the current restriction on the ability of banks to pay interest on demand deposits, most of which are held by businesses. The Board has supported the repeal of the prohibition on the

[11] Under this scenario, the delivery of the physical checks would continue to constitute presentment, absent an agreement between the presenting bank and paying bank.

payment of interest on demand deposits.

1. To what extent would the answers to the above questions be affected by a change in the law to permit banks to pay interest on demand deposits?

2. To what extent are controlled disbursement arrangements designed to minimize the interest earnings lost by holding funds in demand deposits? If banks paid an explicit market rate of return on business demand deposits, would controlled disbursement arrangements be necessary?

IV. Other Legal Differences between the Federal Reserve Banks and Private Collecting Banks

In addition to the disparity in presentment deadlines, there are other legal differences in the abilities of the Federal Reserve Banks and private-sector banks to collect checks. The Board requests comment on the continued justification of these legal differences, the effect of reducing or eliminating these legal differences on the efficiency and integrity of the interbank check collection market, the check collection process, and the payments system more broadly, and, if the Board were to modify these regulatory provisions, how it should do so.

A. Presentment location for same-day settlement

The Reserve Banks have greater flexibility than private-sector collecting banks have under the same-day settlement with respect to the locations to which they may present checks to a paying bank. Under the same-day settlement rule, a presenting bank must present a check to the paying bank ''at a location designated by the paying bank. . . in the check-processing region consistent with the routing number encoded in magnetic ink on the check.'' (12 CFR 229.36(f)(1)(i)) If the paying bank does not designate a presentment location, then the presenting bank may present the check to any location described in § 229.36(b). In contrast, the paying bank does not have the legal right to designate a single location to which checks must be presented by a Federal Reserve Bank. The Board's Regulation J, which governs check collection by the Federal Reserve Banks, does not limit the permissible presentment location to that designated by the paying bank. Instead, it provides the Federal Reserve Banks flexibility, including the right to present checks to any location specified in § 229.36(b) of Regulation CC or to present checks through a clearinghouse, subject to its rules and practices. (12 CFR 210.7(b)) In practice, however, the Reserve Banks generally present checks to the location designated by the paying bank consistent with the routing number on the check.

1. To what extent does this disparity in permissible presentment locations affect the ability of private-sector banks to compete effectively with the Reserve Banks in the interbank check collection market? In practice, to what extent and why do paying banks designate a presentment location for presentments made under the same-day settlement rule that differs from the presentment location used by the Federal Reserve Bank?

2. Should the Reserve Banks and private-sector collecting banks be subject to the same rules regarding presentment locations for check presented for same-day settlement? Why or why not?

3. If the Board were to eliminate the disparity regarding permissible presentment locations, should it make the flexibility currently provided to the Reserve Banks in Regulation J available to private-sector collecting banks or impose on the Reserve Banks the standard currently applicable to private-sector collecting banks?

B. Ability of paying bank to impose reasonable delivery requirements

Under the same-day settlement rule, a paying bank must settle for a check on the day of presentment ''if the presenting bank delivers the check in accordance with reasonable delivery requirements established by the paying bank.'' (12 CFR 229.36(f)(1)) The Commentary to this section notes that because presentment may not take place during the paying bank's banking day, a paying bank may establish reasonable delivery requirements to safeguard the checks presented. Regulation J provides no similar right to paying banks to establish reasonable delivery requirements for Federal Reserve Bank presentments.

1. What types of delivery requirements are imposed by paying banks for presentments by private-sector collecting banks for same-day settlement?

2. To what extent does the disparity in the right to impose reasonable delivery requirements affect the ability of private-sector banks to compete effectively with the Reserve Banks in the interbank check collection market?

3. Should paying banks have the same right to impose reasonable delivery requirements on the Federal Reserve Banks as they have on private-sector presenting banks? Alternatively, should the paying banks' right to impose reasonable delivery standards on private-sector banks be eliminated? Why or why not?

4. If paying banks had the right to impose reasonable delivery requirements on Federal Reserve Bank presentments, would banks require the Reserve Banks to modify their current presentment practices? If so, how?

C. Control of settlement

The manner in which settlement of Federal Reserve-presented checks is made differs significantly from the manner in which settlement for checks presented by private-sector collecting banks is made. While the Federal Reserve controls the settlement of checks it presents, the paying bank controls the settlement of checks presented by private-sector banks. In the case of checks presented by the Federal Reserve Banks, the Reserve Bank debits the account of the paying bank or its designated correspondent on its books. (12 CFR 210.9(b)(5)) In contrast, the paying bank settles for checks presented by a private-sector bank for same-day settlement by sending a Fedwire funds transfer to the presenting bank or by another agreed-upon method. (12 CFR 229.36(f)(2))

1. To what extent does this disparity in the control of the settlement affect the ability of private-sector banks to compete effectively with the Reserve Banks in the interbank check collection market?

2. Should the Board take steps to reduce or eliminate this disparity? If so, why and how? For example, should the Board eliminate the Reserve Banks' ability to autocharge (i.e., automatically debit the account of the paying bank)? Alternatively, should presenting banks have more control over the settlement of checks presented for same-day settlement? If yes, how could this best be accomplished?

D. Time of settlement

In the case of presentments for same-day settlement by both Federal Reserve Banks and private-sector collecting banks, the paying bank becomes accountable for a check if it does not settle for the check by the close of Fedwire on the day of presentment. (12 CFR 210.9(b)(1) and 12 CFR 229.36(f)(2)) The Reserve Banks, however, have the right to debit the account of the paying bank for settlement of checks by the latest of (a) the next clock hour that is at least one hour after the paying bank receives the check, (b) 9:30 a.m. Eastern Time, or (c) such later time provided in the Reserve Bank's operating circular. (12 CFR 210.9(b)(2))

The Board noted, when it adopted the same-day settlement rule, that it believed that, at the present time, the settlement time for checks presented by private banks should not conform to the settlement time for checks presented by Reserve Banks under Regulation J. The Board reached that conclusion after considering the reasoning put forth by the commenters to the proposed rule as well as the fact that conforming the two times would (a) create the additional burden for the paying bank of initiating early-in-the-day Fedwire transfers for private-sector presentments (as opposed to settlement payments to Reserve Banks, which are made by debits to accounts held by the Federal Reserve and require no affirmative action by the paying bank); (b) result in an increased potential for mistakes, even if the deadline were met; and (c) increase the risk faced by paying banks that may want to examine selected cash letters presented by certain banks. The Board noted, however, that it would revisit the issue of settlement deadlines for checks presented by private-sector collecting banks under the same-day settlement rule if intraday funds start to have significant value as a result of Federal Reserve pricing of daylight overdrafts. (57 FR 46964, October 14, 1992) To date, this has not occurred.

1. To what extent does this disparity in the timing of the settlement affect the ability of private-sector banks to compete effectively with the Reserve Banks in the interbank check collection market?

2. Have there been any changes in the marketplace or other considerations that should change the Board's earlier conclusion regarding this issue? If yes, please explain.

3. Instead of requiring earlier-in-the-day settlement for same-day settlement presentments by private-sector collecting banks, the Board could also reduce the legal disparity in the timing of settlement by moving the paying banks' settlement to Federal Reserve Banks to the close of Fedwire. If such a change were made, the Reserve Banks would also provide credit for check deposits at the same time. Would this approach be desirable? Why or why not?

E. Obligation to settle on a non-banking day

The settlement obligation of a paying bank that closes voluntarily on a business day (i.e., a day that the Federal Reserve Banks are open) differs depending on whether the Federal Reserve Bank or a private-sector collecting bank is the presenting bank. In the case of the Federal Reserve Bank, the paying bank's settlement obligation is triggered if the Reserve Bank ''makes a cash item available to the paying bank on that day.'' (12 CFR 210.9(b)(3)) In the case of a presentment made by a private-sector collecting bank, the paying bank's settlement obligation is triggered only if the paying bank ''receives presentment of a check'' on a business day on which it is open. (12 CFR 229.36(f)(3)) A paying bank that is obligated to settle for checks presented on a day that it is closed is not considered to have received the checks until its next banking day for purposes of the deadline for return.[12]

1. To what extent does this disparity in the settlement obligation of a closed paying bank affect the ability of private-sector banks to compete effectively with the Reserve Banks in the interbank check collection market?

2. Should the paying bank's obligation to settle on days on which it closes voluntarily be the same for presentments by the Federal Reserve Banks and private-sector collecting banks? If so, what standard should be used and why?

F. Other legal differences

1. Are there additional legal differences between the rights and obligations associated with checks presented by the Federal Reserve Banks and private-sector collecting banks? If so, please describe. To what extent do these other differences affect the ability of private-sector banks to compete effectively with the Reserve Banks, or the ability of Reserve Banks to compete effectively with other presenting banks, in the interbank check collection market? What changes, if any, should the Board consider to minimize or eliminate these differences?

V. Consistency of Reduction in Legal Disparities with Purposes of the Expedited Funds Availability Act

The Board's authority to govern the collection of checks through private-sector banks is derived from the Expedited Funds Availability Act. Therefore, amendments to Regulation CC, subpart C should be consistent with the Act's purpose to provide timely availability of funds deposited into transaction accounts; this is generally accomplished by accelerating the collection and/or return of checks. To the extent that unpaid checks are returned to the depositary bank more expeditiously, the depositary bank can make the funds available to its customer for withdrawal on a more timely basis without assuming greater risk.

In contrast, the Board's authority to govern checks collected through the Federal Reserve Banks is derived from the Federal Reserve Act and not the Expedited Funds Availability Act. Consequently, the Board's authority to amend Regulation J, subpart A, is not limited to changes that accelerate the collection and/or return of checks. Nonetheless, the Board has generally regulated the collection of checks through the Federal Reserve Banks in a manner that provides for their timely collection and return.

1. Should the Board consider changes to Regulation J that would reduce the legal disparities between the Federal Reserve Banks and private-sector collecting banks, if those changes slow the collection and return of checks through the Reserve Banks and therefore are not consistent with the purpose of the Expedited Funds Availability Act?

By order of the Board of Governors of the Federal Reserve System, March 10, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–6614 Filed 3–13–98; 8:45 am]

BILLING CODE 6210–01–P

[12] If a Federal Reserve Bank makes a cash item available to a paying bank on a day that it closes voluntarily, the paying bank must either settle for the item on that day or on the next banking day with an as-of adjustment or other interest compensation. If a private-sector bank presents a check to a paying bank for same-day settlement on a day that it closes voluntarily, the paying bank must settle by its next banking day and pay interest compensation.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–129–AD]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Stemme GmbH & Co. KG (Stemme) Models S10 and S10–V sailplanes. The proposed action would require replacing the fuel filter, inserting a revision to the Limitations Section of the airplane flight manual, and inspecting the engine valve shafts for brownish-black sticky residue. If a residue is found on the valve shafts, the proposed action would require cleaning the engine. The proposed AD is the

result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent engine valve malfunction, which, if not corrected, could cause engine failure during flight and loss of control of the sailplane.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–129–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–129–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–129–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Stemme Models S10 and S10–V sailplanes. The LBA reports engine failure on two of the affected sailplanes. The engine failures occurred on sailplanes that were found to have a brown sticky substance on the engine. This substance is brownish-black in color and ranges from a lacquer-like hardness to gum-like sticky in composition. The substance may be residue and build-up formed by foreign materials dissolved in the fuel. The composition of the residue is causing the intake valves to stick in the valve guides. Sticky deposits were also found in parts of the induction system on the inside walls of the intake manifolds, as well as on the throttle shaft.

This condition, if not corrected, could result in engine failure during flight and loss of control of the sailplane.

Relevant Service Information

Stemme has issued Service Bulletin (SB) No. A31–10–021, dated June 28, 1995, which specifies inserting a revision to the Limitations Section in the airplane flight manual (AFM) restricting the type and grade of fuel to use in the sailplane engine; and, specifies procedures for replacing the fuel filter if contaminated, along with inspecting the engine for the sticky brown residue.

Limbach Flugmotoren Technical Bulletin No. 47, dated June 28, 1995, specifies procedures for inspecting certain engine components for contamination, and cleaning the engine. These procedures are a follow-on to those found in Stemme SB No. A31–10–021, when a sticky brown residue is found in the engine.

The LBA classified these service bulletins as mandatory and issued German AD 95–273, dated July 11, 1995, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme Models S10 and S10–V sailplanes of the same type design registered in the United States, the proposed AD would require replacing the fuel filter if contaminated, inserting a revision to the Limitations Section of the airplane flight manual (AFM), and inspecting the engine valve shafts for brownish-black sticky residue. If a residue is found on the valve shafts, the proposed action would require cleaning the engine. Accomplishment of the proposed insertion, inspection, and cleaning would be in accordance with Stemme Service Bulletin No. A31–10–021, dated June 28, 1995, and Limbach Flugmotoren Technical Bulletin No. 47, dated June 28, 1995.

Cost Impact

The FAA estimates that 9 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $30 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,970, or $330 per sailplane.

Proposed Compliance Time

The FAA is proposing a calendar compliance time instead of hours time-in-service (TIS) because the average monthly usage of the affected sailplanes varies throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25

hours TIS in one year. The sticky residue builds up on the engine regardless of sailplane use. In order to assure that all of the affected sailplanes are in compliance within a reasonable amount of time, the FAA is proposing a compliance time of 30 days after the effective date of this AD to insert the AFM Limitations Section revision, and 60 days after the effective date of this AD to replace the fuel filter and inspect the engine.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Stemme GMBH & Co. KG: Docket No. 97–CE–129–AD.

Applicability: Model S10 (serial numbers 10–12 through 10–60), and Model S10–V (serial numbers 14–002 through 14–022) and transformed Model S10–V (serial numbers 14–012M to 14–060M) sailplanes, certificated in any category.

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

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent engine valve malfunction, which, if not corrected, could cause engine failure during flight and loss of control of the sailplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, insert a revision in the Limitations Section 2.4.2.1, Fuel, of the airplane flight manual (AFM) that states: ''Only authorized fuel is AVGAS 100LL'' in accordance with the Instructions section of Stemme Service Bulletin (SB) Document No. A31–10–021, dated June 28, 1995.

(b) Incorporating the revision to the Limitations Section of the AFM, as required by paragraph (a) of this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Within the next 60 days after the effective date of this AD, accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD;

(1) Inspect the fine fuel filter for the accumulation of chopped cotton fibers, and replace the filter if it is contaminated, prior to further flight, in accordance with the Instructions section of Stemme SB Document No. A31–10–021, dated June 28, 1995; and,

(2) Inspect the engine in accordance with LIMBACH Flugmotoren Technical Bulletin No. 47, dated June 28, 1995.

(3) If a brownish-black sticky residue is found on the engine, prior to further flight, disassemble and clean the engine in accordance with LIMBACH Flugmotoren Technical Bulletin No. 47, dated June 28, 1995.

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

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Questions or technical information related to Stemme Service Bulletin No. A31–10–021, dated June 28, 1995, and LIMBACH Flugmotoren Technical Bulletin No. 47, dated June 28, 1995, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 95–273, dated July 11, 1995.

Issued in Kansas City, Missouri, on March 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6585 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–03–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Operations) Limited Model B.121 Series 1, 2, and 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain British Aerospace (Operations) Limited (British Aerospace) Model B.121 Series 1, 2, and 3 airplanes. The proposed AD would require installing an inspection opening in the area of the main spar web, repetitively inspecting the area at the main spar web for cracks and the area of the wing to fuselage attach bolt holes for corrosion, and repairing or replacing any cracked or corroded part. The

proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent structural failure of the main spar web area caused by fatigue cracking or separation of the wing from the fuselage caused by corroded attach bolt holes, which could result in loss of control of the airplane.

DATES: Comments must be received on or before April 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, *Attention:* Rules Docket No. 98–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace (Operations) Limited, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–03–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–03–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model B.121 Series 1, 2, and 3 airplanes. The CAA reports findings of fatigue cracking in the area of the main-spar next to the undercarriage attach points, and corrosion at the wing/spar attach bolt holes.

These conditions, if not corrected in a timely manner, could result in structural failure of the main spar web area caused by fatigue cracking or separation of the wing from the fuselage caused by corroded attach bolt holes, with consequent loss of control of the airplane.

Relevant Service Information

British Aerospace has issued PUP Service Bulletin No. B121/102, Revision No. 1, Issued April 16, 1997, which specifies procedures for the following:

—Installing an inspection opening and inspecting, using eddy current methods, the area at the main spar web for cracks; and

—Visually inspecting the area of the wing to fuselage attach bolt holes for corrosion.

The CAA classified this service bulletin as mandatory and issued British AD 005–10–96, not dated, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Model B.121 Series 1, 2, and 3 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require installing an inspection opening in the area of the main spar web, repetitively inspecting the area at the main spar web for cracks and the area of the wing to fuselage attach bolt holes for corrosion, and repairing or replacing any cracked or corroded part. Accomplishment of the proposed inspections would be required in accordance with British Aerospace PUP Service Bulletin No. B121/102, Revision No. 1, Issued April 16, 1997. If necessary, the proposed repair or replacement would be required in accordance with a scheme obtained from the manufacturer through the FAA, Small Airplane Directorate.

Cost Impact

The FAA estimates that 2 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 18 workhours per airplane to accomplish the proposed initial inspection and inspection opening installation, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,160, or $1,080 per airplane. These figures only take into account the cost of the proposed initial inspections and inspection opening installation, and do not take into account the cost of repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace (Operations) Limited: Docket No. 98–CE–03–AD.

Applicability: Model B.121 Series 1, 2, and 3 airplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural failure of the main spar web area caused by fatigue cracking or separation of the wing from the fuselage caused by corroded attach bolt holes, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, accomplish the following in accordance with the Accomplishment Instructions section, Appendix 1, and Appendix 2 of British Aerospace PUP Service Bulletin No. B121/102, Revision No. 1, dated April 16, 1997:

(1) Install an inspection opening and inspect, using eddy current methods, the area at the main spar web for cracks; and

(2) Visually inspect the area of the wing to fuselage attach bolt holes for corrosion.

(b) Within 800 hours TIS after the initial inspection required by paragraph (a), including subparagraphs, of this AD, and thereafter at intervals not to exceed 800 hours TIS, reinspect the area of the main spar web as specified in paragraph (a), including all subparagraphs, of this AD.

(c) If any cracks or corrosion damage is found during any inspection required by this AD, prior to further flight, accomplish the following:

(1) Obtain a repair or replacement scheme from the manufacturer through the FAA, Small Airplane Directorate, at the address specified in paragraph (e) of this AD; and

(2) Incorporate this scheme and continue to repetitively inspect as required by paragraph (b) of this AD, unless specified differently in the instructions to the repair or replacement scheme.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Questions or technical information related to British Aerospace PUP Service Bulletin No. B121/102, Revision No. 1, Issued April 16, 1997, should be directed to British Aerospace (Operations) Limited, British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British AD 005–10–96, not dated.

Issued in Kansas City, Missouri, on March 9, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–6592 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–3]

RIN 2120–AA66

Proposed Modification of Colored Federal Airways Offshore Airspace Area; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify three colored Federal airways, Green 10 (G–10), Green 12 (G–12), and Red 99 (R–99), located in Offshore Airspace Area 1234L, Alaska. The FAA is proposing this action to raise the floors of the airways to be consistent with the 2,000-foot above ground level (AGL) floor of Offshore Control Area 1234L.

DATES: Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 98–AAL–3, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AAL–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may also obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 (part 71) to modify three colored Federal airways in Offshore Airspace Area 1234L, AK, by raising the floor of G–10, G–12, and R–99 from 1,200 feet AGL to 2,000 feet AGL. This action is being taken to raise the floors of the airways to be consistent with the 2,000-foot AGL floor of Offshore Control Area 1234L.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The colored Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6009(a)—Green Federal Airways

* * * * *

G–10

From Cape Newenham, AK, NDB; 20 AGL St. Paul Island, AK, NDB; 20 AGL Elfee, AK, NDB; 20 AGL INT Elfee NDB 041° and Port Heiden, AK, NDB 248° bearings; 20 AGL Port Heiden NDB; 67 miles 12 AGL, 77 miles 85 MSL, 67 miles 12 AGL, Woody Island, AK, NDB; to Kachemak, NDB.

* * * * *

G–12

From Saldo, AK, NDB; 20 AGL Port Heiden, AK, NDB; 20 AGL Borland, AK, NDB; 20 AGL to Elfee, AK, NDB.

* * * * *

Paragraph 6009(b)—Red Federal Airways

* * * * *

R–99

From St. Paul Island, AK, NDB; 20 AGL Dutch Harbor, AK, NDB; 20 AGL Saldo, AK, NDB; 20 AGL Iliamna, AK, NDB; INT Iliamna NDB 124° and Kachemak, AK, NDB 269° bearings to Kachemak.

* * * * *

Issued in Washington, DC, on March 6, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–6633 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–35]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways; Kahului, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the legal descriptions of seven Hawaiian Very High Frequency Omnidirectional Range (VOR) Federal airways due to the relocation of the Maui, HI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC). The FAA is taking this action to enhance safety and to improve the management of air traffic operations in the vicinity of Kahului, HI.

DATES: Comments must be received on or before April 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 97–AWP–35, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, CA, 90261.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Bill Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWP–35.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may also obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 71 to amend the legal descriptions of seven Hawaiian VOR Federal airways due to the upgrade and relocation of the Maui, HI, VORTAC. The FAA is taking this action to enhance safety and improve the management of air traffic operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Hawaiian VOR Federal airways are published in paragraph 6010 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Hawaiian VOR Federal airways listed in this document would be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(c) Hawaiian VOR Federal Airways

* * * * *

V–1 [Revised]

From Kona, HI, via INT Kona 323° and Maui, HI, 180° radials; INT Maui 180° and Upolu Point, HI, 305° radials; INT Maui 197° and Upolu Point 305° radials; to Maui.

* * * * *

From Kona, HI, via INT Kona 323° and Maui, HI, 180° radials; INT Maui 180° and Upolu Point, HI, 305° radials; INT Maui 197° and Upolu Point 305° radials; to Maui.

* * * * *

V–5 [Revised]

From Kona, HI, via INT Kona 338° and Maui, HI, 180° radials; to INT Maui 180° and Upolu Point, HI, 305° radials.

V–6 [Revised]

From INT Molokai, HI, 067° and Maui, HI, 329° radials, to Maui.

* * * * *

V–11 [Revised]

From INT Kona, HI, 323° and Upolu Point, HI, 211° radials; via Upolu Point; INT Upolu Point 349° and Maui, HI, 081° radials; to Maui.

* * * * *

V–15 [Revised]

From INT South Kauai, HI, 288° radial and long. 162°37′11″W., via South Kauai; Lihue, HI; INT Lihue 121° and Honolulu, HI, 269° radials; Honolulu; Koko Head, HI; Molokai,

HI, Maui, HI, INT Maui 096° and Hilo, HI, 336° radials; Hilo to INT Hilo 099° radial and long. 151°5′00″W.

* * * * *

V–17 [Revised]

From INT Lanai, HI, 106° and Maui, HI, 197° radials; Maui. From INT Koko Head, HI, 071° and Maui 347° radials; to INT Maui 347° and Lihue, HI, 065° radials.

* * * * *

V–22 [Revised]

From Molokai, HI, via INT Molokai 082° and Maui, HI, 329° radials; Maui; INT Maui 096° and Hilo, HI, 321° radials; Hilo; to INT Hilo 078° radial and long. 152°1′00″W.

* * * * *

Issued in Washington, DC, March 6, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–6634 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Amendments to Minimum Financial Requirements for Futures Commission Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') proposes to amend its minimum financial requirements for futures commission merchants (''FCMs''). The proposed amendment would eliminate the charge against the net capital of an FCM, presently required by rule 1.17(c)(5)(iii). The charge is four percent of the market value of options sold by customers trading on contract markets or foreign boards of trade. It is generally referred to as the ''short option value charge'' or ''SOV charge''. The original intent in adopting this rule was to require FCMs to provide additional capital to offset the risk of short options positions carried on behalf of customers. The Commission is proposing to rescind this rule because it has determined that the charge is not closely correlated to the actual risk of the options carried on behalf of customers and, in any event, there are adequate other protections in place to address the risk of short options. In particular, the Standard Portfolio Analysis of Risk (''SPAN'') margining system has been effectively used to set appropriate levels of risk margin and there are many other non-capital protections. These protections include effective self-regulatory organization (''SRO'') audit and financial surveillance programs and modern risk management and control systems at FCMs. Because of the demonstrated effectiveness of these programs, the Commission believes it may now be appropriate to rescind the SOV charge.

The Commission wishes to receive comments on this proposal. Comments are desired not only on the specific proposal itself, but also on all of the components of the system of protections that are designed to address the risk of short options, which are described below.

DATES: Comments must be received on or before May 15, 1998. Any requests for an extension of the comment period must be made in writing to the Commission within the comment period.

ADDRESSES: Comments may be sent to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Attn.: Secretariat with a reference to the Minimum Financial Requirement Rule—SOV Charge. Also, comments may be E-mailed to ''secretary@cftc.gov''.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Chief Accountant, 202–418–5459 or ''paulb@cftc.gov''; or Lawrence B. Patent, Associate Chief Counsel, 202–418–5439 or ''lpatent@cftc.gov''. Mailing address: Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 7, 1982,[1] the Commission proposed amendments to the rule governing the computation of net capital for FCMs to recognize the difference in risk between the purchase and sale of commodity options. The sale of an option (''short option'') poses a greater risk to an FCM than does the purchase of an option (''long option'') because the risk of a short option is unlimited. In contrast, long options pose a risk to the carrying FCM which is limited to the premium on the option. Once the premium is collected from the customer who purchased the option, there is no further risk of financial loss to the FCM or the customer. In this connection, the Commission has proposed the repeal of Commission Regulation 33.4(a)(2) which requires the full payment of a commodity option premium at the time the option is purchased. The proposal was initially published for comment on December 19, 1997. The comment period was extended to March 4, 1998. The effect of the repeal would be to permit the futures-style margining of commodity options traded on regulated futures exchanges and is discussed in the initial notice of proposed rulemaking.[2]

To recognize the risk of carrying short options, the Commission adopted, effective September 21, 1982,[3] a safety factor charge of four percent of the market value of exchange-traded (domestic and foreign) options granted or sold by an FCM's customers—the short option value charge (''SOV charge''), as set forth in Regulation 1.17(c)(5)(iii).[4] However, over the years since its adoption, there have been complaints that the charge was not proportional to the risk of the options and was excessive in its financial burden upon the FCMs in terms of the cost of the capital required to carry the positions.

In June 1995, both the Chicago Board of Trade (''CBOT'') and the Chicago Mercantile Exchange (''CME'') urged the Commission to rescind the SOV charge. In the alternative, the two exchanges asked for some degree of relief from the SOV charge in the event that the Commission felt that complete rescission of the charge was not possible. Their letters cited, among other reasons for rescission or the requested relief, that: (a) Short options positions may serve to reduce the risk of a portfolio that would carry greater risk absent the short options positions, and (b) the risks of short option positions are already adequately addressed by the risk-based margining system currently being used by all commodity exchanges in the U.S. and many abroad.

They pointed out that the charge was adopted in 1982, prior to the development of risk-based margining systems. While the charge was intended to serve as an additional regulatory capital safety factor for option positions, they contended that it is now excessive and no longer justified because of the use of margining systems that

[1] 47 FR 30261 (July 13, 1982).

[2] 63 FR 6112 (February 6, 1998), Extension of comment period to March 4, 1998; See also 62 FR 66569 (December 19, 1997), Initial request for comment.

[3] 47 FR 41513 (September 21, 1982).

[4] Commission rules referred to herein can be found at 17 CFR Ch. I (1997).

adequately measure portfolio risk and, therefore, assess appropriate margins on the entire portfolio.

The Commission staff felt that there was some merit to the position of the exchanges and others who had criticized the efficacy of the SOV charge. Therefore, to temper the impact of the charge, while the matter was studied further, on July 26, 1995, the Division of Trading and Markets (''Division'') issued Interpretative Letter No. 95–65.[5] That letter provided partial relief through a ''no action'' position that would allow FCMs to reduce the four percent SOV charge applicable to short options positions carried by professional traders and market makers.[6] An FCM that wished to avail itself of the relief under the ''no action'' position was required to prepare certain supporting calculations and obtain approval from its designated self-regulatory organization (''DSRO'') to take the relief. The Division subsequently expanded this relief to include any customer account carried by an FCM, in Interpretative Letter No. 97–46, dated June 12, 1997, provided the same conditions could be met by the additional accounts.[7]

However, only five FCMs have taken advantage of the relief. This small number resulted from the fact that the relief required what were viewed as burdensome calculations and, in any event, the relief was limited to fifty percent of the total charge. The FCM community also communicated to the Commission that the relief provided by the Division failed to address the theoretical deficiencies of the rule. In a letter dated September 26, 1997, the Joint Audit Committee (''JAC'')[8] formally suggested that the net capital charge on SOV be eliminated. The JAC letter stated the following:

* * * Since the limited relief was granted, the JAC has closely monitored the application of the relief. From JAC's experience and from discussions with FCMs, many firms feel that the conditions for relief are too restrictive and complicated. Thus, they are not able to expend their resources to take advantage of the relief. In fact, there are only five FCMs which have applied for such relief.

During periods of high volatility, the capital charge will increase as the value of the applicable short option increases. However, this charge does not necessarily relate to the risk applicable to a particular options portfolio. Selling options may actually serve to reduce risk in a portfolio. As a result, some firms have made a business decision to refuse large, lucrative customer accounts due to an unwillingness to absorb the charge. The fact that this decision is made for cost rather than risk reasons is clearly not in the best interest of any participant in the U.S. futures industry. This outdated regulation forces the concentration of exchange traded short options in a few firms.

In general, FCMs have little control over reducing the charge. Requiring additional collateral has no impact on the charge itself and will instead increase the FCM's capital requirements. We believe the SPAN[9] performance bond system adequately captures the risk in options portfolios and the undermargined charge to capital appropriately reflects risk in an FCM's capital computation.

The charge has a significant impact on the viability of the exchange traded options markets. When market users can not find an FCM willing to absorb the charge, the liquidity of our markets is directly impacted. For all the reasons stated above, we again request the CFTC eliminate this charge in its entirety . . .

II. Discussion

As stated above, the Commission proposes that the SOV charge be rescinded for two reasons: (1) The rule has not resulted in capital charges proportionate to risk; and (2) the SPAN margining system and other non-capital components of the system of protections are much better developed and executed than they were when the SOV charge was first adopted. These factors are discussed below in two sections. The first section addresses the theoretical deficiencies of the SOV charge, and the second section is a summary of non-capital protections.

A. Theoretical Deficiencies of the SOV Charge

The current charge based on four percent of SOV has not, in practice, resulted in capital charges which are proportionate to risk. The following situations are illustrative:

Multiple Strikes—Exchanges typically list multiple strikes with the same underlying futures contract in a given option contract month. Option premium typically increases across strikes, moving from out-of-the-money strikes to in-the-money strikes. Moving to deep-in-the-money strikes increases the option intrinsic value and the resulting premium. At some deep-in-the-money point the deltas of the different strikes will be the same. Therefore, while two deep-in-the-money strikes may have very similar or even identical risk profiles, the deeper-in strike will have a higher intrinsic value and a higher premium, yielding a higher SOV charge. The SOV charges for the two options can differ 200 percent or more, even though those options have the same underlying futures, the same time to expiration, and the same risk profiles.

Risk-Reducing Strategies—Short options positions are often used as one component of a trading strategy. The other positions used in the strategy could be futures, other derivatives, or cash instruments. In such strategies, the short options positions may be intended as a risk-reducing position, as demonstrated by the fact that the introduction of the short options positions into the portfolio results in a reduction in the SPAN-based margin requirement for the portfolio. Despite the fact that these positions are risk-reducing, the short option values for these portfolios increase markedly in trending markets. In practice, the Commission notes that some FCMs which have carried the accounts of traders who do a great deal of these kinds of strategies have faced large capital charges in trending markets. Because the short options component of such strategies is actually risk-reducing, the SOV charge has not served its intended purpose in these cases.

The following examples will illustrate the problem with short calls. (Also, the same problem applies to short puts.)

Deep-In-The-Money Short Dated Short Call—A deep-in-the-money short dated short call has a risk profile essentially like a short futures position. The one major difference between the short call and the futures contract is that the call has a large intrinsic value which translates into a large premium and a corresponding large SOV charge. Therefore, FCMs incur a significant extra capital requirement for the short call even though there is no extra capital requirement to carry essentially the same risk with equivalent short futures contracts. In this case, the capital requirement is excessive compared to the risk, as indicated by the margin requirement on the futures contract.

Deep-Out-Of-The-Money Short Dated Call—A deep-out-of-the-money short dated call displays more of the unique risk characteristics associated with options. While initially it has a low

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[5] CFTC Interpretative Letter No. 95–65, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,495 (July 26,1995).

[6] The reduction in the charge cannot exceed 50 percent of the pre-relief charge calculated for all SOV on a firm-wide basis.

[7] CFTC Interpretative Letter No. 97–46, [Current Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,086 (June 12,1997). This letter also provided some relief pertaining to the required supporting calculations.

[8] JAC is comprised of representatives from each commodity exchange and National Futures Association who coordinate the industry's audit and ongoing surveillance activities to promote a uniform framework of self-regulation.

[9] SPAN is an acronym for Standard Portfolio Analysis of Risk.

delta [10] this short call has a high gamma [11] as it approaches the money, introducing the potential for significant losses from extreme underlying moves. For normal underlying moves, this deep-out short call has little risk. Only extreme moves far beyond the normal performance bond coverage levels would cause significant losses for this option. However, because this deep-out short call has no intrinsic value and little time value, it typically has very low premium and therefore has a correspondingly low capital charge. Because this kind of risk rarely materializes into actual losses, it is best addressed by the non-capital protections. These protections are described below.

As discussed below, the Commission believes that the SPAN margining system, since its introduction in December 1988, appears to have provided adequate margins. Also, SPAN is being refined on an ongoing basis by the CME, the CBOT, and the other SROs which use it. Finally, the Commission has previously reported to the Federal Reserve Board that the SPAN margining system has met its performance goals for many years, with respect to futures margins on stock index futures contracts.

B. Summary of Non-Capital Protections

There are protections against the risk of short options other than net capital charges. In this connection, the Commission believes that the non-capital components of the system of protections in place are now stronger than they were when the SOV charge was put into place. Risk management models have been refined over the years; there have been enhancements in Commission and SRO audit and surveillance programs; FCM risk management systems and controls have improved significantly compared to what was available and in place at many firms when the SOV charge was first adopted; and technological advancements have improved communication among clearing organizations, FCMs and their customers. Therefore, the Commission has preliminarily concluded not only that the SOV charge has not worked to provide a risk-based protection, as hoped, but also that these other non-net capital protections have been improved over the years and have resulted in an overall strengthening of the system, well beyond what was in place when the SOV charge was adopted. The primary non-capital protections are described below.

Portfolio Margining System

Performance bond requirements are referred to commonly as ''margin'' requirements. Margin requirements typically are set at levels which cover 95 to 99 percent of a product's expected daily price change over a period of time. To ensure that margin requirements are set at appropriate levels, historical volatility price charts are reviewed by product and spreads between products. SPAN is a risk-measuring margin methodology adopted by all U.S. and numerous foreign futures exchanges. SPAN uses option pricing models to calculate the theoretical gains and losses on options under various market situations (*e.g.*, prices up, prices down, volatility up, volatility down, and extreme price movements). As noted above, the Commission has reported to the Federal Reserve Board on the effectiveness of SPAN in setting margins in equities-related futures contracts.

Financial Surveillance and Position Reporting Systems

Generally, it is the large traders which pose the greatest risk to FCMs. To deal with this risk, the U.S. futures industry has a very complete and current system of position reporting. This permits close monitoring of the positions of large traders and is the foundation of an effective program of financial surveillance conducted by the SROs. As explained below, current positions are assessed prospectively—what financial effect would such positions have if the market moved significantly one way or the other. The advanced reporting systems in place permit assessments to be done at the account level, which is where risk to the firms must be evaluated. Using account level data along with other information, the SROs' sophisticated programs are designed to identify risks to the clearing system, including financially troubled FCMs or FCMs that carry high-risk positions.

To accomplish this goal, SROs monitor market developments throughout the day, make intra-day variation margin calls on clearing members, and follow up with individual FCMs regarding potential problems. There have been occasions in the past when customers holding very large or concentrated positions have caused financial problems for their carrying FCMs. Large trader monitoring systems are designed to identify such traders before losses occur. Although it is not possible to obviate the possibility of an FCM failure due to the default of a large trader, the systems operated by the SROs improve the control of this risk by permitting scrutiny of large trader positions by the SROs. Scrutiny is carried out by the SROs on a systematic basis.

Using the large trader information, SROs perform stress testing of positions using ''what if'' price simulations based on open positions carried by clearing member FCMs in order to determine an FCM's potential risk in relation to its excess net capital. Daily pay/collect variation margin is aggregated for periods of time to monitor losses compared to the excess capital of the firm. Potential losses revealed by the stress testing, which are determined to be large in relation to an FCM's most recently reported capital, will indicate that the firm should be contacted by SRO surveillance staff to obtain assurances that the FCM has properly evaluated the creditworthiness of its customers and the adequacy of collateral in place.

As noted elsewhere, as a part of its oversight program, the Division regularly reviews the procedures used by the SROs to conduct financial surveillance over member-FCMs. The Division's reviews, as well as experience over many years working with the SROs in identified problem situations, reveal that the systems generally have been effective. The systems also have improved over time, because the SROs have shown a willingness to learn from experience. However, it should be noted that financial surveillance at the SRO level, including any review work done at an FCM during an in-field examination, is not a substitute for an effective risk management and control system operated by the FCM itself. The Commission believes that the audit and financial surveillance programs operated by the SROs have been effective in encouraging the development of equally good risk management and control systems at FCMs. In this connection, as explained below, the SROs ensure that FCMs have appropriate risk management and control systems in place and make recommendations when their in-field audits reveal inadequate systems.

Capital and Segregation Requirements for FCMs

The Commission's capital and segregation requirements are part of the protections built into the system against the risk of short options positions. All FCMs must meet the Commission's net capital and segregation requirements, as

[10] Delta measures the amount an option price changes for a one-point change in the price of the underlying product.

[11] Gamma is a risk variable that measures the amount that the delta of an option changes given a one-point change in the price of the underlying product.

well as SRO requirements. An FCM which is a clearing member also must have capital requirements which are higher than those set by the Commission. Commission regulations require firms to keep current books and records, prepare a daily segregation calculation and a formal, monthly capital calculation, among other things. FCMs must be in compliance with the net capital and segregation rules at all times. Material inadequacies in internal control must be reported. The demands of these recordkeeping and reporting requirements serve as an element of the overall system of internal controls. The daily segregation calculation, especially, will reveal problems in customers' accounts very quickly, when and if they occur.

The basic capital requirement is set at four percent of an FCM's liabilities to its customers. The segregation rule requires an FCM to have sufficient funds in segregation to meet its liabilities to its customers. The underlying concept of segregation is that by separating, i.e., segregating, the funds of customers from the proprietary funds of the FCM, there will be sufficient funds available to pay off the FCM's liabilities to its customers in the event of the FCM's failure due to proprietary losses. As already stated, in order to demonstrate to itself and regulators that it is in compliance with the segregation requirements, an FCM is required to prepare a daily computation of the status of the segregated accounts, which shows that there are sufficient funds in segregation. One of the elements of the computation is to ascertain the status of deficits in the accounts of customers. Any deficit which is not covered by appropriate collateral must be made up by the firm with funds of its own. Deficits outstanding for more than one day have a direct and immediate impact upon firm capital and may cause a firm to be undercapitalized. An FCM must report to the Commission in the event its capital falls below the early warning level, which is 150 percent of required capital. Although the capital rule provides some discretion to the Commission in allowing an FCM to come back into capital compliance, with respect to undersegregation, there is no grace period.[12] Therefore, it is prudent for an FCM to carry excess net capital and funds in segregation in amounts commensurate with the type of business it handles.

SRO Programs of In-Field Audits of FCMs

The Commission believes that the in-field audit program conducted by the SROs over their member-FCMs has resulted in a high level of compliance with the Commission's and the SROs' financial rules. Commission rules require SROs to have these programs in place. To this end, each FCM's DSRO conducts an annual audit of each FCM assigned to it under the Joint Audit Plan. Under the plan, a full-scope audit is conducted every other year, and a limited-scope records review is conducted in the alternate year. The audits are conducted according to the Joint Audit Program, which is designed and regularly updated for new developments by the JAC. The Commission reviews the Joint Audit Program each time it is updated.

The full-scope audit, conducted using the Joint Audit Program, includes a review of the systems and controls that the FCM has in place. In this connection, members of JAC complete a Financial and Risk Management Internal Controls questionnaire for each FCM audit. The questionnaire covers the firm's procedures for: opening new accounts, monitoring non-customer trading, assessing the impact of potential market movements on customer and non-customer trading, and ensuring that the segregation of duties is appropriate. Furthermore, during the course of the audit, a review is made of account documentation, margin procedures, undermargined account net capital charges, debit/deficit accounts and sales practices. Such reviews provide information to assess the firm's overall internal control and risk management procedures.

The JAC has initiated a project to revise its in-field audit approach to be more explicitly risk-based. That is, in planning and performing in-field audits, the DSRO will place a greater emphasis upon review and identification of potentially high risk areas at an FCM at the outset of an audit. The results of this early audit survey and planning work will translate into a more focused targeting by the DSRO of the total available audit resources upon the areas of highest risk at an FCM.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that FCMs are not ''small entities'' for purposes of the Regulatory Flexibility Act.[13] Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995[14] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this proposed rule has no burden, the group of rules (3038–0024) of which this is a part has the following burden:

Average burden hours per response: 128.

Number of Respondents: 3143.

Frequency of response: On occasion.

Copies of the OMB-approved information collection package associated with this rule may be obtained from Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Net capital requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a (5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

§ 1.17 [Amended]

2. Section 1.17(c)(5)(iii) is removed and reserved.

[12] The Commission has proposed to amend Regulation 1.12, its early warning notification rule, to add a requirement that an FCM promptly report to the Commission and the FCM's DSRO whenever it knows or should have known that it does not have sufficient funds in segregated accounts to meet its obligations to customers who are trading on U.S. markets or set aside in special accounts to meet its obligations to customers who are trading on non-U.S. markets. 63 FR 2188 (January 14, 1998).

[13] 47 FR 18619–18620.

[14] Pub. L. 104–13 (May 13, 1995).

Issued in Washington, DC on March 9, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–6580 Filed 3–13–98; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104062–97]

RIN 1545–AV88

Consolidated Returns—Limitations on the Use of Certain Credits and Related Tax Attributes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that relate to the use of certain tax credits and losses of a consolidated group and its members. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for May 7, 1998, at 10 a.m., must be received by April 13, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R [REG–104062–97], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG–104005–98], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the Home Page or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing has been scheduled for May 7, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, in general, Roy A. Hirschhorn (202) 622–7770; concerning submissions and the hearing, Mike Slaughter (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The temporary regulations provide rules that relate to the use of certain tax credits and related tax attributes of a consolidated group and its members. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated federal income tax returns that have carryover or carryback of credits from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have credit carryovers or carrybacks, and thus even fewer of these filers have credit carryovers or carrybacks that are subject to the separate return limitation year rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for May 7, 1998, at 10 a.m., in room 2615. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics (signed original and eight (8) copies) to be discussed by April 13, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Roy A. Hirschhorn of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.1502–3 also issued under 26 U.S.C. 1502.

Section 1.1502–4 also issued under 26 U.S.C. 1502.

Section 1.1502–9 also issued under 26 U.S.C. 1502. * * *

Section 1.1502–55 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–3, as proposed to be amended at 63 FR 1804, January 12, 1998, is amended by revising paragraphs (c)(3) and (d)(2) and adding paragraph (c)(4) to read as follows:

§ 1.1502–3 Consolidated investment credit.

* * * * *

(c) * * *

(3) and (4) [The text of proposed paragraphs (c) (3) and (4) of this section is the same as the text of § 1.1502–3T(c) (3) and (4) published elsewhere in this issue of the **Federal Register**.]

(d) * * *

(2) [The text of proposed paragraph (d)(2) of this section is the same as the

text of § 1.1502–3T(d)(2) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 3. Section 1.1502–4, as proposed to be amended at 63 FR 1804, January 12, 1998, is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 1.1502–4 Consolidated foreign tax credit.

* * * * *

(f) * * *

(3) [The text of proposed paragraph (f)(3) of this section is the same as the text of § 1.1502–4T(f)(3) published elsewhere in this issue of the **Federal Register**.]

(g) * * *

(3) [The text of proposed paragraph (g)(3) of this section is the same as the text of § 1.1502–4T and (g)(3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 4. Section 1.1502–9, as proposed to be amended at 63 FR 1804, January 12, 1998, is amended by revising paragraph (b)(1)(v) to read as follows:

§ 1.1502–9 Application of overall foreign losses recapture rules to corporations filing consolidated returns.

* * * * *

(b) * * *

(1) * * *

(v) [The text of proposed paragraph (b)(1)(v) of this section is the same as the text of § 1.1502–9T(b)(1)(v) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Par. 5. Section 1.1502–55, as proposed to be added at 57 FR 62257, December 30, 1992, and amended at 63 FR 1804, January 12, 1998, is further amended by revising paragraph (h)(4)(iii)(C) to read as follows:

§ 1.1502–55 Computation of alternative minimum tax of consolidated groups.

* * * * *

(h) * * *

(4) * * *

(iii) * * *

(C) [The text of proposed paragraph (h)(4)(iii)(C) of this section is the same as the text of § 1.1502–55T(h)(4)(iii)(C) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–6562 Filed 3–13–98; 8:45 am]

BILLING CODE 4830–01–U

Notices

Federal Register

Vol. 63, No. 50

Monday, March 16, 1998

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Annual Report of State Revenue Matching

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is an extension of a collection currently approved for the National School Lunch Program.

DATES: Comments on this notice must be received by May 15, 1998.

ADDRESSES: Send comments and requests for copies of this information collection to Alan Rich, Data Base Monitoring Branch, Program Information Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alan Rich, (703) 305–2113.

SUPPLEMENTARY INFORMATION:

Title: Annual Report of State Revenue Matching.

OMB Number: 0584–0075.

Expiration Date: June 30, 1998.

Type of Request: Extension of a currently approved collection.

Abstract: The National School Lunch Program is mandated by the National School Lunch Act, 42 U.S.C. 1751, *et seq.*, and the Child Nutrition Act of 1966, 42 U.S.C. 1771, *et seq.* Program implementing regulations are contained in 7 CFR Part 210. In accordance with 7 CFR 210.17(g), State agencies must submit an annual report of state revenue matching in order to receive Federal reimbursement for meals served to eligible participants.

Respondents: State agencies that administer the National School Lunch Program.

Number of Respondents: 57.

Estimated Number of Responses per Respondent: The number of responses is estimated to be one submission per State agency per school year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 80 hours per respondent per submission.

Estimated Total Annual Burden on Respondents: 4,560 hours.

Dated: March 9, 1998.

Yvette S. Jackson,

Administrator, Food and Nutrition Service.

[FR Doc. 98–6596 Filed 3–13–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 1998 through June 30, 1999. These guidelines are used by schools, institutions, and centers participating in the National School Lunch Program, School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Commodity School Program. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556 and No. 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals in the National School Lunch Program (7 CFR Part 210), School Breakfast Program (7 CFR Part 220), Child and Adult Care Food Program (7 CFR Part 226), and Commodity School Program (7 CFR Part

210), and the guidelines for free milk in the Special Milk Program for Children (7 CFR Part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size.

The Department requires schools and institutions which charge for meals separately from other fees to serve *free meals* to all children from any household with income at or below *130* percent of the poverty guidelines. The Department also requires such schools and institutions to serve *reduced price meals* to all children from any household with income higher than *130* percent of the poverty guidelines, but at or below *185* percent of the poverty guidelines. Schools and institutions participating in the Special Milk Program for Children may, at local option, serve free milk to all children from any household with income at or below *130* percent of the poverty guidelines.

Definition of Income

''Income,'' as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It concludes the following: (1) monetary compensations for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

''Income,'' as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislature prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 1998 through June 30, 1999. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the 1998 Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar.

BILLING CODE 3410–30–M

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 1998 to June 30, 1999)

Household size	Federal Poverty Guidelines			Reduced Price Meals - 185%			Free Meals - 130%		
	Annual	Month	Week	Annual	Month	Week	Annual	Month	Week
48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES									
1	8,050	671	155	14,893	1,242	287	10,465	873	202
2	10,850	905	209	20,073	1,673	387	14,105	1,176	272
3	13,650	1,138	263	25,253	2,105	486	17,745	1,479	342
4	16,450	1,371	317	30,433	2,537	586	21,385	1,783	412
5	19,250	1,605	371	35,613	2,968	685	25,025	2,086	482
6	22,050	1,838	425	40,793	3,400	785	28,665	2,389	552
7	24,850	2,071	478	45,973	3,832	885	32,305	2,693	622
8	27,650	2,305	532	51,153	4,263	984	35,945	2,996	692
For each add'l family member add	+2,800	+234	+54	+5,180	+432	+100	+3,640	+304	+70
ALASKA									
1	10,070	840	194	18,630	1,553	359	13,091	1,091	252
2	13,570	1,131	261	25,105	2,093	483	17,641	1,471	340
3	17,070	1,423	329	31,580	2,632	608	22,191	1,850	427
4	20,570	1,715	396	38,055	3,172	732	26,741	2,229	515
5	24,070	2,006	463	44,530	3,711	857	31,291	2,608	602
6	27,570	2,298	531	51,005	4,251	981	35,841	2,987	690
7	31,070	2,590	598	57,480	4,790	1,106	40,391	3,366	777
8	34,570	2,881	665	63,955	5,330	1,230	44,941	3,746	865
For each add'l family member add	+3,500	+292	+68	+6,475	+540	+125	+4,550	+380	+88
HAWAII									
1	9,260	772	179	17,131	1,428	330	12,038	1,004	232
2	12,480	1,040	240	23,088	1,924	444	16,224	1,352	312
3	15,700	1,309	302	29,045	2,421	559	20,410	1,701	393
4	18,920	1,577	364	35,002	2,917	674	24,596	2,050	473
5	22,140	1,845	426	40,959	3,414	788	28,782	2,399	554
6	25,360	2,114	488	46,916	3,910	903	32,968	2,748	634
7	28,580	2,382	550	52,873	4,407	1,017	37,154	3,097	715
8	31,800	2,650	612	58,830	4,903	1,132	41,340	3,445	795
For each add'l family member add	+3,220	+269	+62	+5,957	+497	+115	+4,186	+349	+81

Authority: (42 U.S.C. 1758(b)(1)).

Dated: March 9, 1998.

Yvette S. Jackson,

Administrator.

[FR Doc. 98–6615 Filed 3–13–98; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF COMMERCE

[Docket No. 980223045–8045–01]

Privacy Act; Altered System of Records

AGENCY: Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (4) and (11)), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce Department System 1, ''Attendance, Leave, and Payroll Records of Employees and Certain Other Persons'', to include a new routine use, a disclosure required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193); to update the list of Commerce Department bureaus; to update the location and system manager of our system of records; and to update the notification procedures. We invite public comment on the proposed routine use in this publication.

DATES: *Effective Date:* The amendments will become effective as proposed without further notice on April 15, 1998, unless comments dictate otherwise.

Comment Date: To be considered, written comments must be submitted on or before April 15, 1998.

ADDRESSES: Comments may be mailed to Diane M. Atchinson, U.S. Department of Commerce, Room 5001, 14th & Constitution Avenue, NW., Washington, DC, 20230. All comments received will be available for public inspection at U.S. Department of Commerce, Central Reference Room Inspection Facility, Room 6204, 14th & Constitution Avenue, NW., Washington, DC, 20230.

FOR FURTHER INFORMATION CONTACT: Diane M. Atchinson, U.S. Department of Commerce, Room 5001, 14th & Constitution Avenue, NW., Washington, DC, 20230, 202–482–4425.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Department of Commerce will disclose data from Commerce Department System 1; Attendance, Leave, and Payroll Records of Employees and Certain Other Persons system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, HHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the Department of Commerce, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to the FPLS names, social security numbers, and quarterly earnings of each Department of Commerce employee, within one month of the end of the quarterly reporting period.

Information submitted by the Department of Commerce to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the Department of Commerce to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

We are also making other changes required to update the system of records. The list of Commerce Department bureaus is updated to add the Office of the Secretary, Bureau of Export Administration, Economic and Statistics Administration, National Institute of Standards and Technology, Technology Administration and Office of Inspector General; and to remove Departmental Offices and United States Travel and Tourism Administration. The location and manager of our system is updated to: Remove the Management Service Center in Germantown, Maryland; add the National Finance Center, U.S. Department of Agriculture, in New Orleans, Louisiana; and add the Field Administrative Payroll System, Bureau of the Census, Suitland, Maryland.

Accordingly, the Attendance, Leave, and Payroll Records of Employees and Certain Other Persons system notice originally published at 46 FR 63502, December 31, 1981, is amended by the addition of the following routine use and updates:

COMMERCE/DEPT–1

SYSTEM NAME:

Attendance, Leave, and Payroll Records of Employees and Certain Other Persons.

* * * * *

SYSTEM LOCATION:

For employees of the Office of the Secretary, Bureau of Economic Analysis, Bureau of Export Administration, Bureau of the Census, Economic Development Administration, Economics and Statistics Administration, International Trade Administration, Minority Business Development Agency, National Institute of Standards and Technology, National Oceanic and Atmospheric Administration, National Telecommunications and Information Administration, National Technical Information Service, Office of Inspector General, Patent and Trademark Office, Technology Administration: National Finance Center, U.S. Department of Agriculture, PO Box 70160, New Orleans, Louisiana, 70160.

For Census Field Representative employees: Field Administrative Payroll System, Bureau of the Census, Suitland, Maryland, 20746.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and

Human Services, for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

National Finance Center, U.S. Department of Agriculture, PO Box 70160, New Orleans, Louisiana, 70160.

Field Administrative Payroll System, Demographic and Decennial Census Staff, Bureau of the Census, Suitland, Maryland, 20746.

NOTIFICATION PROCEDURE:

For Economics and Statistics Administration and Bureau of the Census records of employees employed in the Washington, DC, metropolitan area, Census Regional Offices, the Census Hagerstown Telephone Center and the Census Tucson Telephone Center, information may be obtained from: Bureau of the Census, Human Resources Division, ATTN: Chief, Pay, Processing and Systems Branch, Room 3254, FOB #3, Washington, DC 20233, (301) 457–3710.

For records of Census employees employed by the Jeffersonville Census Data Preparation Division, information may be obtained from: Bureau of the Census, Data Preparation Division, ATTN: Chief, Human Resources Branch, Room 113, Bldg. 66, Jeffersonville, Indiana, 47132, (812) 218–3323.

For Patent and Trademark Office records, information may be obtained from: Human Resources Manager, U.S. Patent and Trademark Office, Box 3, Washington, DC, 20231, (703) 305–8221.

For records of International Trade Administration employees employed in the Washington, DC, metropolitan area, information may be obtained from: Human Resources Manager, Personnel Management Division, Room 4809, 14th & Constitution Avenue, NW, Washington, DC, 20230, (202) 482–3438.

For records of National Institute of Standards and Technology employees other than those employed in Colorado and Hawaii and for Technology Administration and National Technical Information Service records, information may be obtained from: Personnel Officer, Office of Human Resources Management, Administration Building, Room A–123, Gaithersburg, Maryland, 20899, (301) 975–3000.

For Office of Inspector General records, information may be obtained from: Human Resources Manager, Resource Management Division, Room 7713, 14th & Constitution Avenue, NW, Washington, DC, 20230, (202) 482–4948.

For records of National Oceanic and Atmospheric Administration employees in the Washington, DC. metropolitan area, information may be obtained from: Chief, Human Resources Services Division, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13619, Silver Spring, Maryland, 20910, (301) 713–0524

For records of Office of the Secretary, Bureau of Economic Analysis, Bureau of Export Administration, Economic Development Administration, Minority Business Development Agency, and National Telecommunications and Information Administration employees in the Washington, DC. metropolitan area, information may be obtained from: Human Resources Manager, Office of Personnel Operations, Office of the Secretary, Room 5005, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 482–3827.

For records of regional employees of the National Oceanic and Atmospheric Administration, National Institute of Standards and Technology, Bureau of Export Administration, Economic Development Administration, Minority Business Development Agency, International Trade Administration, National Telecommunications and Information Administration, information may be obtained from the Human Resources Manager servicing the region or State in which they are employed, as follows:

a. *Central Region*. For National Oceanic and Atmospheric Administration employees in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin; for National Marine Fisheries Service employees in the States of North Carolina, South Carolina and Texas; and for National Weather Service employees in the States of Colorado, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming; for employees in the Bureau of Export Administration, Economic Development Administration, Minority Business Development Agency, and International Trade Administration in the States of Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin: Human Resources Manager, Central Administrative Support Center (CASC), Federal Building, Room 1736, 601 East 12th Street, Kansas City, Missouri, 64106, (816) 426–2056.

b. *Eastern Region*. For the National Oceanic and Atmospheric Administration employees in the States of: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Puerto Rico, and the Virgin Islands; for employees in the Bureau of Export Administration, Economic Development Administration, Minority Business Development Agency, and International Trade Administration in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Puerto Rico, and the Virgin Islands: Human Resources Manager, Eastern Administrative Support Center (EASC), National Oceanic and Atmospheric Administration EC, 200 World Trade Center, Norfolk, Virginia, 23510, 757) 441–6517.

c. *Mountain Region*. For National Oceanic and Atmospheric Administration employees in the States of: Alaska, Colorado, Florida, Hawaii, Idaho, and Oklahoma, at the South Pole and in American Samoa; and for the National Weather Service employees in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, Oklahoma, Tennessee, Texas and in Puerto Rico; for employees in the Bureau of Export Administration, Economic Development Administration, Minority Business Development Agency, National Institute of Standards and Technology, and the National Telecommunications and Information Administration in the states of Arkansas, Colorado, Hawaii, Iowa, Louisiana, Missouri, Montana, South Dakota, Texas, Utah and Wisconsin: Human Resources Office, Mountain Administrative Support Center (MASC), MC22A, 325 Broadway, Boulder, Colorado, 80303, (303) 497–3578.

d. *Western Region*. For National Oceanic and Atmospheric Administration employees in the States of Arizona, California, Montana, Nevada, Oregon, Utah, Washington, and the Trust Territories; for employees in the Bureau of Export Administration, Economic Development Administration, Minority Business Development Agency, and International Trade Administration in the States of Arizona, California, Nevada, Oregon, Utah, Washington, and the Trust Territories:

Human Resources Manager, Western Administrative Support Center (WASC), National Oceanic and Atmospheric Administration WC2, 7600 Sand Point Way, NE, Bin C15700, Seattle, Washington, 98115, 206) 526–6057.

For all other records, information may be obtained from: Director for Human Resources Management, U.S. Department of Commerce, Room 5001, 14th & Constitution Avenue, NW., Washington, DC. 20230, (202) 482–4807.

* * * * *

Dated: February 27, 1998.

Brenda Dolan,

Privacy Act Officer.

[FR Doc. 98–6590 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–FA

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held April 2, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 16, 1996, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, call (202) 482–2583.

Dated: March 11, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–6697 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews

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

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On September 9, 1997, the Department of Commerce (''the Department'') published the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover five manufacturers/exporters of the subject merchandise to the United States during the period August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. As a result of these comments, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski (Dofasco, Inc. and Sorevco Inc. (''Dofasco'')); Carrie Blozy (Continuous Colour Coat (''CCC'')); Rick Johnson (Algoma Inc. (''Algoma'')); Doreen Chen, Gerdau MRM Steel (''MRM'')); N. Gerard Zapiain (Stelco, Inc. (''Stelco'')); Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington DC 20230; telephone: (202) 482-3793.

SUPPLEMENTARY INFORMATION:

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 set forth at 19 CFR part 353 (April 1997).

Background

On September 9, 1997, the Department published in the **Federal Register** (62 FR 47429) the preliminary results of its administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada (''*Preliminary Results*''). We gave interested parties an opportunity to comment on our preliminary results. We received written comments from Algoma, CCC, Dofasco, MRM, Stelco, and from the petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, Geneva Steel, and Lukens Steel Company). We have now completed these administrative reviews in accordance with section 751(a) of the Act.

On October 10, 1996, petitioners requested that the Department determine whether antidumping duties had been absorbed by Algoma, CCC, Dofasco, MRM, and Stelco during the period of review (POR), pursuant to section 751(a)(4) of the Act. Section 751(a)(4) provides that the Department, if requested, will determine during an administrative review initiated two years or four years after publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA. The Department's interim regulations do not address this provision of the Act. Section 351.213(j)(2) of the Department's May 19, 1997 regulations provides that, for transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, the Department will make a duty absorption determination upon request in administrative reviews initiated in 1996 and 1998. See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27394 (''new regulations''). Although these new regulations do not govern these administrative reviews, they do constitute a public statement of how the Department will proceed in construing section 751(a)(4) of the Act. This

approach assures that interested parties will have the opportunity to request a duty absorption determination prior to sunset reviews for entries for which the second and fourth years following an order have already passed. Because the orders on corrosion-resistant carbon steel flat products and cut-to-length carbon steel plate from Canada have been in effect since 1993, these are transition orders within the meaning of section 751(c)(6)(C) of the Act. Thus, as there has been a request for an absorption determination in these reviews (initiated in 1996), we are making a duty-absorption determination.

The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. Respondents are themselves the importers of record for either some (Algoma, Stelco, and Dofasco) or all (CCC and MRM) of their respective sales to the United States (*i.e.*, the exporter and the importer are the same entity). In addition, some of Dofasco's U.S. sales are made through a U.S. affiliate. Therefore, the importer and the exporter are ''affiliated'' within the meaning of 751(a)(4) for all Dofasco, MRM and CCC transactions, and for some Algoma and Stelco transactions. For corrosion-resistant subject merchandise, with respect to CCC, we have determined that there is a dumping margin on 2.72 percent of its U.S. sales during the POR. For corrosion-resistant subject merchandise with respect to Dofasco, we have determined that there is a dumping margin on 16.05 percent of its U.S. sales. For corrosion-resistant subject merchandise with respect to Stelco, we have determined that there is a dumping margin on 16.50 percent of its U.S. sales. In addition, for CCC, Dofasco, and Stelco corrosion-resistant product, we cannot conclude from the record that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Under these circumstances, therefore, we find that antidumping duties have been absorbed by Dofasco on 16.05 percent of its U.S. sales, by CCC on 2.72 percent of its U.S. sales and by Stelco on 16.50 percent of its U.S. sales of corrosion-resistant product. For Algoma, MRM and Stelco plate, we have determined that there are zero or *de minimis* dumping margins on their U.S. sales during the POR. For Algoma, MRM, and Stelco plate, because there are no dumping margins, we find that antidumping duties have not been absorbed.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the established time limit. On January 7, 1998, the Department published a notice of extension of the time limit for the final results in this case to March 9, 1998. See Extension of Time Limits for Antidumping Duty Administrative Reviews, 63 FR 808. The Department is conducting these reviews in accordance with section 751(a) of the Act.

Scope of Reviews

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) certain corrosion-resistant steel and (2) certain cut-to-length plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These

HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1995, through July 31, 1996.

Fair Value Comparisons

To determine whether sales of subject merchandise from Canada to the United States were made at less than fair value, we compared the Export Price (EP) to the Normal Value (NV), as described in the ''Export Price'' and ''Normal Value'' sections of the preliminary results of review notice (*see Preliminary Results* at 47431). On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX. United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' We will match a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model are below cost. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

Analysis of Comments Received

Algoma

Comment 1: Petitioners argue that Algoma improperly excluded what Algoma deemed to be ''excessively long'' production runs from its calculation of product costs. Petitioners cite *Final Determination of Sales at Less Than Fair Value: Titanium Sponge from Japan* (''*Titanium Sponge*'') 49 FR 38687 (October 1, 1984) and *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria* (''*OCTG from Austria*'') 60 FR 33551 (June 28, 1995) as cases in which the Department disallowed adjustments to a hypothetical production cost model. Petitioners assert that the Department should direct Algoma to recalculate its costs to account for these production runs.

Algoma claims that, contrary to petitioners' implication, it did not exclude any costs by excluding aberrant production runs from its productivity analysis. Algoma argues that the productivity matrices are merely the means of allocating Algoma's aggregate costs. Therefore, according to Algoma, petitioners' reliance on *Titanium Sponge* and *OCTG from Austria*, two cases in which the Department was concerned with the completeness of the cost reporting, is misplaced.

Algoma also notes that it reported and discussed its exclusion of aberrant production runs on the record of this review ''well in advance of'' the Department's verification. Nevertheless, according to Algoma, petitioners have not offered any specific modifications of Algoma's guidelines that would continue to identify and exclude aberrant production runs. Algoma further argues that inclusion of aberrant runs would be inappropriate.

Finally, Algoma argues that the appropriate standard by which to judge an allocation methodology is whether it is reasonable and representative under the circumstances and does not lead to a distortion of costs. By this standard, Algoma believes that, by basing its allocation on actual and verified production run times, it has met these criteria.

Department's Position: We agree with respondent. First, as Algoma has argued, the Department is not determining whether an adjustment to actual costs is appropriate, which was the question faced by the Department in *Titanium Sponge* and *OCTG from Austria*. For example, in *OCTG from Austria*, the Department did not allow two variances which were adjustments to actual costs, because (as petitioners have noted) they reflected ''an improper hypothetical normalization of actual costs incurred during the POI.'' *See OCTG from Austria* at 33552. In this case, the Department fully reconciled actual costs at verification (*see Algoma Cost Verification Report*, September 2, 1997, pp. 2–3), and Algoma is not seeking an adjustment to these costs by excluding aberrant production runs from its allocative system. Therefore, petitioners' reliance on *Titanium Sponge* and *OCTG from Austria* is misplaced.

With respect to the appropriateness of using an allocation methodology which excludes certain time data, we agree with respondent that in this case, Algoma's exclusion of excessively long production runs yields more accurate results. Indeed, if we were to accept petitioners' argument that all runs should be included in the cost calculations, manipulation of product-specific cost reporting would in fact be facilitated. For example, a disproportionate share of actual costs could be shifted to a product not sold in the United States simply through the application of purported ''equipment breakdowns'' during production runs of that product. Clearly, such a result does not reflect a product's actual costs. In fact, in this case we believe that the integrity of the allocation system employed by Algoma is supported by the fact that the aberrant production runs have been excluded.

Comment 2: Petitioners allege that, contrary to section 773A(a) of the statute, Algoma failed to report U.S. inland freight expenses in the currency incurred. Specifically, petitioners assert that Algoma's U.S. inland freight expenses incurred in U.S. dollars were converted using Algoma's ''projection'' of what the average exchange rate was going to be for the month in which the payment was made, instead of using the actual exchange rate.

Petitioners further point out that, because Algoma reports currency gains and losses, it must maintain records of its U.S. inland freight expenses in the currency incurred. Petitioners note that, given the number of U.S. sales, reporting would not have imposed a burden on respondents. Petitioners also point out that, because Algoma is participating in its third administrative review, it ''clearly'' had notice of the reporting requirement.

According to petitioners, the Department should apply adverse facts available to Algoma's U.S. inland freight expenses, because Algoma withheld the requested information and thus did not

act to the best of its ability in providing the information.

Algoma contends that it was not reasonably possible to report these amounts in U.S. dollars because that information is not maintained electronically in Algoma's accounting records. Algoma does not regard as credible petitioners' contention that the recording of gains and losses on foreign currency transactions indicates an ability to report transaction-specific data to the Department. Specifically, Algoma claims that these gains and losses are based on account balances, not on individual transactions.

Furthermore, Algoma argues that there would have been no advantage to the company to deliberately withhold the data, because the exchange rate fluctuated very little during the POR.

Finally, Algoma argues that its reporting of these expenses in Canadian dollars was consistent with its practice in the normal course of business and with the manner in which these expenses have been reported in past reviews.

Department's Position: We agree with respondent. First, we note that Algoma has reported U.S. inland freight expenses in Canadian dollars in past reviews of this case. Moreover, the Department reviewed Algoma's reporting of these expenses at verification in the most recently completed segment of this proceeding. *See Memorandum to the File: Algoma Sales Verification Report*, August 12, 1996, which has been added to the record of this proceeding, at page 6 (''Algoma stated that it bills its U.S. customers in U.S. dollars but that Algoma maintains its records in Canadian dollars.'' *See* also pp. 10–13, the Department's review of ten U.S. sales traces, which revealed no discrepancies in Algoma's reporting). The Department accepted Algoma's method of reporting these expenses. Furthermore, Algoma stated for the record of this review that there ''have been no changes to Algoma's financial accounting practices since the Department conducted its verification of Algoma's COP questionnaire responses in the second administrative review'' (June 3–6, 1996). *See* Algoma's Section D response at page 16. We therefore do not believe that Algoma maintains these records in U.S. dollars.

Algoma has reported these expenses in a manner consistent with their record-keeping in the normal course of business. Furthermore, given the relatively stable exchange rate over the period in which these sales occurred (the USD/CD exchange rate ranged from approximately .72 to .75 for the POR, with a beginning POR rate of approximately .732 and an ending POR rate of approximately .727), reporting these expenses in Canadian dollars would not produce a significant effect on the Department's dumping calculations. Therefore, we have made no adjustments to Algoma's reported U.S. inland freight expenses for the final results of review.

Comment 3: Petitioners allege that Algoma may not have reported certain U.S. sales, based on the fact that Algoma reported commissions for some U.S. customers in the last six months of 1995, yet did not report sales to these customers in the 1995 portion of the POR (*i.e.*, August through December).

Algoma notes that the Department traced and reconciled its sales quantities and values at verification. Algoma maintains that the apparent discrepancy identified by petitioners is explained by the way Algoma pays its commissions. *See* Rebuttal Brief at page 15 (business proprietary version).

Department's Position: We disagree with petitioners. Petitioners' speculation that Algoma may not have reported certain U.S. sales is contradicted by information that the Department examined at verification, at which time we tied Algoma's reported U.S. sales to its sales register and annual report. *See Algoma Cost Verification Report*, Exhibit 17. Furthermore, record evidence supports Algoma's explanation of the way Algoma pays its commissions. As the discussion of this issue involves business proprietary information, *see* Exhibit 7 of Algoma's supplemental questionnaire response (December 20, 1996) (business proprietary version).

Based on these facts, we determine there is no basis to suspect that Algoma did not report certain U.S. sales.

Comment 4: Petitioners contend that Algoma should have reported commissions on a transaction-specific basis, instead of on a six-month average basis, given that Algoma has reported the ''exact payment schedule'' for its commission sales.

Algoma asserts that transaction-specific reporting in this instance is neither warranted nor possible because of the manner in which commissions were actually calculated and paid in the normal course of business. Furthermore, Algoma states that petitioners' alternative methodology would be mathematically incorrect and would not reflect the actual amount of commissions paid on the individual sales in question. Finally, Algoma argues that its allocation of commissions is in accordance with the Department's policy to accept such allocations if they are not inaccurate or distortive.

Department's Position: We agree with petitioners in part and respondents in part. With regard to reporting U.S. direct expenses such as commissions, the Department permits respondents to use averages only for expenses that cannot be tied to a specific sale. *See* Antidumping Questionnaire at page 4. When direct expenses cannot reasonably be tied on a sale-by-sale basis, it is the Department's clear preference to apply an allocation methodology at the most specific level permitted by the respondent's records kept in the normal course of business. *See, e.g., Certain Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, Comment 6, 62 FR 42496, 42501 (August 7, 1997), in which the Department accepted respondents' allocation of a direct expense (freight).

Based on information on the record with respect to how Algoma pays commissions (see Exhibit 7 of Algoma's supplemental questionnaire response), we believe that it was appropriate for Algoma to report commissions on a customer-specific basis over a period of time. However, it is also clear that commissions were paid by Algoma based on monthly shipments, and not semi-annually. Therefore, Algoma should have reported its U.S. commissions on a monthly basis instead of a semi-annual basis.

The Department has therefore adjusted Algoma's reported commissions as appropriate for the final results of review. *See Algoma's Final Analysis Memorandum* at page 2.

Comment 5: Petitioners argue that Algoma's adjustment to normal value for pre-processing freight must be denied, as such charges should be included in the cost of manufacture. First, petitioners note that section 773(a) of the statute requires that only those movement charges ''incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser'' shall be deducted from normal value. According to petitioners, the Department has interpreted ''original place of shipment'' to mean the production facility. Because the cost of the outside processing has been included in the cost of manufacture, petitioners conclude that the outside processor's plant is a production facility.

Second, petitioners argue that, if the Department were to allow such freight expenses to be deducted from normal value, a respondent could manipulate dumping margins by, for example, performing certain processing at its own

facility for U.S. sales, while having the same processing performed by an outside processor for the comparison sales in the home market.

Third, petitioners claim that the Department has determined in other cases that the cost of shipping unfinished merchandise to outside processors should be treated as a cost of manufacturing, and not a movement charge, citing, *inter alia*, the less-than-fair-value (LTFV) investigation of this proceeding. Furthermore, petitioners contend that respondents CCC and Stelco in this proceeding have been reporting such charges as manufacturing costs.

Accordingly, petitioners assert that the Department should deny these normal value adjustments, and should upwardly adjust Algoma's costs to include these freight expenses.

Petitioners additionally contend that, in the event the Department does not deny this adjustment in full, it should reduce the claimed adjustment using the average freight costs to the outside processors at one location (and increase the manufacturing costs for the affected control numbers by the same amount).

Algoma argues that the Department addressed this precise issue in the last review, and that the Department's position in that review should be upheld in this review.

Department's Position: We agree with respondent that Algoma's adjustment to normal value for pre-processing freight is allowable. As stated in the final results of the second review of this proceeding, ''the freight from Algoma to the further processor is a movement charge deductible pursuant to section 772(a)(6)(B)(ii) of the Act because it is not freight incurred in the process of manufacturing subject merchandise but freight incurred in sending subject merchandise for further processing at the customer's request as part of the sale . . . In order to insure that a proper comparison is made with ex-factory home market products and ex-factory U.S. market products, all ex-factory freight expenses need to be excluded from the price.'' *See Final Results of Antidumping Administrative Reviews on Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada* (''*1994/95 Canadian Steel*''), 62 FR 18448, 18453 (April 15, 1997). As there is no record evidence of any change in the facts of the case, and because there has been no change in statute or Department regulations since the publication of the final results of the second review, there is no basis to revisit our decision, with the exception of the additional argument raised by petitioners for this review.

With respect to petitioners' new argument in this review that the allowance of such freight deductions could lead to margin manipulation by respondent, we note that the rationale for allowing such a deduction in the first place is to compare ex-factory prices for U.S. sales to ex-factory prices of home market sales, in order to ensure that there are no distortions to actual prices. Moreover, petitioners have pointed to no evidence on the record suggesting that Algoma has positioned its own processing facilities, in Canada, significantly closer to its U.S. customers. Finally, even if such processing facilities owned by Algoma did exist, petitioners have not even attempted to show that the pattern suggested by petitioners exists with respect to Algoma: namely, that respondent could manipulate its dumping margins by performing processing at its own facility for U.S. sales, while having the same processing performed by an outside processor for the comparison sales in the home market. Therefore, we do not find that petitioners' speculation in this regard warrants reversal of our position on Algoma's freight expenses.

Comment 6: Petitioners allege that the Department made a ministerial error involving a currency conversion with regard to Algoma's U.S. inland freight expenses. Respondent agrees with petitioners.

Department's Position: We agree and have corrected this error. *See Algoma's Final Results Analysis Memorandum at page 2.*

CCC

Comment 7: Petitioners argue that CCC improperly reported the value of steel substrate purchased from Stelco. Petitioners state that the Department's July 17, 1997 questionnaire directed CCC to recalculate its cost data for Stelco substrate based on its transfer price and to submit a new COP/CV cost file reflecting only this change. Petitioners note that the cost of Stelco substrate as well as non-Stelco substrate changed in the revised cost submission. See CCC's response to the Department's supplemental questionnaire (July 31, 1997). Petitioners continue that because the cost of non-Stelco substrate changed, the Department should not rely on the cost data from CCC's third supplemental response. Moreover, they argue that because there is no reliable means of identifying Stelco substrate and non-Stelco substrate, the Department should recalculate CCC's cost data for all control numbers, citing *Final Results of Antidumping Administrative Reviews on Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada* (''*1994/95 Canadian Steel*''), 62 FR 18448, 18463 (April 15, 1997). Petitioners maintain that the Department should change the value of all control numbers by an amount equal to the difference between reported transfer price and cost for products reported by CCC as Stelco substrate.

Respondent argues that, in its July 31, 1997 response to the Department's supplemental questionnaire, it revised the cost of all control numbers that used Stelco substrate to reflect the invoice price charged by Stelco. CCC notes that changes were made on a work order-specific basis, and that control numbers were comprised of numerous work orders, some of which used Stelco substrate and others which did not. CCC concedes that the data field in the sales response which identifies the control number as containing either Stelco or non-Stelco coils is incorrect with respect to certain sales. CCC acknowledges that many control numbers contain both Stelco and non-Stelco coils. CCC maintains, however, that the accuracy of the cost submission is unaffected by the error in the sales response.

CCC asserts that the accuracy of its July 31, 1997 cost submission can be verified by cross-referencing control numbers to work orders provided in Exhibit 28 of CCC's December 20, 1996 Supplemental Response. CCC adds that cost data changed for a control number that was reported in the sales response as being produced from non-Stelco substrate for one of two reasons: either the sales response misidentified the coil origin; or CCC was unable to identify the specific work orders for the merchandise. CCC reports that, in the latter case, it used a weighted average of all work order costs for either painted or unpainted merchandise, as appropriate.

In conclusion, CCC argues that the Department should accept CCC's cost response as correct. CCC further contends that, in the event the Department determines that an adjustment is necessary, the Department should use CCC's calculation for the weighted average difference between Stelco's transfer price and cost of manufacture.

Department's position: While we agree with petitioners that there are some minor discrepancies concerning CCC's costs, we do not agree that these discrepancies are sufficient to discredit CCC's cost data. In the Department's

July, 17, 1997 letter to CCC, we requested that:

''[f]or all production of subject merchandise using steel substrate provided by Stelco, Inc., please recalculate CCC's cost data based on the transfer price (not cost of production) of such steel substrate. Please submit your COP/CV cost file (which, with the exception of this revision to the cost data, should be identical to your most recent submission) * * *''

There is no evidence to suggest that CCC failed to comply with the Department's request to revalue, at the invoice price paid by CCC, all control numbers that used Stelco substrate. In addition, based on information on the record of review, we agree with CCC that the original reporting for certain control numbers was inaccurate. Moreover, the accuracy of CCC's revised costs for those control numbers can be confirmed by information on the record. *See CCC Final Results Analysis Memorandum* at pages 2 and 3.

With respect to CCC's decision to report average costs for certain control numbers for which it could not identify the source of the substrate, we find respondent's methodology to be reasonable. Petitioners have provided no basis for concluding that CCC could have identified the source of the substrate, nor have they provided a ''neutral'' basis for calculating the costs. Pursuant to section 776(b) of the statue, the Department may not apply an ''adverse'' inference unless the respondent has not acted to the best of its ability in complying with the Department's requests for information. Respondent's methodology represents an appropriate use of the ''facts available'' pursuant to section 776(a) of the statute.

Comment 8: Petitioners argue that the Department should not accept CCC's allegedly improperly allocated price adjustments. Citing *Final Results of Antidumping Duty Administrative Reviews Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* (''*AFBs 1996*''), 61 FR 66472, 66498 (December 17, 1996), *Final Results of Antidumping Duty Administrative Reviews Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* (''*AFBs 1995*'') 60 FR 10900, 10929 (February 28, 1995), and *Final Results of Antidumping Duty Administrative Reviews Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* (''*AFBs 1993*'') 59 FR 39729, 39759 (July 26, 1993), petitioners maintain that longstanding Department practice requires price adjustments to be reported on a transaction-specific basis. In support, they also cite to *NSK Ltd.* v. *United States*, 910 F Supp. 365 (CIT 1995) and *Torrington Co.* v. *United States*, 926 F. Supp. 1151, 1159 (CIT 1996). Additionally, citing *Torrington Co.* v. *United States*, 832 F Supp. 365, 376 (CIT 1993) and *Smith Corona* v. *United States*, 713 F.2d 1568 (Fed. Cir. 1983), petitioners maintain that a price adjustment must have actually been paid on all sales to which it is allocated.

Petitioners argue that CCC did not report price adjustments on a transaction-specific basis. They claim that in some cases CCC allocated adjustments on invoices without determining whether the adjustment applied to all transactions recorded on the invoice. They also assert that, for some customers, CCC applied adjustments across all sales (including subject and non-subject merchandise) when they could only tie the credit or debit note to a particular customer. Finally, petitioners maintain that CCC incorrectly allocated the adjustments.

Petitioners state that the Department's new regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997)) concerning allocated price adjustments are contrary to the Department's longstanding practice, established case law, and the URAA. However, petitioners argue that, even under its new regulations, the Department must continue to deny CCC its claimed price adjustments.

Petitioners maintain that CCC was able to report some of its price adjustments on a transaction-specific basis, and this indicates that CCC therefore could have reported all of its price adjustments in this manner. Because CCC did not do so, petitioners contend that CCC did not act to the best of its ability in responding to the Department's request for information. They continue that, because CCC did not report the total number of sales to which allocated adjustments applied, an adverse inference must be applied. Petitioners argue that the Department should reject all of CCC's claimed adjustments in both the home market and the U.S. market. As facts available, petitioners argue that the Department should apply the highest debit for any sale in the home market to all sales for which a debit was reported. In the U.S. market, petitioners argue that the Department should apply the highest credit for any sale to all sales for which a credit was reported.

Respondent argues that CCC's reported price adjustments should again be accepted by the Department as they were in the first and second administrative reviews. Respondent notes that the Department rejected petitioners' arguments concerning CCC's price adjustments in the first and second administrative reviews and that the Department verified CCC's methodology in the second administrative review. CCC maintains that it has applied pricing adjustments in the same manner in this review.

CCC argues that the Department's decision to accept CCC's claimed price adjustments is consistent with its decisions in other cases, citing *Final Results of Antidumping Duty Administrative Reviews on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom* (''*AFBs October 1997*''), 62 FR 54043 (October 17, 1997); *Final Results of Antidumping Duty Administrative Reviews on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom* (''*AFBs January 1997*''), 62 FR 2081 (January 15, 1997); and *AFBs 1996.* CCC states that the Department has verified in past reviews that CCC has applied its price adjustments using the most precise methodology possible and in a manner not unreasonably distortive. Therefore, CCC argues that, based on the precedents in this proceeding and the law, the Department should accept CCC's price adjustments.

Department's Position: We agree with respondent. In light of the Department's determination in recent cases and the facts of the record, we accept CCC's post-sale price adjustments.

In its rebuttal brief, CCC cites to *AFBs January 1997* and *AFBs October 1997*, in which the Department allowed the use of allocations where they did not cause unreasonable inaccuracies or distortions. The Department, citing section 776 of the Tariff Act, determined that ''it is inappropriate to reject allocations that are not unreasonably distortive in favor of facts otherwise available where a fully cooperating respondent is unable to report the information in a more specific manner'' (*AFBs January 1997* at 2090 and *AFBs October 1997* at 54049). Significantly, the Department treated these discounts, rebates and billing adjustments not as direct (or indirect) selling expenses but as ''direct adjustments necessary to identify the correct starting price.'' *Id.*

The Department's policy represented a departure from earlier AFBs cases, to which petitioners cite in their case brief. In these earlier cases, the Department only permitted adjustments if they were reported on a transaction-specific basis or granted on a fixed and constant percentage of sales on all transactions which were reported. *See AFBs 1993* at 39759, *AFBs 1995* at 10929, and *AFBs 1996* at 66498.

In the most recent AFBs cases, the Department addressed the relevance of *Torrington Co.* v. *United States*, 82 F.3d 1039, 1047–51 (Fed. Circ 1996) (''Torrington I''), to the allocation of adjustments. The Department noted that, while the Court of Appeals for the Federal Circuit (''CAFC'') in its decision in Torrington I questioned whether price adjustments constituted expenses (see Torrington I at n.15), the Court maintained that, if the adjustments were expenses, they had to be treated as direct selling expenses. Significantly, ''the CAFC did not find that such price adjustments could not be based on allocations'' (*AFBs October 1997* at 54050).

In its rebuttal brief, CCC notes that it has allocated price adjustments in the same manner as in previous reviews. In the second administrative review, the Department conducted a verification of CCC's response, in which the Department examined many home market and U.S. market sales, several of which contained adjustments similar to the ones in question in this review (see *CCC Verification Report for Certain Corrosion-Resistant Carbon Steel Flat Products From Canada* at pp. 11–15 (August 8, 1996)). We note that while there were some discrepancies, CCC accounted for these discrepancies to the Department's satisfaction. In our final results in the second administrative review, the Department accepted CCC's allocation of price adjustments.

Based on information on the record of this review, we find CCC to have fully cooperated and to have allocated its price adjustments using a methodology which is not unreasonably distortive. With respect to petitioners' comments on the legality of the Department's May 1997 regulations, we note that this case is being conducted under the Department's regulations as they existed prior to May 1997, and therefore petitioners' comments are not applicable here.

Comment 9: Respondent argues that the Department should recalculate G&A expenses to exclude antidumping legal expenses. CCC notes that the Department consistently has held that legal fees paid in connection with participating in an antidumping investigation or administrative review are not selling expenses. *See Final Results of Administrative Review of Antidumping Duty Order on Color Television Receivers from the Republic of Korea*, 58 FR 50333, 50366 (September 27, 1993); *Final Results of Antidumping Duty Administrative Review on Television Receivers, Monochrome and Color, from Japan*, 56 FR 28417, 38419 (August 13, 1991). CCC also notes that the Court of International Trade has affirmed the Department's exclusion of antidumping legal expenses in the margin calculation. *See, e.g., Federal-Mogul Corp.* v. *United States*, 813 F. Supp. 856, 871 (CIT 1993) *Daewoo Electronics Co., Ltd.* v. *United States*, 712 F. Supp. 931, 947 (CIT 1989). CCC argues further that, in the second administrative review of this proceeding, the Department determined that CCC's antidumping legal expenses should be excluded from its calculation of the G&A expense ratio. See *CCC Final Results Analysis Memo for Certain Corrosion-Resistant Carbon Steel Flat Products From Canada* (August 13, 1997).

Furthermore, CCC maintains that the Department has the information on the record needed to calculate G&A expenses exclusive of antidumping legal expenses. Respondent states that the antidumping legal expenses for the case were calculated from invoices received and paid by CCC during the POR. Respondent notes that, in its preliminary results notice, the Department rejected CCC's POR G&A calculations and recalculated the G&A expense ratio based on CCC's eleven month internal financial statement (*see* CCC's Supplemental Response at Exhibit 6, pg. 14 (December 20, 1996)). CCC states that the Department failed to deduct the antidumping legal expenses when the Department recalculated the G&A expense ratio. CCC argues that, if the Department does not deem the exclusion of the antidumping legal expenses from the G&A to be a ministerial error, the Department should exclude antidumping legal expenses from total selling and administrative expense as a matter of law.

Petitioners did not comment on this issue.

Department's Position: We agree with respondent that the Department made a ministerial error in the calculation of the G&A expense ratio, and that antidumping legal expenses should have been deducted from total selling and administrative expenses. We have recalculated the general and administrative expense ratio to exclude antidumping legal expenses. *See CCC Final Results Analysis Memorandum* at page 3.

Comment 10: Petitioners state that the Department should correct a ministerial error in its margin calculation program. They maintain that the Department erroneously calculated CCC's G&A for constructed value based on CCC's variable cost of manufacture. Instead, petitioners argue that G&A for CV should be calculated based on CCC's total cost of manufacture.

CCC did not comment on this issue.

Department's Position: We agree with petitioners. The Department has recalculated G&A for CV based on a percentage of total cost of manufacture. *See CCC Final Results Analysis Memorandum* at page 3.

Dofasco

Comment 11: Respondent argues that the Department should value the painting services that Dofasco receives from Baycoat based on the cost of production, not the invoice price. Dofasco asserts that, although Baycoat initially invoices Dofasco at a price that is higher than its cost of production, Baycoat issues the equivalent of a cash ''rebate'' to Dofasco at year-end that reduces the invoice price so that it is equal to Baycoat's cost of production. This is required by the terms of the shareholder agreement. Dofasco maintains that it records both the initial invoice price and the year-end cash rebate in its accounting records. Consequently, Dofasco asserts that all painting services are effectively valued in Dofasco's normal accounting records at year-end at Baycoat's cost of production.

Dofasco maintains that this situation is distinct from one in which intercompany profits are eliminated, because in this case, Dofasco actually receives a check from Baycoat at year-end. Dofasco argues that the Department should treat this situation as it would treat one involving a rebate that a company receives from a vendor. As such, respondent argues that the Department should change its methodology to include the rebate of profits from Baycoat to Dofasco in the calculation of total cost of manufacture.

Alternatively, Dofasco urges the Department to offset Dofasco's general and administrative expenses (G&A) with the ''miscellaneous income'' that is the difference between the invoice price and the net cost to Dofasco. Respondent cites *Final Determination of Sales at Not Less than Fair Value: Saccharin from Korea* (''*Saccharin from Korea*'') 59 FR 58826, 58828 (November 15, 1994) and *U.S. Steel Group* v. *United States* (''*U.S. Steel* v. *United States*''), *Slip Op. 97–95,*

CIT (July 14, 1997) as two cases in which the Department offset G&A by miscellaneous income relating to production operations of the subject merchandise. In the instant case, respondent maintains that the remission of profits constitutes miscellaneous income.

Petitioners contend that it is the Department's practice, as reflected under 19 CFR 351.407(b) (regulations which the Department has noted, in the section of this notice entitled ''Applicable Statute and Regulations,'' do not apply to this case), to determine the value of a major input purchased from an affiliated person based on the higher of the price paid by the exporter, the amount usually reflected in sales of the major input in the market under consideration, or the cost to the affiliated person of producing the major input. Petitioners note that, in the most recently concluded segment of this proceeding, the Department valued Baycoat's services to Dofasco and Stelco based on the transfer price.

Petitioners assert that the Department rejected a similar argument made by Stelco in the last review. In that case, Stelco argued that the profit remitted by Baycoat constituted a rebate on each invoice which should be deducted from transfer price. Petitioners note that the Department denied the requested adjustment under the major input rule. *See 1994/95 Canadian Steel* at 18464. Dofasco, petitioners assert, has made no compelling new arguments warranting a reversal of that prior decision. In addition, petitioners cite *Mechanical Transfer Presses from Japan: Final Results of Antidumping Administrative Review (''MTPs from Japan''*), 61 FR 52910, 52913–14 (October 9, 1996) as a case in which respondent's requested downward adjustment from transfer price to cost was not allowed.

Petitioners additionally contend that Baycoat's profit remission is not analogous to a rebate. Rebates are generally related to sales in some way (*i.e.*, Baycoat would offer Dofasco a rebate if Dofasco purchased a certain amount of goods from Baycoat), but in this case, Dofasco receives its share of Baycoat's profits without regard to Dofasco's purchases from Baycoat. There is nothing on the record which demonstrates that this distribution is in any way related to the quantity or value of specific sales. Consequently, petitioners argue that the Department should maintain the methodology it adopted in the second administrative review and value Baycoat's painting services at transfer price.

Petitioners argue that Dofasco's suggested alternative, to offset Dofasco's G&A expenses by year-end profit received from Baycoat, is faulty for two reasons. First, petitioners contend that the remission of profits from Baycoat to Dofasco does not constitute miscellaneous income as it is not income which Dofasco receives from secondary or auxiliary activities, but instead is income that is produced by the corporation's principal business activities. In fact, petitioners argue that the record shows that Dofasco itself does not classify income it receives from Baycoat as ''miscellaneous income.'' Second, petitioners assert that even if the profit were to be considered miscellaneous income, an offset would be improper because an offset cannot be made to G&A when the cost relating to the activity in question is in the cost of manufacture. *See Certain Cold-Rolled and Corrosion-Resistant Steel Flat Products from Korea: Final Results of Antidumping Administrative Review* (*''Steel from Korea''*) 62 FR 18404, 18447 (April 15, 1997) and *Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand* (*''Pineapple from Thailand''*), 60 FR 29553, 29566 (June 5, 1995).

Nevertheless, should the Department consider granting the offset, petitioners maintain that the amount proposed by respondent must be rejected as it reflects the period of review rather than the calendar year 1995, which is the period upon which G&A is based. Petitioners assert that it would be distortive for the Department to apply the profit for one period to the G&A of another period. Finally, should the Department decide to include the profit from Baycoat as an offset, petitioners suggest that the Department also include other gains and losses related to other affiliates.

Department's Position: We agree with petitioners that it is appropriate to use an unadjusted transfer price in valuing Baycoat's painting services to Dofasco. Sections 773(f)(2) and (3) of the Act direct the Department to value inputs supplied by affiliated persons at the transfer price between the entities provided that such a price reflects the price commonly charged in the market and, for major inputs, is not below the cost of producing the input. In *AFBs January 1997* (at 2115), the Department found that ''in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated parties, the market price between unaffiliated parties, and the affiliated supplier's cost of producing the major input.'' As painting services obtained from Baycoat constitute a major input, we will continue to use the transfer price, as it is above cost and we have no other information regarding market values. Furthermore, we will not adjust the transfer price in any manner, whether it be a year-end cash rebate or an offset to G&A, for the reasons stated in Comment 22 of this notice (Stelco).

While it is inappropriate to adjust transfer price in any manner, there are further reasons to reject Dofasco's alternatives to adjusting the transfer price by a year-end cash rebate. With respect to a price-to-cost offset to G&A, in *MTPs from Japan*, the Department rejected an argument to offset the transfer price and determined that as the transfer price is higher than the cost of production, ''it would be inappropriate to ignore the transfer price.'' *See MTPs from Japan* at 52914. Also, we note that G&A expenses are defined as expenses incurred in performing general and administrative activities and are shown under the operating expense portion of a company's income statement. *See* Siegel, Joel G. and Jae K. Shim, *Barron's Dictionary of Accounting Terms* (1987), at 191. Profit remission from Baycoat is not an activity that Dofasco has classified in its own accounting records as a general or administrative expense.

Respondent cites *Saccharin from Korea* and *U.S. Steel Group* v. *United States* as cases in which ''miscellaneous income'' was permitted as an offset to G&A because this income was related to production operations. However, in the instant case, remission of profits does not constitute miscellaneous income, which is traditionally defined as income received from secondary or auxiliary activities. *See* Kieso and Weygandt, *Intermediate Accounting*, 5th Ed. (1986) at 118. The record shows that Dofasco classifies this income as income from steel operations in its financial statements. *See Dofasco's Cost Verification Report*, July 17, 1997, Exhibit 4 at 12 (hereinafter ''Dofasco Verification Report'').

Comment 12: Petitioners claim that the reconciliation Dofasco performed at verification between Dofasco's costs as kept in its normal accounting system and Dofasco's reported costs was incorrect, incomplete and based on unreliable information.

First, petitioners suggest that the record shows that there were significant discrepancies in the total costs and quantities between the response and the financial statements in three out of the four prime product categories.

Second, petitioners allege that Dofasco attempted to reconcile its reported costs to its earning statements, and not to its inventory values, which petitioners claim is standard practice.

Petitioners contend that Dofasco did not explain the relationship between values from earnings statements and inventory. Also, petitioners argue that Dofasco did not clarify which elements of cost are included in the costs of the earnings statements.

Third, petitioners contend that the reconciliation was invalid because Dofasco's comparisons were not made on an ''apples-to-apples'' basis; the two sets of costs that were being compared did not reflect the same items and were not based on data from the same time periods.

Fourth, petitioners further argue that Dofasco failed to include third country production costs in the calculation of the reported costs, and that this alleged failure is contrary to the Department's practice. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Antidumping Administrative Review,* 60 FR 44009, 44012 (August 24, 1995). Petitioners maintain that the Department's comparison of costs and quantities reported in the response (which petitioners insist did not include third country production) to costs and quantities in the earnings statements (which petitioners claim did include these costs) was improper; any reconciliation based on this inconsistent comparison, petitioners assert, is therefore meaningless.

Fifth, petitioners state that an additional defect in Dofasco's reconciliation of cost concerns the fact that Dofasco reported cost of goods sold (COGS) instead of the cost of manufacture, which petitioners claim is contrary to the Department's practice. Petitioners argue that Dofasco's December 23, 1996 response indicates that Dofasco added an adjustment based on changes in inventory to COM to convert it to COGS. In the reconciliation, petitioners assert that Dofasco compared reported costs, based on COGS, to the costs in the earnings statement, based on cost of goods manufactured. Petitioners state that the verification exhibits show that costs from the earnings statement were adjusted by inventory change to reflect COM.

Sixth, according to petitioners, Dofasco did not use the yield loss rates maintained in its normal cost accounting system to prepare the costs in its response. Instead, petitioners point out that Dofasco used yields calculated by PaYs, its management cost system. Petitioners maintain that Dofasco acknowledged that there were differences in the bases upon which yields were calculated under the two systems but it did not account for these differences in the reconciliation. In addition, petitioners contend that the Department did not verify seemingly aberrational yield loss rates at verification.

Seventh, petitioners claim that Dofasco improperly included certain products and costs in its reconciliation for various product groups; this inclusion makes a proper reconciliation more improbable.

Eighth, petitioners argue that Dofasco has not properly treated fixed costs. According to petitioners, in its reconciliation, Dofasco adjusted the ''costs per earning statement'' to arrive at a variable cost of manufacture (VCOM) amount and then added only one fixed cost (depreciation) to calculate a total cost of manufacture (TOTCOM). This reconciliation, petitioners maintain, is inconsistent with the response where Dofasco stated that TOTCOM included VCOM as well as ''numerous'' fixed costs, such as an allocation from sundry cost of sales, the ongoing costs of idled operations, and the expense portion of capital projects. Therefore, for the reconciliation, Dofasco compared VCOMs from the response, which petitioners argue must have no fixed costs, to VCOMs from the earnings statement, which petitioners surmise to include all fixed costs other than depreciation.

Finally, petitioners assert that the total production costs and quantities which Dofasco attempted to reconcile to its accounting records were unreliable as their cost accounting (PaYs) categories were comprised of both subject merchandise and alloy products. The costs and quantities associated with the alloy products were important to a proper reconciliation, but petitioners argue that Dofasco did not explain its calculations relating to alloy products and did not properly corroborate quantities and costs for these products, thus making a proper reconciliation impossible.

Petitioners maintain that all of these failures contributed to Dofasco's inability to reconcile its reported costs to the accounting records. As such, petitioners assert that the Department should reject the reported costs, citing numerous cases in support of this assertion *See, e.g., Certain Welded Carbon Steel Piles and Tubes from Thailand: Preliminary Results of Antidumping Administrative Review,* 62 FR 17590, 17593–94 (April 10, 1997); and *Cut-to-Length Carbon Steel Plate from Sweden: Preliminary Results of Antidumping Administrative Review,* 61 FR 51899 (October 4, 1996). Petitioners also argue, citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey,* 61 FR 30309, 30312 (June 14, 1996), that the Department's practice in such cases is to apply total facts available. Petitioners argue that, should the Department decide to use partial facts available, the Department should use the highest reported cost for each inventory category as the cost for all products in that category. *See Granular Polytetrafluroethylene Resin from Italy: Final Results of Antidumping Administrative Reviews,* 62 FR 5590 (February 6, 1997).

Respondent asserts that petitioners' argument concerning Dofasco's cost reconciliation is without merit and demonstrates petitioners' basic misunderstanding of the thorough analysis performed by the Department verifiers. Dofasco states that the Department spent days at verification ensuring that detailed product costs properly reconciled to the average costs of the aggregate product groupings per Dofasco's financial statements. In fact, Dofasco asserts that the Department's cost verification report states that the Department was able to tie costs calculated by PaYs to costs per earnings statement.

Regarding petitioners' contention that there is a fundamental flaw in Dofasco's reconciliation because costs were reconciled to the earnings statements and not to inventory values, Dofasco argues that a basic cost accounting concept is that inventory values represent the costs at one point in time and that the cost of goods manufactured from the earnings statement represents the costs over the period of time corresponding to the cost reporting period. The Department's reconciliation, therefore, was based on the reconciliation of reported costs for the one year period to the total costs actually incurred during the same period.

Respondent also asserts that petitioners' argument that Dofasco performed its reconciliation solely on the basis of a comparison of per-unit costs is inaccurate. In fact, Dofasco claims that it reconciled the submission to both the per-unit costs and the total costs. Dofasco claims that the alleged differences in the total cost and total quantities in the verification exhibits are a result of timing differences in the reported production quantities and represent a reconciling item between the submission and the books. Thus, once the reconciling quantities are valued at the cost per the books, there is essentially no difference in the total costs. Dofasco states that, at verification, it was able to reconcile the fact that the per unit costs were comparable, and

also that the total costs were comparable.

Dofasco disagrees with petitioners' argument that Dofasco failed to make ''apples-to-apples'' comparisons. According to Dofasco, the reported costs include all variances, sundry items, and depreciation. Dofasco contends that these same items were added to the earnings statement to ensure that the costs per the books for each of the selected product categories were on exactly the same basis as in the response. In addition, petitioners' allegation that the reported costs and the costs per the earnings statement are not for the same time period is factually incorrect, Dofasco maintains, as the earnings statement covers the period July 1, 1995 through June 30, 1996 (Dofasco's fiscal period) and the Department expressly allowed Dofasco to base its reported costs on its fiscal period rather than the POR.

Additionally, Dofasco disputes petitioners' claim that Dofasco did not include third country production costs in the calculation of the reported cost. Dofasco maintains that, as explained in its Section D response, Dofasco accumulates the costs for each factory process and weight averages the actual production cost and existing inventory cost of that process to arrive at an average product cost that flows into the next process. At the time that a product is manufactured, the mill floor is not aware of the destination of the order and is therefore unable to track the cost of North American and offshore orders separately. Hence, the total production cost at a factory process includes the cost of both North American and third country shipments.

Dofasco maintains that reported costs do in fact reconcile to both cost of goods manufactured and COGS, contrary to petitioners' allegation. Dofasco asserts that it adjusted TOTCOM to account for changes in its inventory only as a result of petitioners' suggestions and the Department's subsequent request to calculate inventory change on a quarterly basis. Regardless, Dofasco argues that the difference between the cost of sales per earning statement and the reported TOTCOM is insignificant.

Dofasco states that the allegation regarding yield loss rates is incorrect because the production data for financial statement purposes and PaYs flows from common systems and thus, the overall source of the production figures for calculating yields is the same for financial statement purposes as PaYs. In addition, respondent states that the Department did verify and accept Dofasco's explanation of the aberrant yield loss rates at verification.

Dofasco also disputes petitioners' claim that several products exist in Dofasco's reconciliation that do not exist in Dofasco's cost database. Dofasco states that the products at issue were products that Dofasco sold during the third administrative review period but did not produce during this period. Because Sorevco (an affiliated producer of subject merchandise) had produced these products and because the Department treats Dofasco and Sorevco as one entity, Dofasco reported per unit costs for such products based on Sorevco's costs. At reconciliation, Dofasco reported the cost for such products based on its own second administrative review costs because these were the actual costs associated with the products. Regardless, respondents assert that the difference this makes to the TOTCOM field is insignificant and represents petitioners' continued ''nitpicking.''

According to Dofasco, petitioners' argument that Dofasco's treatment of fixed costs was faulty and that sundry expenses were not included in the calculation of VCOM is ''ridiculous.'' Dofasco asserts that a careful examination of the calculations will show that sundry expenses were included in VCOM, which explains why depreciation is the only item added to VCOM to calculate TOTCOM. For the reconciliation, Dofasco states that all fixed overhead costs were included in calculating the unit cost for the selected product costs.

Finally, Dofasco disputes petitioners' claim that it failed to explain the nature of its calculations relating to alloy products. In fact, for the reconciliation, Dofasco had to include the cost of alloy products in order to calculate the total (and per unit) costs for products within the broad inventory groupings. Dofasco states that the cost of alloy products was calculated in exactly the same manner as the cost of subject goods. For purposes of the administrative review, however, alloy products are not in the scope of the review and therefore, Dofasco asserts that it was not required to submit any data related to alloy products on the record.

Department's Position: We agree with respondents that the Department was satisfied with the outcome of verification and note that one of the Department's principle mandates at verification is to reconcile the cost response with the financial statements to a point at which the accuracy of the response is confirmed. In this case, at verification, we reconciled the reported costs with the financial statements and determined that Dofasco properly reported costs as incurred. ''Dofasco's product costs, as calculated by PaYs and reported to the Department, were comparable to Dofasco's costs per earnings statement (and hence, Dofasco's normal cost accounting system).'' *See* Dofasco Verification Report at page 7. However, we will address each argument made by petitioners and respondent in turn.

(1) Discrepancies in Three Out of Four Prime Product Categories

The Department notes that costs for all of the categories reviewed (with the exception of galvanized waste and seconds) were reconciled such that the Department deemed the average costs to be ''comparable''. First, Dofasco has stated that differences between reported production quantities and the financial statements are timing differences. Petitioners have pointed to no compelling reason to dispute this explanation.

Moreover, and more importantly, the Department notes that minor differences between reported and financial costs are expected at verification. A company's inability to reconcile costs exactly does not, however, render a company's response unuseable. *See, e.g. Brass Sheet and Strip from the Netherlands: Final Results of Antidumping Administrative Review*, 62 FR 51449, 51453–454 (October 1, 1997) and *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled*, From Japan, 61 FR 38139, 38154 (July 23, 1996). Rather, the Department's responsibility is to ensure that costs incurred for production of the subject merchandise during the POR have been properly reported, and that the allocations employed are not distortive. The Department reviewed the reported quantities and costs for these three categories at verification, and found that the costs were comparable. Concerning the fourth prime category for which there were more substantial differences in cost, Dofasco provided a reasonable explanation for this discrepancy. *See* Dofasco Verification Report at page 7–8.

(2) Reconciliation to Earnings Statements, Not Inventory Values

The Department has the discretion to determine how to best reconcile the cost response at verification, as long as the reconciliation serves to confirm the overall validity of respondent's reported costs. In this case, the Department accepted Dofasco's reconciliation of the response to the earnings statements and not to inventory values. Furthermore, the Department did not request an inventory value reconciliation at

verification, but determined that a reconciliation to Dofasco's earnings statement would appropriately indicate whether Dofasco's reported costs were in line with Dofasco's normal cost accounting records. As stated in the Verification Agenda dated June 9, 1997 at 3–4, the Department specifically asked Dofasco to ''obtain a reconciliation of the total POR cost of manufacturing costs per cost accounting system to the total of the per-unit manufacturing costs submitted to the Department.'' This is in fact what was accomplished at verification. *See* Dofasco Verification Report at page 7.

(3) Timing and Product Differences

We agree with respondents that Dofasco's earnings statements were adjusted so that the cost response and the earnings statements reflected the same items. In fact, the Department expressly allowed Dofasco to report costs based on its fiscal period rather than the POR, as the two periods differed by only a month. *See* the Department's Antidumping Questionnaire dated September 9, 1996 at page D–1; *Memo to The File from Rick Johnson* dated November 12, 1996, and Dofasco's Section D Response dated November 13, 1996 at page D–2 and D–3. As such, the cost response and the financial statements reflected data from the same period.

(4) Third Country Production Costs

In the first administrative review of this case, petitioners raised the concern that Dofasco did not include third-country production in its weighted-average cost calculations. As we noted in that review, ''[t]he Department verified that Dofasco used costs incurred in its total production to determine the COP and CV of subject merchandise. Third country information was only disregarded when Dofasco weight-averaged its costs to determine U.S. specific CV data and home market-specific COP data.'' *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Administrative Reviews* (''*1993/94 Canadian Steel*'') 61 FR 13815 (March 28, 1996). Significantly, the CIT upheld the Department's finding, stating that ''Commerce's acceptance of Dofasco's methodology essentially finds a middle ground. Total production costs are incorporated into the COM, but final COP and CV are determined based on a weighted-average reflecting production for a particular market.'' *See AK Steel Corp. et al.* v. *United States, Slip Op. 97–152*, CIT (November 14, 1997) at page 14.

While Dofasco no longer reports market-specific costs for the same control number, its methodology with respect to the incorporation of third country production data has not changed since the first review. Thus, there is no compelling new information on the record which indicates any failure to include third country production costs in the calculation of COP and which would warrant a reexamination of this issue. Therefore, the Department is maintaining the position adopted in the first review and upheld by the CIT that third country production information has been properly included and accounted for in Dofasco's cost calculations.

(5) Reconciliation to Cost of Goods Sold

We agree in part with petitioners and respondents. We agree with petitioners that at verification, we compared the TOTCOM (effectively, cost of goods sold) from Dofasco's response to the cost of good manufactured from their accounting records. It would have been more appropriate to compare the reported costs to the costs in the earnings statement, had the two sets of numbers been calculated based on the same items (*i.e.*, both inclusive or exclusive of the inventory change adjustment). However, the difference between the two sets of figures resulting from the inventory change adjustment is insignificant. *See Dofasco Final Results Analysis Memorandum*, page 9.

(6) Calculation of Yield Loss Rates

We agree with petitioners that there may be some minor differences in the bases upon which yield loss rates were calculated in PaYs and in Dofasco's normal accounting system. However, these minor differences do not constitute a serious enough reason for rejecting the entire cost verification. We note that Dofasco has already acknowledged that there are minor differences between the yields calculated by PaYs as opposed to the yields calculated with Dofasco's normal cost accounting system. *See* Dofasco's December 23, 1996 response at 35–38. Significantly, the Department did not, as a result of the information provided by Dofasco, inform the company at that time that the difference provided a sufficient basis to question the use of PaYs as a reporting tool. Furthermore, the Department has found no evidence to contradict Dofasco's explanation regarding the reasons for the differences in the yields calculated by the two systems. *Id*.

Concerning petitioners' contention that the Department did not verify Dofasco's explanation concerning aberrational yield loss rates, we disagree. In the second administrative review, the Department adjusted certain yield loss rates reported by Dofasco because the Department determined that there were certain aberrant yield loss rates which affected the total yield loss rates generated by PaYs. *See 1994/95 Canadian Steel* at 18459. The Department stated that Dofasco did not offer an explanation of the apparently aberrational data. As such, for the final determination in the second administrative review, the Department applied facts available by excluding sales orders which incorporated what appeared to be inaccurate data and by upwardly adjusting Dofasco's reported cost of manufacture on all models by the percentage difference between the reported yield loss rate and the corrected yield loss rate. *See 1994/95 Canadian Steel* at 18468 (April 15, 1997).

However, for this review, Dofasco has provided an acceptable explanation regarding these apparently ''aberrational'' yields. Specifically, Dofasco stated that ''customization of an order often involves adding a piece of steel with the same characteristics as the existing steel being processed. Dofasco added that this customization usually occurs at either the pickle line or the galvanizing line * * *. Therefore, Dofasco explained that the yield loss rates reported in the PaYs system with respect to these orders in fact is accurate. Dofasco also stated that, because the customization of these orders involves taking pieces originally processed for other orders, those other orders would have correspondingly low yields.'' *See* Dofasco Verification Report at pg. 20, Exhibit 24. Therefore, we disagree with petitioners' assertion that the Department did not verify these seemingly aberrational rates.

(7) Inclusion of Certain Products and Costs

We disagree with petitioners concerning the allegedly improper inclusion of certain products and their costs in Dofasco's response. Petitioners are correct to point out that there are several CONNUMs reported in the response for which there are different costs per the earnings statement. The answer for this was presented by Dofasco at verification, when Dofasco noted that there were several products sold (by Sorevco) during the third administrative review period which were produced during the second administrative review. At reconciliation,

Dofasco reported the cost for such products based on verified second administrative review costs. See Dofasco Verification Report at pp. 18–19.

(8) Calculation of Fixed Costs and Variable Cost of Manufacture (VCOM)

We agree in part with petitioners and respondents. While the record shows that there may be some differences regarding the items Dofasco included in VCOM as reported to the Department, compared to those items included in the reconciliation at verification, we note that regardless of the individual classification of certain items in the reconciliation, the Department reconciled Dofasco's reported costs to the costs determined from Dofasco's normal accounting system examined by the Department at verification. The Department found that the average costs per product grouping for those product groupings examined at verification were comparable (with the exception of one grouping, for which Dofasco provided an explanation). See Dofasco Verification Report at page 7. The Department's concern with comparing total costs for each product grouping is reflected in the verification report, in which the Department discusses the comparison of total manufacturing costs, as opposed to variable manufacturing costs: ''[w]e then compared total per unit values per earnings statement after the above reconciling items to the average TOTCOM2 as calculated from the submission to the Department.'' (Emphasis added) See Dofasco Verification Report at page 7. Whether certain costs were included in VCOM or not, the most important aspect of the cost reconciliation is that the same costs were included in both the submission and Dofasco's normal cost accounting system.

(9) Verification of Alloy Products

Concerning the inclusion of alloy products and costs, we disagree in part with both petitioners and respondents. For the reconciliation, the Department tied the costs per financial statements, exclusive of costs associated with alloy products, to the costs reported by Dofasco. See Dofasco Verification Report at pg. 7 (''We reviewed Dofasco's adjustment to exclude the cost of alloy products which are incorporated into Dofasco's normal cost accounting categories'').

We note that, contrary to Dofasco's assertion, the Department is indeed entitled to examine costs for alloy products at verification, as such costs were necessary to perform an adequate reconciliation. However, the Department has the discretion in deciding the depth to which it will examine any information presented at verification. The fact that respondents did not provide more complete information, when the Department did not ask for it, cannot be held against respondents. The purpose of verification is not to examine every number submitted by respondent: instead, the objective is to ensure the integrity of the response. *See, e.g., Silicon Metal from Argentina: Final Results of Antidumping Administrative Review*, 58 FR 65336, 65340 (December 14, 1993) (''the Department is not required to verify every figure reported in the questionnaire response. The process of verification involves spot-checking and cross-checking the information that the Department selects for emphasis in analyzing each specific response''); *Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Administrative Review*, 55 FR 21061, 21064 (May 22, 1990) (''The Department has discretion to decide which items to verify''); *Monsanto Co.* v. *United States*, 698 Fed. Supp. 275, 281 (CIT 1988) (''Verification is a spot check and is not intended to be an exhaustive examination of the respondent's business'').

Comment 13: Petitioners maintain that Sorevco's reconciliation, which was placed on the record as part of its questionnaire response, shows a significant discrepancy. In attempting to show that the total cost of manufacture reported in its response agreed with the production costs in its financial statements, Sorevco determined the total of the COMs in the response for all products. However, Sorevco's database shows that Sorevco's total COMs (*i.e.* the sum of the COM for each CONNUM multiplied by the quantity for that CONNUM) is different. Petitioners state that where there is a discrepancy between the reported costs and the costs maintained in the financial statement, the Department has increased the reported costs by the difference. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30358 (June 14, 1996).

Respondent states that petitioners' allegation that there is a discrepancy in Sorevco's reported costs is in error because petitioners incorrectly attempted to compare the total COM reported to the Department on the computer database with the reconciliation that Sorevco provided in Exhibit 4 of its December 23, 1996 supplemental response. According to Sorevco, this is not an appropriate comparison. The COM reported by Sorevco in the December 23, 1996 response reflected Sorevco's costs as the company maintains them in the normal course of business; that is, this COM reflects the transfer price at which Sorevco buys cold-rolled steel from Dofasco and Sidbec-Dosco. However, as a result of the Department's treatment of Dofasco and Sorevco, Dofasco provided its per-unit cost of production for the cold-rolled steel it sold to Sorevco. For each Sorevco product code, Dofasco's per-unit cost of production was weight-averaged with Sidbec-Dosco's transfer price to arrive at a weight-averaged cost of production that was used in the response. Therefore, respondent states that in the computer database, Sorevco's COM is calculated using both cost and transfer price data for cold-rolled material. Respondent states that this same methodology was used in prior reviews, has been verified by the Department, and has never been challenged by petitioners.

Department's Position: We agree with respondent. In past reviews and in the instant case, the Department has accepted Sorevco's methodology for reporting COM, including the valuation of substrate provided by related parties. This methodology leads to the difference between the costs reported to the Department and Sorevco's internal cost accounts. The difference is therefore adequately explained.

Comment 14: Petitioners claim that on May 28, 1997, Dofasco for the first time submitted freight information that had been the subject of two prior information requests by the Department. Petitioners maintain that Dofasco had the information in its possession and claimed complete reporting but did not submit this information until petitioners demonstrated, in another review, that Dofasco's claim of complete reporting was incorrect. Petitioners further suggest that the Department use adverse facts available based on the fact that Dofasco did not comply to the best of its ability when it repeatedly failed to supply the necessary freight rates in response to the Department's information requests. As such, petitioners argue that the May 28, 1997 response constitutes an untimely submission of factual information which warrants the application of facts available by the Department.

Dofasco contends that it did not withhold information from the Department. According to Dofasco, in the second administrative review it became clear that there was a programming error which caused certain freight costs to be missing. As soon as this programming error was discovered in the second review,

Dofasco alleges that its counsel contacted the Department to inform the Department that the same error existed in the third review. Dofasco contends that as a result of this conversation, the Department issued a supplemental questionnaire on this issue which was intended to allow Dofasco to explain whether any freight costs were missing and provide any missing data. At that time, Dofasco explains that it informed the Department of the programming error and provided the data for the locations in question. Dofasco maintains that it could not have withheld information because Dofasco did not even know that an error existed at the time it filed its first supplemental questionnaire response in the third review.

In addition, Dofasco claims that section 782(d) of the Act provides the Department with the discretion to allow respondents to remedy or explain deficiencies. Respondent states that this was exactly what the Department did when it issued the supplemental questionnaire to Dofasco requesting information on the missing maximum freight rates. After receiving the information from Dofasco, Dofasco maintains that the Department appeared to be satisfied with the information and used it in the preliminary results over three months later.

In conclusion, Dofasco argues that the information was submitted in a timely manner according to the second supplemental questionnaire, could be verified, was not incomplete, and could be used without undue difficulty. Moreover, Dofasco maintains that it acted to the best of its ability to provide the information as soon as it was discovered that it was missing. As a result, Dofasco argues that the Department should continue to use the information supplied by Dofasco in the final results.

Department's Position: We agree with respondent. In its original questionnaire, the Department required Dofasco to report the freight cost incurred for each sale to the United States. Dofasco stated that for certain sales, it was unable to report the actual freight charges; instead, it reported maximum freight for each destination. *See* Dofasco's November 13, 1996 response at C–22, 23 (proprietary version). In the database submitted in the response dated November 13, 1996, however, there were numerous sales in the United States for which Dofasco reported a prepaid freight but failed to report a maximum freight rate. In a supplemental questionnaire, the Department asked Dofasco to explain why it had not reported a maximum freight rate for certain sales. *See* the *Department's Supplemental Questionnaire* dated December 5, 1996 at page 4. Dofasco responded that it had reported maximum freight for these sales, either in the MAXFRTU field or else in the DINLFTWU field. *See* Dofasco's December 23, 1996 response at 16 (proprietary version). In early May of 1997, it became apparent, in the second review of this proceeding, that there was a programming error which caused certain freight costs to be missing. The Department issued Dofasco a second supplemental questionnaire dated May 16, 1997, which asked Dofasco to explain why there were certain sales with no associated maximum freight value, despite Dofasco's statement to the contrary. Dofasco explained that due to a programming error, it inadvertently failed to report maximum freight charges for certain sales; it supplied the missing maximum freight rates for four customer shipping locations. *See* Dofasco's response dated May 28, 1997 at page 2.

Section 782(d) of the Act and section 353.31(b)(1) of the Department's regulations permit the Department to solicit and consider information which was not supplied in the original or first supplemental questionnaire responses. Based on this statutory and regulatory authority, the Department accepted this information as reported. Since Dofasco's May 28, 1997 response to the Department's May 16, 1997 questionnaire was submitted by the deadline, there is no basis to petitioners' claim that the information was not submitted in a timely manner. Therefore, we have continued to use this information for the final results of this review.

Comment 15: Petitioners argue that the Department has traditionally treated sales to the United States as constructed export price (''CEP'') sales when the sale is made through a foreign producer's U.S. subsidiary. Petitioners claim that, where sales are made prior to importation, the Department will classify such U.S. sales as export price (''EP'') sales when the merchandise is shipped directly to an unaffiliated buyer without being introduced into the affiliated selling agent's inventory or where this procedure is the customary sales channel between the parties and the affiliated selling agent only acts as a processor of paper and a communications link between the unaffiliated buyer and the foreign producer.

In the instant case, petitioners maintain that the record shows that Dofasco's U.S. subsidiary, Dofasco U.S.A. (''DUSA''), introduced the merchandise into its inventory and performed an active role in selling the merchandise. Thus, petitioners contend that CEP treatment is warranted.

First, petitioners allege that DUSA introduces merchandise into its physical inventory in cases where it stores the merchandise at independently-owned warehouses prior to delivery. The Department's practice, petitioners contend, has been to classify sales as CEP whenever the merchandise is warehoused by the affiliate. *See Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Administrative Review,* 62 FR 18390, 18391 (April 15, 1997). Petitioners allege that in the instant case, a significant portion of Dofasco's sales were warehoused in the United States prior to delivery.

In addition, petitioners maintain that DUSA plays an active role in Dofasco's selling activities. They maintain that the Department has accorded CEP treatment to sales where the foreign producer attended meetings with U.S. customers, reserved the right to approve all orders, and limited the affiliate's ability to negotiate prices within certain ranges. *See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Administrative Review,* 62 FR 47446 (September 9, 1997) and *Cut-to-Length Carbon Steel Plate from Belgium: Preliminary Results of Antidumping Administrative Review,* 62 FR 48213, 49214–15 (September 15, 1997). In the instant case, petitioners claim that the issue is not whether DUSA has negotiating authority, but instead whether DUSA's level of participation in the selling process is sufficiently substantial. Petitioners cite certain letters on the record which they believe demonstrates DUSA's substantial involvement in the selling process. Furthermore, they point out several documents on the record which discuss DUSA's involvement in arranging further manufacturing and warehousing, which they claim the Department has determined in other cases to constitute more than simply routine selling functions (thus meriting CEP treatment). *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany (''Printing Presses from Germany''),* 61 FR 38166 (July 23, 1996).

Dofasco asserts that the Department correctly determined that all of Dofasco's U.S. sales were EP transactions based on the fact that the

sales were made before importation. Dofasco maintains that the Department's practice has been to treat U.S. sales through a U.S. affiliate as EP transactions if the following three criteria are met: (1) the merchandise is shipped directly to the U.S. customer without entering the affiliate's inventory; (2) this is the customary channel of trade and (3) the affiliate only acts as a sales document processor and communications link. *See Steel from Korea,* 62 FR 18404, 18423 (April 15, 1997) and *Printing Presses from Germany,* 38175.

Dofasco argues that the Department defines ''inventory'' as merchandise that is in storage and is available for sale to various customers. *See Certain Cut-to-Length Steel Plate from Germany: Final Results of Antidumping Administrative Review (''Steel Plate from Germany''),* 61 FR 13834, 13843 (March 28, 1996) and *Final Determination of Sales at Less Than Fair Value: Certain Stainless Wire Rods from France (''Wire Rod from France''),* 58 FR 68865, 68868–69 (December 29, 1993). Dofasco maintains that the Department has held that even though a U.S. affiliate may have taken title to the imported merchandise and arranged for its warehousing in the U.S., if the merchandise was warehoused to await delivery to a specific customer or if the customer dictated that merchandise be warehoused, then the sale is not considered to be a CEP transaction. *See Zenith Electrical Corp.* v. *United States (''Zenith''), Slip Op. 94–146 at 7–8* (CIT 1994) and *Cellular Mobile Telephones and Subassemblies from Japan: Preliminary Results of Antidumping Administrative Review,* 54 FR 48922, 48923 (Nov. 28, 1989). In this case, Dofasco contends that for the few sales through DUSA that were warehoused, this merchandise was warehoused in independent warehouses after the sale, and thus was not stored awaiting sale.

Dofasco also maintains that DUSA's role is that of a paper processor and communications link that does not negotiate prices or market products. Even were the affiliate to extend credit to U.S. customers, process warranty claims, and engage in project development, Dofasco argues that the Department has held that a sale through the U.S. affiliate is properly an EP transaction because the affiliate's selling functions are of a kind that the exporter or foreign producer would normally perform. Dofasco argues that an affiliate ceases to be a paper processor and communications link only if it controls the terms of sale. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Administrative Review,* 61 FR 18547, 18552 (April 26, 1996); *Steel Plate from Germany* at 13842–43; and *Wire Rod from France at 68869.* In this case, Dofasco alleges that DUSA does not perform any additional selling functions that Dofasco would normally perform; documents on the record demonstrate that Dofasco is responsible for conducting sales activities.

Department's Position: We agree with respondents. The Department, in the first and second administrative reviews of this proceeding, determined that Dofasco's sales through DUSA were EP transactions. The Department noted that ''while the Department usually finds further manufacturing of merchandise occurs in the context of ESP (now CEP) sales, and while 19 U.S.C. section 1677a(e)(3), discussing adjustments to ESP, is the only explicit reference to further manufacturing in the statute, it would clearly be a mistake to define the sale as an ESP sale simply because there is further manufacturing.'' *See Memorandum for Roland McDonald: Administrative Review of Corrosion Resistant Carbon Steel Flat Products from Canada: Categorization of Sales of Dofasco, Inc. (''Memorandum for Roland McDonald''),* page 2 (July 12, 1995) (Public Version).

In the second administrative review, the Department determined that sales through DUSA should not be classified as CEP sales based on the following: (1) warehousing inventory destined for specific customers at privately owned warehousing facilities does not constitute taking the merchandise into DUSA's physical inventory; (2) Dofasco's channels of delivery remain the same—that is, the Department verified that the merchandise is delivered directly from Dofasco to the U.S. customer; and (3) DUSA's role in the sales process constitutes only that of a communications link and paper processor. *See 1994/95 Canadian Steel* at 18460–18462 (April 15, 1997).

A further discussion of this policy exists in *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Administrative Review (''Korean Steel Final Results''),* which was signed March 9, 1998. In that notice, we explain that CEP treatment is appropriate where certain facts indicate ''that the subject merchandise is first sold *in the United States* by or for the account of the producer or exporter'' and not sold by the producer or exporter *outside* the United States. Such a finding requires that certain criteria be met, such as: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. selling agent is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unrelated U.S. buyer. Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.* arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. Where the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or providing customer support, we treat the transactions as CEP sales.''

For this administrative review, petitioners do not present any new arguments regarding this issue, nor is the fact pattern pertaining to DUSA sales significantly different from past reviews. Moreover, as we also indicate in Comment 16 below, we believe that evidence on the record indicates that DUSA's involvement in the sales process is ancillary. Therefore, we are maintaining the methodology we adopted in the first and second administrative reviews and classifying DUSA's sales as EP transactions.

Comment 16: Petitioners urge that, in the event the Department does not agree with petitioners with respect to the classification of all DUSA sales as CEP sales, the Department should classify all further manufactured sales as CEP sales. Petitioners cite *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Administrative Review (''Korean Steel''),* 62 FR 47422, 47425–26 (September 9, 1997) as a case in which the Department found that certain sales made by a respondent prior to importation had substantial involvement on the part of the U.S. subsidiary. Petitioners argue that the same facts apply here.

Dofasco argues that sales through DUSA which were further processed should not be treated as CEP transactions solely because of this further processing. Dofasco argues that the Department's position in the first and second administrative reviews (that it would be incorrect to define the sale as CEP simply because there is further processing) is still valid as there is no additional information on the record in this review which would merit a revisiting of this issue.

Department's Position: We disagree with petitioners that the information on the record proves that DUSA plays an ''active'' role in the selling process. In fact, the evidence on the record does not suggest that DUSA's role in the selling

process was anything beyond an ancillary role. As much of this information is business proprietary, please refer to *Dofasco's Final Results Analysis Memorandum,* page 5 (business proprietary version). In addition, *Korean Steel* discussed four factors in its determination of CEP/EP treatment for sales with further processing, not all of which apply to this case. *See Dofasco's Final Results Analysis Memorandum,* page 5 (business proprietary version). Therefore, for these final results, we have classified all sales made through DUSA as EP transactions.

Comment 17: Petitioners contend that Dofasco improperly calculated home market credit expenses in its response by applying the interest rate to the gross unit price plus the amount of the goods and services tax (''GST''). Petitioners maintain that the Department's clearly stated practice is that home market credit expenses are to be calculated on the basis of gross unit price exclusive of any value added tax (''VAT''). *See Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Administrative Review* (''*Carbon Steel Plate from Brazil*''), 62 FR 18486, 18487–88 (April 15, 1997), *Silicon Metal from Brazil: Final Results of Antidumping Administrative Review and Determination not to Revoke in Part,* 62 FR 1954, 1961 (January 14, 1997), *Ferrosilicon from Brazil: Final Results of Antidumping Administrative Review,* 61 FR 59407, 59410 (November 22, 1996), *Steel Wire Rope from the Republic of Korea: Final Results of Antidumping Administrative Review,* 60 FR 63499, 63504 (December 11, 1995), and *Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Administrative Review* (''*Steel Pipe and Tube from Mexico*''), 62 FR 37014, 37016 (July 10, 1997). Accordingly, petitioners contend that the Department should recalculate Dofasco's home market credit expense exclusive of the seven percent GST.

Dofasco does not dispute that the Department's practice has been to exclude VAT from the calculation of credit expense. *See, e.g., Steel Pipe and Tube from Mexico* at 37106. However, they allege that the Department's reasoning for doing so is incorrect. Dofasco claims that the Department's statement that VAT is a revenue for the government is correct. However, Dofasco claims that the Department is incorrect in stating that credit expenses for VAT payment by the company is a government expense. In fact, Dofasco maintains that because there is a lag between the time that it pays the tax (the date of shipment) and the date it receives payment from the buyer, Dofasco incurs an opportunity cost associated with the time it does not have use of the money. Dofasco requests that the Department reconsider its position on this issue and calculate Dofasco's credit expense inclusive of VAT.

Department's Position: We agree with petitioners and respondents that it has been the Department's long-standing practice to calculate a company's credit expense exclusive of VAT. However, we disagree with respondents that the Department should revisit this position. In *Carbon Steel Plate from Brazil* at 18486, the Department rejected the argument Dofasco makes here, stating that ''there may be a potential opportunity cost associated with the respondents'' prepayment of the VAT, [however] this fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons. Thus, to allow the type of credit adjustment suggested by the respondents would imply in the future the Department would be faced with the virtually impossible task of trying to determine the potential opportunity cost or gain of every charge and expense reported in the respondents' home market and U.S. databases.'' Therefore, for the final results of this review, the Department has recalculated Dofasco's credit expense so that it is exclusive of VAT, as suggested by petitioners.

Comment 18: Respondent argues that the Department should correct certain clerical errors it made in the preliminary results of review. Specifically, Dofasco claims that the Department: (1) incorrectly subtracted prepaid freight from the reported gross unit price in the margin calculation program; (2) failed to use the proper exchange rate conversions in the calculation of direct selling expenses; and (3) used maximum freight expenses instead of actual freight expenses, where provided, to calculate U.S. movement expenses. Additionally, as stated above in Comment 11, Dofasco disagrees with the Department's use of Baycoat's invoice prices. However, if the Department uses those prices, Dofasco asserts that it must also use the reported G&A and interest expenses that are based on the invoice price.

Petitioners disagree that the Department should value U.S. movement expenses based on actual, instead of maximum, freight as the record allegedly shows certain inconsistencies which suggest that the computer system which tracks actual freight is not yet functional. In particular, petitioners contend that an invoice submitted in order to confirm the validity of the computer program which tracks actual freight in fact proves that the program is not working properly, since the database reflects a different number than that reported in the invoice. *See* Dofasco's December 23, 1996 Response (proprietary version) at Exhibit 17, compared to, inter alia, observation number 1921 in Dofasco's December 23, 1996 Section C computer printout.

Petitioners agree with respondents that the Department should include reported G&A and interest expenses for reported costs based on Baycoat's invoice prices.

Petitioners argue that the Department failed to include all relevant freight charges for certain U.S. sales. In particular, petitioners assert that the Department should add inland freight from the warehouse to the U.S. customer (INLFWCU) to its calculation of U.S. moving expenses for these sales.

Department's Position: We agree with respondent that we incorrectly subtracted prepaid freight from the reported gross unit price in the margin calculation program and have corrected this error for the final results. We also agree with respondents that we should revise our exchange rate conversion errors in the calculation of direct selling expenses for the final results.

We agree with petitioners that the record demonstrates that the computer program which Dofasco has begun using to calculate actual freight expenses is not working properly as the actual freight charge which is shown on the invoice does not match that reported in Dofasco's database. As there is nothing on the record that can demonstrate the accuracy of the actual freight field, we are continuing to use the maximum freight field when determining U.S. moving expenses for certain sales in the final results of this review.

We agree with both respondents and petitioners that we should use the reported G&A and interest expenses based on Baycoat's transfer price and have corrected this error for the final results of this review.

We disagree with petitioners that the Department should add inland freight from the warehouse to the U.S. customer (INLFWCU) to its calculation of U.S. moving expenses for certain sales. The Department understands the MAXFRTU field to represent the maximum freight expenses from the warehouse to the customer. *See* the Department's questionnaire dated September 19, 1996 at page C–30 and Dofasco's November 13, 1996 response to the Department's questionnaire at page C–21–23. As such, we will treat U.S. movement expenses consistently

with our treatment of movement expenses in earlier segments of this proceeding. *See, e.g., 1994/95 Canadian Steel at 18462.*

MRM

Comment 19: Petitioners argue that MRM has reported estimated freight expenses despite its ability to report actual freight expenses on an invoice-by-invoice basis. Therefore, petitioners contend that the Department should reject MRM's reported freight expense. Because MRM allegedly withheld information requested twice by the Department, petitioners contend that the Department should apply adverse facts available in calculating MRM's freight expenses for both the home market (by disallowing all reported freight expenses) and the U.S. market (by applying the highest reported freight expense to all sales).

MRM maintains that it does not track actual freight costs on an invoice-specific or transaction-specific basis in the ordinary course of business. For this administrative review, MRM reported an estimated freight cost based on the application of MRM's freight rate to each specific shipment. MRM claims that when the actual freight costs are available, it records this information in its accounts payable files. MRM contends that reporting actual freight expense instead of the estimated freight expense would have been extremely tedious and burdensome for MRM and would have little effect on the Department's margin analysis. Moreover, MRM claims that the Department accepted MRM's allocation method for freight expenses for the first review. *See 1993/94 Canadian Steel* at 13829. MRM argues that the Department verified MRM's treatment of freight expenses and the Department's questionnaire did not prohibit the use of an appropriate allocation methodology in determining freight expense.

MRM argues that the Department has consistently allowed the use of reasonable allocative methodologies in reporting freight expense. *See Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy,* 60 FR 31981, 31987 (June 19, 1995), and *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea,* 60 FR 33561, 33563 (June 28, 1995).

Department's Position: We agree with respondent. First, we note the Department's standard questionnaire explicitly contemplates a respondent's inability to report actual freight expenses. *See* Antidumping Duty Questionnaire, page 4 (''Averages may only be used for expenses that can be tied to a particular sale (*e.g.*, freight) when to do otherwise would create a significant burden because of the manner in which your accounting records are maintained''). Second, the Department has in the past allowed the reporting of estimated freight expenses as long as the freight estimates are reasonable and any differences between estimated amounts and actual freight charges are minor. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe from Italy,* 60 FR 31981, 31987 (June 19, 1995).

In this review, MRM reported that it does not track the actual freight payment on an invoice-by-invoice basis in the normal course of business. *See Verification of Gerdau MRM Steel's (''MRM'') Sales Response* at pp. 6–9. At verification, we examined documentation concerning MRM's freight expenses and tied them to the response. In addition, we examined the variances between actual and estimated freight payments for both home market and U.S. sales and found that the variances were either nonexistent or minimal. Consequently, we determine that MRM's freight methodology is reasonable and have allowed the adjustments for the final results.

Comment 20: Petitioners argue that MRM improperly reported credit expense. Specifically, petitioners argue that MRM inappropriately calculated credit expense using the average payment date information instead of actual payment date information. Petitioners claim that MRM recorded actual payment data but then deleted this information from its computer system. Because MRM allegedly deleted this information, petitioners insist that the Department must disallow MRM's reported home market credit expense. Furthermore, petitioners urge the Department to apply adverse facts available for credit expense for U.S. sales by using the highest reported credit period.

MRM argues that it reported estimated dates based on each customer's terms of payment because it does not maintain records of the actual date of payment received for each invoice in its ordinary course of business. MRM asserts that its ordinary operating procedures do not provide for the maintenance of information on the date of payment. MRM notes that the maintenance of information on the date of payment is neither relevant to MRM from a business perspective, nor mandated under Canadian GAAP. Further, MRM argues that the Department verified the methodology used by MRM in this review, and accepted MRM's methodology for approximating the date of payment in the first review of plate from Canada. *See 1993/94 Canadian Steel* at 13829.

MRM contends that they were not instructed by the Department in the first administrative review to follow any particular methodologies in future reviews. MRM also notes that in the first review, the Department accepted the same method utilized in this case for purposes of calculating MRM's credit expense. *Id.* Further, MRM asserts that in the litigation arising from the review, the Department withdrew its request for a remand on the issue of the allowance of the adjustment to FMV for MRM's credit expenses. Finally, MRM argues that, even if MRM's U.S. credit expense was uniformly increased by the amount suggested by petitioners, the result would be a minimal decrease in MRM's ''large'' negative margins.

Department's Position: We disagree with petitioners that MRM's credit expenses should be denied. Based on the results of verification, we find MRM's use of the average age of invoices for each month of the POR to be an acceptable methodology for determining credit expenses. At verification, we found that MRM was unable to report the actual expense because in the normal course of business, MRM does not maintain information on the date of payment in its computer system. We reviewed MRM's credit information contained in their sales response and determined that actual accounts receivable balances were divided by average daily sales figures to arrive at average days outstanding balances for Canadian customers and U.S. customers. Furthermore, MRM stated that this is the same methodology it uses in submitting information to its parent company in the normal course of business. *See Verification of Gerdau MRM Steel's (''MRM'') Sales Response* at pg. 9. Finally, petitioners have pointed to no record evidence showing that MRM's methodology has led to a distortion of reported credit expenses. Therefore, we have allowed MRM's reported credit expenses for the final results.

Comment 21: Petitioners argue that MRM failed to substantiate its claimed home market rebate adjustment. Petitioners charge that MRM did not meet its burden of showing that its customers had prior knowledge of the rebates. Because MRM has not established its entitlement to this

adjustment, petitioners urge the Department to reject MRM's claim.

MRM argues that there is substantial evidence on the administrative record to support the Department's decision to adjust normal value for claimed rebate amounts. MRM insists that the Department routinely grants adjustments to normal value for rebates or other post-sale price adjustments. *Smith-Corona Group* v. *United States*, 713 F.2d 1568 (1983). MRM notes that the Department deducted rebate amounts from FMV in the first administrative review of steel plate from Canada. *See 1993/94 Canadian Steel* at 13829. MRM argues that since it used the same methodology to derive and report transaction-specific rebate amounts in the first review, the Department's preliminary decision to reduce normal value for these amounts should be adopted in the final results of the instant review.

MRM further argues that they have satisfied the legal criteria for rebates and therefore should receive an adjustment to normal value on that basis. *See Smith-Corona Group, Consumer Products Division, SCM Corp.* v. *United States*, 3 CIT 126, 146–49 (1982). MRM asserts that it is the Department's ''general policy to allow rebates only when the terms of sale are predetermined.'' *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France et al.; Final Results of Antidumping Duty Administrative Review, Partial Termination of Antidumping Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10930 (Feb. 28, 1995).

MRM argues that the rebate amounts are properly viewed as ''predetermined.'' MRM claims that customers had prior knowledge of the rebate amount since customers were informed of the MRM's rebate practices through telephone contacts and invoices which indicated the total rebate amount. MRM maintains that the method of setting rebates and the level of rebates are based on MRM's standard business practices. In addition, MRM maintains that the Department verified written agreements with regard to rebates.

If, in the alternative, the Department declines to adjust normal value for rebates granted by MRM, MRM urges the Department to grant an adjustment to normal value for the same amounts as post-sale price adjustments. MRM maintains that the Department makes post-sale price adjustments that reflect a respondent's ''normal business practice.'' MRM claims that there is substantial evidence on the administrative record of these proceedings to support MRM's assertion that MRM's rebate program is an integral part of MRM's business practice. MRM adds that the Department found the payments in question to be ''part of the company's ''normal business practice''' in the first administrative review. *See 1993/94 Canadian Steel* at 13828.

Department's Position: We agree with respondent that these adjustments are allowable as rebates. At verification, we examined documentation which sufficiently demonstrated that MRM's customers had prior knowledge of MRM's rebate program. We also confirmed that in the normal course of business, MRM normally made verbal agreements with its customers concerning rebates, and that its rebate program has not changed since 1993. We examined a letter of confirmation of a rebate agreement for one of MRM's customers. Finally, we also examined correspondence between MRM and another customer which indicated the customer's acknowledgment of MRM's rebate policies. *See Verification of Gerdau MRM Steel's (''MRM'') Sales Response* at p. 11, and Exhibit S–36. Therefore, because substantial record evidence indicates that MRM's customers were aware of the rebate prior to the time of sale, we have continued to adjust normal value to account for rebates for these final results of review.

Stelco

Comment 22: Stelco argues that there is no factual or legal basis for the Department's decision to increase Stelco's submitted actual costs of production for certain inputs supplied by Baycoat (painting services), Z-Line Company (galvanizing services), and iron ore obtained from Stelco's affiliated mines for both corrosion-resistant and plate products. Stelco maintains that the Department erroneously ''grossed up'' the costs beyond Stelco's actual costs of production, to what the Department claimed to be the ''unadjusted transfer price'' of these inputs. Stelco asserts that (1) the antidumping statute requires that the Department use the actual costs of production of the company as it calculates them, provided that these are not distortive; (2) the statutory language of the ''major input rule'' does not require the Department to increase an affiliated supplier's actual cost of production in valuing its major inputs; and (3) the major input rule does not apply to affiliated suppliers that are collapsed with the respondent.

Stelco continues that, in any event, the Department's methodology for comparing the transfer price to the affiliated supplier's cost is incorrect, because it used a transfer price that did not accurately reflect how Stelco records its cost of inputs, which resulted in double counting of expenses.

Petitioners, in response to Stelco's argument, state that the Department correctly valued at transfer price the inputs received from Stelco's affiliated suppliers. Petitioners continue that the statute does not permit valuation of a major input based on an affiliated supplier's cost when such cost is below the transfer price and that it is the Department's practice to value a major input based on transfer price where such price exceeds the affiliated supplier's COP.

Petitioners further argue that Stelco's assertion that the Department should treat Stelco and its affiliated suppliers as a single entity is baseless. Petitioners state that Stelco has failed to establish (1) that the affiliated suppliers are ''divisions'' of Stelco, or (2) that the requirements for collapsing, which petitioners assert are not even applicable to this situation, have been satisfied with respect to any of its affiliates.

Petitioners conclude that the Department properly rejected Stelco's adjustments to transfer prices. Petitioners maintain that transfer prices should not be reduced by the affiliated suppliers' profit, G&A and interest expense.

Department's Position: We agree with petitioners that it is appropriate to use the transfer price to value Stelco's major inputs. Under section 773(f)(2) of the Act, the Department's current practice is to request information on both the transfer price and the market value of the input and to choose the higher of the two valuations. Pursuant to section 773(f)(3) of the Act, the Department may alter this valuation only in those cases where the input is ''major'' and the value determined under section 773(f)(2) is lower than the COP of the inputs. All parties agree that the inputs in question are major inputs within the meaning of section 773(f)(3); we have determined that the value determined under section 773(f)(2) is not lower than the COP of the inputs.

Stelco cites *Torrington Co.* v. *United States* (''*Torrington*'') (881 F. Supp 622, 642–643 CIT 1995) and *SKF USA Inc.* v. *United States* (''*SKF*'') (888 F. Supp 152, 156 CIT 1995) to support its contention that a COP valuation is appropriate when it is below transfer price. However, in those cases, which concerned the calculation of CV, the Department had not requested or received information on the transfer prices of the inputs. The CIT did not say that the Department was prohibited

from requesting the transfer prices of the inputs; rather, it said that the Department was within its discretion to choose to rely on cost information. Here, because of the Department's current policy, the Department requested and received the transfer prices of the inputs. These transfer prices are greater than the affiliated suppliers' COP.

The policy applied here was the policy applied by the Department in the second review of this case. The Department held in the second administrative review (the most recently completed segment of this proceeding) that the statute directs it ''to value inputs supplied by affiliated persons at the transfer price between the entities provided that such a price reflects the price commonly charged in the market and, for major inputs, is not below the cost of producing the input.'' *See 1994/95 Canadian Steel* at 18464.

Stelco also argues that it and its affiliated suppliers should be treated as a single entity for determining cost of production. However, Stelco has not established either that the affiliated suppliers are ''divisions'' of Stelco or that the requirements for sales collapsing have been satisfied with respect to its affiliates. In *Certain Forged Steel Crankshafts from the United Kingdom*, 61 FR 54613, 54614 (October 21, 1996), (''*Crankshafts*'') respondent argued that because it and its affiliated supplier were ''both unincorporated operating divisions within a single entity, * * * they are parts of the same company and share a common steel COP.'' The Department ruled that the record evidence indicated that they were divisions of the same corporation and found that the major input rule did not apply. Unlike the respondent in *Crankshafts*, Stelco does not contend that the affiliated suppliers are actual divisions of a single entity. Rather, Stelco contends that the affiliated suppliers and the manufacturer should be treated as a single entity for purposes of the major input rule. The Department rejected a similar argument in *Mechanical Transfer Presses from Japan* 55 FR 335 (January 4, 1990) (''*MTPs from Japan*'') in which respondent maintained that its wholly-owned subsidiaries ''function[ed] as divisions.'' The Department noted that the ''wholly-owned subsidiaries are separate legal entities,'' and thus applied the major input rule. The subsidiaries in question here are clearly separate legal entities and thus the rule of *Crankshafts* does not apply.

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 62 FR 18404, 18430 (April 15, 1997) (''*Korean Steel*'') represents another instance where we have determined that the major input rule does not apply. In that case, the Department disregarded the major input rule for transactions between producers of the subject merchandise where it had determined that such producers should be collapsed into a single respondent for purposes of analyzing sales. The criteria applied for determining whether sales collapsing is appropriate do not apply in cases where the affiliated supplier does not have the capacity to produce the subject merchandise. *See* 19 FR 351.401(f) (new regulation which does not, technically, apply in this proceeding, but which restates the Department's practice on collapsing).

The criteria applied by the Department for purposes of sales collapsing do not, on their face, apply to affiliations with suppliers that do not produce the subject merchandise. We agree with petitioners that Stelco has not established a basis for the treatment of Stelco's affiliated suppliers as ''collapsed'' entities.

Finally, a year-end profit distribution does not function as an adjustment to price. The entitlement to a profit distribution arises from the ownership interest, not from the sale. The Department has therefore allowed no adjustments to the transfer price between Stelco and its affiliated suppliers.

Comment 23: Petitioners argue that the Department must recalculate home market credit expenses, because they maintain that Stelco's inclusion of the GST and provincial sales tax (''PST'') in its home market credit expense calculation was improper. GST and PST are not revenues for the company, but for the government, and thus, according to petitioners, Stelco's home market credit expenses should be recalculated to exclude such taxes.

Department's Position: We agree with petitioners. Accordingly, the Department has corrected Stelco's home market credit expenses to exclude both GST and PST.

Comment 24: Petitioners maintain that Stelco failed to use the interest rate on actual borrowings by its U.S. subsidiary to determine credit expense on U.S. dollar-denominated sales. Petitioners argue that, during the POR, Stelco USA borrowed against a line of credit. Petitioners contend that it is the Department's practice to use a respondent's actual cost of short-term financing in the currency of sale. Because money is fungible, argue petitioners, and a corporate parent determines the capital structure of a company, it does not matter whether the entity doing the actual borrowing is a parent or its subsidiary. Therefore, conclude petitioners, the Department should recalculate the credit expense on Stelco's U.S. dollar-denominated sales, using the rate on actual borrowings by Stelco USA.

Stelco argues that there is no basis for modification of the interest rate utilized to calculate imputed credit for Stelco's U.S. sales. Stelco argues that: (1) Stelco Inc. (and not Stelco USA) was the only entity that made sales of subject merchandise (corrosion-resistant and cut-to-length plate) to the United States; (2) Stelco Inc. did not borrow U.S. dollars during the POR; and (3) Stelco Inc. had access to borrowed funds at the LIBOR rate through an open line of credit. *See* Stelco's section B questionnaire response of November 4, 1996 and its supplemental response of December 24, 1996. Respondent states that there is evidence on the record regarding what rate it would have received had it borrowed U.S. dollars. Consequently, the Department was correct to use the LIBOR rate to calculate imputed credit expense for Stelco's U.S. sales.

Department's Position: We disagree with both respondent and petitioners. As we stated in *Import Administration Policy Bulletin 98.2* (February 23, 1998) at pg. 6, ''[i]n cases where a respondent has no short-term borrowings in the currency of the transactions, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. * * * For dollar transactions, we will generally use the average short-term lending rates calculated by the Federal Reserve to impute credit expenses.'' Therefore, for the final results of review, we have recalculated imputed credit expense based on Federal Reserve rates. *See* Stelco's Final Results Analysis Memorandum for Corrosion-Resistant Products.

Comment 25: Petitioners argue that certain sales of both corrosion-resistant and plate products in the home market were erroneously matched to sales made in the United States, and that the Department should adopt certain proposed corrective steps.

Stelco argues that petitioners' suggestion would result in a ''wholesale change in the reporting of product characteristics.'' Stelco concludes that petitioners' suggestion would result in a completely unworkable change in the Department's questionnaire.

Department's Position: We agree with Stelco, and will not make petitioners' proposed change to the Department's program. For further discussion of this comment, including business

proprietary information, please see Stelco's analysis memorandum, at pg. 13.

Comment 26: Petitioners contend that Stelco failed to properly report pension expense in accordance with its actual funding obligations based on independent actuarial assessments. Thus, petitioners argue that the Department must disallow Stelco's reporting methodology calculated for financial statement purposes, even though these pension expenses were reported in accordance with Canadian GAAP. Petitioners argue that Stelco adjusted its standard product costs to reflect a different pension amount. Petitioners argue that, in the investigation in this proceeding, the Department determined that Stelco's pension expense should be reported in accordance with Canadian GAAP. Petitioners continue that the Department stated that, because the difference between the CICA pension expense and the higher required funding was ''recorded as a deferred asset on Stelco's financial statements,'' it is ''not properly included in current expenses.'' *See Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to Length Carbon Steel Plate from Canada, Final Determination* (''*Canadian Steel Investigation*'') 58 FR 37099, 37120 (July 9, 1993). Petitioners state that under nearly identical circumstances in *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to Length Carbon Steel Plate from Brazil; Final Determination,* 58 FR 37091 (July 9, 1993), the Department rejected pension expense reporting under Brazilian GAAP and accepted pension expense reporting in accordance with an independent actuary's report. Petitioners conclude that it is the Department's practice, now codified at section 773(f)(1)(A) of the Tariff Act of 1930, as amended, to rely on a company's normal books and records if such records are in accordance with home country GAAP and reasonably reflect the costs associated with production of the merchandise. In this instance, although it conforms to Canadian GAAP, petitioners argue that the CICA pension expense reflected in Stelco's financial statements does not reasonably reflect the costs associated with producing the subject merchandise. Petitioners reason that therefore, the CICA pension adjustment must be disallowed for purposes of the final results.

Stelco states that the Department should reject petitioners' suggestion to reverse the Department's precedent regarding its methodology for calculating pension costs. Stelco asserts that the appropriate methodology to value its pension obligations is the methodology required by Canadian GAAP, and not the cash outlay (actuarial) methodology petitioner suggests. Stelco concludes that the Department followed this methodology in the investigation and in both subsequent reviews. *See Canadian Steel Investigation* at 37120. Stelco states that petitioners confuse cash outlay in an accounting period with cost of production, and that for any company which operates on an accrual accounting basis, the amount of cash paid in a year does not accurately reflect the cost of production in that year. Stelco continues that this is the case for pension costs. According to Stelco, CICA (which establishes Canadian GAAP) prohibits companies from declaring the cash value of their pension outlays in a year as the cost of the pensions in that year because using the cash methodology distorts pension costs. That is, according to Stelco, companies make cash payments to pension funds for reasons that have ''nothing to do with'' the nature of a company's pension obligations. To permit companies to account for pension costs on the basis of cash outlays would, in CICA's view, severely distort a company's true cost picture.

Stelco continues that petitioners imply that Stelco's standard costs value pension costs at their actuarial value, and that petitioners erroneously imply that this treatment carries through to Stelco's calculation of its cost of production. Stelco further notes that petitioners state that the CICA pension adjustment, which adjusts pension costs to conform to GAAP, is for financial purposes only. Stelco argues that its standard costs are budgeted costs set at the beginning of the year on the basis of estimates, and because these are estimates, the Department requires that costs not be reported purely on a standard basis, but rather that all standard costs be adjusted to reflect actual outlays. Stelco states that, in order for its standards to be corrected on an actual basis, they must be adjusted monthly and annually to take into account appropriate variances. Stelco argues that its true costs of production are therefore not calculated using the cash outlay methodology of pension costs, just as the standard cost of production is not fully reflective of their actual cost of production. Hence, the application of such pension outlays would not properly reflect the true costs of producing this merchandise. Stelco concludes that the Department's long-standing precedent in this case requires the use of CICA methodology in calculating pension costs.

Department's Position: We agree with respondent. Stelco's treatment of its pension costs is in accordance with both Canadian and U.S. GAAP. These accounting principles are not arbitrary, but are established as the method deemed to be the most accurate representation of a company's costs. Furthermore, in *Canadian Steel Investigation* (58 FR 37099, 37120 (July 9, 1993)), the Department determined that the appropriate methodology for Stelco to value its pension obligations is the methodology required by Canadian GAAP, not the cash outlay (actuarial methodology). Petitioners' reliance on *Certain Hot-Rolled Carbon Steel Flat Products, etc., from Brazil, Final Determination,* 58 FR 37091 (July 9, 1993) is misplaced because in it, the Department noted that the respondent acknowledged that according to an independent actuary's report, these costs (as recorded in the company's books) may not be sufficient to cover the respondent's ultimate liability. The actuary's report apparently indicated that the normal accounting treatment did not fully reflect the company's cost obligations, and the respondent did not contest that conclusion. The nature of the reports and the nature of the cost situations involved are very different in these two cases. Therefore, for the final results of review, we have used Stelco's pension costs as reported and have not applied the cash outlay methodology to determine Stelco's pension funding cost.

Comment 27: Petitioners allege that the Department made the following ministerial errors in its margin calculation program for both corrosion-resistant and plate products:

For corrosion-resistant: (1) The Department revised Stelco's total cost of manufacture for cost of production purposes using the variable name ''TCOM.'' However, in revising Stelco's general and administrative and interest expenses, the Department failed to use the revised TCOM, using ''TOTCOM'' instead. (2) The Department recalculated general and administrative expenses for constructed value purposes, using the variable name ''GNACV.'' Similarly, the Department renamed the interest variable for CV purposes ''INTEXCV.'' However, when calculating GNA and interest factors as a percentage of the total cost of

manufacture, the Department failed to use the recalculated GNACV and the renamed INTEXCV. (3) The Department erroneously converted PACKU into U.S. dollars twice. (4) The Department revised respondent's total cost of manufacture for CV purposes using the variable name ''TCOM.'' Subsequently, the Department failed to use the variable ''TCOM,'' using ''TOTCOMCV'' instead.

For plate: The Department revised respondent's total cost of manufacture for CV purposes using the variable name TCOM. However, when the Department recalculated CV profit and total CV, the Department failed to use the variable name TCOM, using ''TOTCOMCV'' instead.

Department's Position: We agree with petitioners and have made the appropriate modifications to the Department's margin calculation programs. *See Stelco's Final Results Analysis Memorandum for Corrosion-Resistant Products,* pp. 3 and 4 and *Stelco's Final Results Analysis Memorandum for Plate,* pg. 3.

Final Results of Review

As a result of our review, we determine the dumping margin (in percent) for the period August 1, 1995, through July 31, 1996 to be as follows:

Manufacturer/exporter	Margin (percent)
Corrosion-Resistant Steel:	
Dofasco	0.72
CCC	0.54
Stelco	3.48
Cut-to-Length Plate:	
Algoma	[1] 0.44
MRM	0.00
Stelco	[1] 0.23

[1] *Deminimis.*

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific ad valorem duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate made effective by the final results of the 1994–1995 administrative review of this order (*See* Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews 62 FR 18448 (April 15, 1997)). As noted in those final results, these rates are the ''all others'' rates from the relevant LTFV investigations which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (See Final Determination, 60 FR 49582 (September 26, 1995)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

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 353.34(d)(1). 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 the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: March 9, 1998.

Robert S. LaRussa

Assistant Secretary for Import Administration

[FR Doc. 98–6689 Filed 3–13–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–817]

Certain Cut-To-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 9, 1997, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate from Brazil. This review covers one collapsed entity which was a manufacturer/exporter of the subject merchandise to the United States during the period of review (POR), August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Samantha Denenberg or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0414 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37091) the final affirmative antidumping duty determination on Certain Cut-to-Length Carbon Steel Plate from Brazil. We published an antidumping duty order on August 19, 1993 (58 FR 44164). On September 9, 1997, the Department published in the **Federal Register** (62 FR 47436) the preliminary results of the administrative review (*Preliminary Results*) of the antidumping duty order on Certain Cut-

to-Length Carbon Steel Plate from Brazil. On December 24, 1997, we published in the **Federal Register** (62 FR 67345) an extension of the time limit (*Extension of Time Limit*) for conducting this review. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Applicable Statute and Regulations

Unless otherwise stated, all citations to 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 refer to the regulations as codified at 19 CFR part 353, as they existed on April 1, 1996.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed.Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See Section* 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Investigation'' section of this notice, below, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted.

Scope of this Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The POR is August 1, 1995, through July 31, 1996. This review covers entries of certain cut-to-length carbon steel plate by Usinas Siderurgicas de Minas Gerais (''USIMINAS'') and Companhia Siderurgica Paulista (''COSIPA''). These two producers/exporters have been collapsed (''USIMINAS/COSIPA'') and are being treated as one entity for the purpose of this review.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the respondent (USIMINAS/COSIPA) and petitioners (Bethlehem Steel Corporation; U.S. Steel Company, a Unit of USX Corporation; Inland Steel Industries, Inc.; Geneva Steel; Gulf States Steel, Inc. of Alabama; Sharon Steel Corporation; and Lukens Steel Company). Based upon our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

Comment 1: Respondent objects to the fact that, in the preliminary determination, the Department did not deduct PIS and COFINS taxes from normal value, arguing that while the Department did not state its reason for denying this adjustment, neither of the reasons it can conceive of is a valid reason for doing so. USIMINAS/COSIPA states that the relevant statutory provision, 19 U.S.C. 1677b(a)(6)(B)(iii), calls for the Department to reduce the starting prices for normal value by the amount of home market taxes which meet three criteria: (1) they are ''directly imposed'' on the foreign like product or components thereof, (2) they are rebated or not collected on the subject merchandise, and (3) they are added to or included in the price of the foreign like product. Because the second requirement has never been an issue in any case involving PIS and COFINS, USIMINAS/COSIPA state, the Department could only refuse to make this adjustment due to concerns as to whether these taxes were ''directly imposed'' or ''included in the price'' of the merchandise used to determine normal value.

With respect to the ''directly imposed'' prong, USIMINAS/COSIPA notes that in *Silicon Metal from Brazil*, 62 FR 1954, 1968 (Jan. 14, 1997), the Department declined to deduct PIS and COFINS from home market prices on the grounds that because these taxes are ''gross revenue taxes'' they are not ''directly imposed.'' Respondent notes that, prior to the determination in *Silicon Metal from Brazil*, the Department had a long history of finding that these taxes *were* ''directly imposed.'' Further, respondent argues that the Department's reliance in that case upon the precedent in *Silicon Metal from Argentina*, 56 FR 37891, 37893 (Aug. 9, 1991), for the principle that gross revenue taxes cannot be ''directly imposed'' is misplaced for three reasons. First, the Argentine tax at issue is distinguishable from the PIS

and COFINS taxes. Second, the Argentine notice cites another Brazilian case (in which PIS and the predecessor of COFINS were adjusted for) as an example of circumstances in which it *would* adjust for taxes. Third, respondent argues that, although these taxes are not itemized on the invoices, from the standpoint of mathematics, accounting and public finance there is no difference between a tax imposed on an invoice-specific basis and one imposed on an aggregate basis when the same rate is applied to both.

With respect to the ''included in home market price'' prong, USIMINAS/COSIPA argues that the Department's determinations prior to January of 1997 support the position that these taxes are included in home market price, and that the Department has long held that it may, under the dumping law, presume that a company includes the full amount of home market taxes in its home market price and thus passes the tax through to its home market customers. USIMINAS/COSIPA notes that the Department has made no finding in this review that such tax pass-through does not occur, and has not raised this issue in the course of the review. On February 18, 1998, USIMINAS/COSIPA submitted further tax legislation, court documentation, and fuller translation of previously submitted documents, as requested by the Department.

Petitioners argue that the Department correctly did not deduct PIS and COFINS taxes from the home market prices in calculating normal value, claiming that they are not ''directly imposed'' on the foreign like product because they are calculated on all of the gross monthly receipts of USIMINAS/COFINS. They note that in three recent final determinations regarding Brazilian products the Department did not deduct PIS and COFINS taxes from home market price. *Silicon Metal from Brazil*, 62 FR 1954, 1968 (1992–1993 review) (Sept. 5, 1996); *Silicon Metal from Brazil*, 62 FR 1983 (1993–1994 review) (January 14, 1997); and *Ferrosilicon from Brazil*, 62 FR 43,504, 43,508 (Aug. 14, 1997). Thus, petitioners argue that respondent's reliance on earlier cases is unwarranted, because it is clear that the Department now recognizes that taxes that are levied on gross revenues, rather than solely on a company's sales, are not ''directly imposed'' on home market sales. For example, they point out that the Brazilian law in effect during the period of review stated that PIS is to be imposed on financial revenue as well as sales revenue. Finally, petitioners state that the statutory language on tax deductions is clear and that respondent was given adequate opportunity to comment on this approach in their case briefs by virtue of the Department's position in *Silicon Metal from Brazil* and by the position taken in the preliminary determination in this case.

At the request of the Department, the petitioners commented further on this issue in response to USIMINAS/COSIPA's February 18, 1998 PIS/COFINS submission. Petitioners reiterate that the Department should not adjust for PIS and COFINS taxes because, they claim, these taxes are not directly imposed on the subject merchandise and are not consumption taxes. Petitioners recall the basis upon which the PIS and COFINS taxes are levied, highlighting that both are gross revenue taxes. Petitioners state that as a consequence, the PIS and COFINS taxes are not imposed directly on the foreign like merchandise. Petitioners also note that the Department very recently reaffirmed in the 1995–1996 review of *Silicon Metal from Brazil* that these taxes cannot be tied directly to sales and therefore do not qualify for an adjustment. *See Final results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 63 FR 6899, 6910 (Feb. 11, 1998). Petitioners continue to rely on section 773(a)(6)(B)(iii) of the Act and the SAA at pg. 827–828 (discussing the requirement that taxes be directly imposed on the subject merchandise and referring to ''consumption taxes''). Petitioners cite the Department's determination in the 1993–1994 review of *Silicon Metal from Brazil*, 62 FR 1954, 1968 (Jan. 14, 1997) for the proposition that PIS and COFINS are not ''consumption taxes,'' arguing that the Court of Appeals for The Federal Circuit has defined ''indirect taxes'' as ''consumption taxes'' in *United States* v. *Zenith Radio Corp.*, 562 F.2d 1209, 1233 n.20 (1997).

Department's Position: As in the most recent review of *Silicon Metal from Brazil*, the Department has determined that a deduction of the PIS and COFINS taxes is not correct in the calculation of NV. Commerce has determined that since these taxes are levied on total revenues, except for export revenues, the taxes are direct taxes and thus akin to taxes on profit or wages. Since the Department has determined these taxes are not indirect taxes, there is no basis to deduct them in the calculation of NV, according to section 773(a)(6)(B)(iii) of the Act. The Department finds that it is not the sale of the merchandise that is being taxed but rather USIMINAS/COSIPA's revenue, and as such, the PIS and COFINS taxes should not be adjusted for in the calculation of normal value.

Comment 2: USIMINAS contends that the Department failed to deduct one component of its home market movement expenses from the gross home market price. Both USIMINAS and COSIPA originally included an extra letter in the Department's computer code variable for inland freight. In its post-verification submission, COSIPA conformed its field name to the one used by the Department. Thus, the Department's SAS program correctly deducted the inland freight expense for COSIPA because it corresponded to the Department's field name.

USIMINAS also used the incorrect variable name in its submissions. However, unlike COSIPA, USIMINAS did not change the variable name of this field in its post-verification submission. Consequently, the Department failed to deduct USIMINAS'' home market freight expense. USIMINAS urges the Department to revise its computer program so that inland freight expenses are deducted from the gross home market price.

Department's Position: We agree with USIMINAS and have revised the computer program so that USIMINAS'' home market inland freight expense is deducted from the gross unit price in these final results.

Comment 3: USIMINAS believes that the Department incorrectly deducted related party commissions from the U.S. price. Based on USIMINAS'' relationship with its wholly-owned subsidiary, USIMINAS Overseas, the nature of the commissions, and the Department's treatment of intracompany commissions, USIMINAS believes that the Department's decision to deduct these commissions was incorrect.

USIMINAS notes that the Department has a long-standing practice of not deducting commissions to related parties. Pursuant to the Federal Circuit's decision in *LMI-La Metalli Industriale v.* United States (''LMI''), 912 F. 2d 455 (Fed. Cir. 1990), the Department will only make an adjustment for related party commissions when it is demonstrated that (1) the commissions are arm's length, and (2) they are directly related the underlying sale (*see Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From Finland (''Grounwood Paper''),* 56 FR 56363, 56372 (Nov. 4, 1991)).

USIMINAS cites two cases in support of its contention that, absent a demonstration to the contrary, the Department presumes that related party commissions are not at arm's length (*see Outokumpu Copper* v. *United States*, 850 Supp. 16, 22 (CIT 1994) and *Brass*

Sheet and Strip from the Netherlands, 61 FR 1324, 1326 (Jan. 19, 1996)).

USIMINAS suggests that the Department's preliminary determination to deduct these commissions was incorrect because (1) there were no allegations by petitioners that the commissions to USIMINAS Overseas were directly related or made at arm's length; (2) there are no bench mark commissions to compare to the commissions granted to USIMINAS Overseas, and (3) the record demonstrates that the commissions are not directly related to sales.

Petitioners rebut USIMINAS'' claim that related party commissions should not be deducted from U.S. price. Petitioners state that documentation presented in USIMINAS'' response to the Department's questionnaire and the method by which the commissions were calculated clearly suggest that commissions to USIMINAS Overseas were directly related to sales. Petitioners further argue that the commissions were arm's-length transactions, relying upon the holding in *LMI* that a commission is at arm's length if the recipient is a bona fide sales agent. Petitioners state that the Department's practice is to consider the totality of the circumstances surrounding the commission in order to determine whether or not the recipient is considered a bona fide agent (*see Groundwood Paper* at 56372). Petitioners note that it is the Department's practice to analyze contracts and agreements between producers and affiliated agents. An analysis of the proprietary contract presented to the Department and USIMINAS'' narrative response to the Department's supplemental questions cause petitioners note that USIMINAS Overseas has contracted to and assumed multiple duties in connection with USIMINAS sales. See USIMINAS A/B/C Response to the Department's Second Supplemental Questionnaire (May 30, 1997), Exh. 15 at 1–2 and narrative at 18–19 (APO Version)). In addition, information received at the sales verification adds to the list of responsibilities taken on by USIMINAS Overseas (see USIMINAS Sales Verification Report at 3–5).

Department's Position: We agree with the respondent. Further analysis of the related party commission confirms that it should be classified as an intracompany transfer of funds. Due to the proprietary nature of the contractual arrangements between USIMINAS and USIMINAS Overseas, see Final Analysis Memorandum of March 9, 1998, for further discussion of the Department's rationale with respect to this issue.

Comment 4: The petitioners claim that the respondent improperly reported home market credit expense for the following reasons: first, USIMINAS/COSIPA used a tax-inclusive gross unit price as the basis for its submitted credit calculation; second, USIMINAS/COSIPA made two improper adjustments to the short-term interest rate reported.

The petitioners note that the Department's longstanding practice is to exclude taxes from the basis of the home market imputed credit expense calculation. They cite the final results of the previous review in support of their position (*see, Certain Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review,* 62 FR 18486, 18488 (April 15, 1997)). The petitioners request that the Department follow its longstanding practice in this review, and recalculate home market imputed credit expense, deducting IPI, ICMS, PIS, and COFINS taxes from the home market gross unit price before using it as the basis for this calculation.

The petitioners also maintain that, in calculating home market credit expense, USIMINAS/COSIPA incorrectly changed the rate actually received from the bank two times. According to petitioners, by failing to explain how or why it changed the nominal rate to the discount rate, USIMINAS/COSIPA has not met its burden of demonstrating why the adjustment embodied in the credit calculation USIMINAS/COSIPA submitted should be allowed. Accordingly, the petitioners urge the Department to reject this adjustment.

The petitioners conclude that the respondent's distortion of the discount rate requires the Department to use an alternative: the ''taxa referential'' (TR). The petitioners note that this short-term lending rate is a benchmark similar to the prime rate and was used in the last administrative review of this proceeding. Therefore, the petitioners conclude that the Department should use the TR to calculate home market credit expenses. However, if the Department decides not to use the TR, the petitioners maintain that it should at least utilize the nominal rate during the month of the U.S. sale to calculate home market credit expenses.

Regarding the use of gross price inclusive of taxes in calculating imputed credit costs, respondent disagrees with petitioners. USIMINAS/COSIPA points to *Stainless Steel Angles From Japan,* 60 F.R. 16608 (March 31, 1995) as evidence that the Department has previously calculated imputed credit costs using a tax inclusive gross price. USIMINAS/COSIPA states that the Department was incorrect in the previous review of this case when it dismissed the relevance of the Japanese case (see Certain Cut-to-Length Carbon Steel Plate from Brazil, 62 FR 18486, 18487–88 (April 15, 1997)). In the previous review, the Department found that imputed credit costs should be calculated on net price, not gross price. USIMINAS/COSIPA maintains that there is no complication in this review in recognizing that the seller is extending payment terms for both the underlying goods, and for tax liability associated with the sale.

USIMINAS/COSIPA also objects to the petitioners' comments on procedural grounds because they waited a year to object to USIMINAS/COSIPA's credit methodology and it is too late in the proceeding for the Department to accept alternative credit costs calculations.

Concerning the petitioners' complaint that USIMINAS/COSIPA used an overstated interest rate in its home market imputed credit costs calculations, USIMINAS/COSIPA contends that the petitioners fail to understand the distinctions between a conventional loan and discounting receivables. However, USIMINAS/COSIPA agrees with petitioners that it used incorrect interest rates to the extent that there is no justification for adjusting the interest rate twice to derive an effective rate from a nominal rate. Therefore, USIMINAS/COSIPA suggests that the Department revise imputed credit costs and, if necessary, inventory carrying costs, using USIMINAS/COSIPA's actual borrowing experience during the POR, and not the TR, as proposed by the petitioners.

Department's Position: The Department agrees with petitioners that imputed credit expense should be calculated on the basis of a price net of taxes, rather than a gross price basis. The Department has found previously in several cases that it is impossible for it to determine the opportunity cost of every expense for each sale reported. For example, in the *Final Determination of Sales at Less than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom,* 58 FR 3235 (Jan. 8, 1993), Commerce determined that ''[w]hile there may be an opportunity cost associated with the prepayment of [taxes], that fact alone is not a sufficient basis for the Department to make an adjustment in price-to-price comparisons. We note that virtually every charge or expense associated with price-to-price comparisons is either prepaid or paid for at some point after the cost is incurred. Accordingly, for each pre-or post-service payment, there is also an opportunity cost (or gain).

Thus, to allow the type of adjustment suggested by respondent would imply that in the future the Department would be faced with the impossible task of trying to determine the opportunity cost (or gain) of every freight charge, rebate and selling expense for each sale reported in a respondent's database. In order to make a price-to-price comparison, this exercise would make our calculations inordinately complicated, placing an unreasonable and onerous burden on both respondents and the Department.'' *See also Final Determination of Sales at Less than Fair Value: Steel Wire Rope from Korea,* 58 FR 11029, 11032 (Feb. 23, 1993); *Ferrosilicon From Brazil: Final Results of Antidumping Duty Administrative Review,* 61 FR 59407, 59410 (Nov. 22, 1996); *Certain Cut-to-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Adminstrative Review,* 62 FR 18486, 18487 (Apr. 15, 1997)).

The respondent's reliance on *Stainless Steel Angles from Japan* is not on point. As the Department found in the previous review of this case, ''[t]he comment in the Stainless Steel Angles case cited by the respondent refers to pre-shipment advance payment for the merchandise, rather than taxes, and is not contrary to the Department's position with respect to basing credit calculations on a price net of taxes' (*see Certain Cut-to-Length Carbon Steel Plate from Brazil,* 62 FR 18486 (Apr. 15, 1997)).

For these final results, we have recalculated credit expense and used a price net of taxes for the basis of the recalculation. *See Final Analysis Memorandum* of March 9, 1998.

With respect to the selection of interest rates for use in calculating credit expense, the Department agrees with petitioners that the nominal rate should be used. The Department does not have information on the record of this proceeding with respect to nominal rates for each week of the POR. However, such information was not requested by the Department. Accordingly, on the basis of the facts available, we are using the weekly nominal rates for the weeks for which such information is on the record. For all other weeks, we are using the simple average of the available weekly nominal rates. Because the Department finds that USIMINAS/COSIPA has acted to the best of its ability in providing information relating to credit expenses, we are not making an adverse inference. *See Final Analysis Memorandum* of March 9, 1998. Because we are eliminating the adjustments to the interest rate in question and instead are using the nominal rates, we have not used the ''taxa referential'' are suggested by petitioners.

Comment 5: The petitioners object to USIMINAS/COSIPA's use of all plate products, including non-subject merchandise, in calculating its home market inventory carrying costs. The petitioners state that any inventory expenses associated with non-subject merchandise ''may not be used in calculating deductions of expenses from FMV for in-scope merchandise'' (*NSK Ltd.* v. *United States,* 896 F.Supp. 1236, 1272 (CIT, 1995) *aff'd in relevant part* 115 F. 3d 965, 973 (Fed. Cir. 1997). The petitioners conclude that if the respondent could not develop a viable method to separate inventory carrying costs of subject merchandise from non-subject merchandise, the Department must deny the adjustment altogether. Petitioners close by stating that if the Department decides to allow the inventory carrying cost adjustment, the Department should recalculate the cost using the ''taxa referential'' instead of the discount rate.

In response, USIMINAS/COSIPA characterizes the inventory carrying cost adjustment as irrelevant in this review because there are no U.S. commissions and, therefore, no need to calculate a commission offset which would include inventory carrying costs.

Nevertheless, assuming arguendo that the inventory cost adjustment is relevant, USIMINAS/COSIPA states that the petitioners have confused ''selling out of inventory'' and ''having an inventory.'' ''Selling out of inventory,'' from USIMINAS/COSIPA's viewpoint, is based on a decision by a producer to manufacture and inventory products without a specific customer request for the products. COSIPA and USIMINAS contend that having an inventory is a natural consequence of selling to order for several reasons: (1) export shipments are often held until the entire order is produced; (2) overruns, a natural consequence in steel production, are inventoried; (3) materials are held at distribution warehouses.

Finally, USIMINAS/COSIPA urges the Department to reject the petitioners' suggestion that the Department deny this adjustment altogether.

Department's Position: As the Department has determined that there were no U.S. commissions, there is no need to consider how inventory carrying costs might affect a commission offset in this case.

Comment 6: The petitioners state that the COSIPA verification team found that the IPI tax, an indirect home market tax of 5% of the gross unit price, was incorrectly reported for February through April 1995. However, the petitioners claim that USIMINAS/COSIPA did not submit the correct values in a revised database, as instructed by the Department. Since the Department may deduct taxes from normal value ''only to the extent that such taxes are added to or included in the price of the foreign like product'' pursuant to 19 U.S.C. 1677b(a) (6) (B) (iii), the petitioners urge the Department to recalculate the IPI tax to reflect the correct amount of 5% of the gross unit price.

USIMINAS/COSIPA counters that the petitioners' comments are based on a confused understanding of how IPI is calculated and how it is presented on COSIPA's sales listing. USIMINAS/COSIPA states that petitioners' proposal that the Department divide the IPI adjustment in the sales listing by the gross price in the sales listing fails to account for: (1) the need to adjust the IPI base for the ICMS rate, and (2) the fact that the IPI base is not net of discounts. The respondent concludes that the Department should reject petitioners' comments with respect to the IPI because COSIPA'S IPI adjustments are correct in its post-verification sales listing.

Department's Position: We agree with the respondent. At the start of COSIPA's verification, the respondent presented the Department officials with a list of corrections (see COSIPA Sales Verification Report, Exhibit 1). The list of corrections makes a brief mention of miscalculated IPI taxes. This correction was not directed at COSIPA's sales database. Rather, this correction was directed toward Exhibit 23 of respondent's April 10, 1997 Supplemental Questionnaire Response, wherein COSIPA misreported the monthly payments of IPI tax for the months of February through April of 1995. In an effort to provide accurate information to the Department, COSIPA sought to correct this mistake in the questionnaire response at the beginning of verification. No change was made to the IPI tax field as reported in the pre-verification sales tape because this tax field was never incorrect. As further proof of this point, Department officials verified the IPI tax reported from an invoice dated during the February—April period (see COSIPA Verification Exhibit 7).

Comment 7: The petitioners maintain that the Department must disallow COSIPA's claimed warranty expenses because they represent credits to customers for a defective product or a price adjustment. According to petitioners, COSIPA had the burden of demonstrating which ''warranty''

expenses related to quality problems and which related to price adjustments. Since COSIPA could not directly relate the post-sale price adjustments (''PSPAs'') to specific transactions, the petitioners believe the Department should disallow COSIPA's claimed ''warranty'' expense. The petitioners argue that since the reported ''warranty'' expense included post-sale price adjustments, COSIPA's warranty claim should be rejected because while warranty expenses may be allocated, petitioners argue that post-sale price adjustments may not be allocated. Petitioners cite *Torrington Co.* v. *United States (''Torrington''),* 82 F.3d 1039, 1050 (Fed. Cir. 1996) and *Timken Company* v. *United States,* 930 F. Supp. 621, 632 (Ct. Int'l Trade 1996).

The respondent states that the Department should dismiss petitioners' comments because they are tardy, and mischaracterize the law and Departmental practice. The respondent notes that the petitioners have waited until the record is effectively closed and verification has been completed to attack COSIPA's warranty expense and urge the Department to reject this adjustment. The respondent requests the Department to discourage such tactics and reject petitioners' comments on procedural grounds.

The respondent also challenges petitioners' statement that PSPAs may not be based on allocations. The respondent maintains that the petitioners' cite to the Federal Circuit's holding in *Torrington* in support of their position ignores the Department's application of the *Torrington* holding in recent investigations. The respondent notes that in a final results of *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, Final Results of Antidumping Duty Administrative Reviews and Termination in Part (''Tapered Roller Bearings''),* 62 FR 11825 (March 13, 1997), the Department rejected the petitioners' interpretation of *Torrington* and stated that it would accept adjustments for PSPAs based on allocation if : (1) The respondent acted to the best of its ability to report the adjustment in the most specific manner, and (2) the allocation methodology was not unreasonably distortive. Moreover, the respondent states that the final antidumping regulations published on May 19, 1997, specifically permit allocations for price adjustments (62 FR 27296, 27410 (section 351.401(g)).

In addition, the respondent states that the Department verified that COSIPA's warranty calculation was based on the most specific allocation permitted, given COSIPA's record-keeping system and the Department did not perceive any distortions in COSIPA's adjustment (*see* COSIPA's Sales Verification Report at 16). The respondent concludes that the Department was correct to allow COSIPA's warranty adjustment in its preliminary results and should continue to do so in the final results.

Department's Position: We agree with the respondent. At verification, the Department officials found that COSIPA was unable to link credit notes to specific *notas fiscais* (invoices). Therefore, COSIPA could not link the credit notes to the specific sales of merchandise, nor discriminate between warranties and post-sale price adjustments. We found COSIPA's methodology to be reasonable. In the *Tapered Roller Bearings* case cited by respondents, the Department allowed adjustment for post-sale price adjustments that had been allocated, provided that it was not feasible for the respondent to report the adjustment on a more specific basis, and provided that the allocation methodology was not distortive. Department officials verified that these adjustments could not be more specifically reported and also verified the allocation methodology for COSIPA. We do not find it to be distortive. Thus, allowance of COSIPA's PSPAs is consistent with the Department's practice (see section 351.401(g) of the Department's new regulations (62 FR 27296, May 19, 1997).

Comment 8: USIMINAS/COSIPA challenges the Department's exclusion of inter-company transactions between USIMINAS and COSIPA from the denominator in the calculation of the cost of goods sold of USIMINAS. Respondent points out that this adjustment is irrelevant for purposes of the consolidated financial expense ratio, but increases the consolidated G&A ratio. First, USIMINAS/COSIPA maintains that the exclusion of inter-company sales is unfounded from an accounting and economic perspective. In USIMINAS/COSIPA's view, if the manufacture and sale of a category of products generates any of the expenses in the numerator, like other sales, there is no justification for excluding that category from the denominator. USIMINAS/COSIPA argues that its accounting department must perform its services regardless of whether the product is manufactured for sale t o an unaffiliated distributor, an affiliated distributor, or to COSIPA. USIMINAS/COSIPA conjectures that the Department's concern with including sales to COSIPA may be based on a suspicion that these sales are not normal. However, USIMINAS/COSIPA notes that the denominator of the G&A ratio is the cost of goods sold which is incurred regardless of the ultimate destination of the product. Therefore, according to USIMINAS/COSIPA, there is no basis for the exclusion from the cost of goods sold, of the costs associated with sales of products by USIMINAS to COSIPA.

Secondly, USIMINAS/COSIPA maintains that the Department currently requests the respondent to calculate financial ratios on a consolidated basis, while the Department's questionnaire requires respondents to calculate G&A ratios on a non-consolidated basis (*see* the Department's September 19, 1996 Questionnaire at D–21–22). USIMINAS/COSIPA supports the calculation of the G&A ratio on a non-consolidated basis, stating that according to Department practice, neither the numerator nor the denominator in the G&A ratio calculation should be adjusted for the effects of any consolidation.

Petitioners state that the Department was correct in deducting costs associated with inter-company transactions from cost of goods sold. Petitioners state that since the Department has declared USIMINAS and COSIPA to be affiliated and collapsed them into one entity for the purposes of this review, their costs must be treated as if they were consolidated. Therefore, petitioners state that the deduction of costs associated with inter-company transactions is necessary in order to avoid double-counting. Petitioners cite *Certain Corrosion-Resistant Carbon Steel Plate From Canada,* 62 FR 18464 (Apr. 15, 1997) as evidence of precedent for the Department's decision.

Department's Position: We agree with petitioners. As indicated in the preliminary results of this review, we have treated USIMINAS and COSIPA as a collapsed, single entity for purposes of our antidumping analysis. *Preliminary Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Brazil,* 62 FR 47436 (Sept. 9, 1997). We have determined that USIMINAS/COSIPA should be considered a single producer of certain cut-to-length carbon steel plate.

The decision to treat affiliated parties as a single entity necessitates that transactions between such parties also be viewed in terms of a single, consolidated whole. The Department has determined it would be inappropriate to combine the cost of goods sold by USIMINAS and COSIPA without adjustment, because this would

recognize income/expenses which would not be recognized in the context of consolidation. When treating companies as consolidated, the Department eliminates profits/losses from intercompany transactions in order to recognize profits/losses from transactions only with unaffiliated companies. For the final results, therefore, the Department has eliminated intercompany transactions from the calculation of cost of sales.

Comment 9: USIMINAS notes that in reformulating financial expenses for USIMINAS and COSIPA, the Department did not deduct financial expenses associated with exports or home market sales from total financial expenses. Since the Department found the financial expenses of both parties to be de minimis, this error is irrelevant. However, USIMINAS/COSIPA requests that in the event the Department revises its financial expense calculations, and in the event constructed value comparisons are used, the Department ensure that it includes these deductions from financial expenses for purposes of any comparison of U.S. price to constructed value.

Petitioners state that the Department correctly omitted from its financial expense recalculation amounts for ''Excluded Export Expenses'' and ''Excluded Financial Expenses on Sales''. Petitioners cite *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 60 FR 10900 (Feb. 28, 1995), as illustration of the Department's practice in this matter.

Department's Position: This issue is moot because we continue to find the financial expense rate to be de minimis. However, we disagree with respondent. The Department's normal practice is to compute the actual net financial expenses of the entire company in arriving at the financial expense ratio used in constructed value. The statute directs Commerce to calculate selling, general and administrative costs, including interest expenses, based on the actual experience of the company. See section 773(b)(3)(B) and section 773(e)(2)(A) of the Act of 1930, as amended.

Comment 10: The petitioners maintain that under section 773(f)(2) and (3) of the Tariff Act, major inputs purchased from affiliated parties must be valued at the highest of market value, transfer price, and the affiliate's cost of production (COP). The petitioners note that the respondent failed to report the cost of iron ore provided by Companhia Vale do Rio Doce (CVRD), an affiliate of USIMINAS. Further, they state that CVRD declined to release the cost of production information because they claimed it was business proprietary information, regardless of whether or not they were affiliated with USIMINAS.

The petitioners state that this same situation existed in the recent 1994–1995 review of *Silicomanganese from Brazil; Final Results of Antidumping Duty Administrative Review (''Silicomanganese from Brazil''),* 62 FR 37869 (July 15, 1997). According to petitioners, in that case the Department rejected CVRD's argument that the information was confidential, noting that the information could have been submitted directly to the Department. According to petitioners, in *Silicomanganese from Brazil,* the Department also rejected CVRD's and USIMINAS' argument that the profits reported by these parties proved that they were not transferring major inputs to affiliated parties at below-cost prices. The Department stated that the record showed that the company earned an overall profit, but did not establish that specific products were sold above cost to affiliated parties.

The petitioners note that, in *Silicomanganese from Brazil,* CVRD's and USIMINAS/COSIPA's refusal to provide COP data led the Department to apply adverse facts available with respect to the major input in question. Petitioners argue that the Department should also apply adverse facts available in this case.

The petitioners contend that the conditions required by section 776(a) of the statute for the application of facts available have been met. Specifically, petitioners claim that CVRD's refusal to provide the requested information on two occasions (*i.e.*, in its response to the Department's initial questionnaire and in the supplemental questionnaire) is imputable to the respondent, and that, thus, respondent has ''withheld information'' within the meaning of section 776(a)(2)(A). Moreover, the petitioners state that under section 782(d) of the Tariff Act, once notice of a deficiency is provided and the response is unsatisfactory, the Department may reject all or part of a respondent's original and subsequent responses subject to the provisions of section 782(e), which outlines the five criteria under which the Department cannot decline to consider submitted information. In the petitioners' view, CVRD and the respondent failed to comply with one of the criteria when they repeatedly failed to supply the necessary COP data in response to the Department's requests for information. For this reason, the petitioners urge the Department to apply adverse facts available.

The respondent rejects these arguments, stating that petitioners' analysis is flawed by misinterpretation of the statute and a misplaced reliance on the Department's recent decision in *Silicomanganese from Brazil,* 62 FR 37869 (July 15, 1997). The respondent maintains that the petitioners fail to recognize that application of the major input provision requires ''reasonable grounds'' to believe that an input is being supplied at below cost prices. 19 U.S.C. 1677b(F)(3). The respondent states that the Department verified that the CVRD prices for iron ore were above prices from unaffiliated suppliers and that CVRD was a highly profitable company. According to USIMINAS/COSIPA, this provides the Department with reasonable grounds to conclude that CVRD was selling iron ore to the respondent at prices above its costs and above market prices.

Respondent argues that the major input provision includes a ''reasonable grounds'' requirement identical to the clause that requires petitioners to submit information that provides sufficient ''reasonable grounds'' to initiate a below cost investigation. The respondent states that the petitioners did not even attempt to submit information to establish reasonable grounds to believe that CVRD sold to USIMINAS or COSIPA at below-cost prices in this proceeding and, therefore, they are not positioned to argue that the Department should have invoked its authority under the major inputs provision. Thus, the respondent states that the record supports the conclusion that there is no reason to suspect that CVRD is providing iron ore at prices below its COP, and below market price.

In addition, the respondent claims that the petitioners incorrectly state that the Department ''must'' use the highest of market value, transfer price, and cost of production. In the respondent's opinion, the Department's authority under the major input provision is discretionary because the statute states plainly that even if there are reasonable grounds to believe that below cost sales of a major input exist, the Department ''may'' seek an affiliated suppliers' COP for major inputs and use that value in lieu of transfer prices for the inputs at issue.

Department's Position: We agree, in part, with both the petitioners and respondent. Pursuant to sections 773(f)(2) and (3) of the Act, the

Department may value major inputs purchased from affiliated suppliers at the higher of market value, transfer price or the affiliated supplier's cost of production. In the Department's original questionnaire, supplemental questionnaires and at verification, officials requested CVRD's cost of production information for iron ore, which is a major input in carbon steel plate.

USIMINAS/COSIPA argues that the petitioners did not provide ''reasonable grounds'' for the Department to invoke the major input rule and therefore to seek cost information on this input. However, it is the Department's position that a separate sales-below-cost allegation need not always be filed and accepted before we can investigate whether prices of major inputs purchased from affiliated suppliers were below COP. Specifically, in those instances in which we conduct an investigation of sales below cost under section 773(b) of the Act, it is our practice to analyze production-cost data for major inputs purchased by a respondent from its affiliated suppliers (*see, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 37871 (Apr. 15, 1997)). In such situations, the ''reasonable grounds'' provision of section 773(f)(3) of the Act is met by the evidence on record that the respondent may be selling below cost in the home market, since this may be linked to major inputs obtained at below cost transfer prices from affiliated parties. Because a COP investigation was properly initiated with respect to USIMINAS/COSIPA in this review, Commerce properly requested that USIMINAS/COSIPA provide cost of production data for the iron ore it obtains from its affiliate CVRD.

Of the three elements which may be compared in determining the value of major inputs supplied by affiliates (transfer price, market value and cost of production), USIMINAS/COSIPA provided the transfer price of iron ore from CVRD to USIMINAS/COSIPA in its submissions. In addition, at verification, the respondent provided market price data from unaffiliated iron ore suppliers. In most instances, the market price was much lower than the transfer price from the affiliated supplier.

The Department has determined that USIMINAS/COSIPA did attempt to obtain cost of production information from its affiliate, CVRD, and otherwise complied with the Department's information requests. Further, the Department has determined that, due to the nature of its affiliation with CVRD, USIMINAS/COSIPA could not compel CVRD to provide such information to the Department. Thus, the Department will not impute CVRD's refusal to provide the requested cost information to USIMINAS/COSIPA. In *Silicomanganese from Brazil,* the Department determined that USIMINAS and CVRD, which together wholly owned the respondent Ferro Ligas Group, were to be considered ''interested parties'' to the case. Given these facts, the Department held that the burden of supplying information to the Department fell not only to the wholly owned subsidiary, but also to these ''parent'' companies. The Department stated, ''[b]ecause the Department requires such data and because the business of the parent entity is clearly affected by its ability to ensure that its subsidiary avoids or lessens the effect of antidumping duties on U.S. sales, the consolidated or parent entity must be considered an ''interested party'' for purposes of responding to requests for information.'' The current proceeding is distinguished from *Silicomanganese from Brazil* by the degree of ownership involved. Public data on the record of the current proceeding indicates that CVRD holds only 15 percent of USIMINAS' stock, and CVRD's interest in USIMINAS constitutes only a small portion of CVRD's total operation. Thus, USIMINAS/COSIPA could not compel CVRD to supply its cost of production information, nor is CVRD an interested party as in *Silicomanganese from Brazil.* Instead, CVRD holds only a minor interest in USIMINAS. *See Roller Chain, Other Than Bicycle, From Japan: Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review,* 62 FR 60472 (Nov. 10, 1997), in which the Department determined that a respondent could not compel an affiliate to supply downstream sales information due to similar ownership circumstances. Adding to the difficulty faced by USIMINAS/COSIPA in obtaining CVRD's cost information was the fact that CVRD was in the process of privatization throughout most of this review. Some aspects of the privatization may have prevented CVRD from releasing cost information even to the Department, let alone to USIMINAS/COSIPA. In addition, USIMINAS' major competitor in Brazil, CSN, was part of the group involved in the privatization of CVRD.

Finally, as the petitioners point out, the fact that USIMINAS/COSIPA submitted the profitable financial statements of CVRD at verification does not negate the possibility that CVRD was selling major inputs to USIMINAS and COSIPA at prices below CVRD's cost of production (*see Silicomanganese from Brazil*). However, at verification, Department officials noted that CVRD's metals mining line of business appeared to be profitable. We note that, while not dispositive, the fact that not only CVRD as a whole, but also its metals mining division, were profitable during the period during which USIMINAS/COSIPA purchased iron ore from CVRD, constitutes some evidence that CVRD's sales of iron ore to the respondent likely were at above-cost levels.

Because USIMINAS/COSIPA did not provide CVRD's cost of production data, the Department has made a determination with respect to the appropriate value for iron ore on the basis of the facts available. Because the Department finds that USIMINAS/COSIPA has acted to the best of its ability in attempting to obtain the CVRD cost data, however, we will not make an adverse assumption in selecting from the facts available. Therefore, because the transfer prices for iron ore are generally higher than the market prices for iron ore, and because the record contains no indication that the cost of production of the iron ore would be higher than the transfer prices for that input, we are using the reported transfer prices for this major input as facts available in these final results. Therefore, we made no changes to the major input calculations employed in the preliminary determination, which were also based on the use of transfer prices.

Final Results of Review

As a result of our review, we have determined that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
USIMINAS/COSIPA	8/1/95–7/31/96	11.54

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

We will calculate importer-specific duty assessment rates on a unit value per pound basis. To calculate the per pound unit value for assessment, we summed the margins on U.S. sales with positive margins, and then divided this sum by the entered pounds of all U.S. sales.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of plate from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate for that firm as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 36.00 percent. This is the ''all others'' rate from the LTFV investigation. See *Antidumping Duty Order and Amendment of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate From Germany*, 58 FR 44170 (August 19, 1993). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6713 Filed 3–13–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On November 7, 1997, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on extruded rubber thread from Malaysia. This review covers four manufacturers/exporters of the subject merchandise to the United States (Filati Lastex Elastofibre (Malaysia), Heveafil Sdn. Bhd./Filmax Sdn. Bhd, Rubberflex Sdn. Bhd., and Rubfil Sdn. Bhd.). The period of review is October 1, 1995, through September 30, 1996.

We gave interested parties an opportunity to comment on our preliminary results. We have based our analysis on the comments received and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Fabian Rivelis, AD/CVD Enforcement Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 1997, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the 1995–1996 administrative review of the antidumping duty order on extruded rubber thread from Malaysia (62 FR 60221). The Department has now completed this administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to 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 353 (April 1, 1997).

Facts Available

A. Heveafil Sdn. Bhd./Filmax Sdn. Bhd. (Heveafil)

In accordance with section 776(a)(2) of the Act, we determine that the use of facts available is appropriate as the basis for Heveafil's dumping margin because the Department could not verify the information provided by Heveafil, as required under section 782(i) of the Act, despite the Department's attempts to do so.

Specifically, we were unable to verify the cost of production (COP) and constructed value (CV) information provided by Heveafil because we discovered at verification that the company had destroyed the source documents upon which a large portion of its response was based. The destruction of these source documents raises particular concern, as Heveafil should have been aware of the necessity of retaining these documents based

upon its participation in prior segments of this proceeding. Moreover, there were significant delays in the verification process itself, caused by company difficulties in locating documents and the inability of company officials to link information in the questionnaire response to the accounting system. Our findings at verification are outlined in detail in the public version of the cost verification report from Shawn Thompson and Irina Itkin to Louis Apple, dated October 17, 1997 (Heveafil cost verification report).

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate to the best of its ability. See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. 870 (SAA). Because we were unable to verify the information submitted by Heveafil in this period of review (POR) and because the company failed to adequately prepare and provide information during the verification, we determine that Heveafil did not cooperate to the best of its ability. Thus, pursuant to section 776(b) of the Act, we are basing Heveafil's margin on adverse facts available for purposes of the final results.

As adverse facts available for Heveafil, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 54.31 percent. For further discussion, see *Comment 16* in the ''Analysis of Comments Received'' section of this notice.

B. Rubfil Sdn. Bhd. (Rubfil)

In accordance with section 776(a)(2)(A) of the Act, we also determine that the use of facts available is appropriate as the basis for Rubfil's dumping margin. Specifically, Rubfil failed to respond to the Department's questionnaire, issued in December 1996. Because Rubfil did not respond to the Department's questionnaire, we must use facts otherwise available to calculate Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate calculated for any respondent in any segment of this proceeding. This rate is 54.31 percent.

C. Corroboration of Secondary Information

As facts available in this case, the Department has used information derived from a prior administrative review, which constitutes secondary information within the meaning of the SAA. See SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA, H.R. Doc. 316, Vol. 1, 103rd Cong., 2d sess. 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the same or a prior segment of this proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For both Heveafil and Rubfil, we examined the rate applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to its probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1994–1995 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Heveafil and Rubfil. Thus, the Department considers this rate to be appropriate adverse facts available.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for Filati Lastex Elastofibre (Malaysia) (Filati) and Rubberflex Sdn. Bhd. (Rubberflex), as specified in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *CEMEX* v. *United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ''ordinary course of trade.'' This issue was not raised by any party in this proceeding. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV as the basis for NV, in lieu of foreign market sales, if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of the Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire.

Level of Trade and 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 level of trade as export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

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

Both Filati and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers) and that this level was different, and more remote, than the level of trade at which they made CEP sales.

Because only one level of trade existed in the home market for both respondents, we conducted an analysis to determine whether a CEP offset was warranted for either company. In order to determine whether NV was established at a level of trade which constituted a more advanced state of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction which excludes economic activities occurring in the United States. We found that both respondents performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, the respondent's sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an FOB foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to either Filati or Rubberflex. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated October 31, 1997.

Constructed Export Price

For all sales by Filati and Rubberflex, we based the starting price on CEP, in accordance with section 772(b) of the Act. For further discussion, see *Comment 5* in the ''Analysis of Comments Received'' section of this notice.

Moreover, for both companies, we revised the reported data based on our findings at verification.

A. Filati

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia. We made deductions from the starting price, where appropriate, for discounts and rebates. In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for commissions, credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We recalculated U.S. indirect selling expenses to exclude an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance with the Department's practice. See *Comment 4* in the ''Analysis of Comments Received'' section of this notice, for further discussion.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Rubberflex

We calculated CEP based on the starting price to the first unaffiliated customer in the United States. We made deductions from the starting price, where appropriate, for discounts and rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions to CEP, where appropriate, for credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We recalculated U.S. indirect selling expenses to exclude an offset claimed by Rubberflex relating to imputed costs associated with financing antidumping and countervailing duty deposits, in accordance the Department's practice. See *Comment 4* in the ''Analysis of Comments Received'' section of this notice, for further discussion.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that both Filati and Rubberflex had viable home markets during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b) of the Act, there were reasonable grounds to believe or suspect that Rubberflex had made home market sales at prices below

its COP in this review because the Department had disregarded sales below the COP for Rubberflex in a previous administrative review. See Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia, 61 FR 54767 (Oct. 22, 1996). Moreover, the petitioner submitted an adequate allegation that there were reasonable grounds to believe or suspect that Filati had made home market sales at prices below its COP in this review. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

We used the respondents' reported COP amounts, adjusted as discussed below, to compute weighted-average COPs during the POR. We compared the weighted-average COP figures to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. See § 773(b)(1) of the Act.

Pursuant to section 773(b)(2) 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 were at prices below the COP, we found that sales of that model were made in ''substantial quantities'' within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of extruded rubber thread, more than 20 percent of both Filati's and Rubberflex's home market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of extruded rubber thread for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Company-specific calculations are discussed below.

A. Filati

We made the following adjustments to Filati's reported COP and CV data based on our findings at verification. For the cost of manufacturing (COM), in order to properly value second quality merchandise and apply the appropriate manufacturing variance, we first valued the second quality merchandise at the standard cost of the first quality product that was intended to be produced. We then calculated the variance between the revised total standard cost and the total actual cost, and applied the variance proportionately to each per-unit standard cost. We also recalculated Filati's reported general and administrative (G&A) expense ratio by excluding direct selling, indirect selling, G&A, and financial expenses from the denominator of the ratio. The resulting ratio was applied to the per-unit COM. Finally, we recalculated Filati's reported interest expense using the consolidated financial statements of its parent company. Specifically, we divided net interest expense by the cost of operations. For further discussion of these adjustments, see *Comment 13* in the ''Analysis of Comments Received'' section, below, and the cost calculation memorandum from Michael Martin and Gina Lee to Christian Marsh, dated March 9, 1998.

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made adjustments to Filati's reported sales data based on our findings at verification.

For all price-to-price comparisons, we made deductions from the starting price for rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, bank charges, and U.S. commissions. Where applicable, in accordance with 19 CFR 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, bank charges, and U.S. commissions, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8) of the Act. Where applicable, in accordance with 19 CFR 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

B. Rubberflex

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made adjustments to Rubberflex's reported sales data based on our findings at verification.

We made deductions from the starting price for discounts and rebates, where appropriate. We also made deductions for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. In addition, we made a circumstance-of-sale adjustment for differences in credit expenses. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for

differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(c)(ii) of the Act and 19 CFR 353.57.

For CV-to-CEP comparisons, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses.

Duty Absorption

On December 16, 1996, the petitioner requested that the Department determine, with respect to all respondents, whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer.

For transition orders as defined in section 751(c)(6)(C) of the Act (*i.e.*, orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's new antidumping regulations provide that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See 62 FR 27394 (May 19, 1997). Because the order on extruded rubber thread from Malaysia has been in effect since 1991, it is a transition order in accordance with section 751(c)(6)(C) of the Act. The preamble to the new antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year (62 FR 27317, May 19, 1997). This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time for sunset review of the order under section 751(c) of the Act on entries for which the second and fourth years following an order have already passed. Since this review was initiated in 1996, and a request was made for a determination, we are making a duty-absorption determination as part of this administrative review.

As indicated above, section 751(a)(4) of the Act provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, the respondents sold through importers that are affiliated. We have determined that duty absorption by all respondents has occurred in this administrative review. This determination is made only with respect to the percentages of sales shown below which were made through the respondents' U.S. affiliates and which had positive dumping margins:

Manufacturer/exporter/re-seller	Percentage of U.S. affiliates' sales with dumping margins
Heveafil	100.00
Filati	100.00
Rubberflex	57.35
Rubfil	100.00

With respect to Heveafil and Rubfil, because the former failed verification and the latter did not respond to our questionnaire, we determined the dumping margins for these two companies on the basis of adverse facts available. Lacking other information, we find duty absorption on all sales by these two companies. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043 (Oct. 17, 1997) (AFBs) and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews, 63 FR 2558 (Jan. 15, 1998) (TRBs) (where we found duty absorption with respect to all sales for which the respondent provided no data in response to the Department's questionnaire).

With respect to the other respondents with affiliated importers (*i.e.*, Filati and Rubberflex) for which we did not apply adverse facts available, we must presume that the duties will be absorbed for those sales which were dumped. As the above chart indicates, 100 percent of Filati's sales, and 57.35 percent of Rubberflex's sales, by volume, were dumped. Our duty-absorption presumptions can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. After publication of our preliminary results, we gave interested parties the opportunity to submit evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duties. However, we received no such evidence. Under these circumstances, we find that antidumping duties have been absorbed by all respondents on the percentages of U.S. sales indicated. Specific arguments relating to duty absorption are discussed in *Comment 1* of the ''Analysis of Comments Received'' section, below.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A 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 for the daily rate, in accordance with established practice.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from North American Rubber Thread (the petitioner), and two respondents, Filati and Heveafil. We also received rebuttal comments from Filati and Heveafil.

General Issues

Comment 1: Duty Absorption

According to the petitioner, the Department should find that the respondents are absorbing antidumping duties in cases where their U.S. subsidiaries are the importers of record.

Filati and Heveafil assert that there is no evidence that they are absorbing antidumping duties in this review. According to these companies, the duties for this review period have yet to be assessed. Consequently, there can be no finding that these companies are absorbing duties for this POR.

Moreover, these respondents state that both the URAA and SAA require that the Department perform a meaningful analysis of whether antidumping duties are absorbed. Therefore, these respondents argue that it is not lawful for the Department to merely presume that duty absorption has taken place by virtue of a finding that dumping margins exist on sales through affiliated importers. According to these respondents, such a presumption shifts the burden of demonstrating that duties are not being absorbed to the respondents. These respondents state that this presumption is both unfair and unreasonable because it is impossible to rebut, given that it would require their

customers to assume an unlimited, contingent liability for antidumping duties several years after the sale.

Filati and Heveafil also contend that acceptance of the Department's presumption renders meaningless any sunset reviews, because the existence of dumping margins would be sufficient to make an affirmative finding.

Finally, Heveafil argues that the Department should not find that it absorbed antidumping duties based on Rubfil's rate in a previous review because that rate clearly is not representative of Heveafil's sales patterns. Instead, Heveafil asserts that the Department should make a determination based on Heveafil's actual experience, as submitted to the Department in past reviews.

DOC Position

We disagree with the respondents. An investigation as to whether there is duty absorption does not simply involve publishing the margin in the final results of review. The Department's determination that duty absorption exists is based on the lack of any information on the record that the first unaffiliated customer will be responsible for paying the duty that is ultimately assessed. Absent such an irrevocable agreement between the affiliated U.S. importer(s) and the first unaffiliated customer, there is no basis for the Department to conclude that the duty attributable to the margin is not being absorbed. See, *e.g.*, AFBs at 54043 and 54044.

As in previous cases where the Department has found duty absorption (see, *e.g.*, AFBs and TRBs), this is an instance where the existence of margins raises an initial presumption that the affiliated importer(s) are absorbing the duty. As such, the burden of producing evidence to the contrary shifts to the respondent. See *Creswell Trading Co., Inc.* v. *United States*, 15 F.3d 1054 (CAFC 1994). Here, the respondents have failed to place evidence on the record, despite being given ample time to do so, in support of their position that their affiliated importer(s) are not absorbing the duties.

Regarding Heveafil's argument that we should make our duty-absorption determination based on Heveafil's actual experience, as submitted to the Department in past reviews, we also disagree. The Department's current practice is to find that duty absorption occurred for companies having a margin based on adverse facts available, absent any information to the contrary. See AFBs and TRBs. Because Heveafil submitted no information showing that its affiliated importer is not absorbing the duties for this POR, we find that duty absorption occurred.

Finally, regarding the argument that the presumption of absorption renders the sunset provisions meaningless, we note that the Department has no experience in conducting sunset reviews. Thus, we are unable to determine the impact of any duty absorption finding on a subsequent sunset review.

Comment 2: Calculation of CV Profit

The petitioner argues that the Department should exclude all below-cost sales from the calculation of CV profit, in accordance with its practice. As support for this contention, the petitioner cites Mechanical Transfer Presses From Japan; Final Results of Antidumping Administrative Review, 62 FR 11820, 11822 (Mar. 13, 1997) (MTPs from Japan).

Filati disagrees, citing to the Department's practice under the old law, in which the Department consistently rejected such arguments. Filati argues that the URAA does not require a change in the Department's practice. Specifically, Filati contends that the Department may exclude below-cost sales only when it determines that such sales are outside the ordinary course of trade. Filati cites Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2114 (Jan. 15, 1997) (1994–1995 AFBs Reviews), where the Department stated that sales must be disregarded under the cost test before they can be excluded from the calculation of CV profit. Filati asserts that this practice is consistent with the SAA as well as the WTO antidumping code.

Filati further argues that, in this case, the Department should not exclude any of its sales of second quality merchandise from the calculation of CV profit (or, correspondingly from the calculation of NV)—irrespective of whether they are above or below cost—because they are not outside the ordinary course of trade. According to Filati, these sales are the type of unusual, off-spec, infrequent sales contemplated by the SAA in its discussion of what types of below-cost sales should be included as part of NV. Specifically, Filati cites the SAA at 833, which states that ''below-cost sales may be used to determine normal value if those sales are obsolete or end-of-model-year merchandise.''

DOC Position

We agree with Filati, in part. It is the Department's practice to disregard below-cost sales in the calculation of CV profit only when those sales fail the cost test. See, *e.g.*, MTPs from Japan, 1994–1995 AFBs Reviews, and Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan 63 FR 8909 (Feb. 23, 1998) (SRAMs from Taiwan). Consequently, in accordance with our practice, we have excluded below-cost sales from the calculation of CV profit only when they were made in substantial quantities within an extended period of time at prices which would not permit the recovery of all costs within a reasonable period of time.

We disagree with Filati's contention that its below-cost sales of second quality merchandise were made in the ordinary course of trade. The Department's practice is not to distinguish between first and second quality merchandise in conducting the cost test. See, *e.g.*, Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Administrative Reviews and Notice of Revocation in Part, 61 FR 35177 (July 5, 1996). Consequently, where these sales failed the cost test, we find that they were made outside the ordinary course of trade. Accordingly, we have excluded such sales from our analysis for purposes of the final results.

Comment 3: Date of Payment

The Department noted at verification that both Filati and Rubberflex had not received payment for certain U.S. sales. According to the petitioner, the Department should use the date of the final results as the date of payment for these transactions. The petitioner asserts that, if payment for these sales had been received by the time of verification, the respondents should have indicated this to the Department.

Filati maintains that the Department's consistent policy is to use the last day of verification as the date of payment for the unpaid sales. See Brass Sheet and Strip from Sweden: Final Results of Antidumping Administrative Review, 60 FR 3617, 3620 (Jan. 18, 1995) (Brass Sheet and Strip from Sweden). Filati states that this date is the last date on which the Department can be certain that payment had not been received, given that the Department's regulations do not allow respondents to provide information after verification. Furthermore, Filati argues that the use of the date of the final results would be unduly punitive, because there is an

extended period between the time that the sales were made and the date of the final results of the review.

DOC Position

The Department's recent practice regarding this issue has been to use the last day of verification as the date of payment for unpaid sales. See SRAMs from Taiwan and Brass Sheet and Strip from Sweden. In accordance with our practice, we have used the last day of verification as the date of payment for the transactions in question.

Company-Specific Issues

A. Filati

Comment 4: Offset for Imputed Costs Associated With AD/CVD Duty Deposits

In its questionnaire response, Filati reported the opportunity costs associated with financing its cash deposits of antidumping and countervailing duties as an offset to U.S. indirect selling expenses. Filati notes that the Department's decision to deny this offset for purposes of the preliminary results is consistent with its recent practice. See AFBs. However, Filati contends that the Department's change in policy conflicts with prior decisions both by the Department and the Court of International Trade (CIT). See, *e.g.*, 1994–1995 AFBs Reviews and *Federal-Mogul* v. *United States*, 950 F. Supp. 1179 (CIT 1996).

Specifically, Filati asserts that the reasoning in AFBs was flawed, in two respects. First, Filati asserts that AFBs was based on the premise that money is fungible. According to Filati, however, this point is irrelevant because the company has incurred a real expense which it would not have incurred but for the existence of the antidumping duty order. Second, Filati asserts that AFBs was based on the premise that there is no ''real'' opportunity cost associated with the duty deposits. Filati maintains that this point is also incorrect, because respondents making cash deposits are required to divert funds from more profitable ventures.

According to Filati, the CIT has mandated that imputed interest expenses incurred with respect to antidumping or countervailing duty deposits are not ''selling expenses,'' and, therefore, the antidumping law does not allow their deduction from CEP. Consequently, Filati argues that the Department should allow its offset for purposes of the final results.

DOC Position

We disagree. For these final results, we have continued to deny an offset to Filati's U.S. indirect selling expenses for expenses which Filati claims are related to financing of antidumping and countervailing duty cash deposits.

As the Department explained in AFBs, the statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress gave the administering authority discretion in this area. It is a matter of policy whether we consider there to be any financing expenses associated with cash deposits. We recognize that we have, to a limited extent, removed such expenses from indirect selling expenses for such financing expenses in other proceedings. However, we have reconsidered our position on this matter and have now concluded that this practice is inappropriate.

We have long maintained, and continue to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that we should deduct from CEP. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. See, *e.g.*, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360 (June 24, 1992). We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. *Id.* Underlying our logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the dumping order.

Financial expenses associated with cash deposits are not a direct, inevitable consequence of an antidumping order. As noted in AFBs, money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost. See AFBs at 54079. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were.

In a different context, we have made similar observations. For example, we stated that ''debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit.'' See Ferrosilicon From Brazil; Final Results of Antidumping Duty Administrative Review, 61 FR 59407, 59412 (Nov. 22, 1996) (regarding whether the Department should allocate debt to specific divisions of a corporation).

So, while under the statute we may allow a limited exemption from deductions from CEP for cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this exemption to financing expenses allegedly associated with financing cash deposits. By the same token, for the reasons stated above, we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

We see no merit to the argument that, since we do not deduct cash deposits from CEP, we should also not deduct financing expenses that are arbitrarily associated with cash deposits. To draw an analogy as to why this logic is flawed, we also do not deduct corporate taxes from CEP; however, we would not consider a reduction in selling expenses to reflect financing alleged to be associated with payment of such taxes.

Finally, we also determine that we should not use an imputed amount that would theoretically be associated with financing of cash deposits. There is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. Like taxes, rent, and salaries, cash deposits are simply a financial obligation of doing business. Companies cannot choose not to pay cash deposits if they want to import, nor can they dictate the terms, conditions, or timing of such payments. By contrast, we impute credit and inventory carrying costs when companies do not show an actual expense in their records because companies have it within their discretion to provide different payment terms to different customers and to hold different inventory balances for different markets. We impute costs in these circumstances as a means of comparing different conditions of sale in different markets. Thus, our policy on imputed expenses is consistent; under this policy, the imputation of financing costs to actual expenses is inappropriate.

Comment 5: *Treatment of EP Sales*

During the POR, Filati classified all sales shipped directly to U.S. customers as EP sales. The petitioner argues that the Department should treat these transactions as CEP sales because, according to the petitioner, Filati's U.S. subsidiary acts as more than a paper processor and communications link between the Malaysian parent and its customers. Specifically, the petitioner maintains that Filati's U.S. affiliate is involved in the actual negotiation of prices to unaffiliated U.S. customers.

The petitioner cites to the following cases as precedent for reclassifying the transactions in question as CEP sales: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 47446, 47448 (Sept. 9, 1997); Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors From the People's Republic of China, 61 FR 53190, 53194 (Oct. 10, 1996); Certain Cut-To-Length Carbon Steel Plate From Germany: Final Results of Antidumping Duty Administrative Review, 62 FR 18390, 18392 (Apr. 15, 1997); and Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 10530, 10532 (Mar. 7, 1997). In those cases, the Department classified the respondents' U.S. sales as CEP transactions, because the U.S. companies performed significant selling functions in the United States. Consequently, the petitioner maintains that the Department should deduct the indirect selling and operating costs of Filati's U.S. subsidiary from the starting price for purposes of the final results.

Filati contends that the Department properly treated its direct shipment sales as EP sales. Filati states that the Department has consistently classified Filati's direct shipment sales as EP sales from the original investigation through the latest published administrative review (*i.e.*, Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review, 62 FR 52547 (Nov. 24, 1997)). Furthermore, Filati notes that the facts of this review in no way differ from the facts of previous reviews with respect to the role in the sales process of Filati's U.S. affiliate. According to Filati, the sales in question were made prior to entry in the normal, customary commercial channel for the customers involved. Moreover, Filati asserts that the selling activities of its U.S. affiliate were well within the range of activities that the Department has previously found to be consistent with EP sales.

Filati notes that the cases cited by the petitioner are distinguishable from the circumstances present in this case, in that the U.S. subsidiaries in those cases set the prices of the direct sales. According to Filati, the Department confirmed at verification that Filati (USA) has no flexibility or authority to set prices or other significant terms for direct sales.

DOC Position

We agree with the petitioner. When sales are made prior to the date of importation through an affiliated or unaffiliated entity in the United States, the Department uses the following criteria to determine whether U.S. sales should be classified as EP sales:

- The merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent;
- Direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and
- The selling agent in the United States acts only as a processor of sales-related documentation and a communication link with the unaffiliated U.S. buyer (*i.e.*, a ''paper-pusher'').

See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404 (Apr. 15, 1997).

Although the sales in question were made prior to importation and were shipped directly to the unaffiliated customer without entering the U.S. inventory, we note that the U.S. affiliate did not serve mainly as a processor of sales-related documentation and a communications link with the buyer. Specifically, Filati stated in its questionnaire response that, for all direct sales, its U.S. affiliate makes the initial contact with the U.S. customer, negotiates terms of sale, contacts Filati to arrange for production and shipment of the container to the United States, and issues the final invoice to, and collects payment from, the customer. See Filati's February 20, 1997, questionnaire response at A–9 and A–10. As noted in the U.S. sales verification report at page 5, we found no discrepancies with the information reported in Filati's response regarding its sales process.

Because the extent of the affiliate's activities in the United States are significant, we find that the affiliate is not merely a paper processor. Accordingly, we have treated these transactions as CEP sales for purposes of the final results.

Comment 6: Sales with Zero Prices

According to the petitioner, the Department should include Filati's sales with zero prices in its analysis for purposes of the final results. The petitioner states that these transactions are actual sales because: (1) The parties negotiated a price; and (2) Filati transferred title to the product to the customer. The petitioner asserts that Filati's decision to give a full rebate to the customer after the terms of sale were set does not negate the fact that a sale occurred.

Filati contends that the Department correctly excluded the transactions in question from its analysis in the preliminary results. According to Filati, the concurrence memorandum cited by the petitioner predates the Department's current policy in this area, which was set in response to a decision by the Court of Appeals for the Federal Circuit (CAFC). See *NSK* v. *United States* 115 F.3d 965, 975 (CAFC 1997) (*NSK*). Specifically, Filati notes that the court held in NSK that the existence of consideration (*i.e.*, a bargained-for exchange) is the determinative factor, absent which there can be no sale. According to Filati, because there was no consideration for the transactions in question, the Department cannot treat them as sales.

DOC Position

We agree with Filati. At verification, we found that Filati shipped the merchandise in question, but then issued a refund to its customers after being informed that the merchandise was damaged and could not be used. See the Filati U.S. sales verification report from David Genovese and Irina Itkin, dated August 1, 1997, at page 2. The fact that Filati initially negotiated a price for these transactions is not relevant, because the sales were, in effect, canceled due to quality problems with the merchandise. Consequently, we find that these transactions were not sales, and we have excluded them from our analysis for purposes of the final results.

Comment 7: U.S. Commissions to Company Employees

The petitioner argues that the Department should treat Filati's commission payments to its U.S. sales agent as a direct selling expense, in accordance with its current practice.

According to Filati, the commissions in question are not commissions per se. Rather, Filati maintains that these payments are part of the compensation provided to its U.S. salesperson and, as such, were properly reported as indirect selling expenses. Moreover, Filati asserts that these commissions are paid periodically and are not related directly to specific sales; thus, Filati argues that, by definition, they cannot be direct selling expenses. Filati asserts that the Department should continue to treat these commissions as U.S. indirect selling expenses for purposes of the final results.

DOC Position

We agree with Filati. At verification, we confirmed that the expenses in question were not commissions per se, but rather were part of the salary paid to a company employee and were not directly related to specific sales. Consequently, we find that these expenses were properly reported in Filati's U.S. indirect selling expenses and we have continued to treat them as such for purposes of the final results.

Comment 8: Calculation of Inventory Carrying Costs

The petitioner contends that Filati incorrectly calculated inventory carrying costs on the basis of gross unit price, rather than COM. The petitioner asserts that the Department should recalculate inventory carrying costs using COM, in accordance with its standard practice.

According to Filati, the Department instructed it to calculate its inventory carrying costs using gross unit price. Filati asserts that use of gross unit price is appropriate because the opportunity cost of carrying inventory is related to the price that a company receives, not the costs that it incurs.

DOC Position

We agree with the petitioner. It is the Department's practice to calculate inventory carrying costs based on COM. See, *e.g.*, Final Determination of Sales at Less than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553 (June 5, 1995) and Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049 (March 29, 1996). We note that companies generally value the cost of their finished goods inventory using the costs incurred to manufacture their products, rather than the value of future sales. Therefore, we recalculated inventory carrying costs using COM for purposes of the final results.

Comment 9: Double-Counting of Indirect Selling Expenses

The petitioner argues that the Department may have double-counted the deduction for Filati's home market indirect selling expenses, in that the Department used home market indirect selling expenses to offset both U.S. commissions and the indirect selling expenses of Filati's U.S. subsidiary.

According to Filati, the Department did not double-count indirect selling expenses because the Department denied Filati a CEP offset for purposes of the preliminary results. Consequently, Filati asserts that the Department did not use home market indirect selling expenses to offset the expenses of Filati's U.S. subsidiary.

DOC Position

We agree with Filati. We used Filati's home market indirect selling expenses only to offset the company's U.S. commissions. Accordingly, we have not double-counted these expenses for purposes of the final results.

Comment 10: *Treatment of Uncollected Duties In Price-to-CV Comparisons*

During the POR, the government of Malaysia allowed Filati to import rubber thread inputs duty free; however, when Filati sold extruded rubber thread in the home market, the government charged it a duty equal to three percent of the sales price. In the preliminary results, the Department treated these amounts as uncollected import duties and added them to the U.S. starting price for purposes of price-to-price comparisons. Filati argues that the Department should also have added an amount for uncollected import duties to the starting price for purposes of price-to-CV comparisons. Filati states that the statute requires such an adjustment regardless of whether normal value is based upon price or CV. See 19 U.S.C. 1677a(c)(1)(B).

DOC Position

We agree. Section 772(c)(1)(B) of the Act directs the Department to increase CEP by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the subject merchandise to the United States. Because these duties have not been collected by reason of exportation of the subject merchandise, we have added them to CEP for all comparisons for purposes of the final results.

Comment 11: Inclusion of Uncollected Duties in COP

According to Filati, the Department should not add the uncollected duties referenced in *Comment 10* above to COP because they are not recorded as raw materials costs in Filati's accounting system. Filati notes that both 19 U.S.C. 1677b(b)(3) and the SAA at 834 require respondents to base their reported production costs on the actual costs recorded in their normal accounting records.

However, Filati contends that, if the Department finds that the duties at issue should be included in COP, the Department should apply the duty percentage to raw material costs only.

DOC Position

We disagree that we should not add the uncollected duties to COP. Section 773(f)(1)(A) of the Act requires the Department to depart from the records of the producer if: (1) Those records are not in accordance with the general accepted accounting principles (GAAP) of the exporting country; and (2) such costs do not reasonably reflect the costs associated with the production and sale of the merchandise. In this case, we acknowledge that Filati's treatment of these duties is in accordance with Malaysian GAAP. However, we find that this treatment is contrary to the requirements of section 773(f)(1)(A) of the Act, as it does not reasonably reflect Filati's cost of production. Specifically, we find that, because the amounts in question are charged by the Malaysian government in place of import duties on raw materials, they appropriately form part of Filati's cost of production. Accordingly, we have included these duties in the calculation of COP and CV.

We also disagree that we should apply the three percent duty to Filati's raw materials costs. Because these duties are assessed as a percentage of home market price, we have continued to calculate them in this manner. To do otherwise would result in our not capturing the full amount of the duty, which would consequently understate the amount of duty included in COP and CV.

Comment 12: Selection of Cost Response

Filati argues that the Department should use the COPs and CVs that it reported in its original section D response, rather than the costs reported in the supplemental response. Filati argues that, in its original response, it calculated the cost of manufacture for COP and CV based on a methodology that follows its normal standard cost accounting system and applies actual

inputs from its normal books and records. Filati argues it demonstrated at verification that the reported costs using this methodology reconcile to the actual costs used by Filati; that the reported costs were in accordance with applicable accounting norms; and that these costs reasonably reflect the cost of producing the merchandise. Filati asserts that the Department's normal practice is to accept a cost methodology when it is from the company's normal records, consistent with accounting norms, and is not proven to be distortive. Filati also argues that its original method is reasonable, as demonstrated by the small variance between its actual and standard costs.

DOC Position

We disagree. Section 773(f)(1)(A) of the Act states that costs shall normally be calculated based on the records of the exporter or producer of the merchandise. Contrary to Filati's assertion, the costs reported in the company's original section D response were not those reflected in its normal cost accounting system. In its normal records, Filati records per-unit costs using a standard cost system and derives actual costs by applying cost variances. In its original response, Filati derived new per-unit costs by applying to its financial accounting data a new actual cost methodology. Although the data that Filati used in the original response were from its financial accounting system, the per-unit amounts were reallocated to obtain per-unit costs that differed from the per-unit costs in its normal accounting system. Filati developed new COPs and CVs specifically to respond to the Department's questionnaire.

We find unpersuasive Filati's argument that its alternative costing method is reasonable. The Department normally relies on the records of the producer if they are in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. Filati's standard cost system is acceptable under Malaysian GAAP and produces per-unit costs that reasonably reflect the costs associated with the production and sale of the merchandise.

In a supplemental questionnaire, we directed Filati to resubmit its per-unit COPs and CVs based on the standard cost system it uses in the normal course of business. Filati complied with this request. Therefore, we used the costs and variances from Filati's standard cost system for purposes of the final results.

Comment 13: Offset to Financial Expenses

Filati argues that the Department should allow the total amount of consolidated interest income as an offset to consolidated interest expense in the calculation of its financial expense ratio. According to Filati, the company demonstrated at verification that all of the interest income in question was from short-term investments.

DOC Position

We agree. The audited consolidated financial statements show that the interest income was generated from current assets. Therefore, we have allowed the full amount of interest income as an offset to interest expense.

Comment 14: Unreported Costs

The petitioner claims that Filati failed to report cost information for one second-quality, and several first-quality, products. According to the petitioner, the Department should assign costs to these products based on adverse facts available. The petitioner maintains that to do otherwise would reward Filati for its failure to report costs for the products in question.

Filati maintains that it reported cost data for all products sold during the POR, pursuant to the Department's instructions. Specifically, Filati notes that it reported a single cost for each unique product, regardless of whether the product was sold as first- or second-quality merchandise. Filati asserts that it was not necessary to report a separate cost for first- and second-quality production of a given product in its COP and CV databases because the Department assigns the same cost to both. According to Filati, the Department should continue to use the costs of first- and second-quality products interchangeably in cases where the cost for one or the other quality was not explicitly identified in its databases.

DOC Position

We agree with Filati. The costs that the petitioner alleges that Filati withheld are on the record of this proceeding. Since the per-unit cost of a product is the same whether it is of first- or second-quality, using the cost of one as a replacement for the other will not affect our analysis. Therefore, we have made no adverse inference with respect to the products in question for purposes of the final results.

Comment 15: G&A Expenses of Filati's Parent Company

According to the petitioner, the Department should include the G&A expenses of MYCOM, Filati's parent company, in the calculation of Filati's CV. The petitioner notes that MYCOM provides management services to Filati.

According to Filati, its reported G&A expenses include all expenses associated with the services provided by MYCOM. Filati contends that there is no basis for including any other portion of MYCOM's expenses in G&A, because these expenses relate to activities not associated with the production or sale of extruded rubber thread.

DOC Position

We agree with the respondent. Filati included in its G&A expense calculation the amount its parent charges Filati for the services the parent provides. We reviewed this calculation at verification and found it to be reflective of the cost incurred for the types of services that MYCOM performed and the overall structure of the group companies involved. Therefore, we have made no adjustment to Filati's G&A rate calculation for additional MYCOM expenses.

B. Heveafil

Comment 16: Selection of Facts Available Rate for Heveafil

Heveafil argues that the Department should assign it a dumping rate based on non-adverse facts available. Heveafil asserts that the Department may only assign a dumping rate using adverse facts available when it is unable to verify submitted data and the respondent ''failed to cooperate by not acting to the best of its ability.'' According to Heveafil, it cooperated to the best of its ability in this review by submitting complete questionnaire responses and successfully verifying its U.S. and home market sales data. Regarding the verification of its cost data, Heveafil states that, although certain records were inadvertently purged from its computer system, it acted to the best of its ability to cooperate.

Specifically, Heveafil notes that it used its bills of materials (BOMs) to calculate the product-specific costs reported to the Department. Heveafil asserts that the database containing its BOMs was purged from its computer system after it was transmitted to the company's computer consultants for purposes of preparing a supplemental questionnaire response. Heveafil asserts that it assumed that the Department would consider the consultant's copy as an original source document. According to Heveafil, while this misunderstanding was unfortunate, it cannot be viewed as a failure to cooperate or an attempt to control

verification. In any event, Heveafil contends that it did not ''destroy'' its BOMs database, as suggested by the Department's cost verification report, because the database existed in the form of the consultant's copy. Heveafil suggests that the Department should have used this database to relate the reported costs to its production records, even if the copy was considered to be only a worksheet.

Heveafil states that the Department should assess Heveafil's level of cooperation in relation to its ability. In doing so, Heveafil claims that the Department should consider that many of its employees during this review were new to the company and did not have the experience in antidumping reviews and verifications gained by many former employees.

Moreover, Heveafil argues that it did not stand to benefit from withholding its BOMs. Heveafil states that it requested to participate in this review because it expected an assessment rate of less than its cash deposit rate of 7.88 percent. Therefore, Heveafil maintains that it was clearly in its interest to provide all data necessary to the successful completion of the review.

According to Heveafil, in the event that the Department uses adverse facts available in this case, it should not assign Heveafil the highest rate ever calculated for any respondent (*i.e.,* 54.31 percent for Rubfil in the third review). Rather, Heveafil argues that the Department should assign it the highest rate it has received in a prior segment of the proceeding, consistent with the Department's treatment of Rubberflex in the third review. According to Heveafil, the Department assigned it the same rate as a company that did not cooperate at all in this review, while Heveafil submitted responses to all questionnaires, passed its sales verifications, and verified parts of the cost response. Heveafil argues that this arbitrary practice would not encourage cooperation from a respondent interested in participating in an administrative review because inadvertent errors might negate all efforts to cooperate. Heveafil cites to Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review, 62 FR 17581, 17588 (April 10, 1997) and Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy, 61 FR 30288, 30306 (June 14, 1996) as cases where the Department has stated that the primary purpose for using adverse inferences is to encourage future respondent cooperation.

Heveafil cites to Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 969, 970 (Jan. 7, 1997) (Sulphur), Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey, 61 FR 30309, 30310 (June 14, 1996) (Pasta), and Chrome-Plated Lug Nuts from Taiwan; Final Results of Antidumping Duty Administrative Review and Termination in Part, 61 FR 58372, 58373 (Nov. 14, 1996) (Lug Nuts) as cases where the Department has assigned respondents the highest rate ever assigned to any respondent in the proceeding only where the respondent deliberately misled the Department or refused a direct request for information. Heveafil states that, because it did not mislead the Department or refuse to provide original information, it would be inappropriate to assign it a rate on the same basis as the respondents in Sulphur, Pasta, and Lug Nuts.

In addition, Heveafil argues that Rubfil's dumping rate from the third administrative review is not relevant to its own experience because: (1) There are significant differences in the companies' sizes and consequent price and cost structures; and (2) Rubfil's margin is approximately 45 percentage points above the highest margin ever received by Heveafil. Heveafil contends that there is no evidence in either its questionnaire responses or the Department's verification reports to suggest that its prices and costs have increased so drastically as to increase its dumping rate five times.

Finally, Heveafil notes that Rubfil has appealed the Department's final results of the third review to the CIT. Heveafil maintains that, until the issues raised in that proceeding are resolved, Rubfil's dumping rate is not reliable.

DOC Position

We disagree with Heveafil's argument that the Department should apply non-adverse facts available for the final results. Heveafil attributes its failure of the cost verification simply to a misunderstanding concerning the availability of its BOMs database. However, the purging of the BOMs database was just one factor which contributed to Heveafil's failed verification. In addition to purging its computer system of the BOMs, Heveafil was unable to provide hard copies of its BOMs during the POR. Thus, there was no reliable way to test the veracity of the computer consultant's copy of the computer database.

At verification, we afforded Heveafil the opportunity to tie its reported cost data to its accounting system using source documents other than the BOMs. Specifically, on the first day of verification we requested the company's 1996 ''Budgeting Report'' which, according to the section D response, was the basis for the reported cost data. However, company officials indicated that they were unable to locate this document in its entirety. Moreover, when we attempted to reconcile the costs shown in the portion provided at verification, we were unable to do so in a number of instances. Similarly, we were unable to reconcile the costs for the products missing from the Budgeting Report to Heveafil's inventory records. For these reasons, we have determined that Heveafil did not cooperate to the best of its ability in verifying its reported cost data. See Heveafil cost verification report for further discussion.

It is true that the Department considers a respondent's ability to cooperate in determining whether or not it has cooperated to the best of its ability. See, *e.g.,* 1994–1995 AFBs Reviews. As stated in the 1994–1995 AFBs Reviews, the Department considers the experience of the respondent in antidumping duty proceedings, whether the respondent was in control of the data the Department was unable to verify, and the extent to which the respondent might have benefitted from its own lack of cooperation.

This is the fourth review of the antidumping duty order on extruded rubber thread from Malaysia. Heveafil has participated in each of the prior reviews, as well as the original less than fair value (LTFV) investigation. Although some of its accounting staff was inexperienced at the time of verification, we cannot conclude that the company as a whole was so inexperienced as to be unaware of the necessity of retaining key source documents for verification purposes.

Moreover, we note that Heveafil generated the relevant source documents in the ordinary course of business. Therefore, we find that it maintained exclusive control of the documents necessary to prepare its response and conduct verification.

We disagree with Heveafil's assertion that it did not stand to benefit from withholding source documents. Absent reliable data, we cannot accurately determine Heveafil's actual dumping liability during the POR. We find Heveafil's assertion that it expected to receive a significantly lower rate to be meaningless, because it is based not only on speculation but also on unverifiable data.

We disagree with Heveafil that we should not assign, as adverse facts available, the highest rate calculated for

Rubfil in a prior segment of this proceeding. In arguing against the application of the highest rate calculated for any respondent in any review, Heveafil attempts to distinguish its degree of cooperation with the degree of cooperation exhibited by respondents in Sulphur, Pasta, and Lug Nuts. However, in each of those cases, the underlying reason for using the highest rate as adverse facts available was that the information submitted by the respondents was rendered unusable because it could not be verified. The Department's practice has been to reject a respondent's submitted information in toto when flawed and unverifiable cost data renders all price-to-price comparisons impossible. See Notice of Final Determination of Sales at Less Than Fair Value: Grain-Oriented Electrical Steel from Italy, 59 FR 33952, 33953–54 (July 1, 1994).

We also disagree with Heveafil's argument that Rubfil's rate from the third review is neither relevant nor reliable. Regardless of Rubfil's size relative to Heveafil, we find that its calculated rate reflects the business practices occurring in the rubber thread industry. Unlike in Fresh Cut Flowers, there is no evidence on the record of this review which indicates that Rubfil's calculated rate was based on an uncharacteristic business practice. Furthermore, the CIT has not yet ruled on the matter of Rubfil's appeal. Therefore, absent evidence to the contrary, we find that its rate is reliable and has probative value.

We have considered Heveafil's argument that our selection of an adverse facts available rate in this review is not consistent with our treatment of Rubberflex in the third review. However, as stated in the 1994–1995 AFBs Reviews, as adverse facts available, we must apply a rate sufficiently adverse so as to encourage cooperation from respondents in future reviews. The intent of using an adverse inference is to encourage successful verifications and to elicit the accurate reporting of sales and cost data in future segments of the proceeding. In this case, we find that the use of the highest rate ever calculated for Heveafil of 10.68 percent would not achieve this purpose.

Comment 17: Duty Reimbursement

The petitioner argues that Heveafil's dumping duties should be doubled, in accordance with the Department's regulations, because Heveafil is, in effect, paying the dumping duties itself. Specifically, the petitioner notes that Heveafil's U.S. affiliate is not a separate entity, but, instead, is a branch of Heveafil. According to the petitioner, this branch is the importer of record for the subject merchandise and, consequently, is obligated to pay Heveafil's antidumping duties. Thus, the petitioner asserts that reimbursement has occurred.

According to Heveafil, the Department should not double its dumping duties because the criteria under 19 CFR 353.26(a)(1) which would allow it to do so have not been met. Specifically, Heveafil asserts that it has neither paid antidumping duties on behalf of the importer nor reimbursed the importer for these duties, because it, through its U.S. branch, is itself the importer of record for all imports of subject merchandise.

According to Heveafil, the Department faced a similar situation in Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Review, 62 FR 64564 (Dec. 8, 1997). In that case, the Department concluded that both the importer and exporter were one entity; consequently, there could be no payment to, or on behalf of, the importer within the meaning of the Department's regulations.

Furthermore, Heveafil asserts that, even it the requirements of 19 CFR 353.26 were to be met in this case, the remedy (*i.e.*, reducing CEP by the amount of the dumping duties) could not be applied because the Department assigned Heveafil a dumping rate using facts available.

DOC Position

We agree with Heveafil. The imposition of antidumping duties is intended to provide relief to U.S. industries injured by unfair trade practices of foreign competitors. In effect, the imposition of antidumping duties raises the price of subject merchandise to importers, thereby providing a level playing field upon which injured U.S. industries can compete. The remedial effect of the law is defeated, however, where exporters themselves pay antidumping duties, or reimburse importers for such duties. To ensure that the remedial effect of the law is not undermined, the Department has authority to reduce the U.S. starting price (used to determine dumping) by the amount of any duty paid, or reimbursed, by the producer or reseller, thereby increasing the amount of the duty ultimately collected.

Reimbursement takes place between affiliated parties if the evidence demonstrates that the exporter directly pays antidumping duties for the affiliated importer or reimburses the importer for such duties. See 19 CFR 353.26; Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Reviews, 61 FR 4408 (Feb. 6, 1996); Brass Sheet and Strip from the Netherlands; Final Results of Antidumping Duty Administrative Reviews, 57 FR 9534, 9537 (Mar. 19, 1992); and Brass Sheet and Strip from Sweden; Final Results of Antidumping Duty Administrative Review, 57 FR 2706, 2708 (Jan. 23, 1992).

While we note the petitioner's argument regarding the corporate relationship between Heveafil and its U.S. branch, it is the Department's practice to treat affiliated parties as separate entities when examining the question of reimbursement. See Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from Korea, 62 FR 55574 (Oct. 27, 1997). In this case, there is no evidence of inappropriate financial intermingling or of an agreement to reimburse antidumping duties between Heveafil and its U.S. branch. Therefore, the Department has no reason to require payment of twice the amount of any dumping duties owed.

Finally, we have considered Heveafil's argument that the Department is unable to double dumping duties in a facts available situation. Since there is no evidence which would require such a determination, this argument is moot.

Final Results of Review

As a result of comments received we have revised our preliminary results and determine that the following margins exist for the period October 1, 1995, through September 30, 1996:

Manufacturer/exporter	Percent margin
Filati Lastex Elastofibre (Malaysia)	52.89
Heveafil Sdn. Bhd./Filmax Sdn. Bhd.	54.31
Rubberflex Sdn. Bhd	3.75
Rubfil Sdn. Bhd	54.31

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between CEP and NV may vary from the percentages stated above. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. This rate will be assessed uniformly on all entries of that

particular importer made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Further, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that for Heveafil the cash deposit rate will be reduced by 0.90 percent, the current cash deposit rate attributable to export subsidies); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), section 777(i) of the Act (19 U.S.C. 1677f(i)), and 19 CFR 353.22.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6715 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 10, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, CEMEX, S.A. de C.V (CEMEX), and its affiliated party Cementos de Chihuahua, S.A. de C.V. (CDC), and the period August 1, 1995, through July 31, 1996. We gave interested parties an opportunity to comment on the preliminary results. We received comments from petitioner and respondent. We received rebuttal comments from the petitioner and respondent.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Kristen Stevens or John Totaro, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 353 (April 1997).

Background

On September 10, 1997, the Department published in the **Federal Register** (62 FR 47626) the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico covering the period August 1, 1995 through July 31, 1996. The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent using standard verification procedures, including on site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in verification reports in the official file of this case (public versions of these reports are on file in room B–099 of the Department's main building).

Analysis of Comments Received

The Southern Tier Cement Committee (petitioner), CEMEX, and CDC submitted case briefs on October 24, 1997. Petitioner and CEMEX submitted supplemental case briefs on December 5, 1997. All parties submitted rebuttal briefs on December 19, 1997. A public hearing was held on February 12, 1998.

Revocation of the Underlying Order

Comment 1

CEMEX contends that the Department lacks the authority to assess antidumping duties pursuant to the final results of this review because at the time the original less-than-fair-value

(LTFV) investigation was initiated (October 16, 1989), the Department assumed that the petition was filed ''on behalf of'' a regional industry without measuring whether a majority of the industry actually supported the request. The Department should have measured industry support, CEMEX argues, because a GATT panel recommended in July of 1992 that an antidumping petition filed ''on behalf of'' an industry must be supported by an appropriate majority of the industry, and such support must be ascertained prior to initiating an investigation. According to CEMEX, the panel's recommendation is applicable to the instant administrative review for two reasons.

First, CEMEX claims that the Antidumping Agreement which resulted from the Uruguay Round of global trade talks ''adopted'' the requirement of industry support articulated by the GATT panel. Moreover, CEMEX asserts, the new standard regarding industry support for a petition is contained in the URAA and since this review is governed by the amendments to the antidumping law occasioned by the URAA, ''the new standard should be used in this case.''

Second, even if the new requirement on standing does not apply retroactively to a determination the Department made over eight years ago, the antidumping statute that was in effect in 1989 did not define the term ''on behalf of.'' Faced with this lacuna in the statute, CEMEX asserts, the Department is compelled by the decision in *Murray* v. *Schooner Charming Betsy*, 6 U.S. 64, 2 Cranch 64 (1804) to reinterpret U.S. law in accordance with the international obligations of the United States. In the opinion of CEMEX, this means that the Department is required in the sixth review to revisit the issue of initiation in the original LTFV investigation and abide by the 1992 GATT panel ruling.

CDC also argues that the Department must terminate this review and revoke the underlying antidumping duty order. According to CDC, the plain language of the antidumping statute requires petitions in regional industry cases to be filed on behalf of the producers who account for ''all or virtually all'' of the production in the region. Since the antidumping order covering cement from Mexico was based, CDC asserts, on a petition that was not supported by producers accounting for all or almost all of the region's production, the order was issued in violation of U.S. law.

Finally, CDC argues that lack of standing to file an antidumping duty petition is a ''jurisdictional'' defect which parties may raise at any time. Citing *Zenith Electronics Corp.* v. *United States, Gilmore Steel Corp.* v. *United States,* and *Oregon Steel Mills, Inc.* v. *United States,* CDC contends that the Department has the authority to revoke an order that never had the requisite level of industry support.

Petitioner argues that the Department properly initiated the original antidumping investigation and that respondent's claim that the Department should revoke the antidumping order is barred because it has been previously adjudicated adversely to CEMEX and CDC. In this regard, petitioner notes that both parties tried to challenge the initiation of the original LTFV investigation before a binational panel convened under the auspices of Chapter 19 of the North American Free Trade Agreement (NAFTA) to review the final results of the third administrative review. In a unanimous opinion issued on September 13, 1996, the panel rejected the very claims that CEMEX and CDC advance in the instant review. Thus, petitioner argues, the principle of ''issue preclusion'' (or ''collateral estoppel'') should prevent CEMEX and CDC from ''relitigating'' these claims before the Department in the sixth administrative review.

Petitioner also contends that the respondent's claim lacks any legal basis because it is barred by the statute of limitations which requires ''any appeal of the decision to initiate the antidumping investigation to be filed within 30 days of the publication of the antidumping order.'' Additionally, petitioner asserts, CEMEX and CDC failed to ''exhaust available administrative remedies'' by not raising the issue before the Department in the original LTFV investigation . CEMEX and CDC also failed to raise this issue in the now-concluded litigation over the LTFV investigation and, therefore, the claim is barred by *res judicata.* Petitioner also contends that much of the basis for CEMEX's and CDC's claim is an unadopted GATT panel report which is not binding international law. Furthermore, petitioner claims that the Department ''lacks authority under the statute to rescind its initiation of the original investigation in the context of an administrative review.'' Finally, petitioner asserts, citing *Suramerica de Aleaciones Laminada, C.A.* v. *United States,* that the courts have upheld the Department's prior practice of presuming industry support for a petition in absence of ''any showing to the contrary.''

Department's Position

For the following reasons, respondent's arguments are without merit. First, like the GATT itself, panel reports under the 1947 GATT were not self-executing and thus had no direct legal effect under U.S. law.

Second, neither the 1947 GATT nor the 1979 GATT Antidumping Code obligated the United States to affirmatively establish prior to the initiation of a regional-industry case that all or almost all of the producers in the region supported the petition. There certainly was no suggestion in either instrument that the standing requirements in regional-industry cases were any more rigorous than the standing requirements in national-industry cases.

Furthermore, GATT panel reports, such as the one issued in 1992, had no legal effect or formal status unless and until they were adopted by the GATT Council or, in the case of antidumping measures, the GATT Antidumping Code Committee. This followed from the fact that the 1947 GATT operated, throughout its history, on the basis of consensus for purposes of decision-making in general and the resolution of disputes in particular. In the present case, it is undisputed that the GATT panel report was never adopted by the Antidumping Code Committee. Thus, the recommendations contained in the report were never binding, did not impose any international obligations upon the United States, and did not trigger the rule of statutory construction set forth in the *Charming Betsy* case.

Third, the object of CEMEX's and CDC's comments is not the preliminary results of this review. Rather, they complain about the initiation of the original LTFV investigation—an event which occurred over eight years ago and over five years before the effective date of the URAA. The time to voice such objections before the Department was *during* the investigation. Instead, CEMEX and CDC, as well as the other Mexican cement producer that participated in the original investigation (Apasco, S.A. de C.V.), sat silent before the Department. *See Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker From Mexico,* 55 FR 29244 (1990). Moreover, neither CEMEX nor any other party appealed the agency's final affirmative LTFV determination (including the decision to initiate) to the appropriate court, and the statute of limitations for doing so has long expired. *See* 19 U.S.C. 1516a(a)(2)(A).

The only one who appealed the Department's final LTFV determination was the petitioner. It challenged certain aspects of the Department's final determination before the U.S. Court of International Trade (''CIT'') and the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). *See Ad Hoc*

Committee Of AZ–NM–TX–FL Producers of Gray Portland Cement v. *United States,* Slip Op. 94–152 (CIT), *aff'd,* 68 F.3d 487 (Fed. Cir. 1995). CEMEX participated in that litigation as an intervenor on the side of the Department. On October 10, 1995, the Federal Circuit issued an opinion which disposed of the last issue in that case.

Therefore, even if the Department, of its own volition, were to reinterpret U.S. law in light of the 1992 GATT panel report, it lacks the legal authority in this review to revoke the order or otherwise rescind the initiation of the underlying investigation. As we stated in the final results of the third administrative review and reaffirm here:

> * * * the Department has no authority to rescind its initiation of the LTFV investigation. Under sections 514(b) and 516A(c)(1) of the Act, a LTFV determination regarding initiation becomes final and binding unless a court challenge to that determination is timely initiated under 516A. Even if judicial review of a determination is timely sought, the Department's determination continues to control until there is a resulting court decision ''not in harmony with that determination.'' *See* 19 U.S.C. § 1516a(c)(1). *In this case, no one challenged the Department's determination on standing before the CIT. Therefore, that determination is final and binding on all persons, including the Department.*

Gray Portland Cement and Clinker from Mexico; Final Results Of Antidumping Duty Administrative Review, 60 FR 26865 (1995) (emphasis added). *See also Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 17581 (1997) (final results of fourth administrative review); *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review,* 62 FR 17148 (1997) (final results of five administrative review).

Fourth, no court, including the court in *Gilmore Steel,* has ever held that the Department has the authority, in an administrative review under section 751(a) of the Act, to reach back more than eight years and reexamine the issue of industry support for the original petition. *Gilmore Steel* involved a challenge to the termination of a *pending* investigation based upon information obtained in the course of that investigation. In particular, the petitioner contended that the Department lacked the authority to rescind the investigation based upon insufficient industry support for the petition after the 20-day period provided for in section 732(c) of the Act had elapsed. 585 F. Supp. at 673. In upholding the Department's determination, the court recognized that administrative officers have the authority to correct errors, such as ''jurisdictional defects,'' at anytime during the proceeding. *Id.* at 674–75. The court did not state or imply that a change in legal interpretation (in this case a non-binding one) authorizes administrative officers to reopen prior agency decisions which are otherwise final. The court simply held that the administering authority may, in the context of the original investigation, rescind an ongoing proceeding after expiration of the 20-day initiation period.

Although the *Zenith Electronics* case did involve an administrative review, it did *not* concern questions about industry support for a petition in the original investigation. Rather, the plaintiffs in *Zenith Electronics* alleged that the petitioner was no longer a domestic ''interested party'' with standing to request an administrative review. 872 F. Supp. at 994. As in *Gilmore Steel,* the court found that the Department had the authority to determine whether the proceeding from which the appeal was taken—the administrative review—was properly initiated. Nothing in *Zenith Electronics* or *Gilmore Steel* supports CDC's argument that a party may challenge industry support for a petition more than eight years after the fact in the context of an administrative review under section 751(a) of the Act.

Lastly, CDC completely misapprehends the holding in *Oregon Steel Mills.* First, the case involved a challenge to the Department's authority to revoke an antidumping duty order based upon new facts, not upon a reexamination of the facts as they existed during the original LTFV investigation. Secondly, the new fact was the industry's affirmative expression of no further support for the antidumping order. Under these circumstances, the Federal Circuit held that it was lawful for the investigating authority, in the context of a ''changed circumstances'' review pursuant to section 751(b) of the Act, to revoke an order over the objection of one member of the industry. 862 F.2d at 1544–46. The court did not state that industry support for an order must be affirmatively established throughout the life of an order. Indeed, the court went to lengths to explain that it was not ruling on the claim that ''loss of industry support for an existing order creates a 'jurisdictional defect.'' *Id.* at 1545 n. 4. As subsequent courts have explained, the holding in *Oregon Steel Mills* is limited to the proposition that the Department may, but need not, revoke an order when presented with record evidence which demonstrates a lack of industry support for the continuation of the order. *See, e.g., Suramerica De Aleaciones Laminadas* v. *United States,* 966 F.2d 660, 666 (Fed. Cir. 1992); *Citrosuco Paulista, S.A.* v. *United States,* 704 F. Supp. 1075, 1085 (CIT 1988).

In short, the cases cited by CEMEX and CDC are inapposite. None of them support the argument that the Department has the authority, in an administrative review under section 751(a) of the Act, to reach back more than eight years and reexamine the issue of industry support for the original petition.

Finally, we note, as we did in the final results of the third, fourth, and fifth administrative reviews, that numerous courts upheld the Department's prior practice of assuming, in the absence of evidence to the contrary, that a petition filed on behalf of a regional or national industry is supported by that industry. *See, e.g., NTN Bearing Corp.* v. *United States,* 757 F. Supp. 1425, 1427–30 (CIT 1991); *Citrosuco,* 704 F. Supp. at 1085; *Comeau Seafoods* v. *United States,* 724 F. Supp. 1407, 1410–12 (CIT 1989).

Indeed, the very issue raised by CEMEX and CDC was before the Federal Circuit in the *Suramerica* case. 966 F.2d at 665 & 667. In *Suramerica* the appellees challenged the Department's interpretation of the phrase ''on behalf of'' which applied to both national-and regional-industry cases. Specifically, the appellees argued that the Department's prior practice of presuming industry support for a petition was contrary to the statute *and* an unadopted GATT panel report involving the U.S. antidumping order on certain stainless steel hollow products from Sweden. In affirming the Department's practice, the Federal Circuit observed that the phrase ''on behalf of'' was not defined in the statute. *Id.* at 666–67. The statute was, in fact, open ''to several possible interpretations.'' In the opinion of the court, the Department's practice with regard to standing and industry support for a petition reflected a reasonable ''middle position.'' 966 F.2d at 667. While there was a gap in the statute, the court stated, ''Congress did make [one thing] clear—Commerce has broad discretion in deciding when to pursue an investigation, and when to terminate one.'' *Id.*

The court then dismissed the argument that the gap in the statute must be interpreted in a manner that is consistent with the 1947 GATT or the GATT panel ruling:

Appellees next argue that the statutory provisions should be interpreted to be consistent with the obligations of the United States as a signatory country of the GATT. Appellees argue that the legislative history of the statute demonstrates Congress's intent to comply with the GATT in formulating these provisions. Appellees refer also to a GATT panel—a group of experts convened under the GATT to resolve disputes—which ''recently rejected [Commerce's] views on the meaning of 'on behalf of.' ''

We reject this argument. First, the GATT panel itself acknowledged and declared that its examination and decision were limited in scope to the case before it. The panel also acknowledged that it was not faced with the issue of whether, even in the case before it, Commerce had acted in conformity with U.S. domestic legislation.

Second, even if we were convinced that Commerce's interpretation conflicts with the GATT, *which we are not,* the GATT is not controlling. *While we acknowledge Congress's interest in complying with U.S. responsibilities under the GATT, we are bound not by what we think Congress should or perhaps wanted to do, but by what Congress in fact did.* The GATT does not trump domestic legislation; if the statutory provisions at issue here are inconsistent with the GATT, it is matter for Congress and not this court to decide and remedy. *See* 19 U.S.C. 2504(a); *Algoma Steel Corp.* v. *United States,* 865 F.2d 240, 242 (Fed. Cir. 1989).

Id. at 667–68 (emphasis added).

Produced As vs. Sold As

Comment 2

CEMEX argues that the Department's methodology for calculating normal value (NV) has been fundamentally flawed since the original LTFV investigation. CEMEX claims that the Department has matched U.S. sales to home market sales using a ''sold as'' methodology which matches U.S. sales to home market sales on the basis of how the cement is sold (*e.g.*, according to the cement type listed on the invoice.) CEMEX asserts that since the original investigation, it has argued that the Department should use a ''produced as'' methodology which matches U.S. sales to home market sales based on the physical characteristics of the cement being sold.

CEMEX asserts that in the original LTFV investigation, the Department learned that cement is differentiated according to standards established by the American Society for Testing and Materials (ASTM). According to these standards, the physical and performance specifications for a Type II cement are more exacting than the specifications for a Type I cement. Similarly, the specifications for Type V cement are more exacting than for Type II. A cement that meets the physical and performance specifications for a higher grade cement also meets the specifications for a lower grade cement.

During the POR, CEMEX sold cement invoiced as Type I, Type II, and Type V in Mexico and cement invoiced as Type II in the United States. However, all cement invoiced as Type II or Type V (and a small amount invoiced as Type I) contains the physical and performance specifications of Type V cement. CEMEX states that customers requiring a lower grade of cement can use the higher grade cement for their applications. Thus, CEMEX asserts that cement producers will sell a higher grade cement to a customer needing only a lower level ASTM cement when it is commercially sensible to do so.

CEMEX argues that according to 19 U.S.C. 1677(b)(A)(1)(B)(i), the Department must base NV on the price at which the ''foreign like product'' is sold in the home market. CEMEX contends that the foreign like product can only be merchandise ''identical in physical characteristics with'' the cement sold in the United States. Furthermore, CEMEX argues that the dumping law requires the inclusion of all sales having identical physical characteristics, including those invoiced as another product. CEMEX argues that the ''sold-as'' methodology would not include all of the appropriate home market sales during the POR (*i.e.*, ''Type I and V'' produced at the Hermosillo plants).

Petitioner argues that CEMEX waived its objection to the Department's matching methodology by not appealing the Department's final determination in the original LTFV investigation and not raising the issue in any of the previous reviews. Petitioner further argues that the Department's questionnaire instructed CEMEX to ''assign a control number to each unique product reported in the Section B sales data file'' and to assign an identical control number to identical merchandise sold in the home market and in the United States. Petitioner asserts that CEMEX assigned unique control numbers to merchandise that was invoiced as Type I, Type II, and Type V cement, even though it may have been the same cement from the same plant. Thus, CEMEX reported its sales on an ''as invoiced'' basis, rather than on an ''as produced'' basis. Petitioner argues that CEMEX only raised this issue after the Department discovered that all cement produced at the Hermosillo plants and sold as Type I, Type II, or Type V cement was basically identical in physical characteristics.

Additionally, petitioner asserts that CEMEX altered its production and shipping arrangements for Type II cement to artificially lower the dumping margin. Petitioner argues that the statute does not direct the Department to ''blindly compare the merchandise exported to the United States with *all* identical merchandise sold in the home market.'' Rather, the Department must recognize the commercial reality that prices can vary based on the specifications to which a product is sold, even though the products in question are physically identical. Furthermore, petitioner asserts that in this case it is impossible to match Type II cement exported by CEMEX to the United States with all home market sales of cement produced at the Hermosillo plants because CEMEX did not report a plant code to identify its home market sales with the producing plant.

Department's Position

We agree, in part, with CEMEX. Section 771(16)(A) of the Act expresses a clear preference for matching sales in the United States with sales in the home market of merchandise that is ''identical in physical characteristics.'' *See CEMEX, S.A.* v. *United States,* 1998 U.S. App. LEXIS 163 (Fed. Cir.). When circumstances require the Department to compare non-identical merchandise, the statute, at section 773(a)(6)(C)(ii) of the Act, provides for a ''difference-in-merchandise'' adjustment (DIFMER) which is normally equal to the difference in cost of production attributable to differences in physical characteristics. 19 CFR 353.57.

Since the inception of this proceeding, we have seen that all cement generally conforms to the standards established by the ASTM. These standards tend to classify cement according to its physical characteristics, dimensional characteristics, and/or performance properties. Also from the outset, interested parties and the Department have used ASTM standards to identify merchandise subject to this antidumping order *and* to inform how, and on what basis, we match sales of identical or similar merchandise. Specifically, the Department has sought, wherever possible, to match sales of ASTM standard Type II to Type II, ASTM standard Type V to Type V, and so forth.

During the period covered by the original investigation, the Department discovered one or more instances where Mexican producers sold cement meeting one ASTM standard on the basis of cement meeting a lower (included) ASTM standard. However, in the final determination, the Department described these sales as a mistake and not ''the ordinary practice in the

industry.'' *Final Determination of Sales at Less Than Fair Value, Gray Portland Cement and Clinker from Mexico,* 55 FR 29244, 29248 (1990). Therefore, based on the fact that it was the normal industry practice to produce and sell on the same basis, the Department accepted that ''matching by ASTM standard was the most reasonable basis for making equitable identical merchandise comparisons.'' *Id.* at 29248.

Devising a methodology for matching sales is often a difficult task and the courts have recognized that the Department has broad discretion ''to choose the manner in which * * * merchandise shall be selected.'' *Koyo Seiko Co.* v. *United States,* 66 F.3d 1204, 1209 (Fed. Cir. 1995). In the instant proceeding, we have sought, throughout each of the past six reviews, including the present one, to (i) match based on physical characteristics, (ii) rely on ASTM standards to distinguish one type of cement from another, and (iii) rely on sales documentation as a convenient surrogate for more direct evidence (*e.g.,* mill test certificates) of cement type. In general, this methodology has not generated much controversy. Indeed, as petitioner notes in its comments on the preliminary results, this issue has not been in dispute since the original LTFV investigation.

In the instant review, the Department repeatedly requested CEMEX to provide information on whether home market sales of Type I, Type II, and Type V cement were produced to meet other specifications or whether merchandise is produced and sold on the same basis. CEMEX consistently reported that it sold cement in the home market as either Type I, Type II, or Type V although these products may meet other ASTM standards. Not until the conclusion of verification did the Department discover that the practice of producing one type of cement and selling it as another type was not an isolated incident or mistake. In fact, the record now demonstrates that all U.S. sales and all home market sales from the Hermosillo plants during the POR met the ASTM standard for Type V cement, but were sold as meeting the specifications for Type I, II, and/or V.

Under these circumstances, we believe it would be unreasonable to match merchandise on a ''sold as'' basis. For one thing, it would make any cost of production or DIFMER calculations more difficult, if not impossible. Secondly, such an approach would not address any sales that were merely labeled ''gray portland cement'' or ''cement.'' Finally, a ''sold as'' approach would lend itself to the type of product manipulation about which petitioner has so often expressed concern. Therefore, for purposes of the instant review, the Department will apply the matching methodology applied in the preliminary results of the instant review. Petitioner has expressed concerns that matching using physical characteristics will enable CEMEX to manipulate home market sales to conform to certain specifications, thereby limiting the Department's ability to properly review sales of merchandise in the comparison markets. In order to properly address these concerns, the Department will continue to closely review and monitor sales of both identical and similar merchandise in the home market to ensure that, in subsequent reviews, an accurate and reliable database of home market and U.S. sales are reported. For example, in the next administrative review, the Department has requested CEMEX to report its home market sales on both an ''as sold'' and ''as produced'' basis.

The Department disagrees with petitioner's comment that we cannot match sales on a ''produced as'' basis because CEMEX did not report plant codes. In the current review, the record demonstrates that CEMEX only produced cement meeting the ASTM specifications for Type V at its plants in Hermosillo. Additionally, CEMEX has stated that all cement invoiced as Type II or V was produced at the Hermosillo plants, and thus meets the ASTM specifications for Type V. Finally, the Department has isolated sales of cement produced at the Hermosillo plants and sold as Type I through Cementos del Yaqui at the Campana and Yaqui plants.

Ordinary Course of Trade

Comment 3

CEMEX contends that the Department improperly concluded that its home market sales of Type II and Type V cement produced at the Hermosillo plants were outside the ordinary course of trade. CEMEX argues that the Department's analysis only relied on facts which indicate that sales were outside the ordinary course of trade. CEMEX asserts that the Department must evaluate all evidence on the record of the review, including any evidence that indicates that sales are made within the ordinary course of trade. CEMEX believes that the Department ignored legally relevant factors which indicate that these sales were made *within* the ordinary course of trade.

First, CEMEX asserts that the Department failed to recognize that a bona fide home market demand existed for Type II and Type V cement produced at the Hermosillo plants. Second, CEMEX contends that the Department failed to recognize that these sales were of first-quality, non-defective merchandise. Finally, CEMEX argues that the Department failed to acknowledge that rebate, discount, and payment terms varied by customer, not by cement type.

CEMEX claims that additional aspects of the administrative record demonstrate that its home market sales of Type II and V cement were made within the ordinary course of trade during the sixth administrative review. To support this argument, CEMEX maintains that the Department should focus on the actual sale terms and practices surrounding the sales of Type II and Type V cement as compared to other cement types subject to the order (*i.e.,* Type I cement). In this regard, CEMEX notes that shipping terms for all cement types were identical (C.I.F. or F.O.B.) which is ''indicative'' of sales in the ordinary course of trade. Moreover, CEMEX notes that all pre-sale freight expenses absorbed by CEMEX for Type II and V sales were incurred in precisely the same manner as pre-sale freight expenses for all other cement types, including Type I.

CEMEX further argues that the Department should not have focused on shipping distances to the customer. Shipping distances and freight costs, CEMEX asserts, are the result of geographic locality, rather than differences in sales practices, and thus should not affect the Department's ordinary-course-of-trade determination. Finally, CEMEX argues that shipping distances have never been a consideration in any other ordinary-course-of-trade determination

Next, CEMEX contends that the difference in profitability between sales of Type II/V cement and Type I cement is not of sufficient magnitude to be indicative of sales outside the ordinary course of trade. CEMEX argues that the profitability of Type II sales is substantial in absolute terms and significantly higher than in prior reviews. According to CEMEX, the preamble to the Department's new regulations defines ''abnormally low profits'' indicative of sales outside the ordinary course of trade as ''negative profitability.'' CEMEX argues that by regarding differences in magnitude of profitability as a factor indicative of sales outside the ordinary course of trade, the Department is requiring companies to earn virtually equal profits on all different products in order for sales to be considered within the ordinary course of trade.

CEMEX maintains that the profit differential is not caused by price

disparities, but rather by the higher average freight costs associated with sales of Type II cement. CEMEX asserts that it has maximized profits by supplying its home market Type II customers from Hermosillo; therefore, the profit differential is the result of a legitimate business decision, indicating that home market sales of Type II cement are within the ordinary course of trade.

CEMEX argues that sales of Type II and Type V cement are made in the same manner and for the same reasons as sales of Type I cement. Thus, CEMEX questions the Department's comments about the ''promotional'' nature of its Type II and V sales. According to CEMEX, if the Department's reasoning for this factor is taken literally, any attempt by a producer to diversify a product line outside of the mass market would be indicative of those sales being outside the ordinary course of trade. CEMEX claims that there has been no proceeding at the Department since the second review of this case which has relied on this factor in an ordinary-course-of-trade-determination.

CEMEX further asserts that in the first review the Department found CEMEX's consolidation of Type II cement production in northwestern Mexico to be based on legitimate business reasons (*i.e.*, maximization of company profitability). Therefore, if the Department finds a company's motivation to sell cement in a profitable manner irrelevant to the ordinary course of trade argument, then the company's possible motivation for selling specific cement types must also not be relevant.

CEMEX also argues that the relative sales volume of Type II and Type V sales (as compared to other cement types) is not indicative of sales outside the ordinary course of trade. In particular, CEMEX argues, Department precedent establishes that low relative sales volume is a factor indicative of sales outside the ordinary course trade only in situations where there is no *bona fide* demand or ready market for the product. For example, in *Thai Pipe and Tube*, CEMEX asserts that the Department found certain sales to be within the ordinary course of trade notwithstanding low relative sales volume as there was a *bona fide* demand for the product in the home market. CEMEX maintains that the administrative record in this case establishes both a significant volume of home market sales for Type II and Type V cement, in absolute terms, and the existence of a *bona fide* home market demand for these products. In addition, CEMEX argues that information on the record of this review shows that sales volumes for Type II and Type V cement have been increasing from review to review and that it now exceeds 5% of U.S. sales.

Likewise, CEMEX argues that historical sales trends support its view that home market sales of Type II and Type V cement have been made within the ordinary course of trade. According to CEMEX, home market customers have been purchasing Type II cement for ten years, including the five years that preceded the antidumping order. Additionally, CEMEX asserts that with regard to Type V cement, the Department's analysis of historical sales trends is factually incorrect because the Department ignores the fact that CEMEX's subsidiary, Tolteca, has made continuous sales of Type V cement since 1964. Finally, CEMEX asserts that the incorporation of the fictitious market verification report from the second review into the record of this review eliminates any need to rely on facts available regarding historical sales patterns.

Lastly, CEMEX contends that the number and type of Type II and Type V customers are not indicative of sales outside the ordinary course of trade. According to CEMEX, it is the existence of customers, not the number of customers, that is relevant to this issue. CEMEX asserts that the Department has found a small number of home market customers to be indicative of sales outside the ordinary course of trade only when the sales have been limited to home market sales of export overrun merchandise or non-specification merchandise. When the subject merchandise has been sold to satisfy a *bona fide* home market demand, sales to a small number of customers have been found inside the ordinary course of trade.

Petitioner contends that the Department correctly applied the statute by excluding all home market sales of Type II and Type V cement from the calculation of NV. Petitioner maintains that the Department properly considered the totality of the circumstances, including all factors expressly considered by the Department in prior reviews, and several of the ''alleged'' factors relied upon by CEMEX. In particular, petitioner asserts that in this review (similar to the second and fifth reviews) the Department has not found an absence of *bona fide* demand, but the existence of limited home market demand.

Petitioner also argues that the Department correctly found that CEMEX's home market shipping arrangements for Type II and Type V cement were unusual compared to its arrangements for other types of cement. In particular, petitioner argues that during the POR, CEMEX shipped Type II and Type V cement greater distances and absorbed the freight expense. To support its claim, petitioner points out that prior to the antidumping order, CEMEX produced Type II cement at 11 plants throughout Mexico. In direct response to the antidumping order; however, petitioner claims that CEMEX radically altered its production and distribution arrangements for Type II cement by consolidating production at Hermosillo despite the fact that home market demand for this cement type is centered in the Mexico City area.

Petitioner asserts that CEMEX's claim that shipping terms were identical for all cement types is misleading, noting that Type I sales terms were ''either FOB CEMEX plant or terminal or CIF at customer's delivery point'' while Type II and Type V cement were never sold using the plant as point of shipment. Furthermore, Petitioner asserts that CEMEX's treatment of handling revenue and freight adjustment rebates differed between sales of Type I cement and sales of Types II and V. Additionally, petitioner argues that CEMEX's statement that shipping distances are not relevant to the ordinary course of trade determination is both factually and legally wrong.

Petitioner contends that the record demonstrates that CEMEX consolidated production of Type II and Type V at Hermosillo in direct response to the antidumping order with the intention of circumventing the order. Petitioner further claims that CEMEX sold cement meeting Type II specifications from plants closer to Mexico City than the Hermosillo plants using product designations such as ''Type I,'' ''Type I Modified,'' ''Type I plus'' and ''Type I special cement.'' Petitioner supports this claim by referencing quality tests certificates submitted on the record of this review by petitioner and chemical analysis spreadsheets located in Exhibit 46 of the Department's July 21, 1997 home market sales verification report. Petitioner points out that CEMEX has made several contradictory statements regarding sales of cement under these alternative descriptions. Furthermore, petitioner asserts that CEMEX concedes it can produce Type II cement at its plants producing Type I cement, but that it would not be economically feasible to produce Type II *low alkali* cement at such plants.

As further evidence that sales of Type II and V are outside the ordinary course of trade, petitioner claims that CEMEX restricted its sales volume of Type II cement after the antidumping order by

ceasing to promote and offer Type II for sale as a general purpose cement, and selling it only as a specialty cement to those customers demonstrating a specific need for Type II in order to diminish the impact of absorbing the higher transportation costs. Petitioner asserts that Type II and Type V cement are now sold to a ''niche'' market. Prior to the order, CEMEX sold Type II as interchangeable with Type I and pozzolanic cement. In addition, petitioner asserts that CEMEX restricted its sales according to ''customer need'' by selling Type II cement only to customers demanding optional specifications of Type II low-alkali cement and actively discouraging Type II sales by reviewing with the customer whether there is a need for low-alkali cement.

Petitioner contends that the Department correctly considered relative sales volume as a factor in its ordinary-course-of-trade analysis. Petitioner argues that CEMEX does not explain the probative value of ''absolute-term'' analysis of sales volumes and, in fact, the statute requires the type of comparative analysis between cement types used by the Department. CEMEX's assertion that small sales volumes are only indicative of sales outside the ordinary course of trade when there is not a *bona fide* home market demand would not be consistent with the Department's principle of considering ''each case on its own facts, not according to some set of preconceived factors.'' In addition, petitioner points out that only a small percentage of CEMEX's Type II and V cement production are sold in the home market; thus, petitioner likens these sales to '''overrun'' merchandise designed for export.''

Petitioner further asserts that the number, type, and geographic location of customers for CEMEX's Type II and Type V sales are unusual relative to Type I. In contrast to the broad range of customers and uses for Type I cement, Type II and Type V cement was principally sold only to certain types of customers (usually large industrial contractors) for particular projects. Petitioner states that the courts have upheld the use of a limited number of customers as a factor in the ordinary course of trade analysis. *See, e.g., Mantex,* 841 F. Supp. At 1307; *Laclede Steel,* 18 CIT at 967. Petitioner cites differences in presentation types (bag or bulk) between the different cement types as additional evidence of different customer types. Moreover, CEMEX's customers for Type II and Type V cement are concentrated in the Mexico City area, while its customers for Type I and pozzolanic cement are dispersed throughout Mexico. Furthermore, from the Hermosillo plants, CEMEX sells cement invoiced as Type II and Type V only to distant customers, while it artificially sells the identical cement to nearby customers as Type I.

Petitioner asserts that CEMEX's profit on Type II sales is unusually small in comparison to its profits on all cement types, with an even greater difference if there is an ''apples to apples'' comparison for sales from the Yaqui plant. Petitioner asserts that this difference is further magnified by a ''before freight'' and after freight'' comparison of Yaqui sales. Petitioner asserts that CEMEX only began selling Type II and Type V cement in the home market when it began production for export in the mid-1980s. Then, after the antidumping order, CEMEX was able ''to drastically change its production and distribution for those cement types without disturbing its profitability on sales of Type I and pozzolanic cement.''

Petitioner agrees with the Department's determination that CEMEX sold Type II and Type V cement for reasons other than profit as CEMEX failed to address this factor in the sixth review. Petitioner points to CEMEX's admission in earlier reviews (which are now part of the record of the instant review) that CEMEX's sales of Type II cement exhibit a promotional quality not evidenced in ordinary sales of cement.

Petitioner argues that CEMEX's contention that consolidation of production at Hermosillo was a legitimate business decision is irrelevant to the ordinary course of trade determination. Moreover, petitioner claims that CEMEX has failed to preserve this issue for the final results by not including it in its case brief.

Department's Position

Consistent with our preliminary results, the Department has determined that CEMEX's home market sales of Type II and Type V cement produced at the Hermosillo plants were outside the ordinary course of trade during the sixth review. Section 773(a)(1)(B) of the Act states, in part, that NV is ''the price at which the foreign like product is first sold (or, in absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade * * *'' The term ''ordinary course of trade'' is defined as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.'' The Statement of Administrative Action (SAA) which accompanied the passage of the URAA further clarifies this portion of the statute, when it states: ''Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market.'' SAA, at 164. Thus, the statute and the SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15)) are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market (*i.e.*, the Department must consider whether certain home market sales of cement are ordinary in comparison with other home market sales of cement).

The purpose of the ordinary course of trade provision ''is to prevent dumping margins from being based on sales which are not representative'' of the home market. *Monsanto Co.* v. *United States,* 698 F. Supp. 275, 278 (CIT 1988). By basing the determination of NV upon representative sales, the provision ensures that the comparison between NV and sales to the United States is done on an ''apples-to-apples'' basis. However, Congress has not specified any criteria that the agency should use in determining the appropriate ''conditions and practices.'' Thus, the Department, ''in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made with in the ordinary course of trade.' '' *Thai Pineapple Public Co.* v. *United States,* 946 F. Supp. 11, 14–17 (CIT 1996) (quoting *Laclede Steel Co.* v. *United States,* Slip Op. 95–144 at 6 (CIT Aug. 11, 1995).

In the instant review, the Department's decision to exclude sales of Type II and Type V cement from the calculation of NV centered around the unusual nature and characteristics of these sales compared to the vast bulk of CEMEX's other home market sales. Based upon these differences, the Department concluded that they were not representative of CEMEX's home market sales. Stated differently, these sales were not within CEMEX's ordinary course of trade.

The Department's ordinary-course-of-trade inquiry is far-reaching. The agency must evaluate not just ''one factor taken in isolation but rather * * * all the circumstances particular to the sales in question.'' *Murata Mfg. Co.* v. *United*

States, 820 F. Supp. 603, 607 (CIT 1993) (quoting *Certain Welded Carbon Steel Standard Pipes and Tubes from India, Final Results of Antidumping Duty Administrative Review,* 56 FR 64753, 64755 (1991). This broad approach recognizes that each company has its own conditions and practices particular to its trade. For example, it might be a normal practice for one company to sell samples in its line of business; for other companies, that might be an abnormal practice. In short, the Department examines the totality of the facts in each case to determine if sales are being made for ''unusual reasons'' or under ''unusual circumstances.'' *Electrolytic Manganese Dioxide from Japan Final Results of Antidumping Duty Administrative Review,* 58 FR 28551, 28552 (1993).

A full discussion of our conclusions, requiring reference to proprietary information, is contained in several Department memoranda in the official file for this case (public versions of these memoranda are on file in room B–099 of the Department's main building). Generally, however, we have found, with respect to Type II cement: (1) the volume of Type II home market sales is extremely small compared to sales of other cement types; (2) the number and type of customers purchasing Type II cement is substantially different from other cement types; (3) Type II is a speciality cement sold to a niche market; (4) shipping distances and freight costs for Type II cement sold in the home market is significantly greater than for sales of other cement types; and (5) CEMEX's profit on Type II sales is small in comparison to its profits on all cement types.

In addition, there are two items, historical sales trends and the ''promotional quality'' of CEMEX's Type II cement sales, which were cited previously as factors in the second review ordinary-course analysis, but which are not discussed above. On March 10, 1997, the Department issued a questionnaire requesting CEMEX to support its position that home market sales of Type II cement were within the ordinary course of trade by addressing, among other things, ''historical sales trends'' and ''marketing reasons for sales other than profit.'' CEMEX's response, (copies of its submission from the fifth administrative review), failed to address these two items. Thus, the Department assumes that the facts regarding these items have not changed since the second review and that: (i) CEMEX did not sell Type II cement until it began production for export in the mid-eighties, despite the fact that a small domestic demand for such existed prior to that time; and (ii) sales of Type II cement continue to exhibit a promotional quality that is not evidenced in CEMEX's ordinary sales of cement.

With respect to CEMEX's home market sales of Type V cement produced at the Hermosillo plants, we note that these sales are less unusual than its home market sales of Type II cement. For example, CEMEX's profit rate on Type V sales is slightly closer to its profit rate on Type I sales than is true of its Type II sales. Notwithstanding this distinction, the Department has determined, after considering the totality of circumstances surrounding these sales, that CEMEX's home market sales of Type V cement are also outside the ordinary course of trade.

First, the volume of these sales, either individually or in combination with sales of Type II cement, is extremely small compared to sales of Type I cement. Secondly, the number and type of customers purchasing Type V cement is substantially different from those purchasing Type I. As is true of Type II, Type V is a speciality cement that CEMEX sells to a niche market. Finally, shipping distances and freight costs for sales of Type V cement are significantly greater than for sales of Type I. Like its sales of Type II cement, CEMEX's sales of Type V cement are shipped over unusually long distances.

Consistent with our preliminary results, we have also determined, based upon the facts otherwise available, that: (1) CEMEX did not sell Type V cement in Mexico until it began production for export in the mid-eighties, despite the fact that a small domestic demand for such existed prior to that time; and (2) sales of Type V cement continue to exhibit (as they did in the second review) a promotional quality that is not evidenced in CEMEX's ordinary sales of cement. We continue to believe, for reasons expressed in our preliminary results, that this use of facts available is warranted and appropriate.

In sum, the Department has determined that CEMEX's home market sales of Type II and Type V cement produced at the Hermosillo plants are not representative of its sales in Mexico of the class or kind of merchandise under investigation. We note that while our decision is based solely upon the facts established in the record of the sixth review, those facts are very similar to the facts which led the department to determine in the second review that home market sales of Type II cement were outside the ordinary course of trade. This determination was recently affirmed by the Federal Circuit in the *CEMEX* case (1998 U.S. App. LEXIS 163) (''* * * Commerce's decision that the sales of Types II and V cements were outside the ordinary course of trade was supported by substantial evidence.'').

The Department disagrees with CEMEX's contention that (i) low sales volume is only relevant to the ordinary-course-of-trade issue if there is no *bona fide* home market demand, and (ii) the presence of home market demand is indicative of sales inside the ordinary course of trade. First, the Department verified in the second review that there was a small, but apparently legitimate, home market demand for Type II and Type V cements. However, that finding did not lead to a determination that the subject sales were made within the ordinary course of trade. As we note above, the Federal Circuit, in the *CEMEX* case, affirmed the Department's determination that CEMEX's home market sales of Types II and V were outside the ordinary course of trade. Secondly, the Department has often found sales to be outside the ordinary course of trade where volume was considered with other, non-demand-related, factors. For example, in *Final Determination of Sales at Less Than Fair Value; Sulfur Dyes Including Sulfur Vat Dyes, from the United Kingdom,* 58 FR 3253, 3256 (1993), the Department concluded that sales were outside the ordinary course of trade based upon abnormally high volume, low price, and the existence of a ''special agreement'' to promote the product at issue. In *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan,* 52 FR 30700, 30704 (1987), the Department determined that sales were outside the ordinary course of trade because the sales in question were of small volume and high prices, most of the sales were canceled prior to invoice, and there were no comparable sales in the United States. We have also excluded transactions from the calculation of NV based upon sales made to employees and negligible volume. *See, e.g., New Minivans from Japan,* 57 FR 43, 46 (1992). In short, the Department's consistent and longstanding practice has been to consider sales volume along with numerous other factors, depending upon the specific product involved.

The Department also disagrees with CEMEX's claim that instead of considering shipping distances and freight costs, we should focus on shipping terms and practices. First, the normal practice in Mexico is to ship cement, a heavy material, over relatively short distances. Indeed, over 95% of all cement shipments in Mexico cover less than 150 miles. While CEMEX's home

market shipments of Type I cement conformed to this norm, its shipments of Type II and V occurred over substantially greater distances. CEMEX's claim that these ''differences in shipping distances is simply a geographic fact'' and the result of a ''legitimate business decision'' missed their mark. A company may have sound business reasons for changing its methods of operation; but, if sales resulting from this new business practice are not normal for the company (for a reasonable time prior to exportation), then they cannot be said to be within that company's ordinary course of trade. As the CIT succinctly stated in its examination of the second administrative review:

> Whatever the real strategy behind the consolidation in the North, the result was an abnormal shipping arrangement for Types II and V cement, which weighs heavily in favor of a finding of sales made outside the ordinary course of trade.

CEMEX, Slip Op. 95–72 at 11 (CIT 1995), *aff'd*, 1998 U.S. App. LEXIS 163.

Secondly, while it is true, as CEMEX points out, that shipping *terms* (*e.g.*, CIF or FOB plant) for Types II and V are in some respects similar to Type I, we believe this contention proceeds from an incorrect premise. In an ordinary-course-of-trade inquiry, the pertinent issue is whether the conditions and practices are ''normal'' for the company in question. For the years preceding the antidumping order, it was CEMEX's *normal* business practice to pass along the cost of pre-sale freight to purchasers of its Type II and V cement. For CEMEX to absorb freight costs after the issuance of the order is an ''unusual circumstance,'' particularly given the high freight costs for Type II and V cement.

Finally, we disagree with CEMEX's contention that our analysis of historical sales trends is factually incorrect. CEMEX's production of Type II and Type V cement is a relatively recent phenomenon for a company producing cement in Mexico for nearly nine decades. CEMEX did not produce Type V cement for the home market until March 1989, when it purchased Tolteca. Company officials conceded at verification in the second review that CEMEX did not produce Type II cement for the home market until the mid-1980s when it was required for export to other countries. CEMEX's argument that it should somehow receive credit for having acquired Tolteca fails to focus upon the pertinent ordinary course of trade issue '' that is, whether the sale of Type II and V cement was a normal condition or practice for *CEMEX*, not whether it was a normal condition or practice for another company in Mexico. Therefore, the fact that Tolteca (as an independent company) produced Type V cement is unpersuasive.

Comment 4

CEMEX asserts that home market sales of cement produced at Hermosillo to customers needing only Type I cement should be used in the calculation of NV. CEMEX claims that the Department should have been able to make an ordinary course of trade determination in connection with these sales because its January 29, 1997 submission informed the Department that these sales met the physical specifications for Type V cement. CEMEX further claims that the Department could have determined whether these sales were below cost because the Department could have used the submitted cost databases to perform this analysis.

According to CEMEX, sales of Type I cement produced at the Hermosillo plants were, in fact, not outside the ordinary course of trade since sales volumes were significant in absolute terms, sales were to the same types of customers as other Type I sales, and the shipping distances and freight costs for cement sold as Type I out of Hermosillo were not unlike all other sales of Type I. Additionally, the profitability for the Hermosillo-produced sales to Type I customers is not significantly different than the profitability for all other Type I sales. Finally, CEMEX argues that the ''promotional quality'' factor cannot apply since customers perceive this cement to be the same type of cement as all other Type I cement.

Petitioner argues that the Department properly relied upon facts available to exclude sales of Type I cement produced at Hermosillo from its dumping calculations. Petitioner argues that the Department was only prepared to verify whether sales of Type II cement were outside the ordinary course trade. The Department did not learn until verification that cement produced at the Hermosillo plants and invoiced as Type I was, in fact, physically identical to the cement labeled as Type II and Type V. Because neither party raised the ordinary course of trade issue with respect to Type I sales, the Department was not prepared, nor able, to verify this issue. Petitioner asserts that if CEMEX had revealed the true nature of these sales prior to verification, the Department could have performed an ordinary course of trade analysis on these sales.

Petitioner asserts that it is not possible in this review to determine exactly which sales of Type I cement in the home market were produced at the Hermosillo plants because CEMEX did not report a plant code for its sales. Additionally, the reported costs for cement produced at the Hermosillo plants were based on an allocation of costs for Type V cement according to how the cement was sold. Therefore, it is impossible to conduct a product-specific cost test. Petitioner asserts that the home market database is ''extremely flawed'' with regard to these sales. Petitioner states that the statute provides the Department with the authority to use facts available whenever (1) necessary information is not on the record, (2) an interested party withholds information that is requested, (3) an interested party significantly impedes a proceeding, or (4) the information submitted cannot be verified. 19 U.S.C. 1677e(a). According to petitioner, each one of these prerequisites to using facts available is satisfied in the instant review.

Department's Position

Pursuant to section 776(a) of the Act, we have continued to exclude, as facts available, sales of Type I cement produced at the Hermosillo plants from our calculation of NV. As stated in our preliminary results of review, home market sales of Type I, Type II, and Type V cement produced at Hermosillo actually satisfy the ASTM specifications for Type V cement. Because the Department only received this information at verification, the Department was unable to determine whether these sales provided an appropriate basis for calculating NV. In particular, the Department lacked information which would allow it to determine whether these sales were made above cost or within the ordinary course of trade. For example, the Department discovered at verification that the reported production costs for the different types of cement supposedly produced at Hermosillo were, in fact, based upon an allocation of costs for Type V that was tied to sales ratios.

The Department has not received any information between our preliminary results of review and these final results which would warrant the inclusion of these sales in our calculation of NV. Therefore, the Department is continuing to exclude home market sales of Type I cement produced at the Hermosillo plants from our dumping calculations in this review.

Comment 5

CEMEX contends that even if all of its home market sales of identical

merchandise were properly excluded from the calculation of NV, the statute requires the Department to base NV upon constructed value (CV), not home market sales of similar merchandise (*i.e.,* Type I). In support of its position, CEMEX cites *DRAMs from the Republic of Korea* in which the Department resorted to CV when all sales of comparison merchandise were excluded from the calculation of NV because they failed the arm's length test. CEMEX argues that in the instant review, all sales to the United States were of Type II cement; therefore, if all home market sales of this type are excluded, Commerce must base NV on CV, not on home market sales of the next most similar merchandise, Type I.

Petitioner argues that, having excluded home market sales of Type II and Type V from the calculation of NV, the Department correctly based NV on sales of the next most similar merchandise, not CV. According to petitioner, the cases relied upon by CEMEX in its brief are those where the Department is required by the statute to exclude sales of the identical or most similar merchandise because they were below the cost of production. In any event, petitioner asserts that CEMEX's reported costs for the Hermosillo plants are extremely flawed and cannot be used to calculate CV.

Department's Position

Subsequent to the preparation of case and rebuttal briefs in this review, the Federal Circuit issued its opinion in the *CEMEX* case. In that case, the appellate court affirmed the Department's use of Type I cement (as opposed to CV) to calculate NV when CEMEX's home market sales of identical merchandise (Type II and V) were found to be outside the ordinary course of trade in the second administrative review of this order. 1998 U.S. App. LEXIS 163. Indeed, the Federal Circuit declared that this result was required by ''the plain language of the statute * * * when sales of identical merchandise have been found to be outside the ordinary course of trade.''

Although the court did not have before it the statutory amendments occasioned by the URAA, the specific provision at issue (section 771(16) of the Act) was not changed in any meaningful sense. Accordingly, our determination on this issue has not changed from the preliminary results.

Fictitious Market

Comment 6

Petitioner claims that CEMEX established a fictitious niche market for home market sales of Type II cement. In particular, petitioner argues that CEMEX, in reaction to the antidumping order, created an artificial and highly restricted market for Type II cement with the intention of manipulating the calculation of NV for identical merchandise ''to mask the fact that the average home market price of the entire class of subject merchandise covered by the order (including Type I, Type V, and pozzolanic cement) continued to greatly exceed the U.S. price of the imported merchandise.'' As a result, petitioner believes a price comparison that is based on home market sales of Type II cement would disguise CEMEX's dumping. Petitioner states that the evidence on the record in this review continues to demonstrate, as it has in prior reviews, that CEMEX established a separate and artificially limited home market distribution channel for sales of Type II cement in order to circumvent the antidumping order and to lower its margin.

CEMEX counters that the Department has correctly rejected petitioner's fictitious market allegation in prior administrative reviews of this antidumping order, and should reject the same argument in this review. CEMEX states that in past reviews the Department accepted CEMEX's business reasons for consolidating production of Type II cement in northwest Mexico, and for not passing on freight costs for Type II cement to its customers. According to CEMEX, the Department also determined in prior reviews that CEMEX provided sufficient evidence of genuine demand for Type II cement in Mexico.

Department's Position

Since the sales in question have been found to be outside the ordinary course of trade and, accordingly, will not be used in the calculation of NV, it is not necessary for us to address this issue for these final results.

Collapsing

Comment 7

CDC argues that the Department's decision to ''collapse'' CDC with CEMEX is contrary to its established practice and is not justified by the facts on the record of this review. CDC cites the Department's determination in *Antifriction Bearings (Other Than Tapered Rolling Bearings) and Parts Thereof From the From the Federal Republic of Germany, Final Determination of Sales at Less Than Fair Value,* 54 FR 18992 (1989) in which the Department states the ''it is the Department's general practice *not* to collapse related parties except in relatively unusual situations, where the type and degree of relationship is so significant that we find that there is strong possibility of price manipulation. The Department has refused to collapse firms in situations where the facts suggest that such a possibility does not exist.'' CDC asserts that the new regulations support this interpretation by strongly rejecting a recommendation that the Department collapse upon finding ''any potential for price manipulation.'' CDC asserts that the potential for price and product manipulation is the primary rationale for collapsing two related companies. CDC believes that the facts in this review are similar to those in the *Nihon* case where the court found that cross ownership and overlapping boards of directors were not sufficient grounds to warrant collapsing two entities. CDC asserts that a company's liability under the antidumping law should be based on that company's own pricing decisions, not those of an affiliated party.

CDC asserts that the Department's decision to collapse CDC and CEMEX is based on an insufficient legal analysis and ignores record evidence. According to CDC, the Department should apply a two-step test for collapsing, and show (1) that the two companies are affiliated parties with production facilities that would not require substantial retooling, and (2) that there exists between the two companies a significant potential for manipulation of price or production. CDC concedes that it is affiliated with CEMEX, but argues that the ''significant potential'' element of the test is not met. CDC argues that there are three elements to be considered in determining ''significant potential': level of common ownership, overlapping boards of directors, and intertwined operations. CDC contends that the Department only addressed the first two factors, but does not provide any analysis as to whether operations are intertwined.

As to common ownership, CDC argues that CEMEX is only a minority shareholder in CAMSA (CDC's parent company) and the majority of shares are still retained by CDC. CDC asserts that its sale of stock to CEMEX was purely a business decision made for financial reasons and CEMEX's share does not constitute a controlling interest under Mexican law.

As far as management overlap, CDC acknowledges that members of CEMEX's management sit on the boards of directors of CDC and its affiliated companies. However, CDC asserts that (1) CEMEX's representatives are in the minority on all of these boards, (2) the

Terrazas/Marquez families are in the majority on all boards, (3) CDC's pricing and production are not discussed at the board meetings of CDC or any of the groups's companies, and (4) that CEMEX's interest in CDC is only that of a passive investor. Therefore, CDC contends that this management/director overlap does not, and will not, result in a significant potential for manipulation of price or production.

CDC argues that the third element of the significant potential test is not established by the facts on the record. CDC argues that the record shows that: (1) the daily operations of CDC are controlled strictly by management, which is appointed by the majority shareholder; (2) CDC and CEMEX do not coordinate pricing strategies in the U.S. market or the Mexican market; (3) the natural markets of CDC and CEMEX do not overlap; (4) CDC and CEMEX do not share sales, distribution, or marketing systems in either the U.S. or Mexico; and (5) there were no commercial transactions between CDC and CEMEX during the sixth review. In addition, CDC argues that CEMEX's role as an engineering consultant during the construction of the Samalayuca plant does not indicate ''significant potential for affecting CDC's production and pricing decisions.'' CDC states that it has shown that this consulting advice was provided by CEMEX on an arm's length basis. Furthermore, CDC asserts that CEMEX's statement at verification that it provided these consulting services to CDC as a result of its ownership interest in CDC does not indicate that CEMEX can coerce CDC to choose it for consulting advice or affect CDC's decisions with respect to any pricing or production issue. Also, CDC does not dispute that CDC and CEMEX have similar production processes and equipment, but the record facts do not demonstrate significant potential for manipulation.

Finally, CDC asserts that there is no policy reason in this case to collapse CDC and CEMEX. CDC distinguishes the facts in this case from those in *Queen's Flowers de Colombia* v. *United States* (97–120 Slip. Op. at 9). Unlike the two collapsed entities in that case, CDC argues, CEMEX and CDC do not constitute a single producer of cement and are separate legal entities. Additionally, CDC asserts that collapsing is not needed to prevent circumvention because CDC submitted all of its own questionnaire responses and participated in verification. CDC asserts that collapsing does not satisfy the purpose of the statute which is to determine dumping margins as accurately as possible. CDC argues that in the cement industry, high inland freight costs limit CDC's natural market; therefore, regardless of the antidumping margin, CDC cannot increase its market beyond these geographic constraints. CDC states that there is no incentive for the owners or management of CDC to agree to any plan that could give rise to an unpredictable monetary liability for CDC's imports. CDC sees no reason why CDC's liability for antidumping duties should be determined by cost, pricing, and sales decisions made by a minority shareholder.

Petitioner argues that, as in the original LTFV investigation and every administrative review conducted to date, the Department should collapse CDC and CEMEX, and that CDC has provided no justification for the Department to depart from this approach. Petitioner asserts that CDC's argument that collapsing CEMEX and CDC is contrary to the Department's established practice is refuted by the history of this proceeding. The Department has always collapsed in this proceeding and circumstances have not changed. The Department has the authority to collapse affiliated producers.

Petitioner argues that all of the factors normally considered by the Department support collapsing CEMEX and CDC. First, petitioner argues that the Department has collapsed in numerous cases where one party holds less than a majority interest in another party. In this review, petitioner contends, CEMEX is in a position to exercise restraint or direction over CDC, though not through majority voting rights. Petitioner claims that this degree of control is not even required for the Department to collapse affiliated parties—as long as similar production processes and significant potential for price or production manipulation are evidenced.

Second, petitioner argues that the existence of interlocking directors between CDC and CEMEX is evidence of significant potential for the manipulation of price and production if these companies are not collapsed.

Third, petitioner argues that the following facts demonstrate that CEMEX and CDC have intertwined business operations that demonstrate a ''significant potential'' for price and production manipulation: (1) CEMEX and CDC formerly shipped to the U.S. through the same channel of distribution—an affiliated importer; (2) CEMEX provides CDC with consulting services and assistance in marketing and exports; and (3) CEMEX provided engineering and technical assistance to CDC in building the Samalayuca plant, services which CEMEX stated that it does not provide to non-affiliated parties.

Finally, petitioner states that there are no valid ''policy'' reasons not to collapse CEMEX and CDC in this review. Petitioner argues that despite CDC's assertion that the ''type of manipulation the Department has cited in other cases simply cannot occur in the cement industry'' because ''each producer has a limited geographic market'' and that the parties ''cannot increase [their] market beyond these natural and geographic limitations,'' the Department must only consider the existence of a significant potential for manipulation. According to petitioner, the record evidence demonstrates that there is a natural overlap in the U.S. market for imports from CDC and CEMEX. Petitioner states that the two producers could also reallocate their geographic shares of the Mexican market in a manner that manipulates the dumping margin and circumvents the order.

Department's Position

The Department agrees with CDC that it must consider all relevant factors when collapsing two affiliated parties. Section 351.401(f) of the Department's new regulations (*Antidumping Duties; Final Rule*, 62 FR 27296, 27410 (May 19, 1997)), describes the Department's current policy regarding when it will treat two or more affiliated producers as a single entity (*i.e.*, ''collapse'') for purposes of calculating a dumping margin. In order for the Department to treat two or more producers as a single entity (1) the producers must be affiliated, (2) the producers must have production facilities that are sufficiently similar so that a shift in production would not require substantial retooling, and (3) there must be a significant potential for the manipulation of price or production.

First, because CEMEX indirectly owns more than five percent of the outstanding voting shares of CDC, the Department considers CEMEX and CDC to be affiliated within the meaning of section 771(33)(F) of the Act. In addition, both CEMEX and CDC manufactured Type I and Type II cement during the period of review. Second, as CDC and CEMEX have similar production processes and facilities, a shift in production would not require substantial retooling. Record evidence for the sixth administrative review also reveals intertwined business operations between CDC and CEMEX. (A complete analysis surrounding the Department's decision to collapse CDC and CEMEX, requiring reference to

proprietary information, is contained in the Department's Memorandum from Roland L. MacDonald to Joseph A. Spetrini, dated September 2, 1997, located in the official file for this case. A public version of this memorandum is on file in room B–099 of the Department's main building.)

Third, given the level of common ownership and cross board members, which provides a mechanism for the two parties to share pertinent pricing and production information, similar production facilities that would not require substantial retooling, as well as intertwined business operations, the Department finds that if CDC and CEMEX are not collapsed, there is a significant potential for price manipulation which could undermine the effectiveness of the order.

Level of Trade (LOT)/ CEP Offset

Comment 8

Petitioner argues that the Department erroneously determined that CEMEX's and CDC's home market sales were at a different level of trade than their sales to the United States, and on that basis granted CEMEX and CDC a constructed export price (CEP) offset adjustment to NV. According to petitioner, the Department found no differences in level of trade in the previous (fifth) review and the facts in this review are virtually identical to the facts in that review. Petitioner claims that the Department's methodology for analyzing the level of trade and CEP offset issues has not changed since the fifth review and, therefore, no basis exists for a different result with respect to the level of trade and CEP offset issues in this review.

Specifically, petitioner argues that, in the preliminary results of this review, the Department found that CEMEX and CDC perform more selling functions for sales to end-users and ready-mixers in the home market than for sales to affiliated importers in the United States. Petitioner argues that the Department must find more than the fact that selling functions in the home market and the United States differ in intensity to find a difference in level of trade.

Petitioner also argues that if the Department grants a CEP offset to CEMEX and CDC, it should modify the methodology employed in the preliminary results. Petitioner first argues that if the Department grants a CEP offset adjustment, the Department should classify CEMEX and CDC's U.S. terminal expenses as movement expenses, not indirect selling expenses. Second, petitioner argues that if the Department grants a CEP offset adjustment, the Department should modify its treatment of U.S. indirect selling expenses incurred in Mexico. Petitioner states that by not deducting from CEP the indirect selling expenses incurred in Mexico that supported U.S. sales, the Department in the preliminary results in effect calculated an ex-U.S. border price, not an ex-factory price, while the deductions made for home market sales calculate an ex-factory price. According to petitioner, comparison of these two prices is unfair, and runs counter to the apples-to-apples price comparison required by the statute. Finally, petitioner argues that the Department should base its identification of levels of trade on the starting price for both EP and CEP sales, not the CEP price adjusted for selling expenses and profit. Petitioner claims that the CEP level of trade, as with the home market, should be based on the price paid by the first unaffiliated customer prior to deductions for expenses and profit. In addition, petitioner argues that if the Department grants a CEP offset adjustment, we should reclassify CEMEX and CDC's U.S. terminal expenses from U.S. indirect selling expenses to movement expenses.

CDC argues that the Department properly granted CDC a CEP offset. CDC argues that the Department's regulations direct the Department to determine NV at the level of trade of the CEP, which includes any CEP deductions under section 772(d) of the Act. In light of this interpretation of the statute, argues CDC, any comparison of selling functions for the purpose of determining CDC's eligibility for a CEP offset must focus on CDC's activities in selling to the two markets, not on the activities of its U.S. affiliate. CDC argues that the record demonstrates that its home market sales were made at a more advanced level of trade than its U.S. sales, thus satisfying the level of trade standard.

CEMEX agrees with the Department's preliminary results which granted CEMEX a CEP offset based on the law and on verified information. First, CEMEX concurs with the Department's determination that the sales to Sunbelt Cement, CEMEX's affiliated U.S. distributor, were at a less advanced level of trade than the level of trade of home market sales. CEMEX notes that the CEP adjustments made under section 772(d) of the Act remove all the marketing and distribution activities of Sunbelt Cement thereby altering the level of trade of the starting price to a less remote link in the chain of distribution. CEMEX contends that the appropriate comparison is based on the selling functions performed by CEMEX with respect to its sales in Mexico and its sales to the U.S. (''[f]or both EP and CEP, the relevant transaction for the level of trade analysis is the sale (or constructed sale) from the exporter to the importer'' 62 FR 47632).

Third, CEMEX argues that the Department appropriately determined that CEMEX performed significantly different selling functions for CEP and home market sales and the home market level of trade was more advanced. CEMEX rejects petitioner's implication that because the Department reached a different determination in from the fifth review, that the sixth review preliminary results must be wrong. CEMEX also rejects petitioner's hypothesis that because the U.S. market is important to CEMEX's business, CEMEX's centralized strategic planning in Mexico must support exports to the United States. CEMEX states that activities with respect to procuring/ sourcing materials and other assets for U.S. operations are performed by CEMEX's U.S. affiliate. Finally, CEMEX disagrees with petitioner's argument that market research, advertising, after-sales service, and technical advice are all insignificant in selling cement. CEMEX notes that the list of selling activities that CEMEX included in the responses are representative of the activities that the Department has included in level of trade questionnaires issued to companies in other cases.

Department's Position

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market, or, when NV is based on constructed value (CV), that of sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sales from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the

export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61971 (November 19, 1997).

Although CEMEX and CDC are collapsed for purposes of determining the weighted-average dumping margin, the Department has determined that CEMEX and CDC's home market sales are at different levels of trade based upon a review of the selling functions performed by CEMEX and CDC to their respective customers. Therefore, for purposes of this administrative review, we are performing separate level of trade analyses for CEMEX's sales and CDC's sales in the home market.

CEMEX claimed that it has three levels of trade in the home market—sales to end-users concrete manufacturers, and distributors through two channels of distribution, bulk and bagged cement. It also reported two levels of trade in the U.S. market—sales of bulk cement to end-users and ready-mixers. We disagree with CEMEX that there are three levels of trade in the home market and two levels of trade in the U.S. market. We have determined that CEMEX sells to one level in the home market and one level of trade in the U.S. market.

Based on our analysis, we concluded the following: (1) there is one level of trade in the home market and one level of trade in the U.S.; (2) there is a quantitative and qualitative difference in the selling functions performed by CEMEX in the home market and the United States; (3) there are two distinct and separate levels of trade; (4) we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products at the same level as the U.S. CEP; and (5) we have determined that NV is at a more advanced level of trade than the CEP. Therefore, we granted a CEP offset consistent with the aforementioned statutory provision. For a complete discussion of the Department's analysis, see the Level of Trade Memorandum, dated March 9, 1998.

CDC claimed that it has two levels of trade in the home market—sales to end-users and concrete manufacturers through two channels of distribution, bulk and bagged cement. It also reported two CEP levels of trade in the U.S. market—sales of bulk cement to end-users and ready-mixers. We disagree with CDC that there are two levels of trade in the home market and two levels of trade in the U.S. market. We have determined that CDC sells to one level of trade in the home market and one level of trade in the U.S. market. Finally, we found no record evidence to suggest that EP and CEP sales by CDC are at the same level of trade, nor is there evidence to suggest that EP and home market sales are at different trades of trade. Therefore, based on the information on the record, we have determined that CDC's home market sales and EP sales are at the same level of trade and no LOT adjustment has been granted.

Based on our analysis of CDC's CEP sales, we concluded the following: (1) there is one level of trade in the home market and one level of trade in the U.S.; (2) there is a quantitative and qualitative difference in the selling functions performed by CDC in the home market and the United States; (3) these are two distinct and separate levels of trade; (4) we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products at the same level as the U.S. CEP; and (5) we have determined that NV is at a more advanced level of trade than the CEP. Therefore, we granted a CEP offset consistent with the aforementioned statutory provision. For a complete discussion of the Department's analysis, see the Level of Trade Memorandum, dated March 9, 1998.

Finally, in response to petitioner's argument that CEMEX and CDC's U.S. terminal expenses should be considered movement expenses, we confirmed at verification (*see* U.S. Sales Verification Report dated July 21, 1997), that the reported terminal expenses are the expenses associated with making sales in the United States from the various sales offices/terminals. The evidence on the record does not indicate that these are expenses associated with the storage or movement of the subject merchandise prior to, or subsequent to the final sale. The Department reviewed the methodology employed by CEMEX and CDC to determine if the reported expenses were in accordance with Departmental practice. We found no discrepancies with respondent's reporting of U.S. indirect selling expenses and, consistent with our final determination in the fifth administrative review, we continue to treat the reported terminal expenses as U.S. indirect selling expenses.

Comment 9

CEMEX argues that Commerce included sales made by its affiliated reseller PROMEXMA, a retailer of cement and building materials. CEMEX argues that the sales functions provided by PROMEXMA differ substantially from those provided by the other CEMEX sales offices. CEMEX argues that sales made to retailers, such as PROMEXMA, are different than those made to distributors and end users. CEMEX asserts that the preliminary results of this review fail to analyze the role of PROMEXMA within ''the seller's whole scheme of marking.'' CEMEX also argues that the Department did not conduct a complete comparison of PROMEXMA sale prices with all other sale prices. CEMEX argues that individual sale quantities and prices by PROMEXMA were significantly different than all other home market sales.

Petitioner asserts that CEMEX has failed to establish that home market sales made by its affiliated distributor, PROMEXMA, were at a different level of trade. Establishing that PROMEXMA is a different class of customer (a retailer) is not sufficient—CEMEX has failed to demonstrate that PROMEXMA performs selling functions that are qualitatively or quantitatively different than the functions CEMEX performs with respect to all other home market sales. Therefore, it would be contrary to the statute and the Department's practice to determine that sales by PROMEXMA were at a different level of trade. Petitioner maintains that the Department correctly determined in the preliminary result that all of CEMEX's home market sales, including sales by PROMEXMA, were made at the same level of trade. Therefore, these sales should be included in the calculation of NV.

Department's Position

We agree with petitioner. As we stated in the preliminary results of this review ''[c]ustomer categories such as distributor, original equipment manufacturer (OEM) or wholesaler are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid.'' As stated above in our discussion of level of trade, the Department has determined that based on the facts placed on the record of this review, that all of CEMEX's home market sales of Type I cement were made at the same level of trade. Therefore, consistent with our decision in the preliminary results of review, the

Department has continued to weight-average all home market sales on a monthly basis and has compared these sales to CEP sales in the U.S. market.

Comment 10

CEMEX asserts that the Department failed to limit price comparisons to sales at the same level of trade. Specifically, CEMEX argues that sales of bagged cement are made at a different level of trade than sales of cement in bulk. CEMEX asserts that there is a consistent pattern of differences in the price of cement sold in bulk and in bags. CEMEX argues that consumers are willing to pay a premium for the convenience of buying a bag of cement. Additionally, CEMEX argues that sales of cement in bags involve far more selling functions that sales in bulk.

Petitioner maintains that CEMEX has failed to establish that its home market sales of bagged cement were at a different level of trade than its home market sales of bulk cement.

Petitioner asserts that the preliminary results correctly included both in the calculation of NV because the merchandise is identical, the only difference being packaging. Petitioner argues that consistent with the statute the net prices for identical merchandise need not be equivalent (*i.e.*, taking into account an adjustment for packaging) to be averaged together in the calculation of NV.

Department's Position

We agree with petitioner. The Department has included the entire universe of Type I sales in its calculation of NV because bulk and bagged sales constitute identical merchandise. The only difference between these products is the packaging; therefore, the Department has made an adjustment for packaging differences. In addition, as stated in the level of trade section of this notice (*see* Comment 8, above), the Department has determined that CEMEX sold at one level of trade in the home market; therefore, comparing by discreet channels of distribution is not warranted as there is only one level of trade. Therefore, we have not calculated NV for each channel of distribution as requested by CEMEX and have used our standard methodology for comparing NV to U.S. sales for purposes of these final results of review.

Comment 11

CEMEX argues that Commerce failed to limit sales comparisons to the same customer category. CEMEX asserts that although all customers negotiate sales prices starting at the same base price, the discount offered in each market differs according to customer category (*i.e.*, distributors, end-users, and ready mixers.) CEMEX argues that it has established distinct customer classifications in both markets and thus Commerce should compare prices by customer category.

Petitioner argues that all cases by CEMEX in support of price comparisons by customer category are original investigations. In addition, petitioner asserts that there is no basis in the statute for averaging prices by customer category in administrative reviews. Petitioner maintains that the statute says nothing about averaging prices based on customer category, only that the Department ''shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.'' 19 U.S.C. 1677f–1(d)(2).

In addition, petitioner asserts the CEMEX has not demonstrated that it is necessary to compare prices by customer category. CEMEX claims that its prices/discounts vary by customer class, but provides no evidence to support this claim. Petitioner argues that the evidence on the record of this review does not support the claim that there is a pattern of price differences between customer categories.

Department's Position

We agree with petitioner. Section 773(a)(1)(B) of the Act does not direct the Department to make comparisons on the basis of customer categories. It merely directs us to compare U.S. sales to the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities, and in the ordinary course of trade. Moreover, section 777A(d)(2) states a preference for ''average-to-individual'' price comparisons in administrative reviews under section 751(a) of the Act. ''With the exception of the contemporaneity rule in section 777A(d)(2), neither the statute nor the SAA provides any guidance of what, if any, factors should be considered when averaging in reviews.'' *Certain Stainless Wire Rods From France*, 61 FR 47874, 47879 (1996).

As stated in the level of trade section of this notice (*see* Comment 8, above), the Department has determined that CEMEX sold at one level of trade in the home market. Therefore, we have not calculated NV for each customer category as requested by CEMEX and have used our standard methodology for comparing NV to U.S. sales for purposes of these final results of review.

Differences in Merchandise (DIFMER)

Comment 12

CEMEX claims that the Department improperly made a DIFMER adjustment based on facts available equal to 20 percent of total cost of manufacturing. CEMEX claims that it has established that there were physical differences between Type I and Type II by providing all supporting documentation for the reported weight-averaged VCOM for Type I and Type II for each plant, which the Department then verified. CEMEX also claims that the Department's own reporting requirements for COP and CV require the weight-averaged costs incurred at all facilities to be reported, and that the Department has granted claimed DIFMER adjustments in other cases when such adjustments were based on weighted-average costs at several facilities. Therefore, CEMEX should not be penalized for not being able to exclude from its DIFMER data costs associated with differences in production efficiencies at the different plants. CEMEX cites *Gray Portland Cement and Clinker from Japan*, 60 FR 43761, 762–763 (1995), in which the Department granted the respondent a DIFMER adjustment, as the Department was satisfied that the respondent reasonably tied cost differences to physical differences in merchandise, not withstanding reported differences in plant efficiencies.

Furthermore, CEMEX claims that government verifiers should have known prior to verification that all of CEMEX's cement produced at Hermosillo met the Type V specifications. CEMEX asserts that Commerce should have known that it could not strip out, for DIFMER purposes, the effects of ''plant efficiencies.'' CEMEX asserts that even if the Department were justified in foregoing the use of CEMEX's plant cost of production data, it was not legally justified in immediately leaping to ''facts available because there is cost of production data on the record of the sixth review for two plants of CEMEX's affiliated party CDC.'' CEMEX argues that if the Department collapses the two entities, it must do so for all purposes, not just for purposes which ''artificially serve to increase antidumping duty liability.''

CEMEX argues that the Department does not have *carte blanche* in arriving at a ''facts available'' number. CEMEX argues that the 20% adverse DIFMER chosen by the Department constitutes ''secondary information'' within the meaning of 19 U.S.C. 1677(C) which can only be used as facts available if it can

be corroborated with outside information or can otherwise be supported by substantial evidence in the administrative record. CEMEX claims that the 20% DIFMER adjustment cannot be corroborated because it vastly overstates any possible DIFMER adjustment needed to account for actual physical differences in the cost of producing Type I and Type II cement. CEMEX points to CDC's DIFMER adjustment which is substantially less than 20% and to an affidavit submitted by petitioner in its submission of July 12, 1995 which concludes that the cost-of-production differential between Type I and Type II cement is ''negligible.'' CEMEX cites *Rhone Poulenc, Inc* v. *United States*, in which the Court of Appeals for the Federal Circuit determined that it would be improper for the DOC to reject low margin information in favor of high margin information that was clearly less probative of current conditions. CEMEX also cites *Saha Thai Steel Pipe Co. Ltd.* v. *United States*, in which the CIT determined that the Department must ''seek to avoid the use of unrepresentative or extraordinary high surrogate data as BIA.'' CEMEX argues that the application of a 20% DIFMER adjustment would be punitive and has no basis in the administrative record or commercial reality.

CEMEX maintains that reliance on a 20% DIFMER adjustment simply because it was upheld by the CIT in the second review is unjustified. CEMEX argues that each administrative review is different and, furthermore, the 20% BIA rate used in the second review was based on the fact that CEMEX had refused to respond to specific requests for information from the Department. In this case, CEMEX argues that it has fully responded to the Department's requests and the agency has verified the accuracy of CEMEX's reported cost information.

Petitioner argues that the Department correctly applied a 20 percent DIFMER adjustment adverse to CEMEX as facts available. Petitioner asserts that as a result of its belated disclosure regarding the types of cement produced at the Yaqui and Campana plants, CEMEX impeded the review, failed verification, and prevented the Department from obtaining and evaluating other information that could have been used to calculate a DIFMER adjustment for CEMEX. Additionally, petitioner claims that CEMEX failed to report information tying the differences in variable costs of production of Type I and Type II cement to the physical differences in the merchandise.

Petitioner argues that the Department did not learn until verification that CEMEX's claimed DIFMER adjustment was not based on differences in the physical characteristics between Type I and Type II cement, but rather on an allocation of costs between Type I and Type II sales for the same physical product—Type V cement. Furthermore, at verification, CEMEX admitted that the reported difference in variable cost for Type I cement produced at Yaqui and Type I produced at its other plants related to plant efficiency. CEMEX should have provided this information earlier. The Department was similarly misled in the fifth review, petitioner asserts, but these revelations were not made in that review. CEMEX repeatedly asserted in questionnaire responses that it was entitled to a DIFMER adjustment simply because there were differences in the variable production costs for Type I and Type II cement, and argued in its case brief that is variable production costs were usable for determining DIFMER. At verification, however, CEMEX stated that it was not entitled to a DIFMER adjustment. CEMEX's disclosure at verification that there were in fact no differences in physical characteristics between the cement types produced at Yaqui prevented the Department from collecting and analyzing other information that could have been used to calculate the DIFMER adjustment.

Petitioner disagrees with CEMEX's suggestion that the Department should have applied CDC's DIFMER rather than using facts available as this would allow CEMEX to avoid responsibility for misleading the Department and would reward CEMEX for its non-compliance with the Department's requests for information and impending of the review. Petitioner argues that CEMEX repeatedly failed to provide requested information tying the differences in variable production costs to differences in physical characteristics. In this review, the facts show that there are physical differences between Type I and Type II cement, and that these differences result in different variable costs of production. CEMEX, however, despite the Department's explicit and repeated requests, provided no information to isolate and quantify the cost differences that are specifically attributable to the physical differences. Petitioner states that this is CEMEX's burden under the regulations and the Department's practice. Thus, CEMEX is not entitled to its claimed DIFMER adjustment.

Petitioner also argues that CEMEX's own information contradicts its claim for a DIFMER adjustment. This data shows that Type II has tighter specifications than Type I which result in it being more expensive to produce. It requires additional raw materials and additional grinding time. Data submitted by CDC corroborates this information.

Petitioner rebuts CEMEX's assertion that the Department should instead use data that is subject to corroboration for facts available. Petitioner argues that in this case the 20 percent adjustment is appropriate but corroboration of that percentage is impracticable. CEMEX's argument that the DIFMER should be lower is based on information that the Department was unable to verify. In this review, facts available DIFMER from the second review is the appropriate model for the Department's treatment of CEMEX's claimed DIFMER adjustment in this review.

Petitioner argues that there is no basis in the record or the Department's practices for calculating CEMEX's DIFMER adjustment from costs incurred at a single plant. In the fifth review, the Department departed from its longstanding practice and granted CEMEX a favorable DIFMER adjustment based solely on CEMEX's reported costs of producing Type I and Type II cement at a single facility, the Yaqui plant. Petitioner asserts that in this review, the Department should use weighted-average costs for all of CEMEX's plants. However, this will be impossible because CEMEX impeded the review by not providing information requested by the Department and failed verification. Furthermore, the adjustment will necessarily be distorted if the Department uses costs for the identical merchandise sold as different products.

Department's Position

Pursuant to section 773(a)(6)(C)(ii) of the Act, the Department will make adjustments to NV for physical differences in merchandise sold in the foreign market as compared to sales in the U.S. market. Pursuant to Section 353.57 of the Department's regulations, we will only adjust for differences in variable costs which correspond to physical differences in producing the merchandise, not due to differences in plant efficiencies. However, CEMEX has failed to report DIFMER information based solely on physical differences in merchandise.

In the preliminary determination, the Department determined that it was appropriate to use adverse facts available. The Department reached this conclusion because CEMEX did not make clear until verification that it only produced Type V cement at its Yaqui and Campana facilities. Therefore, the DIFMER reported for cement sold as Types I and II at these facilities did not

reflect differences in merchandise and was not a proper basis for a DIFMER adjustment. Given the late stage of the proceeding at which these facts came to light, the Department was not able to collect and analyze other DIFMER data and made a twenty percent upward adjustment to CEMEX's home market prices.

The Department continues to believe that CEMEX could and should have made clear the circumstances surrounding its reported DIFMER. In light of the comments received, the Department has evaluated possible alternatives to the twenty percent upward adjustment using the limited information on the record. Because of different plant efficiencies, the Department could not compare the variable costs at the Yaqui and Campana facilities with the variable costs at CEMEX's numerous facilities producing Type I cement. Therefore, as facts available and in order to minimize the effect of varying plant efficiencies, the Department has compared CEMEX's variable costs to produce cement at the Hermosillo plants (sold as Types I, II, and V) with the lowest variable costs reported by a CEMEX Type I facility. This calculation results in an upward adjustment to home market prices that in this case is sufficiently adverse, but is based on CEMEX's actual cost information.

We disagree with the assertion that CEMEX's adjustment should be based upon CDC's data. As stated in our preliminary determination, CDC's DIFMER is based on the differences in physical characteristics between Type I and Type II cement, whereas CEMEX's DIFMER adjustment would have to be based on differences in physical characteristics between Type I and Type V cement. The record evidence indicates that there are significant differences between the various types of cement produced at the various facilities. These are primarily due to different grinding and heating treatments and other factors. Therefore, we have determined that it would not be appropriate to apply CDC's Type I—Type II DIFMER adjustment to CEMEX's sales of Type I–V cement. Consistent with our findings in the preliminary results of review,we have applied a calculated DIFMER to CDC's home market sales based upon plant-specific reported data.

Normal Value

Comment 13

Petitioner argues that the Department should deny CEMEX a freight deduction for home market sales of Type I cement because, contrary to the Department's practice and regulations, CEMEX has not demonstrated that (i) it is not feasible to provide freight expense data on home market sales on a transaction-specific basis, and (ii) company-specific reporting of average freight expenses does not create inaccuracies.

CEMEX argues that the Department's preliminary results correctly adjusted NV for CEMEX's verified freight expenses. CEMEX contends that it reported pre-sale and post-sale freight expenses broken down on a monthly basis based on (i) the selling company, (ii) the type of cement shown on the invoice, and (iii) the method of presentation (bulk or bagged). CEMEX first notes that the Department verified the accuracy of these factors for five separate cement plants and found no discrepancies. CEMEX also notes that the methodology employed in the instant review is identical to the methodology CEMEX used in the fifth review, which was accepted by the Department. CEMEX states that the Department's regulations authorize the use of a reasonable allocation methodology when transaction specific reporting is not feasible, provided that the methodology used is not distortive. CEMEX notes that transaction-specific reporting was not feasible due to the extremely large number of sales. CEMEX also notes that in its ordinary course of business, CEMEX cumulates transaction-specific freight expenses on a company basis; thus reallocation of freight expenses on a point-of sale, plant, or customer basis would not be feasible.

Finally, CEMEX rejects petitioner's argument that CEMEX's allocation is distortive. First, CEMEX states that it used a weight-based allocation methodology, matching the manner in which CEMEX's freight expenses were incurred. Second, CEMEX calculated its freight expenses on a cement-type and presentation-specific basis, without reference to out-of-scope merchandise, further reducing the possibility for distortion. Third, CEMEX calculated monthly, rather than annual (or period-wide) factors. Fourth, CEMEX's allocation used the most specific methodology permitted by company records. Finally, CEMEX rejects petitioner's argument that freight expenses were distortive because CEMEX did not take into account differing delivery distances between the point of sale and the customer. CEMEX counters that in cases where the company records cumulate freight charges and it is not possible to tie the destination of each shipment to cumulated expenses, the use of an overall, weight-based factor has been found by the Department to be reasonable (*Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 61 FR 1328, 1333 (1996)).

Department's Position

We agree with CEMEX. The Department has allowed a deduction for freight expenses for Type I sales because the reported expenses provided are in accordance with Departmental methodology, consistent with the company's accounting practices, and were substantiated at verification. (*see* July 21, 1997 Verification Report at 9.) CEMEX has reported home market Type I freight in accordance with its accounting system and provided the data on a company, cement-type, and presentation-specific, basis. Based on our findings at verification, the Department determined that respondent's reported freight costs for sales of Type I cement are not distortive and provide a reasonable estimate of actual transaction-specific freight expenses. Therefore, we are granting CEMEX a home market freight adjustment for sales of Type I cement.

Comment 14

Petitioner argues that CDC's reported freight expenses between two of its plants, Samalayuca and Chihuahua, are distortive because: (1) the expenses are not calculated on a transaction-specific basis, (2) the reported freight expenses for Type I cement may include freight expenses for clinker, and (3) freight expenses charged to CDC by affiliated parties may not be at arm's length. Petitioner argues, therefore, that these expenses should not be allowed.

CDC asserts that the Department properly deducted from NV its home market inland freight expenses from plant to distribution warehouse. CDC asserts that although the Department prefers transaction-specific reporting, it does permit the use of allocations where transaction-specific reporting is impossible. In this case, CDC argues that transaction-specific reporting is impossible because bagged cement produced at the Samalayuca plant was shipped to the Chihuahua plant warehouse where it was commingled with cement produced at Chihuahua. CDC asserts that it provided two allocation methodologies to the Department, and the Department did not request further information on this issue. CDC further argues that it provided evidence on the record that the reported freight expenses (INLFTWH) include freight for cement only and that affiliated party freight expenses were at arm's length. This

evidence included freight invoices from affiliated and unaffiliated parties.

Department's Position

We agree with CDC. The Department has allowed a deduction for home market freight expenses due to the fact that CDC reported its freight expenses in accordance with Departmental methodology. CDC provided invoices from affiliated and unaffiliated transportation companies demonstrating that the reported freight costs were at arm's length. Based on this information, the Department determined that the reported freight was accurate and non-distortive. Therefore, for the instant review, we have utilized all reported home market freight expenses in our final results of review.

Comment 15

Petitioner argues that the methodology for calculating freight expenses incurred by a CDC affiliate, Construcentro commingles costs related to cement with various other hardware items. Petitioner argues that this commingling distorts the reported freight costs for cement only, and that the Department should disallow CDC a freight adjustment for sales through Construcentro.

CDC argues that because other lighter products are commingled with cement, it is not possible to calculate a product-specific, sale-specific, per-unit freight cost for sales by Construcentro to its customers. CDC argues that is methodology of calculating the total cost of freight by the total sales value is non-distortive, and is the identical methodology accepted by the Department in the fifth review.

Department's Position

We agree with CDC. The Department has allowed a deduction for home market freight expenses incurred by CDC's downstream affiliate, Construcentro, due to the fact that CDC reported its freight expenses in accordance with Departmental methodology. After reviewing CDC's methodology for allocating freight costs, the Department has determined that the reported freight costs were accurate and non-distortive. Although in certain instances, non-subject merchandise accompanies shipments of subject merchandise, CDC's allocation methodology is a conservative means of calculating freight costs. Allocating based on sales value results in a total freight deduction that is less than if freight costs were calculated based on weight. In addition, record evidence indicates the CDC would be unable, in the normal course of business, to isolate the freight costs associated with subject and non-subject merchandise in these particular cases. Therefore, for the instant review, we have utilized all reported home market freight expenses in our final results of review.

Comment 16

According to petitioner, CEMEX is not entitled to a deduction for either allocated or transaction-specific price rebates. Petitioner argues that the allocation methodology used by CEMEX for reporting certain rebates is distortive, because the allocated rebates may include rebates on sales of non-subject merchandise. For transaction-specific rebates, petitioner argues that CEMEX failed to establish that (1) its customers were aware, prior to the sale, of the conditions of the rebate and the amount of the rebate, and (2) the rebates was granted pursuant to a standard business practice or established program.

CEMEX argues that the Department's preliminary results correctly adjusted NV for CEMEX's verified rebates. CEMEX notes that it provided adequate sample documentation for its rebate programs, and that the Department verified this information. CEMEX rejects petitioner's claim that CEMEX's customers were not aware of its rebate policies at the time they were purchasing cement from CEMEX. According to CEMEX, as all rebates were negotiated on a customer-specific basis and customers were aware of the discounts for which they were eligible. CEMEX also notes that petitioner made the same argument in the fifth administrative review, which the Department rejected.

Next, CEMEX rebuts petitioner's argument that it was wrong for the Department to adjust NV because CEMEX failed to establish that it was not feasible for CEMEX to report all rebates on a transaction specific basis. Next, CEMEX argues that in fact the majority of rebates reported were transaction-specific. CEMEX also notes that the use of an allocation methodology for one specific rebate program is required, as this post-sale quantity discount is tied to total customer purchases over a stated period of time and is applied to the customer's outstanding accounts receivable, not to an individual transaction or invoice. CEMEX notes that the Department has long recognized that rebates which are not granted on a transaction-specific basis cannot be reported on a transaction-specific basis (*Corrosion Resistant Carbon Steel Flat Products from Canada,* 61 FR 13815, 13821 (1996)).

Finally, CEMEX rejects petitioner's allegation that CEMEX's rebate calculations included rebates paid on sales of out-of-scope merchandise. CEMEX contends that the Department verified that only rebates and sales of the subject merchandise during the appropriate time period were included in the rebate allocations.

Department's Position

We agree with CEMEX. The Department has allowed CEMEX's claimed rebate adjustments because the data was submitted in accordance with the Department's methodology and was substantiated at verification. While the Department prefers that discounts, rebates, and other price adjustments be reported on a transaction-specific basis, the Department has long recognized that some price adjustments are not granted to customers on that basis, and thus cannot be reported on that basis. Generally, ''we have accepted claims for discounts, rebates, and other billing adjustments as direct adjustments to price if we determined that the respondent, in reporting these adjustments, acted to the best of its ability and that its reporting methodology was not unreasonably distortive.'' *See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al., Final Results of Antidumping Duty Administrative Reviews,* 62 FR 2081 (1997).

Furthermore, the Department disagrees with petitioner's argument that the rebates at issue were not granted on a transaction-specific basis. These rebates were reported on a customer-specific basis for cement sold in a specific form, bag or bulk, and applied equally (as a fixed percentage of price) to all invoices for a given month. The Department does not agree with petitioner that respondent's methodology is sufficient to warrant treatment of the adjustments as indirect expenses in the home market. In this case, the amount of the ''allocation'' is limited to a few specific transactions, all to the same customer, and typically within a very limited period of time. Thus, the danger of unreasonable distortions, which is the averaging effect on prices, is extremely limited in this case. This case is similar to situations, permitted by the Department as direct adjustments, in which a rebate is granted on a limited number of purchases by a single customer. Because CEMEX's method of reporting its rebate is reasonable, the Department has allowed it as a direct adjustment.

Comment 17

Petitioner argues that CDC is not entitled to a deduction for certain other price adjustments combined in the OTHADJH and OTHDISH fields in its home market sales database. Petitioner argues that (1) the adjustments are distortive because they result in a negative net price for certain sales, (2) CDC did not establish that the adjustments were granted pursuant to a standard business practice or under a pre-established program, (3) CDC did not establish that the adjustments were made in proportionate amounts with respect to sales of out-of-scope merchandise, and (4) CDC has commingled price adjustments benefitting sales of products other than cement. For these reasons, the other price adjustments should be denied.

CDC rebuts petitioner's argument that the Department should deny its other adjustments. CDC acknowledges that for a very few sales this deduction results in a negative price, but CDC states that it made the Department aware of this in the first supplemental response. CDC provides language for the computer program to delete these negative sales. CDC also argues that it provided evidence to the Department in its April 7, 1997 submission demonstrating that customers are aware of the terms of the other adjustments and that CDC maintains records of these terms. CDC also argues that these discounts are restricted to the subject merchandise because they are recorded on a product-specific basis, by product code, and by presentation (bag or bulk). Finally, CDC argues that the petitioner misinterpreted the ''concrete pavement discount.'' CDC asserts that this is a discount on the cement used for concrete paving projects, not for sales of concrete. CDC states that the methodology used in the sixth review for this discount is identical to the methodology accepted by the Department in the fifth review.

Department's Position

We agree with CDC. The Department has allowed CDC's claimed adjustments because these adjustments were reported in accordance with Departmental methodology. Based on the information placed on the record of this review, the Department has determined that CDC was able to allocate these adjustments on a product-specific, customer-specific basis for the month in which the sale occurred, thereby not creating a distortive effect on NV. Therefore, we are granting CDC these adjustments. However, we have disregarded those sales which result in negative prices due to these adjustments and have not included these in the calculation of NV.

Comment 18

Petitioner argues in its case brief that the Department erred in basing CEMEX's short-term interest rate on CDC's short-term interest rate. In the preliminary results, the Department found that CEMEX improperly used its interest rate for long-term loans in calculating imputed expenses, and substituted CDC's short-term interest rate. Petitioner argues that because CEMEX affirmatively misrepresented the fact that it had short-term, peso-denominated debt during the sixth review period, the Department should apply adverse facts available. The effect of the adverse facts available, according to petitioner, should be to (1) completely deny CEMEX's claimed imputed credit expenses and inventory carrying costs, (2) revise the calculation of these expenses using IMF rates instead of CDC's rates, or (3) substitute an interest rate for borrowing by CEMEX based on the shortest period available.

CEMEX argues that it accurately reported its interest rate experience. CEMEX claims that the factual record shows that it fully and accurately described its debt position, providing the interest rates applicable to the current portion of its long-term loans as a benchmark for short-term, peso-loan interest rates, and that this description was verified and accepted by the Department. CEMEX also rejects petitioner's argument that the Department should not have used the verified short-term interest rate from CDC. CEMEX argues that the Department was correct to use this data since it has determined that CDC and CEMEX constitute a ''single entity.''

Department's Position

We agree with CEMEX. CEMEX incorrectly included the long-term interest rate in its reported calculation. However, consistent with our decision in the final results of review in the fifth administrative review and in the preliminary results of the instant review, the Department has continued to use the interest rate reported by CDC as a surrogate value for CEMEX's interest rate as facts available because it is the short-term market interest rate of CEMEX's collapsed affiliate.

Comment 19

CDC argues that the expenses reported in the field ADVERTH should be considered direct expenses because they reflect advertising directed at the customer's customer. Furthermore, CDC cites the verification report which notes that ''Company officials indicated that in Mexico, CDC performs significant direct advertising.''

Department's Position

We disagree with CDC. The Department normally considers direct expenses as expenses that result from, and bear a direct relationship to, the particular sale in question. In the instant review, the advertising at issue is associated with sales of subject and non-subject cement and promotes the overall corporate image of CDC. Therefore, consistent with prior Departmental practice, we have treated these expenses as indirect selling expenses in the home market and have not adjusted NV for these expenses except to the extent that these expenses are included in the CEP offset.

Calculation of Export Price and Constructed Export Price

CEP Profit Calculation

Comment 20

Petitioner argues that the Department failed to include home market indirect selling expenses and inventory carrying costs that were incurred on sales to the United States in ''total United States expenses'' for purposes of calculating CEP profit. Petitioner argues that these expenses (DINDIRSU and DINVCARU) should be deducted from the CEP. (See Comment 8). Therefore, any expense properly deducted from CEP should also be included in ''total United States expenses'' for the calculation of CEP profit.

CEMEX and CDC rebut petitioner's argument that DINDIRSU and DINVCARU should be included in total U.S. expenses to calculate CEP profit. They argue that because these expenses are not deducted from CEP, they should not be included in the total U.S. expenses when calculating CEP profit. Furthermore, CDC and CEMEX argue that the Department made an error in creating a formula for calculating the CEP ratio. Specifically, they argue that the Department should not have subtracted Foreign Inventory Carrying Costs (DINVCARU) from U.S. direct selling expenses (DIREXPU) for the CEP ratio calculation because the direct selling expenses did not originally include these expenses.

Department's Position

The Department agrees in part with petitioner. As these expenses are not associated with economic activities in the United States, they have not been deducted from CEP and they should not be included in ''total United States expenses'' for purposes of calculating

CEP profit. CEP profit is calculated based on the total revenue and total actual expenses incurred in making the sale to the unaffiliated purchaser in the U.S. market. Therefore, consistent with recent developments in the Department's methodology, we have included the variable DINDIRSU in the calculation of CEP profit. However, neither inventory carrying costs (DINVCARU), nor U.S. imputed credit (CREDITU) are included in the calculation, as these are imputed expenses and by definition not actual expense. We additionally agree that DINVCARU should not be subtracted from DIREXPU in the CEP ratio calculation and have corrected this in the final results.

Comment 21

CEMEX and CDC further argue that the Department should include the costs associated with further manufactured sales in the CEP ratio calculation. They argue that the Department calculated total U.S. revenue using all U.S. sales, including further manufactured sales. However, in calculating total U.S. expenses, the Department did not include the costs associated with further manufacturing (FURMANU, INDIRS2U and USOTREU). CEMEX additionally argues that the Department should have included sales to affiliated parties that failed the arm's length test in the calculation of CEP profit. CEMEX argues that the SAA directs the Department to include all production and selling expenses incurred for sales of subject merchandise in the U.S. and sales of the foreign like product in the exporting country.

Petitioner counters that the Department's treatment of further manufacturing expenses for purposes of calculating CEP profit was correct. Despite CEMEX's and CDC's argument that the Department should have included transportation expenses and indirect selling expenses related to further manufactured sales in calculating CEP profit, petitioner argues that the Department made a reasonable choice in this matter. Petitioner also argues that the Department need not consider respondent's argument that the Department should have included further manufacturing costs in the CEP ratio calculation. In response to CEMEX's argument that sales failing the arm's length test should be included in the calculation of CEP profit, petitioner notes that the Department rejected CEMEX's argument in the final results of the prior administrative review. *Gray Portland Cement and Clinker From Mexico,* 62 FR 24414, 24414–15 (1997).

Department's Position

We agree with CEMEX and CDC. Consistent with the Department's discussion of CEP profit above, we have included those CEP expenses associated with further manufactured sales in our calculation of CEP profit. The variable FURMANU has been included in the calculation of CEP profit in the variable SELLEXPU. However, we disagree that sales failing the arm's length test should be included in the calculation of CEP profit. *See Gray Portland Cement and Clinker from Mexico,* 62 FR 244414, 244415 (1997).

Financing Cash Deposits

Comment 22

Petitioner argues that the Department erroneously allowed CDC an offset to U.S. indirect selling expenses for the cost of financing antidumping cash deposits. CDC's claimed offset should be denied because (1) while the Department has allowed limited exemptions for cash deposits themselves, ''[f]inancing expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping order,'' and (2) CDC's claim is based on imputed, not actual, financing expenses.

CDC counters that the Department's allowance of an offset for the cost of financing antidumping cash deposits is in accordance with past practice and judicial precedence. CDC cites *AFBs from Japan,* and the December 3, 1997 CIT decision in which the court remanded to the Department a decision to deny the offset (*Timken Co.* v. *United States*). CDC further argues that the Department has in the past allowed the adjustment regardless of how it is financed.

Department's Position

We agree with petitioner that we should deny an adjustment to CDC's U.S. indirect selling expenses for imputed expenses which CDC claims are related to financing of cash deposits. The statute does not contain a precise definition of what constitutes a selling expense. Instead, Congress has given the Department discretion in this area. It is a matter of policy whether we consider there to be any financing expenses associated with cash deposits.

The Department has long maintained, and continues to maintain, that antidumping duties, and cash deposits of antidumping duties, are not expenses that should be deducted from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping. *See, e.g., Antifriction Bearings (Other than Tapered Roller Bearings) & Parts from France, et al.,* 62 FR 54043 (1997). We have also declined to deduct legal fees associated with participation in an antidumping case, reasoning that such expenses are incurred solely as a result of the existence of the antidumping duty order. *Id.* Underlying the logic in both these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of the dumping order. Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping order.

Money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost. Companies may choose to meet obligations for cash deposits in a variety of ways that rely on existing capital resources or that require raising new resources through debt or equity. For example, companies may choose to pay deposits by using cash on hand, obtaining loans, increasing sales revenues, or raising capital through the sale of equity shares. In fact, companies face these choices every day regarding all their expenses and financial obligations. There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds, even if it were.

In a different context, we have made similar observations. For example, we stated that ''debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit'' (*see Ferrosilicon from Brazil,* 61 FR 59407, 59412 (1996) (regarding whether the Department should allocate debt to specific divisions of a corporation)).

So, while under the statute we may allow a limited exemption from deductions from U.S. price for cash deposits themselves and legal fees associated with participation in dumping cases, we do not see a sound basis for extending this exemption to financing expenses allegedly associated with financing cash deposits. By the same token, for the reasons stated above, we would not allow an offset for financing the payment of legal fees associated with participation in a dumping case.

We see no merit to the argument that, since we do not deduct cash deposits from U.S. price, we should also not deduct financing expenses that are

arbitrarily associated with cash deposits. To draw an analogy as to why this logic is flawed, we also do not deduct corporate taxes from U.S. price; however, we would not consider a reduction in selling expenses to reflect financing alleged to be associated with payment of such taxes.

Finally, we also determine that we should not use an imputed amount that would theoretically be associated with financing of cash deposits. There is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. Like taxes, rent, and salaries, cash deposits are simply a financial obligation of doing business. Companies cannot choose not to pay cash deposits if they want to import nor can they dictate the terms, conditions, or timing of such payments. By contrast, we impute credit and inventory carrying costs when companies do not show an actual expense in their records because companies have it within their discretion to provide different payment terms to different customers and to hold different inventory balances for different markets. We impute costs in these circumstances as a means of comparing different conditions of sale in different markets. Thus, our policy on imputed expenses is consistent; under this policy, the imputation of financing costs to actual expenses is inappropriate.

Other Issues

Comment 23

CEMEX argues that the Department failed to use the actual daily exchange rates as published by the Federal Reserve Board in New York, but rather used the rates from the Department's exchange rate model. CEMEX argues that this is inconsistent with the determination in the final results of the fifth review which stated that the exchange rate model is not suitable for use with hyper inflationary economies, and the daily rate should be used unless there is compelling evidence that a fluctuation or sustained movement in the currencies value has occurred.

Petitioner maintains that the Department did not err in its choice of exchange rates. Use of the exchange rate model was correct since the Mexican economy was not hyper-inflationary during the sixth review POR.

Department's Position

We agree with CEMEX that the Department should use actual daily exchange rates. For the final results of review, we have used the daily exchange rates as provided by Dow Jones Business Information Services. The Department's new regulations at section 351.415 state: ''this exchange rate model is not suitable for use with hyper-inflationary currencies. In these cases, we intend to use the daily rate absent compelling evidence that a fluctuation or sustained movement in the currency's value has occurred.'' As stated in our preliminary results of review, the Department found that based on the information on the record of this review, the annual inflation rate in Mexico during the POR exceeded 40 percent. Therefore, consistent with our prior practice, we limited our comparisons to sales in the same month, to avoid any distortions caused by the effects of inflation in the reported prices. However, in our preliminary results of review, the Department inadvertently failed to use the actual daily exchange rates as directed by the Department's exchange rate methodology (*see Change in Policy Regarding Currency Conversions* (61 FR 9434, March 8, 1996)). Thus, the actual daily exchange rate has been used in the final results for all currency conversion during the POR.

Comment 24

Petitioner claims that the Department made a programming error which granted a CEP offset to NV on EP sales.

CDC rebuts this argument by pointing out that although the margin calculation program appears to deduct OFFSETH from EP sale, the program has defined this value as zero for EP sales.

Department's Position

We agree with CDC that the variable OFFSETH was set to zero for EP sales in the preliminary results. Therefore, no CEP offset was granted on EP sales. However, in order to ensure that the final programming is more transparent, the Department has removed this language from the final results of review.

Comment 25

Petitioner claims that the Department made the following errors in the computer program: (1) the Department failed to exclude sales of Type I cement produced by the CEMEX plant at Campana from the calculation of NV by referencing an incorrect plant code in the arm's length test and the margin calculation program; (2) the Department failed to exclude non-arm's length sales to affiliated parties in the margin calculation program due to a programming error; and (3) the Department incorrectly calculated CEMEX's U.S. credit expense by misplacing a decimal point in the calculation.

Department's Position

The Department agrees with these contentions and has included the appropriate corrections in the final results. *See* Final Analysis Memorandum dated March 9, 1998 located in room B099 of the Department's main building. In addition, the **Federal Register** notice for the preliminary results of this review (62 FR 47626) stated that indirect selling expenses incurred in the home market were deducted from gross unit price to determine net prices in the arm's length test. In fact, these were not deducted from the calculation.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period August 1, 1995, through July 31, 1996:

Company	Margin percentage
CEMEX, S.A.	36.30

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR. Individual differences between U.S. price and normal value may vary from the percentages stated above. As a result of this review, we have determined that the importer-specific duty assessments rates are necessary.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of gray portland cement and clinker from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate

will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 61.85 percent, which was the ''all others'' rates in the LTFV investigations. *See Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico,* 55 FR 29244, (1990).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: March 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–6714 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 88–8A016.''

Wood Machinery Manufacturers of America's (''WMMA'') original Certificate was issued on February 3, 1989 (54 FR 6312, February 9, 1989) and previously amended on June 22, 1990 (55 FR 27292, July 2, 1990); August 20, 1991 (56 FR 42596, August 28, 1991); and December 13, 1993 (58 FR 66344, December 20, 1993); August 23, 1994 (59 FR 44408, August 29, 1994); September 20, 1996 (61 FR 50471); and June 20, 1997 (62 FR 34440, June 26, 1997). A summary of the application for an amendment follows.

Summary of the Application:

Applicant: Wood Machinery Manufacturers of America, 1900 Arch Street, Philadelphia, Pennsylvania 19103–1498.

Contact: Harold R. Zassenhaus, Export Director, Telephone: (301) 652–0693.

Application No.: 88–8A016.

Date Deemed Submitted: March 10, 1998.

Proposed Amendment: WMMA seeks to amend its Certificate to:

1. Add the following company as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Terrco Inc., Waterloo, South Dakota; and

2. Delete L.R.H. Enterprises, Inc., Van Nuys, California; and Wood-Mizer Products, Indianapolis, Indiana as ''Members'' of the Certificate.

Dated: March 11, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 98–6657 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031098B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of its Special Crustacean and Finfish Stock Assessment Panels (SAP).

DATES: A meeting of the Crustacean SAP will be held beginning at 8:00 a.m. on Monday, March 30, and will conclude by 11:00 a.m. on Wednesday, April 1, 1998. A meeting of the Finfish SAP will be held beginning at 1:00 p.m. on Monday, April 6, 1998, and will conclude by 5:00 p.m. on Thursday, April 9, 1998.

ADDRESSES: The Crustacean SAP meeting will be held at the Wyndham Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, LA. The Finfish SAP meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SAPs will be convened to develop alternatives for the overfishing criteria as required by the Sustainable Fisheries Act. Separate criteria will be considered for each of the stocks or stock-complexes managed under the Council's existing Fishery Management Plans for shrimp, stone crab, and spiny lobster (Crustacean SAP), and for migratory coastal pelagics, reef fish, and red drum (Finfish SAP).

The SAPs will develop proxies for expressing maximum sustainable yield and optimum yield in terms of spawning potential ratio, spawning stock biomass per recruit, or other credible analyses as appropriate for the stocks or stock complexes of each FMP. The SAPs will also develop alternatives for rebuilding periods for stocks that have been classified as overfished by NMFS. The SAPs may suggest modifications to the framework procedures for specifying acceptable biological catch (ABC) and total allowable catch (TAC) where appropriate. Each SAP will develop a report to the Council setting forth their recommendations.

Although other issues not contained in this agenda may come before these SAPs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 23, 1998.

Dated: March 10, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–6600 Filed 3–13–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Control of Military Excess/Surplus Materiel

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Control of Military Excess/Surplus will meet in closed session on April 7, 1998 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine existing regulatory and statutory guidance in support of controls, DoD Demilitarization policy, and private sector possession of DoD surplus materiel. Investigate the framework which defines MLI/SLI and SME and evaluate the capabilities and shortfalls for identifying and controlling them. Investigate concepts for analysis and execution of the control of DoD surplus materiel in a post cold-war environment focusing on trade-off analysis of different levels of control.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: March 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–6747 Filed 3–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Coalition Warfare

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Coalition Warfare will meet in closed session on April 22–23, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address how best to make future U.S. military capabilities, embodied by JV2010, coalition compatible.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c) (1) (1994), and that accordingly these meetings will be closed to the public.

Dated: March 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–6748 Filed 3–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Satellite Reconnaissance

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Open Systems will meet in closed session on March 17–18, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine the benefits of, criteria for, and obstacles to the

application of an open systems approach to weapon systems, and make recommendations on revisions to DoD policy, practice, or investment strategies that are required to obtain maximum benefit from adopting open systems. The Task Force will examine application to new defense programs, to those that have already made substantial investments in a design, and to those that are already fielded, across the spectrum of weapon systems, not just those heavily dependent on advanced computers and electronics. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b (1) (1994), and that accordingly this meeting will be closed to the public.

Dated: March 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–6749 Filed 3–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary proposes to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. A routine use is being added to an existing system of records identified as DHA 05, entitled Persian Gulf Veterans Illnesses Files.

DATES: This proposed action will be effective without further notice on April 27, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 5, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 11, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files *(May 1, 1997, 62 FR 23768).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Delete the fourth paragraph and replace with 'To the Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents for purposes of carrying out those functions as set forth in Executive Order 13075, or such further Order as directed by the President.'

* * * * *

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files.

SYSTEM LOCATION:

Department of Defense Persian Gulf Veterans Illnesses Investigative Team, 5205 Leesburg Pike, Falls Church, VA 22041–3881; and Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Washington, DC 20301–1200.

Comprehensive Clinical Evaluation Program, 5205 Leesburg Pike, Skyline 1, Suite 1135, Falls Church, VA 22041–3802.

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, ATTN: MCHB-DE-HR, Aberdeen Proving Ground, MD 21010–5422.

U.S. Army Joint Services Support Group, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.

Naval Health Research Center, Division of Clinical Epidemiology, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who served in Operation Desert Storm and/or Operation Desert Shield who feel they may have been exposed to biological, chemical, disease, or environmental agents. Those individuals may contact the Persian Gulf Veterans Illnesses Investigative Team by dialing 1–800–472–6719 to report experiences of unusual illness or health conditions following service during the Persian Gulf conflict.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in Persian Gulf military operations, perceived exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical, disease, or environmental agents.

The system contains information from unit and historical records and information provided to the Department of Defense by individuals with first-hand knowledge of reports of possible biological, chemical, disease, or environmental incidents.

Information from health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf is also included. Records include those documents, files, and other matter in the medical, operational, and intelligence communities that could relate to possible causes of Persian Gulf War Veterans illnesses.

Records of diagnostic and treatment methods pursued on subjects following reports of possible incidental exposure are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131; 10 U.S.C. 136; and E.O. 9397 (SSN).

PURPOSE(S):

Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, disease, or environmental agents incident to service in the Persian Gulf War and to conduct scientific or related studies or medical follow-up programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs and the Social Security Administration for appropriate consideration of individual claims for benefits for which that agency is responsible.

To the Department of Veterans Affairs for use, in conjunction with the Persian Gulf Health Registry, to permit investigative, scientific, medical and other analysis regarding possible causes, symptoms, diagnoses, treatment, and other characteristics pertinent to Gulf War Illnesses.

To the Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents for purposes of carrying out those functions as set forth in Executive Order 13075, or such further Order as directed by the President.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders; electronic records are stored on magnetic media; microfilm/microfiche are maintained in appropriate storage containers.

RETRIEVABILITY:

Records are retrieved by case number, name, Social Security Number or service number.

SAFEGUARDS:

Access to areas where records maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours.

RETENTION AND DISPOSAL:

Disposition pending (until NARA disposition is approved, treat as permanent). The files will be maintained in the Office of the Special Assistant for Gulf War Illnesses. Upon the disestablishment of the Office of the Special Assistant for Gulf War Illnesses, custody of the records will be transferred to the Office of the Under Secretary of Defense (Personnel and Readiness).

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses, 5113 Leesburg Pike, Falls Church, VA 22041–3881.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses, 5113 Leesburg Pike, Falls Church, VA 22041–3881.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Office of the Special Assistant to the Deputy Secretary of Defense for Gulf War Illnesses, 5113 Leesburg Pike, Falls Church, VA 22041–3881.

CONTESTING RECORDS PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is from the individuals themselves, witnesses to a possible agent event, health care providers who have evaluated patients with illnesses possibly related to service in the Persian Gulf, as well as extracts from historical records to include: personnel files and lists, unit histories, medical records, and related sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–6745 Filed 3–13–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Pub. L. 96–517, the Department of the Air Force announces its intention to grant Air Fletcher, corporation application pending in California, an exclusive license under: United States Provisional Application Serial No. TBD filed in the name of Fletcher A Burns for a ''Structural Mount For Head Up Display.''

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Randy Heald, Patent Attorney, Secretary of the Air Force, Office of the General Counsel, SAF/GCQ, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, (703) 696–9037.

Barbara Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–6597 Filed 3–13–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 2 and 3 April 1998 (800 am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advised the Director, DIA, on related scientific and technical matters.

Dated: March 13, 1998.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–6581 Filed 3–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 11, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.
Title: **Federal Register** Notice Inviting Applications for the Participation in the Quality Assurance (QA) Program.
Frequency: One time.
Affected Public: Not-for-profit institutions; Federal Government.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 125.
Burden Hours: 400.
Abstract: Financial Aid Administrators in a letter of application to the Department of Education will describe their institutions commitment to quality assurance and to the reduction of error in the processing and awarding of student aid dollars.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application for Ability to Benefit Testing Approval.
Frequency: Annually.
Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 150,090.
Burden Hours: 77,040.
Abstract: The Secretary will publish a list of approved tests which can be used by postsecondary educational institutions to establish the ability to benefit for a student who does not have a high school diploma or its equivalent.

[FR Doc. 98–6695 Filed 3–13–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 15, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of

the requests are available from Patrick J. Sherrill at the address specified above.

Dated: March 11, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Grants Under the Ronald E. McNair Postbaccalaureate Achievement Program.
Frequency: Competitive year.
Affected Public: Not-for-profit institutions.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 300.
Burden Hours: 6,000.
Abstract: Institutions of Higher Education are eligible applicants under the McNair Program. Data collected in the application provides program and budget information needed to evaluate the quality of the projects proposed for funding consideration.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–6696 Filed 3–13–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Achievement Levels Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: April 29, 1998.

TIME: 9:00 a.m.–5:00 p.m.

LOCATION: Doubletree Hotel, Denver Southeast, 13696 East Iliff Place at I–22, Aurora, Colorado.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994), (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under P.L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing Voluntary National Tests pursuant to contract number RJ97153001.

On April 29, in open session, 9:00 a.m. to 5:00 p.m., the Achievement Levels Committee will meet to consider the achievement levels descriptions for the purpose of formulating a recommendation for Board action at the meeting scheduled for May. The Committee will also discuss the achievement level issues associated with the implementation of the Voluntary National Tests.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, N.W., Washington, D.C., from 8:30 A.M. to 5:00 P.M.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–6601 Filed 3–13–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket Nos. EA–100–B and EA–105–A–MX]

Applications to Export Electric Energy; San Diego Gas & Electric Company and NorAm Energy Services, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: San Diego Gas & Electric Company (SDG&E), an investor owned utility, has submitted an application to renew its authority to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. NorAm Energy Services, Inc. (NorAm), a power marketer, has submitted an application to renew its authority to export electric energy to Mexico.

DATES: Comments, protests or requests to intervene must be submitted on or before April 15, 1998.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On February 9, 1996, in Order EA–100–A, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized San Diego Gas & Electric Company (SDG&E) to transmit electric energy from the United States to British Columbia Hydro and Power Authority (BC Hydro) on a non-firm basis at a maximum rate of transmission of 400 megawatts (MW). That order expires on April 19, 1998. On March 3, 1998, SDG&E filed an application for renewal of this export authority. The electric energy SDG&E proposes to export would be delivered to Canada over the international transmission facilities owned by the Bonneville Power Administration.

On May 30, 1996, in FE Order No. EA–105–MX, FE authorized NorAm to export electric energy to Mexico, as a power marketer, using the facilities of SDG&E, El Paso Electric Company, Central Power and Light Company, and Comission Federal de Electridad, the national electric utility of Mexico. On March 6, 1998, NorAm submitted an application to FE to renew that authorization which will expire on May 30, 1998. In seeking renewal of its export authority, NorAm requested that the list of authorized border crossings be amended to include the following international transmission facilities owned by Arizona Public Service Company:

Location	Voltage (kV)	Presidential permit No.
San Luis, AZ (San Luis-Canal Line).	34.5	PP–108

Location	Voltage (kV)	Presidential permit No.
San Luis, AZ (San Luis-Industrial Park Line).	34.5	PP–106

Procedural Matters

Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of such petitions, comments and protests should be filed with the DOE on or before the date listed above.

Comments on SDG&E's request to export to Canada should be clearly marked with Docket EA–100–B. Additional copies are to be filed directly with Betty Cash Hunter, Power Contracts Administration, San Diego Gas & Electric Company, P.O. Box 1831, San Diego, CA 92112 *AND* James F. Walsh, San Diego Gas & Electric Company, P.O. Box 1831, San Diego, CA 92112.

Comments on NorAm's request to export to Mexico should be clearly marked with Docket EA–105–A–MX. Additional copies are to be filed directly with Kevin P. Erwin, General Attorney, NorAm Energy Services, inc., P.O. Box 4455, 1111 Louisiana, 7th Floor, Houston, TX 77210–4455.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on March 10, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal and Power Im/Ex, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 98–6676 Filed 3–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–29–000]

Florida Power Corporation; Notice of Filing

March 4, 1998.

Take notice that on February 23, 1998, Florida Power Corporation (Florida Power), filed an Application under Section 203 of the jurisdictional transmission facilities from the City of Ocala, through the Ocala Electric Utility (Ocala).

Florida Power explains that it has agreed to purchase from Ocala portions of the Dearmin Substation together with associated transmission facilities and that the acquisition will result in savings to customers. Florida Power seeks authorization to acquire the transmission facilities by April 1, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 FR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 25, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6716 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–147–001]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 10, 1998.

Take notice that on March 5, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective April 1, 1998:

Eleventh Revised Sheet Nos. 5 and 6

NGT states that the revised tariff sheets are filed in compliance with the Stipulation and Agreement (Settlement) approved by Commission order in Docket No. RP91–149 on March 31, 1992. Arkla Energy Resources, a division of Arkla, Inc. 58 FERC ¶ 61,359 (1991). NGT states that its February 27, 1998 filing is its sixth annual filing pursuant to the Settlement, and it proposes to continue the currently effective rate for the CSC Charge as provided in the settlement, at $0.03 per MMBtu.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulation. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6607 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–85–001]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 10, 1998.

Take notice that on March 5, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective April 1, 1998:

Substitute First Revised Sheet No. 307A

NGT states that the purpose of this filing is to comply with the Commission's order in this docket issued February 27, 1998.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing on are file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6608 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–28–002]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

March 10, 1998.

Take notice that on March 4, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing additional workpapers to support its Fuel Reimbursement Filing. Panhandle asserts that the purpose of this filing is to comply with the Commission's order issued February 17, 1998 in Docket No. TM98–2–28–001, 82 FERC ¶ 61,164 (1998).

Panhandle further states that copies of this filing are being served on all parties to this proceeding and applicable state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulation. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6609 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–348–007]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

March 10, 1998.

Take notice that on March 5, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the Pro Forma tariff sheets listed on Appendix A attached to the filing.

Panhandle states that the purpose of this filing is to comply with the Commission's order issued February 18, 1998 in Docket Nos. RP96–348–004 and RP96–348–005, 82 FERC ¶ 61,163 (1998).

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David R. Boergers,

Acting Secretary.

[FR Doc. 98–6610 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–250–000]

Puget Sound Energy, Inc.; Notice of Application

March 5, 1998.

Take notice that on February 25, 1998, Puget Sound Energy, Inc. (Puget Sound), 411—108th Avenue, NE., Bellevue, WA 98004–5515, as Project Operator of the Jackson Prairie Storage Project, filed an application pursuant to Sections 7 (b) and (c) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting authorization for operational changes and construction of new facilities necessary to increase the maximum working gas capacity of the Jackson Prairie Storage Project in Lewis County, Washington, from 15.1 to 18.3 Bcf, to increase the maximum firm withdrawal deliverability from 550 to 850 MMcf per day and to increase the best-efforts deliverability from 71.8 to 150 MMcf per day in time for the 1999/2000 heating season. Puget Sound also requests any amended certificate authorization and new blanket certificate authorization necessary to implement various operational and administrative changes in conformance with an updated and amended Gas Storage Project Agreement, as well as permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

To increase the capacity and deliverability of the Storage Project, Puget Sound proposes to:

- operate the Zone 9 Reservoir, including all existing wells and appurtenant facilities previously installed for testing of that reservoir, to provide up to 5.0 Bcf of storage gas capacity for cushion and working gas;
- decrease the overall cushion gas of the Storage Project from 19.2 to 19.0 Bcf, by increasing the certificated Zone 9 Reservoir cushion gas capacity from 2.0 to 4.0 Bcf and converting 2.2 Bcf of the existing 17.2 Bcf of Zone 2 Reservoir cushion gas capacity to working gas capacity;
- transfer up to 1.0 Bcf of working gas (instead of the currently authorized transfer of up to 0.5 Bcf of cushion gas) between the Zone 9 and Zone 2 Reservoirs as necessary to maximize withdrawal deliverability from the Storage Project;
- modify the current firm withdrawal deliverability formula to reflect that the maximum deliverability of the Storage Project will decline by two percent (instead of the current 1.3 percent) for each one percent that the working gas inventory falls below 60 percent of the maximum working gas capacity of the Storage Project, until reaching a minimum firm withdrawal rate of 85 MMcf per day;
- construct up to eight additional withdrawal wells with appurtenant pipeline facilities in the Zone 2 Reservoir;
- install a new Solar Taurus compressor with 6,960 horsepower (hp) adjacent to existing Storage Project facilities;
- construct 1.8 miles of 24-inch pipeline to loop the existing

transmission lines between the Storage Project compression facilities and the meter station at the Storage Project delivery point to Northwest Pipeline Corporation's (Northwest) transmission system;

- upgrade the existing meter station at the Storage Project delivery point by replacing four turbine meter modules with high-capacity meter modules and replacing the existing filter separator with new filter-separation equipment and replacing the existing 12-inch tap valve on Northwest's 26-inch mainline with a 24-inch tap valve; and
- replace and upgrade the existing dehydration units and make miscellaneous station piping modifications to integrate existing and proposed compression and dehydration facilities.

Puget Sound also requests abandonment authorization for the facilities being replaced by upgraded facilities. These facilities are: the meter modules, filter-separator and tap valve at the Jackson Prairie Meter Station and the dehydration contactors, regeneration skids and appurtenances at the Jackson Prairie compressor/dehydrator complex.

Puget Sound states that the estimated total cost for the proposed expansion of the Storage Project is approximately $30.2 million, including the cost of existing facilities and cushion gas previously authorized and utilized for testing of the Zone 9 Reservoir. It is stated that the costs will be shared equally among the three owners in the Storage Project—Puget Sound, Northwest, and the Washington Water Power Company (Water Power).

Puget Sound states that each of the three owners is entitled to one-third of the proposed expanded capabilities of the Storage Project. It is stated that the rights of each owner to utilize the Storage Project are specified in an updated Gas Storage Project Agreement, as amended. Further, it is proposed that Puget Sound and Water Power have the right to utilize their respective shares of the Storage Project directly, instead of indirectly via storage service agreements with Northwest as is now the case. Accordingly, in a companion application, Northwest will seek approval to abandon certain existing storage services it provides for Puget Sound and Water Power.

It is stated that Puget Sound and Water Power each intend to utilize its share of the increased Storage Project capacity and deliverability in its local distribution operations to help satisfy growing service requirements in its market area. Puget Sound states that Northwest, in its companion application, intends to utilize its share of the increased storage capacity and deliverability for its system balancing requirements and will commensurately reduce its existing contract storage from Questar Pipeline Corporation's Basin Storage Project.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before March 26, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Puget Sound to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6717 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–153–004]

Southern Natural Gas Company; Notice of Clarification

March 6, 1998.

On March 2, 19998, the Commission issued a notice denying motions by GASP/Citizens Opposing North Alabama Pipeline Project (GAS/CONAPP), Midcoast Interstate Transmission, Inc., and Cullman-Jefferson Counties Gas District for an extension of time for filing protests and interventions in the above-docketed proceeding.

The March 2 notice stated that an extension was unnecessary in this proceeding because all intervenors in the original proceeding (Docket No. CP96–153–000, et al.) were considered to be intervenors in the present proceeding without further action on their part and that persons who subsequently determined they had an interest in this proceeding could file motions to intervene out-of-time.

The notice further stated that anyone wishing to file comments or protests on supplemental filings to be made by Southern Natural Gas Company (Southern) could do so in a timely manner. On February 27, 1998 and March 5, 1998, Southern supplemented its application with additional environmental information. The Commission herein clarifies the March 2, 1998 notice that anyone who wishes to file comments or protests based on these supplemental filings by Southern should do so on or before March 20, 1998. As indicated in the notice of March 2, 1998, comments may also be filed during the comment period after the issuance the Notice of Intent to Prepare an Environmental Document.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6718 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–391–021 and RP93–162–006]

Transcontinental Gas Pipe Line Corporation; Notice of Technical Conference

March 10, 1998.

The filing in the above captioned proceeding raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Thursday, March 19, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6611 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–17–000, et al.]

J. Makowski Company, Inc., TransCanada OSP Holdings Ltd., et al.; Electric Rate and Corporate Regulation Filings

March 6, 1998.

Take notice that the following filings have been made with the Commission:

1. J. Makowski Company, Inc. TransCanada OSP Holdings Ltd.

[Docket No. EC98–17–000]

Take notice that on March 3, 1998, J. Makowski Company, Inc. and TransCanada OSP Holdings Ltd, tendered for filing an amendment in the above-referenced docket.

Comment date: March 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. USGen New England, Inc., TransCanada OSP Holdings Ltd., TransCanada Power Marketing Ltd.

[Docket No. EC98–18–000]

Take notice that on March 3, 1998, USGen New England, Inc., TransCanada OSP Holdings Ltd, and TransCanada Power Marketing Ltd. tendered for filing an amendment in the above-referenced docket.

Comment date: March 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Ogden Energy China (Beta) Ltd.

[Docket No. EG98–13–000]

Take notice that, on March 3, 1998, Ogden Energy China (Beta) Ltd. (OECA) filed with the Federal Energy Regulatory Commission (''Commission'') an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Ogden Energy China (Alpha) Ltd.

[Docket No. EG98–16–000]

Take notice that, on March 3, 1998, Ogden Energy China (Alpha) Ltd. (OECA) filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Ogden Energy China (Gamma) Ltd.

[Docket No. EG98–18–000]

Take notice that, on March 3, 1998, Ogden Energy China (Gamma) Ltd. (OECG) filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: March 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Citizens Power LLC

[Docket No. ER94–1685–018]

Take notice that on February 24, 1998, Citizens Power LLC (Citizens), filed a Notice of Change in Status notifying the Federal Energy Regulatory Commission that it had complied with the requirement that it provide a notice of change in status in accordance with the Commission's Feb. 2, 1995 order in Docket No. ER94–1685. Pursuant to that order, Citizens elected to file a revised market analysis every three years in lieu of reporting changes in status on an ongoing basis.

Because of significant intervening changes in status requiring authorization pursuant to Section 203 of the Federal Power Act (FPA), Citizens provided the requested notice as part of the Section 203 application. See Citizens Lehman Power L.L.C., Application for Order Authorizing Transfer of Ownership Interests and Notice of Change in Status, Docket Nos. EC97–17, ER94–1685, ER95–393, ER95–892, and ER96–2652, dated March 11, 1997; FERC Letter Order Docket Nos. ER94–1685–012, ER95–892–011, ER96–2652–003, and ER95–393–012 dated May 13, 1997.

Citizens filed a similar notice in connection with the proposed transfer of control to Lehman Brothers Holdings Inc., also pursuant to Section 203 of the FPA. See Citizens Power LLC and Peabody Investments, Inc., Application for Order Authorizing Sale and Transfers of Control Over Power Marketing Utilities, Notice of Change in Status and Request for Expedited Consideration, Docket Nos. EC97–44, ER94–1685, ER95–393, ER95-892, and ER96–2652, dated July 10, 1997.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power Corporation

[Docket No. ER98–374–000]

Take notice that on February 23, 1998, Florida Power Corporation tendered for filing an amendment in the above-referenced docket.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER98–1996–000]

Take notice that on February 25, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Cinergy Capital & Trading, Inc.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER98–1997–000]

Take notice that on February 25, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), submitted for filing the Third Amendment to the Power Agreement (PPA) between Entergy Arkansas and the City of North Little Rock, Arkansas, dated February 16, 1998. Entergy Services states that the amendment

modifies the rates and adds terms and conditions governing the service provided under the PPA.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. UtiliCorp United Inc.

[Docket No. ER98–1998–000]

Take notice that on February 25, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a service agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Energy Transfer Group, L.L.C. The service agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Energy Transfer Group, L.L.C. pursuant to the tariff, and for the sale of capacity and energy by Energy Transfer Group, L.L.C. to WestPlains Energy-Colorado pursuant to Energy Transfer Group, L.L.C.''s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Energy Transfer Group, L.L.C.

UtiliCorp requests waiver of the Commission's regulations to permit the service agreement to become effective in accordance with its terms.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. UtiliCorp United Inc.

[Docket No. ER98–1999–000]

Take notice that on February 25, 1998, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a service agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Energy Transfer Group, L.L.C. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Energy Transfer Group, L.L.C. pursuant to the tariff, and for the sale of capacity and energy by Energy Transfer Group, L.L.C. to Missouri Public Service pursuant to Energy Transfer Group, L.L.C.'s Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Energy Transfer Group, L.L.C.

UtiliCorp requests waiver of the Commission's regulations to permit the service agreement to become effective in accordance with its terms.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Houston Lighting & Power Company

[Docket No. ER98–2000–000]

Take notice that on February 25, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with American Electric Power Service Corp. (AEP Service) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for transmission service to, from and over certain HVDC interconnections. HL&P has requested an effective date of February 25, 1998.

Copies of the filing were served on AEP Service and the Public Utility Commission of Texas.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER98–2001–000]

Take notice that on February 25, 1998, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35.13 of the Commission's regulations, a rate schedule change for sales of electric energy to Burlington Electric Department (BED).

NUSCO states that a copy of this filing has been mailed to BED.

NUSCO requests that the rate schedule change become effective on May 1, 1998.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER98–2002–000]

Take notice that on February 25, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a service agreement for non-firm point-to-point transmission service with Eastern Power Distribution, Inc. under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered service agreement, Virginia Power will provide non-firm point-to-point service to the transmission customers under the rates, terms and conditions of the open access transmission tariff.

Copies of the filing were served upon Eastern Power Distribution, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER98–2003–000]

Take notice that on February 25, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a aervice agreement for firm point-to-point transmission service with Eastern Power Distribution, Inc. under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered service agreement, Virginia Power will provide firm point-to-point service to the transmission customers under the rates, terms and conditions of the open access transmission tariff.

Copies of the filing were served upon Eastern Power Distribution, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Northern Indiana Public Service Company

[Docket No. ER98–2004–000]

Take notice that on February 25, 1998, Northern Indiana Public Service Company (Northern Indiana), tendered for filing an executed sales service agreement and an executed standard transmission service agreement for non-firm point-to-point transmission service between Northern Indiana and Griffin Energy Marketing, L.L.C. (Griffin).

Under the Transmission Service Agreement, Northern Indiana will provide point-to-point transmission service to Griffin pursuant to the open-access transmission tariff filed by Northern Indiana in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the sales service agreement, Northern Indiana will provide general purpose energy and negotiated capacity to Griffin pursuant to the wholesale sales tariff filed by Northern Indiana in Docket No. ER95–1222–000, as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana has requested that the service agreements be allowed to become effective as of March 15, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Southern Company Services, Inc.

[Docket No. ER98–2005–000]

Take notice that on February 25, 1998, Southern Company Services, Inc. (SCS), acting as agent for Alabama Power Company (APCo), tendered for filing a Delivery Point Specification Sheet dated as of October 1, 1998, reflecting the installation of a new delivery point and accelerated transmission facilities for service to the City of Tuskegee, Alabama. The new delivery point will be served under the terms and conditions of the Amended and Restated Agreement for Partial Requirements Service and Complementary Services between APCo and the Alabama Municipal Electric Authority dated June 16, 1994. The customer will bear full cost responsibility for incremental facilities.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Sierra Pacific Power Company

[Docket No. ER98–2006–000]

Take notice that on February 25, 1998, Sierra Pacific Power Company (Sierra), tendered for filing service agreements (Service Agreements) with Power Fuels, Inc. for both short-term firm and non-firm point-to-point transmission service under Sierra's open access transmission tariff (Tariff):

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 148A (Attachment E) to the Tariff, which is an updated list of all current subscribers. Sierra requests waiver of the Commission's notice requirements to permit an effective date of February 27, 1998 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Long Island Lighting Company

[Docket No. ER98–2007–000]

Take notice that on February 25, 1998, Long Island Lighting Company (LILCO), filed a service agreement for non-firm point-to-point transmission service between LILCO and CNG Power Services Corporation (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of LILCO's open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of February 19, 1998, for the service agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Nevada Power Company

[Docket No. ER98–2008–000]

Take notice that on February 25, 1998, Nevada Power Company (Nevada Power), tendered for filing (1) a letter agreement between Nevada Power and Valley Electric Association, Inc. (Valley Electric) and (2) a letter agreement between Nevada Power and Lincoln County Power District No. 1 (Lincoln Power), collectively referred to as the (Letter Agreements). The Letter Agreements are being filed to effectuate an order of the Public Utilities Commission of Nevada (PUCN) approving a Stipulation, Settlement Agreement and Release (Settlement Agreement) entered into by Nevada Power, Valley Electric and Lincoln Power regarding service to the Nevada Test Site (Test Site), a retail electric customer geographically located in the service areas of those three electric suppliers. The Letter Agreements are being filed in lieu of the transmission service agreements required by Nevada Power's Open Access Tariff. Nevada Power requests that the Commission waive the 60-day notice and filing requirement and permit the Letter Agreements to become effective as of October 1, 1997.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Indianapolis Power & Light Company

[Docket No. ER98–2009–000]

Take notice that on February 25, 1998, Indianapolis Power & Light Company, tendered for filing an interchange agreement dated February 23, 1998, between IPL and Koch Energy Trading, Inc.

Copies of this filing were served on Koch Energy Trading, Inc., the Indiana Utility Regulatory Commission and the Texas Public Utility Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER98–2010–000]

Take notice that on February 26, 1998, PECO Energy Company (PECO), filed a service agreement dated November 13, 1997 with Columbia Power Marketing Corporation (CPM) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The service agreement adds CPM as a customer under the Tariff.

PECO requests an effective date of February 1, 1998, for the service agreement.

PECO states that copies of this filing have been supplied to CPM and to the Pennsylvania Public Utility Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. PECO Energy Company

[Docket No. ER98–2011–000]

Take notice that on February 25, 1998, pursuant to the Order Conditionally Accepting Open Access Transmission Tariff and Power Pool Agreements, Conditionally Authorizing Establishment of an Independent System Operator and Disposition of Control Over Jurisdictional Facilities, and Denying Rehearings, issued by the Federal Energy Regulatory Commission on November 25, 1997, PECO Energy Company (PECO) submitted its compliance filing. PECO states its belief that it has no existing wholesale power sales agreements that are inconsistent with the PJM Order and thus need to be unbundled.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Northeast Utilities Service Company

[Docket No. ER98–2012–000]

Take notice that on February 26, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a service agreement with the Princeton Municipal Light Department (Princeton) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Princeton.

NUSCO requests that the Service Agreement become effective March 1, 1998.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Union Electric Company

[Docket No. ER98–2013–000]

Take notice that on February 26, 1998, Union Electric Company (UE), tendered for filing Service Agreements for Market Based Rate Power Sales between UE and

Central Louisiana Electric Co., Commonwealth Edison Company, Illinois Power Company, Upper Peninsula Power Company and Wisconsin Public Service Corp. UE asserts that the purpose of the Agreements is to permit UE to make sales of capacity and energy at market based rates to the parties pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Deseret Generation & Transmission Co-operative

[Docket No. ER98–2014–000]

Take notice that on February 26, 1998, Deseret Generation & Transmission Co-operative, tendered for filing an executed umbrella non-firm point-to-point service agreement with Rocky Mountain Generation Cooperative, Inc. under its open access transmission tariff. Deseret requests a waiver of the Commission's notice requirements for an effective date of February 25, 1998. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. Rocky Mountain Generation Cooperative, Inc. has been provided a copy of this filing.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. New England Power Company

[Docket No. ER98–2015–000]

Take notice that on February 26, 1998, New England Power Company, filed a service agreement and certificates of concurrence with Cinergy Capital & Trading, Inc., under NEP's FERC Electric Tariff, Original Volumes No. 5 and 6.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. MidAmerican Energy Company

[Docket No. ER98–2016–000]

Take notice that on February 26, 1998, MidAmerican Energy Company (MidAmerican) submitted for filing a Firm Transmission Service Agreement with The Electric and Water Utility Board of the City of Eldridge, Iowa (Eldridge), dated February 1, 1998, and entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of February 1, 1998, for the agreement and, accordingly, seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Eldridge, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: March 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Consumers Energy Company

[Docket No. ES97–7–003]

Take notice that on March 3, 1998, Consumers Energy Company (Consumers) filed an amendment to its application in this proceeding. The amendment seeks authorization to issue up to an additional $600 million in long-term securities, including up to $300 million of first mortgage bonds as security for other securities being issued by Consumers. Consumers also requests waiver of the Commission's competitive bid/negotiated placement requirements for certain securities to be issued pursuant to the authorization requested in this docket.

Comment date: March 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6602 Filed 3–13–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2033–000, et al.]

New England Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 9, 1998.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER98–2033–000]

Take notice that on February 24, 1998, New England Power Company (NEP), tendered a supplement to an amendment to Massachusetts Electric Company's service agreement under NEP's FERC Electric Tariff, Original Volume No. 1. NEP requests an effective date of March 1, 1998 for the supplement.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. ER98–2077–000]

Take notice that on March 4, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Ameren Services under its Market-Based Rate Tariff.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Valley Electric Corporation

[Docket No. ER98–2078–000]

Take notice that on March 4, 1998, Ohio Valley Electric Corporation (OVEC) tendered for filing Modification No. 10, dated as of January 1, 1998, to the Inter-Company Power Agreement dated July 10, 1953 among OVEC and certain other utility companies named within that agreement as ''Sponsoring Companies'' (Inter-Company Power Agreement). The Inter-Company Power Agreement bears the designation ''Ohio Valley Electric Corporation Rate Schedule FPC No. 1–B.''

This filing would amend the Inter-Company Power Agreement to permit OVEC, with the assistance of the Sponsoring Companies, to comply with East Central Area Reliability Council Document No. 2, pursuant to which OVEC is required to have available spinning reserve equal to a percentage of its internal load as well as supplemental reserve equal to a percentage of its internal load, which supplemental reserve is to be provided by OVEC's Sponsoring Companies.

OVEC has requested that the changes to the Inter-Company Power Agreement become effective as of May 8, 1998.

Copies of this filing were served upon Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power

Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, the Utility Regulatory Commission of Indiana, the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, Tennessee Regulatory Authority, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER98–2079–000]

Take notice that on March 4, 1998, Illinois Power Company(Illinois Power) tendered for filing a notification indicating its consent to the assignment by Southern Energy Trading and Marketing, Inc. (SETM) of its rights and obligations under the transmission service and power sales agreements between Illinois Power and SETM to Southern Company Energy Marketing, L.P. (SCEM).

Illinois Power has requested an effective date of January 1, 1998 for the assignment of these agreements from SETM to SCEM.

Copies of the filing were served upon SETM, as well as the Illinois Commerce Commission.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER98–2080–000]

Take notice that on March 4, 1998, Boston Edison Company (Boston Edison) tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Cincinnati Gas and Electric Company, PSI Energy, Inc., and Cinergy Services, Inc. (Buyer). Boston Edison requests that the Service Agreement become effective as of February 1, 1998.

Edison states that it has served a copy of this filing on Buyer and the Massachusetts Department of Public Utilities.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER98–2081–000]

Take notice that on March 4, 1998, Cinergy Services, Inc. (Cienergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (Tariff) entered into between Cinergy and Southern Illinois Power Cooperative (SIPC).

Cinergy and SIPC are requesting an effective date of February 15, 1998.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER98–2082–000]

Take notice that on March 4, 1998, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a Transmission Service Agreement between itself and Wisconsin Public Power Inc. (WPPI). The Transmission Service Agreement allows WPPI to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on WPPI, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER98–2083–000]

Take notice that on March 4, 1998, Wisconsin Electric Power Company (''Wisconsin Electric'') tendered for filing firm and non-firm Transmission Service Agreements between itself and Ameren Services Company (Ameren), as designated agent for Union Electric Company and Central Illinois Public Service Company. The Transmission Service Agreement allows Ameren's operating companies to receive transmission services under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on Ameren, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER98–2084–000]

Take notice that on March 4, 1998, Boston Edison Company (Boston Edison) tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Cinergy Capital and Trading, Inc. (Cinergy). Boston Edison requests that the Service Agreement become effective as of February 1, 1998.

Edison states that it has served a copy of this filing on Cinergy and the Massachusetts Department of Public Utilities.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–2085–000]

Take notice that on March 4, 1998, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff entered into between Cinergy and Southern Illinois Power Cooperative (SIPC).

Cinergy and SIPC are requesting an effective date of February 15, 1998.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER98–2086–000]

Take notice that on March 4, 1998, Cinergy Services, Inc. (Cinergy) tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), an Interchange Agreement dated February 1, 1998 between Cinergy, CG&E, PSI and Strategic Energy Limited (SEL).

The interchange agreement provides for the following service between Cinergy and SEL:

1. Exhibit A—Power Sales by SEL
2. Exhibit B—Power Sales by Cinergy

Cinergy and SEL have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on SEL, the Pennsylvania Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Pacific Gas and Electric Company

[Docket No. ER98–2087–000]

Take notice that on March 4, 1998, Pacific Gas and Electric Company

(PG&E) tendered for filing a revised Appendix III to its Transmission Owner Tariff (TO Tariff) and rate design testimony associated with the revised Appendix. PG&E requests that its filing be made effective on March 31, 1998, the day that the California Independent System Operator (ISO) is scheduled to enter into operation.

Copies of this filing have been served upon the California Public Utilities Commission and all other parties listed in the official service list complied by the Commission in Docket No. ER97–2358–000.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Joseph P. Kearney, P. Chrisman Iribe, John R. Cooper, Gerald S. Endler and David N. Bassett

[Docket Nos. ID–3130–000, 3131–000, 3132–000, 3133–000 and ID–3134–000]

Take notice that on February 24, 1998, Cataula Generating Company, L.P., on behalf of certain of its officers and directors, tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

President and CEO—Millennium Power Partners, L.P.
Senior VP Logan—Generating Company, L.P.
Executive VP and Secretary—Millennium Power Partners, L.P.
Director—Millennium Power Partners, L.P.
Secretary—Logan Generating Company, L.P.
Treasurer—Logan Generating Company, L.P.
Treasurer—Millennium Power Partners, L.P.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Steven E. Moore

[Docket No. ID–3135–000]

Take notice that on February 26, 1998, Steven E. Moore, tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board, President and Chief Executive Officer—Oklahoma Gas and Electric Company
Director—BOK Financial Corporation.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. OA97–280–001]

Take notice that on February 13, 1998, Kansas City Power & Light Company (KCPL), tendered for filing KCPL's revised Standards of Conduct pursuant to revisions and clarifications the Commission has made in Order Nos. 889–A and 889–B. KCPL proposes an effective date of February 13, 1998, and requests waiver of the Commission's notice requirement. This Standard of Conduct will be implemented on February 13, 1998.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Long Island Lighting Company

[Docket No. OA98–5–000]

Take notice that on February 9, 1998, Long Island Lighting Company (LILCO), tendered for filing an amendment to the November 3, 1997 filing in the above-referenced docket to make certain modifications to LILCO's Power Sales Tariff (filed with the Commission on August 10, 1995, as amended on April 4, 1996) in order to comply with Order Nos. 888 and 888A and with LILCO's Open Access Transmission Tariff, the settlement rates, terms and conditions of which were approved by the Commission on May 14, 1997 in Docket No. OA96–38–000.

Copies of this filing have been served by LILCO on the New York State Public Service Commission and on the existing purchasers who have executed service agreements under LILCO's Power Sales Tariff and on prospective purchasers under LILCO's Tariff.

Comment date: March 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6604 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–142–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line K California Road Replacement Project and Request for Comments on Environmental Issues

March 10, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of replacing approximately 0.5 mile of 20-inch-diameter pipeline proposed in the Line K California Road Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

National Fuel Gas Supply Corporation (National Fuel) would replace 2,735 feet of its 20-inch-diameter Line K pipeline with 3,210 feet of same size pipeline along California Road in Erie County, New York. The reroutes on the east and west ends of the project are proposed to avoid homes and businesses which have encroached on the right-of-way since its original construction in 1910.

The abandoned pipeline would be removed except for two segments (644- and 562-foot lengths) which would be abandoned in place to avoid disrupting traffic.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

In front of residences (milepost 0.22 to 0.46) the construction area would consist of a corridor 60-feet-wide from the edge of the California Road pavement. Construction of the proposed facilities would require about 4.72 acres of land. Following construction, about 3 acres would be maintained as permanent right-of-way for the operation of the project. The remaining

[1] National Fuel Gas Supply Corporation's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulation.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

1.72 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from the action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- hazardous waste
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

Based on a preliminary review of the proposed facilities and the environmental information provided by National Fuel, we have identified the following issues which deserve attention:

- Construction adjacent to homes on the east side of California Road; and
- Alternate route deviations.

Additional issues may be considered based on your comments and our analysis.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal including relocating the pipeline to the opposite (west side) of California Road, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–142–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 9, 1998.

You may request detailed maps or additional information about the proposed project by contacting Paul McKee, in the Commission's Office of External Affairs, at (202) 208–1088.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor.'' Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6605 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5679–016]

Toutant Hydropower, Inc., Notice of Availability of Environmental Assessment

March 10, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed the application for amendment to license to increase the generating capacity by installing a 234 kilowatt generator in a non-operating powerhouse. The Toutan project is located at river mile 34 on the Quinebaug River in the Town of Putnam, Connecticut. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Reference and Information Center, Room 2A. Comments are due within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 5679–016 to all comments. For further information, please contact the project manager, John Novak, at (202) 219–2828.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–6606 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–4–000]

Symposium on Process and Reform: Commission Complaint Procedures; Notice of Conference

March 10, 1998.

Take notice that the Federal Energy Regulatory Commission (Commission) will host a forum on Monday, March 30, 1998, at 1:00 p.m., 888 First Street, N.E., Washington, D.C. 20426 in the Commission meeting room. All interested persons are invited to attend

This forum is the second in a series of symposia on reform of regulatory processes at the Commission. The purpose of the symposium is to discuss the Commission's complaint procedures in order to determine: (1) How well the Commission's current complaint procedures are working, (2) whether changes to the current complaint procedures are appropriate, and (3) what type of changes should be made.

The Commission has received proposals filed by the Pipeline Customer Coalition (Coalition) [1] and the Interstate Natural Gas Association of America (INGAA) for expedited procedures for the consideration and resolution of complaints filed with respect to pipeline rates, services or practices.[2] The Commission's complaint procedures have also been the subject of comment in the context of electricity regulation in the proceeding in Docket No. PL98–3–000, in which the Commission held a round-table discussion on processes for assuring non-discriminatory transmission services as new reliability rules are developed. Proposed improvements to the Commission's complaint procedures may also be applicable to the Commission's regulation of oil pipelines.

The Coalition's proposal was to amend the Commission's regulations to require pipeline tariffs to contain an informal complaint procedure, and to formalize procedures for using the Commission's Hotline. The Coalition's proposal also would establish various categories of complaints eligible for expedited consideration and would require the Commission to abide by time deadlines depending on the type of complaint and procedural mechanism chosen by the Commission. The INGAA proposal, among other things, would make fewer types of complaints eligible for expedited action and is designed to supplement rather than replace the Commission's current regulations.

Current Procedures. In addressing how well the Commission's current complaint procedures are working, participants may comment on the various ways to pursue a complaint: (1) The complaint procedures of Rule 206; (2) the informal procedures in pipeline or electric utility tariffs; (3) the Commission's Hotline; and (4) ADR procedures pursuant to Rules 604 and 605.

Under Rule 206 of the Commission's existing rules of practice and procedure, 18 CFR 385.206, any person may file a complaint against any other person alleged to be in violation of any statute, rule, order or other law administered by the Commission, or for any other alleged wrong over which the Commission has jurisdiction. A respondent to a complaint must file an answer, unless the Commission orders otherwise. Pursuant to Rule 213, the answer must be filed within 30 days from the filing of the complaint or 30 days after publication of a notice of the complaint in the **Federal Register,** if a notice is published, whichever is later. Rule 206 also provides a procedure to be followed if the respondent satisfies the complaint. After all pleadings are filed, the regulations do not govern the further handling of the complaint.

In addition to filing a complaint pursuant to Rule 206, there are several other methods which an aggrieved party may use in order to resolve a complaint. An aggrieved party can use the informal procedures contained in the tariff of a pipeline or electric utility or can contact the Commission's Enforcement Hotline. Many aggrieved parties make it a practice of using the Hotline prior to filing a formal complaint against a pipeline or electric utility.

Finally, pipelines, electric utilities, and customers have the ability to use the Commission's alternative dispute resolution (ADR) procedures. Rule 604 of the Commission's Rules of Practice and Procedure generally addresses alternative means of dispute resolution such as settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof. Rule 605 governs the specific procedure of arbitration. Parties must agree to the use of any type of ADR and must first obtain the Commission's approval to use ADR.

Scope of Discussion. The symposium will cover: (1) What types of changes, if any, should be made to the Commission's complaint procedures and whether changes in the Commission's regulations and/or changes in the Commission's internal procedures are appropriate; (2) Whether expediting the formal complaint process can be accomplished only through procedural changes or whether substantive changes to Commission policies are required; (3) Whether complaints should be expedited based on the type of issues and, if so, what type of issues could be resolved expeditiously; and (4) Can a uniform expedited complaint procedure be established for both electric and pipeline matters, or should separate procedures be established for electric and pipeline matters?

Other questions that may be discussed include: How is the Commission's Enforcement Hotline working and are any changes required? What should be the relationship between the Commission's complaint process and enforcement process? Should the Commission take a more active role in prosecuting complaints by, for example, allowing an anonymous formal complaint process? What role can the Commission's ADR rules play in resolving complaints? If the Commission develops alternative complaint procedures with differing procedural steps and timelines, what criteria could be used to decide which process is appropriate for a particular case? For example, should the complainant be able to waive certain procedures in order to obtain a decision within a particular time? If the issue affects interests broader than the complainant, how should that affect the procedures used?

Procedures to Participate. In order to obtain a complete picture of the current complaint process, the Commission seeks the views of all segments of the gas, electric, and oil pipeline industries, as well as state regulatory agencies, and members of the energy bar. The symposium will be organized so that a representative cross section of views are obtained.

Written comments may be filed at any time, but should be filed within 15 days after the conference. Any person who wishes to participate in the discussion should submit a written request to the Secretary of the Commission by March 16, 1998. The request should indicate

[1] The Pipeline Customer Coalition consists of American Iron and Steel Institute, the LDC Caucus of the American Gas Association, American Public Gas Association, Associated Gas Distributors, Georgia Industrial Group, Independent Petroleum Association of America, Natural Gas Supply Association, Process Gas Consumers, and United Distribution Companies.

[2] Comments and Petition of the Pipeline Customer Coalition and Amended Petition of the Pipeline Customer Coalition for Proposed Rulemaking, and Comments and Petition of the Interstate Natural Gas Association of America filed in Regulation of Negotiated Transportation Services of Natural Gas Pipelines, *et al.*, Docket No. RM96–7–000, *et al.*

the topic and scope of the participants planned remarks. This will assist in selecting the members of each panel. A separate notice organizing the symposium will be issued at a later date.

All questions concerning the format of the conference should be directed to: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1275.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–6719 Filed 3–13–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5978–1]

Cancellation of Common Sense Initiative Council, Printing Sector Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of cancellation of open meeting of the Public Advisory Common Sense Initiative Council, Printing Sector Subcommittee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is given that the Printing Sector Subcommittee of the Common Sense Initiative Council meeting scheduled for Friday, March 20, 1998, in Washington, D.C. has been cancelled. The Subcommittee meeting is postponed to a later date because project teams need additional time in order to have products to present before the subcommittee.

FOR FURTHER INFORMATION CONTACT: For more information about the cancellation of this meeting, please call Ms. Gina Bushong, Designated Federal Official (DFO), at EPA by telephone on (202) 564–5081 in Washington, DC, by fax on (202) 564-0009, or by e-mail at bushong.gina@epamail.epa.gov.

Dated: March 10, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–6702 Filed 3–13–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5977–8]

Environmental Laboratory Advisory Board: Nominees, Meeting Date and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Protection Agency (EPA) will convene an open meeting of the Environmental Laboratory Advisory Board (ELAB) on April 16, 1998, from 2 p.m. to 4 p.m. This meeting will be conducted by teleconference. The public is invited to join Ms. Ramona Trovato in Room 911, West Tower, Waterside Mall, 401 M Street, S.W., Washington, D.C.

The agenda will include discussion on the final report of the TSCA/FIFRA Good Laboratory Practices (GLP) Subcommittee and the newly established subcommittee on Third Party Assessors.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are encouraged and should be directed to Ms. Jeanne Mourrain; Designated Federal Officer; USEPA; NCERQA (MD–75); Research Triangle Park, NC 27711. If questions arise, please contact Ms. Mourrain at 919/541–1120, fax 919/541–4261, or E-mail mourrain.jeanne@epamail.epa.gov.

Dated: March 6, 1998.

Nancy W. Wentworth,

Director, Quality Assurance Division.

[FR Doc. 98–6698 Filed 3–13–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

March 6, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 15, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0110.

Title: Application for Renewal of License for AM, FM, TV, Translator or LPTV Station.

Form No.: FCC Form 303–S.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 5,492.

Estimated Time Per Response: 2.67–11.25 hours (0.67–1.25 hours respondent; 0–10 hours for an attorney).

Frequency of Response: Upon license expiration.

Cost to Respondents: $3,054,891.

Total Annual Burden: 9,190 hours.

Needs and Uses: The FCC 303–S is used in applying for renewal of license for an AM, FM, TV, FM/TV Translator and LPTV broadcast stations. The data is used by FCC staff to assure that necessary forms connected with renewal have been filed and that the licensee continues to meet the basic statutory requirements to remain a licensee. The local public notice informs the public that the station has filed for license renewal.

OMB Control No.: 3060–0594.

Title: Cost of Service Filing for Regulated Cable Services.

Form No.: FCC Form 1220.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; state, local or tribal government.

Number of Respondents: 30 (20 cable operators + 10 LFAs.)

Estimated Time Per Response: 4–80 hours (avg).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $120,000.

Total Annual Burden: 1,640 hours.

Needs and Uses: FCC Form 1220 is used by cable operators to demonstrate their costs of providing cable service in order to justify rates above levels determined under the Commission's benchmark methodology. Operators file FCC Form 1220 with local franchise authorities (LFAs) or the Commission where the Commission has assumed jurisdiction when justifying rates based on cost of service. FCC Form 1220 may also be filed as part of an operator's response to a complaint filed with the Commission about programming service rates and associated equipment when justifying rates based on cost of service.

OMB Control No.: 3060–0601.

Title: Setting Maximum Initial Permitted Rates for Regulated Cable Services.

Form No.: FCC Form 1200.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, local, or tribal government.

Number of Respondents: 150 (100 cable operators + 50 LFAs).

Estimated Time Per Response: 2–10 hours (avg.).

Frequency of Response: One time reporting requirement.

Cost to Respondents: $75,500.

Total Annual Burden: 1,100 hours.

Needs and Uses: FCC Form 1200 is used by cable operators to justify the reasonableness of rates in effect on or after May 15, 1994. Cable operators submit this form to local franchising authorities (LFAs) or the Commission in situations where the Commission has assumed jurisdiction. Cable operators also file FCC Form 1200 with the Commission when responding to a complaint filed with the Commission about cable programming services rates and associated equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–6659 Filed 3–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 9, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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 further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0411.

Expiration Date: 02/28/2001.

Title: Procedures for Formal Complaints Filed Against Common Carriers.

Form No.: FCC Form 485.

Respondents: Business or other for-profit, states, individuals or households, not-for-profit institutions, federal government.

Estimated Annual Burden: 5345 respondents; 2.06 hours per response (avg.); 11,026 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $57,000.

Frequency of Response: On occasion; One-time requirement.

Description: Sections 206 to 209 of the Communications Act of 1934, as amended, provide the statutory framework for our current rules for resolving formal complaints filed against common carriers. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the provisions of the Act. Section 208(a) specifically states that ''it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.'' In 1988, Congress added subsection 208(b) to require that any complaint filed with the Commission concerning the lawfulness of a common carrier's charges, practices, classifications or regulations must be resolved by the Commission in a final, appealable order within 12 months from the date filed, or 15 months from the date filed if ''the investigation raises questions of fact of * * * extraordinary complexity.'' Except in very rare circumstances, formal complaints are decided on the basis of a paper record. The Telecommunications Act of 1996 added and, in some cases, amended key complaint provisions that, because of their resolution deadlines, necessitate substantial modification of our current rules and policies for processing formal complaints filed against common carriers pursuant to Section 208 of the Act.

a. *Service.* Pursuant to amended rule 47 CFR 1.735, the complainant must personally serve the complaint on the defendant, as well as serve copies of the complaint with the Mellon Bank, the Secretary of the Commission, and the responsible Bureau or Bureaus. Parties must serve all pleadings subsequent to the complaint by (1) hand delivery; (2) overnight delivery; or (3) facsimile transmission followed by mail delivery. (No. of respondents: 760; hours per response: 1 hour; total annual burden: 760 hours).

b. *Pleading Content Requirements.* See 47 CFR 1.734 for specifications for pleadings, briefs and other documents. Pursuant to amended rules 47 CFR 1.721, 1.724, 1.726, documents on which a party intends to rely must be attached to the complaint, answer, and reply, including an inventory of all such documents, with an explanation of how the party decided that each particular document was relevant to the issues in dispute. Parties are required to attach copies of documents rather than identify them, and to explain why and how each document is relevant to the matters in dispute. Pursuant to amended rules 47 CFR 1.721, 1.724, 1.726, and 1.727, the complaint, answer, reply and any motions seeking dispositive orders must contain proposed findings of fact, conclusions of law, and supporting legal analysis. See 47 CFR 1.720 for general pleading requirements. See also 47 CFR 1.736 for complaints filed pursuant to Section 276 of the Telecommunications Act. Pursuant to amended rule 47 CFR 1.721, the complaint must contain a verification of payment of the filing fee, a certificate of service, a certification that the complainant has discussed the possibility of settlement with the defendant, including a statement that the complainant mailed a certified letter outlining the allegations that form the basis of the complaint it anticipated filing with the Commission to the defendant carrier that invited a response within a reasonable period of time and a brief summary of all additional steps taken to resolve the dispute prior to the filing of the formal complaint, and, if damages are claimed, either a computation of damages or an explanation why a computation of damages cannot be submitted. Pursuant

to amended rule 47 CFR 1.724, the answer must contain certification that the defendant discussed the possibility of settlement with the complainant prior to the filing of the formal complaint. Pursuant to amended rule 47 CFR 1.727, motions to compel must contain certification that attempts to settle the discovery dispute were made prior to filing the motion. Pursuant to amended rule 47 CFR 1.725, parties are prohibited from filing cross-complaints or counterclaims. A defendant to a formal complaint may, however, file claims arising out of the same set of facts as such complaint as a separate formal complaint. See 47 CFR 1.723 for requirements for joinder of complaints and causes of action. Any document purporting to be a formal complaint which does not state cause of action will be dismissed. Any other pleading filed in a formal complaint proceeding not in conformity with the requirements of the applicable Commission rules will be deemed defective. See 47 CFR 1.728. (*No. of respondents:* 760; *hours per response:* 3.0 hours; *total annual burden:* 2,280 hours).

c. *Discovery.* Pursuant to rule 47 CFR 1.729 complainants must file and serve any requests for interrogatories, up to a limit of 10, concurrently with their complaints, defendants must file and serve any requests for interrogatories, up to a limit of 10, prior to or concurrently with their answer, and complainants must file and serve any requests for interrogatories that are directed solely at facts underlying affirmative defenses asserted by the defendant in its answer, up to a limit of 5, within 3 calendar days of service of the defendant's answer. Individuals who are provided access to proprietary information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party. Parties must maintain a log recording the number of copies made of all proprietary materials and the persons to whom the copies have been provided. Upon termination of a formal complaint proceeding, all originals and reproduction of any proprietary materials disclosed in that proceeding, along with the log recording persons who received copies of such materials, shall be provided to the producing party. See 47 CFR 1.731. (*No. of respondents:* 760; *hours per response:* 2.25 hours; *total annual burden:* 1,425 hours).

d. *Scanning.* Pursuant to amended rule 47 CFR 1.729, the Commission may impose a scanning or other electronic formatting requirement for submission of large numbers of documents in certain cases. (*No. of respondents:* 38; *hours per response:* 5 hours; *total annual burden:* 190 hours).

e. *Damages.* Damages must be specifically requested. See 47 CFR 1.722. Pursuant to amended rule 47 CFR 1.722, where the Commission has ordered parties to attempt to negotiate a damages amount according to an approved damages formula, the parties must submit to the Commission, within thirty days, the written results of such negotiations. The written statement shall contain one of the following: (1) The parties' agreement as to the amount of damages; (2) a statement that the parties are continuing to negotiate in good faith and a request for an extension of time to continue such negotiations; or (3) the bases for the continuing dispute and the reasons why no agreement can be reached. (*No. of respondents:* 380; *hours per response:* 1 hour per filing; *total annual burden:* 380 hours).

f. *Briefs.* Pursuant to amended rule 47 CFR 1.732, briefs may be prohibited or limited. Where permitted, briefs must contain all claims and defenses that the party wants the Commission to address. Each brief must attach all documents on which it relies and explain how each attachment is relevant to the issues. Brief length has been shortened to 25 pages for initial briefs and 10 pages for reply briefs. See also 47 CFR 1.734 for specifications for briefs and other documents. (*No. of respondents:* 760; *hours per response:* 3 hours; *total annual burden:* 2280 hours).

g. *Designation of Agent for Service.* Pursuant to amended rule 47 CFR 1.47(h), the Commission will maintain a directory of agents designated by carriers to receive service of process. The directory will list, for both the carrier and its agent(s), names, addresses, telephone or voice-mail numbers, facsimile numbers, and Internet e-mail addresses if available. In addition, the carrier shall list any other names by which it is known or under which it does business. If the carrier is an affiliated company, the carrier must also list its parent, holding, or management company. Parties are required to notify the Commission within one week of any changes in their designated agents. Parties will be required to designate their service agent(s) to the Commission by filing the required information with the Formal Complaints and Investigations Branch of the Common Carrier Bureau. (*No. of respondents:* 4965; *hours per response:* .25 hours; *total annual burden:* 1,241.25 hours).

h. *Joint Statement of Stipulated Facts and Status Conferences.* Pursuant to amended rule 47 CFR 1.732(h), parties must file a joint statement of stipulated facts, disputed facts and key legal issues at least two business days prior to the initial status conference. Pursuant to amended rule 47 CFR 1.733(b), parties must file a joint statement of proposals agreed to and disputes remaining as the result of a meet and confer conference at least two business days prior to the scheduled initial status conference. Pursuant to amended rule 47 CFR 1.733(f), following every status conference, parties must file a joint proposed order, including alternative proposed orders where the parties are unable to agree, memorializing the oral rulings made during the status conference or file a transcript of either the audio recording or stenographic transcription of the oral rulings made during the status conference. (*No. of respondents:* 760; *hours per response:* 2 hours; *total annual burden:* 1520 hours).

i. *Filing of Copies of Proposed Orders on Disks.* Pursuant to amended rule 1.734(d) all proposed orders must be submitted both as hard copies and on computer disk formatted to be compatible with the Commission's computer system and using the Commission's current wordprocessing software. Each disk should be clearly labelled with the submitting party's name, proceeding, type of pleading, and date of submission. Each disk should be accompanied by a cover letter. This requirement may be waived upon a showing of good cause. (*No. of respondents:* 760; *hours per response:* .5 hours; *total annual burden:* 380 hours).

j. *FCC 485—Intake Form.* Pursuant to 47 CFR 1.721(a)(12), the complainant must submit a completed intake form with any formal complaint to indicate that the complaint satisfies the procedural and substantive requirements under the Act and our rules. The completed intake form must also identify all relevant statutory provisions, any relevant procedural history of the case, and, in the case of a Section 271(d)(6)(B) complaint, whether the complainant desires to waive the 90-day resolution deadline. (*No. of respondents:* 380; *hours per response:* .5 hours per filing; *total annual burden:* 190 hours). A public notice will be issued to announce the availability of FCC Form 485. The information has been and is currently being used by the Commission to determine the sufficiency of the complaint and to resolve the merits of the dispute between the parties. Obligation to respond: Required to obtain or retain benefits. Public reporting burden for the collections of information is as noted above. Send

comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–6654 Filed 3–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

March 6, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0767.

Expiration Date: 7/31/1998.

Title: Auction Forms and License Transfer Disclosures Supplement for the 2nd R&O, Order on Reconsideration, and 5th NPRM in CC.

Docket No. 92–297.

Form No.: N/A.

Estimated Annual Burden: 773,000 annual hour; average .5–20 hours per response; 180,000 responses.

Description: The auction rules, among, other things, require small business applicants to submit ownership information and gross revenues calculations, and all applicants to submit terms of joint bidding agreements (if any). Additionally in case a licensee defaults or loses its license, the Commission retains the discretion to reauction such licenses. This collection was revised to include additional requirements that are a result of the Commission adopting a general rule to determine the amount of unjust enrichment payments to be assessed upon assignment, transfer, partitioning and sisaggregation of licenses. The new rule, applicable to all current and future licensees, is based upon the unjust enrichment rule applicable to broadband PCS licensees. Therefore, transfer disclosure requirements apply in all license transactions. The Commission is also amending its general anti-collusion rules, permitting the holder of a non-controlling attributable interest in an applicant to obtain an ownership interest in or enter into a consortium arrangement with another applicant for a license in the same geographic area provided that the original applicant has withdrawn from the auction, is no longer placing bids, and has no further eligibility. To meet the requirements of the exception, the attributable interest holder will be required to certify to the Commission that it did not communicate with the new applicant prior to the date the original applicant withdrew from the auction, and that it will not convey bidding information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–6658 Filed 3–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 6, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0736.

Expiration Date: 09/30/98.

Title: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96–149.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5 respondents; 60.6 hours per response (avg.); 303 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 272 of the Telecommunications Act of 1996 requires that BOCs make information available to third parties if it makes that information available to its section 272(a) affiliates. In an Order released February 6, 1998, the Commission's Common Carrier Bureau resolved questions regarding the application of sections 10 and 272 of the Communications Act of 1934, as amended, (Act) to the provision of E911 services by the Bell Operating Companies (BOCs). Bell Operating Companies, Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96–149, DA 98–220, Memorandum Opinion and Order (Com. Car. Bur. Feb. 6, 1998) (February 6 Order). E911 services enable emergency service personnel to identify the location of the party calling 911, and are essential to the safety of many Americans. In the February 6 Order, the Bureau determined that the BOCs' E911 services are interLATA information services. One consequence of this determination was that each BOC had an obligation under section 272(a)(2)(C) of the Act to provide E911 services only through a separate affiliate. In the February 6 Order, the Bureau forbore from the application of this separate affiliate requirement pursuant to the forbearance authority in section 10 of the Act, thus permitting the BOCs to provide E911 services on an integrated basis. The Bureau determined that requiring the BOCs to provide E911 services only through separate affiliates would have increased the cost, but not the quality, of those services. In the February 6 Order, the Bureau maintained the substance of the statutory nondiscrimination requirement by requiring each BOC to provide unaffiliated entities with all listing information, including unlisted and unpublished numbers as well as the numbers of other local exchange carriers' customers, that the BOC uses to provide E911 services, even though that Order was permitting the BOCs to provide those services on an integrated basis. The Bureau required that this listing information be provided at the same rates, terms, and conditions, if any, the BOC charges or imposes on its own E911 services. The BOCs are already required to account for their

E911 services on the books of account that they maintain in accordance with Part 32 of the Commissions rules. The Commission requires that the BOCs treat their E911 serves as nonregulated activities for federal accounting purposes to the extent they involve storage and retrieval functions included within the statutory definition of information service. The BOCs shall record any charges they impute for their E911 services in their revenue accounts. The BOCs shall account for any imputed charges by debiting their nonregulated operating revenue accounts and crediting their regulated revenue accounts by the amounts of the imputed charges. The BOCs shall make any changes to their cost allocation manuals necessary to reflect this account. The BOCs' independent auditors shall include this accounting in their review of the BOCs compliance with their cost allocation manuals. The requirements will be used to ensure that BOCs comply with the nondiscrimination requirements under the 1996 Act. Obligation to comply: mandatory.

OMB Control No: 3060–0785.

Expiration Date: 08/31/98.

Title: Changes to the Board of Directors of the National Exchange Carrier Association and the Federal-State Joint Board on Universal Service, CC Docket Nos. 97–21 and 96–45.

Form No.: FCC Form 457.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5000 respondents; 11.13 hours per response (avg.); 55,650 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $4,903,000.

Frequency of Response: On occasion.

Description: The Telecommunications Act of 1996 directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. On May 8, 1997, the Commission released the Report and Order on Universal Service (Universal Service Order) in CC Docket 96–45 that established new federal universal service support mechanisms consistent with the universal service provisions of section 254. In the Fourth Order on Reconsideration in CC Docket No. 96–45, Report and Order in CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72 (adopted December 30, 1997, released December 30, 1997), the Commission reconsidered certain aspects of the Universal Service Order and exempted additional entities from universal service contribution and reporting requirements. Broadcasters and schools, colleges, universities, rural health care providers, and systems integrators that derive de minimis amounts of revenue from the resale of telecommunications will not be required to contribute to universal service. Entities whose annual contribution would be less than $10,000 will not be required to contribute to universal service or comply with universal service reporting requirements. Contributors exempt from filing and contributing because of de minimis revenues must complete and retain the FCC 457 worksheet and make it available to the Commission or to the Universal Service Administrator upon request. Underlying carriers should include revenues derived from providing telecommunications to entities qualifying for the de minimis exemption in line 34–47, where appropriate of their Universal Service Worksheet. The Universal Service Worksheet, FCC Form 457 has been revised to make it consistent with recent actions taken by the Commission in the universal service proceeding. We have revised the Worksheet and instructions to the Worksheet. Specifically, we revised the instructions to clarify that quarterly contributions will be paid in monthly installments and further clarify the method by which the administrator of the universal service support mechanisms calculates the individual quarterly contributions of universal service contributors. We revised the instructions to provide a list of entities that are excluded from federal universal service contribution requirements. The instructions direct entities preparing Worksheets to include on Line 27 amounts associated with waived presubscribed interexchange carrier charges for Lifeline customers who have toll blocking and clarify that revenues derived from the lease of bare transponder capacity should not be included in Lines 32 or 46. In addition, we revised Line 4, ''Principal communications business,'' to include a new category, ''SMR (dispatch)'' and clarify that, where possible, contributors should list billed revenues that are based on books of account. Finally, we added a new Line 51. Contributors that wish to request Commission nondisclosure of information contained in the Worksheet may check a box in Line 51 to do so. Contributors are required to file the Worksheet by March 31, 1998. The information will be used by the Commission and the Administrator or Temporary Administrator to calculate contributions to the universal service support mechanisms. Copies of the Universal Service Worksheet may be obtained from USAC by calling (973) 560–4400 or from the Commission's website (www.fcc.gov/formpage.html) and from the Commission's fax-on-demand line at (202) 418–2830 and selecting document number 6730 system. Respondents obligation to comply: Mandatory.

OMB Control No.: 3060–0818.

Expiration Date: 09/30/98.

Title: Geocode Data Request.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 19 respondents; 37 hours per response (avg.); 703 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: One-time requirement.

Description: Pursuant to Congress's directive in the Telecommunications Act of 1996 that the Commission establish support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, the Commission determined on May 8, 1997 that universal service support for rural, insular, and high cost areas (collectively referred to as high cost areas) should be based on forward-looking economic costs. The Commission stated that it would select a federal mechanism for high cost support to non-rural carriers by August 1998. That federal mechanism will determine high cost support for non-rural carriers beginning on January 1, 1999. Nineteen non-rural telecommunications common carriers were requested to voluntarily submit data relating to extent of their use of geocoded data to locate customers. The Commission will use the information collected in the data request in its determination of whether geocode data should be used as inputs to a federal mechanism that will estimate the forward-looking economic costs that non-rural carriers will incur to provide universal service in rural, insular, and high cost areas. Obligation to comply: voluntary.

OMB Control No.: 3060–0536.

Expiration Date: 08/31/98.

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

Form No: FCC Form 431.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5000 respondents; 3.11 hours per response (avg.); 15,593 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Title IV of the Americans with Disabilities Act, Pub. L. No. 101–336, Section 401, 104 Stat. 327, 366–69 (codified at 47 U.S.C. Section 225) requires the Federal Communications Commission to ensure that telecommunications relay services are available to persons with hearing and speech disabilities in the United States. Among other things, the Commission is required by 47 U.S.C. Section 225(d)(3) to enact and oversee a shared-funding mechanism (TRS Fund) for recovering the costs of providing interstate TRS. The Commission's regulations concerning the TRS Fund are codified at 47 CFR Section 64.604(c)(4). Pursuant to these regulations, the National Exchange Carrier Association (NECA) has been appointed Administrator of the TRS Fund. The Commission's rules require all carriers providing interstate telecommunications services to contribute to the TRS Fund on an annual basis. Contributions are the product of the carrier's gross interstate revenues for the previous year and a contribution factor determined annually by the Commission. The collected contributions are used to compensate TRS providers for the costs of providing interstate TRS service. The Commission releases an order each year approving the contribution factor, payment rate and TRS Fund Worksheet for the following year. Accordingly, on December 22, 1997, the Commission's Common Carrier Bureau, acting under delegated authority, released an order approving the contribution factor for the April 1998 through March 1999 contribution period and the 1998 TRS Fund Worksheet (FCC Form 431) and also making several revisions to the form. The data in the report will be used to ensure that carriers properly fund interstate TRS. All carriers providing interstate telecommunications service must file this worksheet. Other telecommunications carriers may voluntarily file this worksheet. The requested information is used to administer the TRS Fund. Information is used to calculate a national average to recover the total interstate TRS revenue requirements and to determine the appropriate payment due to the TRS providers participating in the shared-funding plan. Obligation to comply: required to obtain benefit. A public notice will be issued to announce the availability of the revised FCC Form 431.

OMB Control No: 3060–0816.

Expiration Date: 08/31/98.

Title: Local Competition in the Local Exchange Telecommunications Services Report.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 9 respondents; 18 responses; 310 hours per response (avg.); 5580 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Quarterly.

Description: The Telecommunications Act of 1996 (1996 Act), Pub. Law No. 104–104, 110 Stat 56, codified 47 U.S.C. §§ 151 *et seq.*, imposes obligations and responsibilities on telecommunications carriers, particularly incumbent local exchange carriers (LECs), that are primarily designed to open telecommunications markets to competitive entry, to promote universal service, and to lessen the need for government regulation of telecommunications. Pursuant to these overall goals, the statute directed the Commission to adopt regulations to implement specific statutory requirements, including regulations governing the provision of interconnection of incumbent LEC facilities with new local exchange service competitors, and the competitive entry of Bell Operating Companies (BOCs) into previously prohibited interexchange and other services markets. As part of its responsibilities toward achieving the intent of the statute, the Commission must have adequate data at hand to evaluate the success of these efforts. The Commission has asked certain carriers to complete a two page survey questionnaire. The questions are limited to technical queries about the nature and extent of carrier-provided access facilities; switch ports and non-switched service lines; number of customers purchasing specific services; state operations data; total carrier-handled switched local, intrastate toll, and interstate toll minutes; and number of local telephone numbers ported as of end-of-year 1997. The data request is necessary to evaluate the status of developing competition in local exchange telecommunications markets. This information will be used by Commission economists and carrier analysts to advise the Commission about the efficacy of Commission rules and policies adopted to implement the Telecommunications Act of 1996. Obligation to respond: voluntary.

OMB Control No.: 3060–0814.

Expiration Date: 06/30/98.

Title: Section 54.301 Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 192 respondents; 21.55 hours per response (avg.); 4138 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually.

Description: The Telecommunications Act of 1996 directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. On May 8, 1997, the Commission released the Report and Order on Universal Service (Universal Service Order) in CC Docket 96–45 that established new federal universal service support mechanisms consistent with the universal service provisions of section 254. In the Fourth Order on Reconsideration in CC Docket No. 96–45, Report and Order in CC Docket Nos. 96–45, 96–262, 94–1, 91–213, 95–72 (adopted December 30, 1997, released December 30, 1997), the Commission reconsiders certain aspects of the Universal Service Order. Among other things, the Fourth Order on Reconsideration adopts a precise methodology for the universal service administrator to use in calculating the average unseparated local switching revenue requirement. Although this rule generally requires carriers to submit data on October 1 of each year, the universal service administrator must collect data from carriers that do not participate in the NECA common line pool immediately to prepare for the 1998 year. Each incumbent local exchange carrier that is not a member of the NECA Common Line tariff, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in Section 54.301(b) for 1998. Of the carriers that do not participate in the NECA common line pool, 20 of these carriers are ''average schedule'' companies as defined in Part 69.605(c) of the Commission's rules. Each incumbent local exchange carrier that is not a member of the NECA Common Line tariff, that is an average schedule company, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or

fewer access lines shall, for each study area, provide the Administrator with their total number of access lines, total number of central offices, and projected access minutes for 1998. These companies receive local switching support calculated pursuant to section 54.301(f), whereas the remaining companies receive support calculated pursuant to section 54.301(b). This data request is necessary to calculate the average unseparated local switching revenue requirement. This revenue requirement calculation is necessary to calculate the amount of local switching support that carriers will receive. This data request is necessary to calculate the average unseparated local switching revenue requirement. Obligation to comply: mandatory.

OMB Control No.: 3060–0809.

Expiration Date: 02/28/2001.

Title: Communications Assistance for Law Enforcement Act—CC Docket No. 97–213 (Proposed rule).

Form No: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 14,000 respondents; 3.3 hours per response (avg.); 46,725 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: On October 25, 1994, Congress passed and the President signed the Communications Assistance for Law Enforcement Act (CALEA), Pub. L. No. 103–414, 108 Stat. 4279 (1994). The Act was designed to respond to rapid advances in telecommunications technology and eliminate obstacles faced by law enforcement personnel in conducting electronic surveillance. Section 301 of CALEA also requires the Commission to prescribe and enforce the procedures and record keeping that entities subject to CALEA must follow after receiving lawful electronic surveillance requests from law enforcement entities. To accomplish this statutory objective, the NPRM issued in CC Docket No. 97–213 proposed the creation of a subpart to Part 64 of the Commission's rules, that would require each telecommunications carrier: file a CALEA compliance statement with the Commission (47 CFR § 64.1705(a) (no. of respondents: 3500; hours per response: 1 hours; total annual burden: 3500 hours)); have responsible employees sign affidavits that the electronic surveillance was conducted lawfully (47 CFR § 64.1704(c) no. of respondents: 3500; hours per response: 2.45; total annual hours: 8575)); and maintain records of electronic surveillance activity (47 CFR § 64.1704(a) (no. of respondents: 3500; hours per response: 4.9; total annual hours: 17,510)). The Commission also proposed to waive the compliance statement filing requirement for telecommunications carriers with annual revenues below an indexed threshold (currently $109 million), in order to reduce the paperwork burden on small and rural telecommunications carriers (47 CFR § 1705(b)). We also proposed a requirement for carriers to maintain a list of all persons authorized to process lawful requests for electronic surveillance from law enforcement officials (no. of respondents: 3500; hours per response: 5 hours; total annual hours: 17,500 hours). If adopted, the information submitted to the Commission by telecommunications carriers will be used to determine whether or not the telecommunications carriers are in conformance with CALEA's requirements and the Commission's rules. The information maintained by telecommunications carriers will be used by law enforcement officials to determine the accountability and accuracy of telecommunications carriers' compliance with lawful electronic surveillance orders. Obligation to respond: mandatory, if adopted.

OMB Control No: 3060–0819.

Expiration Date: 09/30/98.

Title: Lifeline Assistance (Lifeline), Lifeline Connection Assistance (Link Up) Reporting Worksheet and Instructions (47 CFR Sections 54.400–54.417).

Form No: FCC Form 497.

Respondents: Business or other for-profit.

Estimated Annual Burden: 1500 respondents; 18,000 responses; 3 hours per response (avg.); 42,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; monthly; quarterly; semi-annually.

Description: The Telecommunications Act of 1996 directed the Commission to initiate a rulemaking to reform our system of universal service so that universal service is preserved and advanced as markets move toward competition. On May 8, 1997, the Commission released a Report and Order on Universal Service (Universal Service Order) in CC Docket 96–45 that established new federal universal service support mechanisms consistent with section 254. In the Universal Service Order, the Commission expanded and made competitively neutral its programs for low-income consumers, Lifeline and Link Up. On December 30, 1997, the Commission released a Fourth Order on Reconsideration that amended some of the Lifeline and Link Up rules. The following describes the universal service support reimbursement available to eligible telecommunications carriers for providing Lifeline and Link Up programs to qualifying low-income customers: Eligible telecommunications carriers are permitted to receive universal service support reimbursement for offering Lifeline service to qualifying low-income customers; eligible telecommunications carriers may receive universal service support reimbursement for the revenue they forego in reducing their customary charge for commencing telecommunications service and for providing a deferred schedule for payment of the charges assessed for commencing service for which the consumer does not pay interest, in conformity with 47 CFR Section 54.411; eligible telecommunications carriers providing toll-limitation services (TLS) for qualifying low-income subscribers will be compensated from universal service mechanisms for the incremental cost of providing either toll blocking or toll control; and eligible telecommunications carriers that serve qualifying low-income consumers who have toll blocking shall receive universal service support reimbursement for waiving the Presubscribed Interexchange Carriers Charge (PICC) for Lifeline customers. FCC Form 497 implements the Lifeline and Link Up reimbursement programs. Obligation to respond: required to obtain benefits. This information is necessary in order for eligible telecommunications carriers to receive universal service support reimbursement for providing Lifeline and Link Up. Copies of the form may be obtained by calling USAC at (973) 884–8027.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–6666 Filed 3–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195-DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 3, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

The counties of Alachua, DeSoto, Levy and Taylor for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–6699 Filed 3–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1195–DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Lafayette and Putnam Counties for Public Assistance (already designated for Individual Assistance).

Sarasota County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–6700 Filed 3–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1195–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1195-DR), dated January 6, 1998, and related determinations.

EFFECTIVE DATE: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 1998:

Brevard County for Public Assistance (already designated for Individual Assistance).

Holmes County for Public Assistance.

Levy County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–6701 Filed 3–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–03]

Sea Dragon Navigation Ltd., et al.—Possible Violations of Sections 8, 10(a)(1), 10(b)(1) and 23 of the Shipping Act of 1984; Order of Investigation and Hearing

Since early 1996, it appears that Sea Dragon Navigation Ltd. (''Sea Dragon''), a Hong Kong company, has become an increasingly active and problematic participant in the inbound Far East-United States trades. It is alleged that Sea Dragon has involved itself in myriad rate malpractices with respect to this traffic including, *inter alia*, improperly accessing service contracts belonging to other shippers, widespread misdescription of commodities to ocean common carriers transporting the cargo and the use of other devices such as improper connecting carrier agreements as a means of obtaining transportation at less than applicable rates. It further appears that, in the conduct of this enterprise Sea Dragon has employed various false or assumed names, and has obtained the services, participation and assistance of numerous companies, destination agents and individuals, both in the U.S. and abroad.

Due to the concerted nature of the malpractices apparently carried out here, and the significant inter-relationships, both commercial and corporate, between the companies and individuals involved, seventeen (17) corporate parties and individuals are named Respondents herein:

(1) Sea Dragon Navigation Ltd. is a Hong Kong company located at Room 602, The Centre Mark, 287–299 Queen's Road Central, Hong Kong, PRC. Sea

Dragon purports to be an ocean common carrier (i.e. a vessel operator) and holds out to perform such services pursuant to its ATFI tariff FMC No. 011712–001,[1] effective October 15, 1993. Lee Man Wong, a.k.a. Denis Lee, is identified in its tariff as Sales Manager of Sea Dragon. K. C. ''Philip'' Yu is the Director of Sea Dragon.

(2) CES Express Inc. (''CES Express'') is a California corporation, whose place of business was 801 S. Garfield Avenue, Alhambra, California 91801. According to the 1994 and 1995 Statement by Domestic Stock Corporation filed with the California Secretary of State, the President of CES Express is Philip Yu; Christine Cheng serves as Secretary of the corporation and as its resident agent. Yun Kei Lo is Chief Financial Officer. As relevant herein, CES Express served as the U.S. destination agent of Sea Dragon with respect to inbound shipments from the Far East to U.S. West Coast ports during the period prior to November 1996.

(3) Chin Express Services Inc. (''Chin Express Services'') is a California corporation whose place of business is 410 S. San Gabriel Boulevard, Suite 7, San Gabriel, California 91776. According to the 1997 Statement by Domestic Stock Corporation filed with the California Secretary of State, the President of Chin Express Services is Philip Yu; Christine Cheng serves as Secretary and Chief Financial Officer of the corporation, and as its resident agent. As relevant herein, Chin Express Services acted as the U.S. destination agent of Sea Dragon with respect to inbound shipments from the Far East to U.S. West Coast ports during the period subsequent to November 1996.

(4) L & L Chain Inc. (''L & L Chain'') is a California corporation whose registered place of business is 317 South Isis Avenue, Inglewood, California 90301. According to the 1996 Statement by Domestic Stock Corporation filed with the California Secretary of State, the President of L & L Chain is Yun Kei Lo; Christine Cheng serves as its resident agent. As relevant herein, L & L Chain acted as the shipper and/or consignee with respect to inbound shipments from the Far East to U.S. West Coast ports prior to November 1996.

(5) CTL Maritime (USA) Inc. (''CTL Maritime'') is a tariffed and bonded NVOCC whose place of business is 317 South Isis Avenue, Suite 105, Inglewood, California 90301. CTL Maritime's address is the same as L & L Chain, and is the address previously reported for CES Express. Through 1996 and 1997, CTL Maritime has served as notify party and destination agent on behalf of numerous shipments purportedly shipped on behalf of Welrich Trading, L & L Chain, and Transnation Shipping Ltd., among other shipper names. Raymond Cheng is the Managing Director of CTL Maritime.

(6) Pan Sharp International Limited (''Pan Sharp'') is a tariffed and bonded NVOCC located at Room 602, The Centre Mark, 287–299 Queen's Road Central, Hong Kong, PRC. Pan Sharp holds itself out as an NVOCC pursuant to its ATFI tariff FMC No. 014944–001, effective September 5, 1997.[2] Pan Sharp currently maintains an NVOCC bond with the Intercargo Insurance Company, in the amount of $50,000. Bond No. 102737 became effective June 13, 1997.

As relevant herein, Pan Sharp is believed to have been established by the principals of Sea Dragon, and currently operates from the same premises as those occupied by Sea Dragon. The NVOCC bond form filed on behalf of Pan Sharp includes the corporate certification of corporate Sales Manager Lee Man Wong, also known to be the Sales Manager of Sea Dragon, and further identifies Mr. K.C. Yu as General Manager.

(7) K.C. ''Philip'' Yu is a principal in Sea Dragon, CES Express, and Chin Express Services. It is believed that Mr. Yu also is the same individual shown as Director of Pan Sharp. Originally resident in Hong Kong, Mr. Yu appears to be the individual responsible for direction of the business affairs of Sea Dragon, CES Express, Chin Express Service and Pan Sharp.

(8) Christine Cheng is a principal in CES Express and Chin Express Service. While providing services as the ''clearing agent'' for inbound shipments imported by Y & W Worldtrade Inc., it appears that Ms. Cheng facilitated the misuse of Y & W Worldtrade's service contract with ANERA and Sea Dragon's misdescription of cargo being transported thereunder. Ms. Cheng apparently played a similar role in serving as destination agent for shipments whereby Sea Dragon improperly obtained access to Hyundai Merchant Marine Co. Ltd. (''Hyundai'') service contract No. 96–5064 with Welrich Trading Co. and likewise misdescribed those commodities being shipped.

(9) Yun Kei Lo is President of L & L Chain Inc., shown as shipper and/or consignee on numerous misdescribed shipments of inbound cargo from the Far East. Mr. Yun also is Chief Financial Officer and a Director of CES Express.

(10) Y & W Worldtrade Inc. (''Y & W Worldtrade'') is an importer and distributor of pottery located at 4373 Santa Anita Avenue, El Monte, California 91731. Y & W Worldtrade is the shipper signatory to ANERA service contract No. 5476/96, executed by Y & W Worldtrade's President and by its Traffic Manager, based in Hong Kong. Y & W Worldtrade's Hong Kong office is located on the premises of Sea Dragon Navigation. At destination in the U.S., Y & W Worldtrade employs the services of Christine Cheng of CES Express to act as clearing agent in handling inbound shipments and arranging delivery of goods to Y & W Worldtrade and its customers.

(11) Worldwide Container Line Inc. (''Worldwide Container'') d.b.a. Worldwide Trade Inc., was an NVOCC located at 145–34 157th Street, Jamaica, New York 11434.[3] Worldwide Container appears to have handled numerous shipments from Hong Kong to the East Coast of the United States on behalf of Sea Dragon.

Prior to July 17, 1997, Worldwide Container maintained a tariff[4] and NVOCC bond with the Commission. While canceled prior to the date of this Order, Worldwide Container's bond continues to provide coverage with respect to any civil penalties assessed against Worldwide Container for violations occurring before the date of bond termination.

(12) Bonnie Yang was the Managing Director of Worldwide Container and handled the company's daily operations.

(13) O.E.I. International Inc. (''OEI'') is a tariffed and bonded NVOCC[5] located at 813 W. Arbor Vitae Street, 2nd Floor, Inglewood, CA 90301. In addition to being identified by name as the notify party on the certain vessel-operating common carrier (''VOCC'' or ''master'') bills of lading in 1996, OEI also is known to have handled inbound shipments while doing business as Power International, Pacific Century

[1] As an ocean common carrier, Sea Dragon need not provide evidence that it maintains a non-vessel-operating common carrier (''NVOCC'') bond, nor has it designated a resident agent in the United States.

[2] Pursuant to Rule 24 of Pan Sharp's tariff, Distribution Publications Inc., 7996 Capwell Drive, Oakland, California 94621, serves as the U.S. resident agent for purposes of receiving service of process on behalf of Pan Sharp.

[3] It appears that in or about July 1997, Worldwide moved its offices to 108 S. Franklin Avenue. #17, Valley Stream, New York 11582.

[4] The tariff (ATFI No. 009890–002) contained only three commodity descriptions: Cargo, NOS (Premium Service); Cargo NOS (Regular Service); and Cargo NOS (Superior Service).

[5] O.E.I. International Inc. currently maintains an effective tariff, ATFI No. 012107–001, with the Commission.

Inc., Oster International, Care Group, and Orient Connection.

(14) OMNI-Freight International, Inc. (''OMNI-Freight'') is a California corporation, located at the same address in Inglewood, California as OEI. OMNI-Freight does not maintain an NVOCC tariff and bond.

As relevant herein, OMNI-Freight issues arrival notices and collects freight charges for OEI's shipments. Whereas OEI often is identified as the notify party on certain VOCC bills of lading, OMNI-Freight generally appears as the consignee or notify party in the underlying NVOCC bills of lading for the same shipment. For certain 1997 shipments, OMNI-Freight is shown on VOCC bills of lading as the notify party.

(15) Hwai Nien Hsu, a.k.a. Power Hsu, is the president of OEI International and president of OMNI-Freight. Mr. Hsu is believed generally knowledgeable as to the involvement of both firms insofar as they served as consignees and/or destination agents with respect to misdescribed cargoes originating with Transnation Shipping Company and Sea Dragon.

(16) Transnation Shipping Company (''Transnation Co.''), located at Rm. 1408, The Centre Mark, 287–299 Queen's Road, Central District, Hong Kong, purports to be a VOCC according to its tariff maintained in the Commission's ATFI system. Its ATFI filings identify Ivy Chan as Director of Transnation Co.

Transnation Co. maintains an effective tariff in ATFI (ATFI No. 012748–001); however, that tariff contains only one rate, applicable to Cargo, NOS between the United States and Asia Countries, filed in August 1994.

(17) Transnation Shipping Limited (''Transnation Ltd.'') is located at Rm. 1104, The Centre Mark, 287–299 Queen's Road, Central District, Hong Kong. The business address, phone and fax numbers for Transnation Ltd. and Transnation Co. are the same.[6] Choi Ling ''Ivy'' Chan is Director, Corporate Secretary and principal shareholder of Transnation Ltd.

Transnation Ltd. operates as an NVOCC. It appears that Transnation Ltd. was doing business as early as January 1996; however, Transnation Ltd.'s tariff (ATFI No. 015124–001) did not become effective until December 4, 1997.[7]

[6] Transnation Ltd. previously moved its offices from Room 1408 in the same building, *i.e.* the offices of Transnation Co. Its ''registered office'' in Hong Kong is Room 1408.

[7] The tariff contains three commodity descriptions: Cargo, NOS (Premium Service); Cargo, NOS (Regular Service); and Cargo, NOS (Superior Service) for shipments between the United States and Asia Countries.

Transnation Ltd. maintains and NVOCC bond, No. 8941515, issued by Washington International Insurance Company, which became effective November 25, 1997.

Based on available import data, Sea Dragon would appear to be the actual shipper on over 4500 inbound shipments during 1996 and 1997. Records obtained under the auspices of Commission Fact Finding Investigation No. 22 are indicative generally of the considerable scope and extent of cargo misdescriptions, untariffed activities and NVOCC misratings in which it appears Sea Dragon and its co-venturers have become involved.

Time Period: January 1 Through November 30, 1996

During the time period through November 30, 1996, Sea Dragon allegedly accessed a service contract between Hyundai Merchant Marine Co. Ltd. and Welrich Trading Co., Hyundai SC No. 96–5064, to obtain transportation of commodities on its own behalf as shipper (in relation to the underlying ocean common carrier, Hyundai) and as a carrier issuing its own Sea Dragon house bill of lading with respect to the commodity being shipped. It appears that Sea Dragon misdescribed the commodities declared on the ocean common carrier's bills of lading (master bill), which were rated by Hyundai pursuant to the service contract. Sea Dragon and its U.S. counterparts, primarily CES Express and CTL Maritime, nonetheless made payment to the ocean common carrier on the basis of the inaccurate commodity shown on the bill of lading when issued.

During this same time period, it is believed that a substantial volume of misdescriptions had occurred on shipments imported pursuant to a service contract between Y & W Worldtrade, of El Monte, California, and the Asia North American Eastbound Rate Agreement (''ANERA''). Under an arrangement whereby Y & A Worldwide contracted for ''cargo clearing'' services to be provided by Christine Cheng of CES Express, it appears that Sea Dragon and CES Express accessed the service contract of Y & W Worldtrade and utilized same to handle the inbound NVOCC traffic of Sea Dragon at ANERA service contract rates.

It appears that Sea Dragon misdescribed numerous shipments as KD furniture while utilizing the proprietary service contract rates available under the Y & W Worldtrade service contract. Y & W Worldtrade's Hong Kong office generally was listed as shipper on the ocean carrier's bill of lading, and Y & W Worldtrade, El Monte, acted as the consignee or notify party. Records obtained by the Commission's Bureau of Enforcement (''BOE'') indicate that an NVOCC bill of lading was issued by Sea Dragon to a consignee wholly unrelated to Y & W Worldtrade, which house bill subsequently was tendered to Sea Dragon's U.S. agent at destination.

Moreover, misdescription activities apparently were not confined to the Y & W Worldtrade and Welrich Trading service contracts during this period. It appears that Sea Dragon and/or Transnation Co., using a false or assumed name[8] in the shipper box of the ocean carrier's bill of lading, participated in additional shipments in which the commodity was variously described as ''DK furniture,'' ''kitchenware,'' ''chinaware,'' ''woodenware'' and ''exercise equipment.'' In numerous instances the notify party for West Coast cargoes utilized an assumed name[9] subsequently identified as one of Power Hsu's companies. Worldwide Container generally acted as notify party in the case of New York shipments.

Of similar import are shipments transported during 1996, in which L & L Chain purported to serve as shipper, consignee and/or notify party.[10] More than 180 shipments from Hong Kong to the United States, described as ''furniture'' or ''KD furniture,'' were carried by NYK and Hyundai on behalf of L & L Chain. Consignees and notify parties with respect to these shipments were CES Expres, CTL Maritime, OMNI-Freight and others. It is alleged that commodities also were misdescribed on the master bills of lading.

Time Period: November 1, 1996 Through May 30, 1997

Subsequent to its receipt of a Fact Finding subpena in October 1996, CES Express vacated its offices in Alhambra, California. Likewise, Sea Dragon appeared to have abandoned its use of the Welrich Trading service contract.

[8] Additional shipper names include Perfect International, Oster International, International Merchandise Inc., Santa National, China World, Shimon Import, Glory Noble and Orient Connection Corp.

[9] The consignee/notify party identified on the master bill of lading often reflected assumed names such as Power International, Pacific Century, Oster International, Care Group and Orient Connection. All reflect the telephone number or address of O.E.I. International and OMNI-Freight.

[10] L & L Chain's address alternately appears as Room 57, Ground Floor, Seven Seas Shopping Centre, 121 King's Road, North Point, Hong Kong, or as 801 S. Garfield Ave., Suite 102, Alhambra, California, the business address then occupied by CES Express.

It appears that on and after November 1, 1996, Sea Dragon contracted to obtain transportation from Hong Kong to the United States pursuant to a connecting carrier agreement signed with Hyundai.[11] Otherwise undated, the agreement provides carrier-to-carrier rates whereby Sea Dragon could obtain transportation on Hyundai's linehaul vessels to the U.S. during the period November 1, 1996 through October 31, 1997. While Sea Dragon presently maintains a VOCC tariff, Sea Dragon is not known to operate any vessels which serve U.S. ports. Accordingly, it appears that Sea Dragon would not be entitled to utilize an agreement subject to 46 CFR Part 572 as a means of obtaining transportation from an ocean common carrier. *See, e.g.*, 46 CFR 572.306(b) and (c).[12]

Significant volumes of cargo appear to have been transported by Hyundai under the above agreement. Various names were identified as shippers [13] on the master bills of lading, whereas Sea Dragon was identified solely within the ''Marks & Numbers'' portion of the bill. The above shipments were destined for handling by Chin Express [14] for West Coast cargo, and Worldwide Container with respect to East Coast cargo. Through July 1997, Chin Express alone is believed to have handled over 2900 TEUs of import cargo from Hong Kong.

Time Period: May 30, 1997 to Present

Subsequent to service of a Fact Finding subpena upon Chin Express in May 1997, Sea Dragon abandoned its use of the Hyundai connecting carrier agreement. It further appears that Philip Yu thereafter commenced operations as Pan Sharp International Ltd., an NVOCC. According to records maintained by the Bureau of Tariffs, Certification and Licensing, an NVOCC bond was filed on behalf of Pan Sharp, effective June 13, 1997. Pan Sharp initially filed in ATFI on July 28, 1997; however, its tariff did not become effective until September 5, 1997.

In and after May 1997, Pan Sharp acted as shipper on numerous shipments from Hong Kong to the U.S. At this same time, Pan Sharp separately negotiated and executed a time volume rate arrangement, TVR 97–004, and a service contract with Hyundai [15] in which Pan Sharp is identified as an NVOCC. More than 160 shipments were originated by Pan Sharp during the months of June–August 1997, at a time when Pan Sharp did not yet have any tariff rates effective for its NVOCC services.

Section 10(a)(1) of the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. § 1709 (a)(1), prohibits any person knowingly and willfully, directly or indirectly, by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, from obtaining or attempting to obtain ocean transport for property at less than the rates or charges that would otherwise be applicable. Operating both independently and in concert with one another, it appears that Sea Dragon and Transnation Co. engaged in a pattern of commodity misdescription practices, in many instances adopting false or assumed names as a means of concealing the transport of NVOCC shipments and facilitating the movement of misdescribed cargoes.[16] As shipper at origin, it appears that Sea Dragon and Transnation Co. had knowledge of the actual description of the commodities for which transportation was to be obtained, and were primarily responsible for misdescribing the shipments to the ocean common carrier. Likewise, at destination, it appears that the U.S. consignees and agents of Sea Dragon and Transnation Co. knew the actual commodities being shipped through their access to the NVOCC bills of lading. Accordingly, it appears that CES Express, Chin Express Services, OMNI-Freight, OEI, and Worldwide Container each participated with Sea Dragon in a scheme of knowingly and willfully obtaining ocean transportation of cargo for which the parties paid rates less than otherwise applicable.

It further appears that other individuals knew of, and assisted or facilitated various shipments on behalf of Sea Dragon, for which transportation was obtained in violation of section 10(a)(1) of the 1984 Act. Among these additional persons are Philip Yu with respect to Sea Dragon, CES Express, Chin Express Services and Pan Sharp; Christine Cheng with respect to CES Express and Chin Express Services; Yun Kei Lo with respect to CES Express and L & L Chain; Bonnie Yang with respect to Worldwide Container; and Power Hsu with respect to OEI and OMNI-Freight. It further appears that other corporate entities, specifically Y & W Worldtrade, L & L Chain, CTL Maritime and Transnation Ltd., knew of, and assisted or facilitated various misdescribed shipments involving Sea Dragon.

Section 10(b)(1), 46 U.S.C. app. 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. With respect to the above shipments in which Sea Dragon issued its own house bill of lading and collected freight from the consignees, it appears that Sea Dragon routinely has disregarded its filed tariff. Insofar as such shipments are representative of Sea Dragon's ongoing business, it would appear that later shipments under the connecting carrier agreement with Hyundai, and pursuant to Pan Sharp's service contract, likewise may be found to have applied rates other than those set forth in Sea Dragon's filed tariff, in violation of section 10(b)(1) of the 1984 Act.

Transnation Co. similarly has routinely issued its own house bills of lading on numerous shipments, yet currently maintains a tariff, ATFI No. 012748–001, which contains only one rate, applicable to Cargo, NOS between the United States and Asia Countries. It therefore appears that Transnation Co. has not applied its filed tariff rate to any of its shipments transported during 1996 and 1997. Thus, it appears that Transnation Co. may have violated section 10(b)(1) of the 1984 Act.

In addition, shipping records reflect that Transnation Shipping Ltd. and Pan Sharp International Ltd. both began operating as shippers prior to the time tariff or bonds were filed with respect to their services as NVOCCs. Transnation Ltd.'s tariff, ATFI No. 015124–001, did not become effective until December 4,

[11] The agreement is signed by Philip Yu, on behalf of Sea Dragon.

[12] Subparagraph (b) of the cited rule makes such agreements exempt from filing only to the extent the parties meet the tariff provisions set forth in paragraph (c) thereof. Subparagraph (c) requires publication in the applicable tariffs of all through rates, routings and additional charges for such service, as well as the identification within the tariff of any participating carriers to such transhipment agreement. *See also* 46 CFR 514.15(b)(13). Sea Dragon's tariff contains no references to any such agreements. Its mandatory tariff rule 13 specifies that such rule is ''not applicable.''

[13] Putative shippers include Tuanjin Import & Export Corp., East Corp., Fast Sales Ltd., Motive Products Manufactory Co., Diary Products Manufactory Co., Rich Chat Chong Import/Export Corp among others.

[14] In or about November 1996, Christine Cheng commenced operations as Chin Express Services, with business offices located in San Gabriel, California.

[15] Hyundai Service Contract No. 97–5817 was executed May 31, 1997, to be effective from June 3, 1997 through April 30, 1998. That agreement identifies Pan Sharp as an NVOCC.

[16] Sea Dragon, Chin Express and possibly other U.S. respondents may have continued to engage in rate practices violative of section 10(a)(1) of the 1984 Act through at least May 1997, pursuant to an unfiled and improper connecting carrier agreement whereby Sea Dragon obtained the benefit of rates not filed in any tariff or service contract.

1997,[17] and thus cannot account for shipments occurring as early as January 1996. Pan Sharp's ATFI tariff did not include any rates which were effective prior to September 5, 1997. Accordingly, it appears that Transnation Ltd. and Pan Sharp each charged rates not then effective for the NVOCC services provided, in apparent violation of section 8 of the 1984 Act and 46 CFR Part 514, and that they each operated as an NVOCC without benefit of the bond required by the 1984 Act, in apparent violation of section 23. In addition, it appears that Transnation Ltd. and Pan Sharp thereafter assessed and collected rates other than those set forth in their respective tariffs, in apparent violation of section 10(b)(1) of the 1984 Act.

As first noted above, Sea Dragon purports to be a vessel-operating common carrier, yet no indication can be found that Sea Dragon in fact operates any vessels in the United States foreign commerce. Likewise, Transnation Co. purports to be a VOCC according to its tariff maintained in the Commission's ATFI system, but there are no records reflecting that Transnation Co. operates vessels. To the extent these firms are maintaining VOCC tariffs as a means of evading the NVOCC bonding and resident agent requirements, or as a device by which to obtain off-tariff rates pursuant to connecting carrier agreements, it should further be determined whether those tariffs should be canceled as violative of sections 8 and 23 of the 1984 Act and 46 CFR Part 514 of the Commission's regulations.

Now therefore, it is ordered, That pursuant to sections 8, 10, 11, 13, and 23 of the 1984 Act, 46 U.S.C. app. 1707, 1709, 1710, 1712, and 1721, an investigation is instituted to determine:

(1) Whether Sea Dragon Navigation Ltd., CES Express Inc., Chin Express Services Inc., Pan Sharp International Ltd., L & L Chain Inc. and their respective principals, Philip Yu, Christine Cheng and Yun Kei Lo, violated section 10(a)(1) of the 1984 Act, 46 U.S.C. app. 1709(a)(1), by obtaining transportation for property at less than the rates or charges applicable from the ocean common carriers furnishing the transportation;

(2) Whether Y & W Worldtrade Inc., Transnation Shipping Co., Transnation Shipping Ltd., CTL Maritime (USA) Inc., O.E.I. International Inc., OMNI-Freight International Inc., Hwai Nien Hsu, Worldwide Container Line Inc. and Bonnie Yang violated section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by obtaining transportation for property at less than the rates or charges applicable from the ocean common carrier furnishing the transportation;

(3) Whether Sea Dragon Navigation Ltd., Transnation Shipping Co., Transnation Shipping Ltd. and Pan Sharp International Ltd. violated section 10(b)(1) of the 1984 Act, 46 U.S.C. app. 1709(b)(1), by charging, demanding, collecting or receiving compensation for the transportation of property other than the rates and charges set forth in their respective tariffs;

(4) Whether Transnation Shipping Ltd. and Pan Sharp International Ltd. violated section 8(a) of the 1984 Act, 46 U.S.C. app. 1707(a)(1), and 46 CFR Part 514 by providing common carrier services without having an effective tariff filed with the Commission;

(5) Whether Sea Dragon Navigation Ltd., Transnation Shipping Co., Transnation Shipping Ltd. and Pan Sharp International Ltd. violated section 23 of the 1984 Act, 46 U.S.C. app. 1721, by operating as NVOCCs without filing the requisite NVOCC bond and designating a resident agent with the Commission;

(6) Whether, in the event violations of sections 8, 10(a)(1), 10(b)(1) and 23 of the 1984 Act are found, civil penalties should be assessed and, if so, the amount of penalties to be assessed against any or all of the parties;

(7) Whether the tariffs of Transnation Shipping Co. and Sea Dragon should be canceled under sections 8 and 23 of the 1984 Act and 46 CFR Part 514;

(8) Whether the tariffs of Pan Sharp International, Transnation Shipping Ltd., O.E.I. International Inc. and CTL Maritime (USA) Inc. should be suspended pursuant to sections 13 and 23 of the 1984 Act; and

(9) Whether, in the event violations are found, an appropriate cease and desist order should be issued against any or all of the parties;

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Sea Dragon Navigation Ltd., CES Express Inc., Chin Express Services Inc., Pan Sharp International Ltd., L & L Chain Inc., Philip Yu, Christine Cheng, Yun Kei Lo, Y & W Worldtrade Inc., Transnation Shipping Co., Transnation Shipping Ltd., CTL Maritime (USA) Inc., O.E.I. International Inc., OMNI-Freight International Inc., Hwai Nien Hsu, Worldwide Container Line Inc. and Bonnie Yang are designated Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register,** and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by March 11, 1999 and the final decision of the Commission shall be issued by July 9, 1999.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–6668 Filed 3–13–98; 8:45 am]

BILLING CODE 6730–01–M

[17] In any event, the Transnation Ltd. tariff contains only three commodity descriptions: Cargo, NOS (Premium Service); Cargo, NOS (Regular Service); and Cargo, NOS (Superior Service).

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Tri-County Financial Group, Inc., Mendota, Illinois; to acquire 100 percent of the voting shares of Farmers State Bank of McNabb, McNabb, Illinois.

Board of Governors of the Federal Reserve System, March 10, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–6579 Filed 3–13–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. CAB Holding, LLC, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of The Chinese American Bank, New York, New York.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Peoples BancTrust Company, Inc., Selma, Alabama; to merge with Elmore County Bancshares, Tallassee, Alabama, and thereby indirectly acquire Bank of Tallassee, Tallassee, Alabama.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. NATCOM Bancshares, Inc., Superior, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Commerce in Superior, Superior, Wisconsin.

Board of Governors of the Federal Reserve System, March 11, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–6683 Filed 3–13–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 30, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Stichting Prioriteit ABN AMRO Holding; Stichting Administratiekantoor ABN AMRO Holding; ABN AMRO Holding N.V.; and ABN AMRO Bank N.V., all of Amsterdam, The Netherlands; to acquire Sage Clearing Corporation, San Francisco, California, and Sage Clearing Limited Partnership, San Francisco, California, their subsidiaries, and thereby engage in nonbanking activities including providing primary clearing services with respect to securities and options on securities, pursuant to § 225.28(b)(7)(i) of the Board's Regulation Y; in clearing futures transactions, pursuant to § 225.28(b)(7)(iv) of the Board's Regulation Y; and in providing data processing services, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bancshares of Missouri, Inc., Kearney, Missouri; to engage through Jesse James Festival Grounds, LLC, Kearney, Missouri, in lending activities, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 10, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–6578 Filed 3–13–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0040]

Submission for OMB Review; Comment Request Entitled Application for Shipping Instructions and Notice of Availability

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0040).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Application for Shipping Instructions and Notice of Availability. A request for public comments was published at 62 FR 67872, December 30, 1997. No comments were received.

DATES: Comment Due Date: April 15, 1998.

FOR FURTHER INFORMATION CONTACT: Marcia Crockett, Acquisition Operations & Electronic Commerce Center, Supply Management Division, (703) 305–7551.

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: Edward Springer, GSA Desk Office, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0400, concerning Application for Shipping Instructions and Notice of Availability. This information collection supports and justifies the markup of the six percent surcharge for the GSA export reimbursable program. It also is used to evaluate and obtain the best cube utilization of shipping vans and containers for export direct delivery shipments. The form contains data necessary to prepare Transportation Control and Movement Documents (TCMD) which are required when material enters the Defense Transportation System.

B. Annual Reporting Burden

Respondent: 500; annual responses: 4,000; average hours per response: .20; burden hours: 1,333.

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephone (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: March 10, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–6744 Filed 3–13–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Administration on Aging.

The Administration on Aging (AoA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511):

Title of Information Collection: State Annual Long-Term Care Ombudsman Report.

Type of Request: Extension, with no revision.

Use: Extension of format for states to report on activities of their Long-Term Care Ombudsman Programs as required under Section 712 of the Older Americans Act, as amended.

Frequency: Annually.

Respondents: State Agencies on Aging.

Estimated Number of Responses: 52.

Total Estimated Burden Hours: 9,000.

Additional Information or Comments: The Administration on Aging is submitting to-the Office of Management and Budget for approval an extension, with no revision, of a reporting form and instructions for the State annual Long-Term-Care Ombudsman reports, pursuant to requirements in Section 712(b) and (h) of the Older Americans Act.

The form for which extension is requested was approved by the Office of Management and Budget, on an emergency basis, for use by the states in reporting on activities in FY 1997. It is the same form used by the states for their FY 1996 reports, except for minor changes made for the FY 1997 emergency request. These changes:

(1) modified the wording of some of the complaint categories to assist respondents in categorizing some complaints which were being placed under ''other'' and

(2) stipulated that several narrative responses which had not changed since the previous report do not need to be repeated.

The reporting form is for federal fiscal years 1998–2000. Written comments and recommendations for the proposed information collection should be sent within 60 days of the publication of this notice directly to the following address: Office of Elder Rights Protection, Administration on Aging, Attention: Sue Wheaton, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Dated: March 10, 1998.

William Benson,

Principal Deputy Assistant Secretary for Aging.

[FR Doc. 98–6694 Filed 3–13–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98018]

State and Local Childhood Lead Poisoning Prevention Program and State Childhood Blood Lead Surveillance Program Notice of Availability of Funds for Fiscal Year 1998; Amendment

A notice announcing the availability of Fiscal Year 1998 funds for grants to support State and Local Childhood Lead Poisoning Prevention Programs and State Childhood Blood Lead Surveillance Programs was published in the **Federal Register** on February 3, 1998, [Vol. 63 FR No. 22]. The notice is amended as follows:

On page 5549, first column, under ''Availability of Funds'', under heading ''Awards for State Applicants'' the first paragraph should read: ''To determine the suggested level of funding for which an individual State is eligible, State applicants should refer to the accompanying table entitled ''State CLPPs Only: Funding Categories Based on Projected Level of Effort Required to Provide Prevention Services to a State Population.''

The second paragraph should read: ''Awards for eligible counties and cities, territories, tribes, and the District of Columbia should range from $250,000—$450,000, with an average award of $350,000. This is a suggested funding range.''

On page 5549, column two; under ''Additional Information on Funding'', the first sentence of the first paragraph should read ''For State applicants for Part A: CLPP funding only: Determine your suggested category (Category 1, 2, or 3) according to the table on the next page''.

On page 5549, column three, last paragraph should be deleted and replaced with: ''Applicants are encouraged to use the funding category that is suggested for the applicant's State; however, note that these are suggested funding guidelines and should not be regarded as absolute funding limits.''

All other information and requirements of the notice remain the same.

Dated: March 10, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–6622 Filed 3–13–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Early Hearing Detection and Intervention (EHDI) Tracking Systems; Workshop

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following workshop.

Name: Workshop on Early Hearing Detection and Intervention (EHDI) Tracking Systems.

Times and Dates: 3 p.m.—5 p.m., March 18, 1998, 8 a.m.—5 p.m., March 19, 1998, 8:30 a.m.—1 p.m., March 20, 1998.

Place: Holiday Inn Select Atlanta-Decatur Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030, telephone 404/371–0204; http://www.holiday-decatur.com

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Purpose: The purpose of this workshop is to provide practical ideas and guidelines on how to deal with various issues related to: (1) building the EHDI system through collaboration and input from stakeholders, (2) assuring the effectiveness of the EHDI system through tracking and monitoring, and (3) minimizing adverse psychological consequences.

Matters to be Discussed: Agenda items for March 19 will include a discussion by experts on the following issues: (1) building the EHDI system through collaboration and input from stakeholders, (2) assuring the effectiveness of the EHDI system through tracking and monitoring, and (3) minimizing adverse psychological consequences. The experts will provide concrete evidence regarding the importance of these particular issues or obstacles and make suggestions as to resolution. On March 20, after the discussion, participants will break into three groups, corresponding to three categories of issues. Facilitators will guide the participants in developing a draft action plan for how to deal with their respective issue while planning and implementing an EHDI system. Participants are encouraged to bring to the workshop information, materials, and references that may be useful in the process of developing a plan of action.

Contact Person For More Information: June Holstrum, Ph.D., Division of Birth Defects and Developmental Disabilities, NCEH, CDC, 4770 Buford Highway, NE, M/S F–15, Atlanta, Georgia 30341, telephone 770/488–7401, fax 770/488–7361, e-mail: ehdi@cdc.gov

Dated: March 11, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–6804 Filed 3–13–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0056]

Draft List of Approved Drugs for Which Additional Pediatric Information May Produce Health Benefits in the Pediatric Population; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft list of approved drugs for which additional pediatric information may produce health benefits in the pediatric population. The draft list is being compiled under new statutory requirements of the Food and Drug Administration Modernization Act of 1997 (FDAMA). The purpose of the list is to identify drugs for which certain information is necessary to determine if an approved drug can be used safely and effectively in the pediatric population. Interested individuals may comment on the draft list.

DATES: Submit written comments by April 15, 1998.

ADDRESSES: The draft list may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written comments on the draft list to the office above. See the Supplementary Information section for electronic access addresses.

FOR FURTHER INFORMATION CONTACT: Khyati N. Roberts, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779, FAX 301–594–5493, e-mail robertsk@cder.fda.gov, or Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041, FAX 301–827–5562, e-mail cusumanol@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, President Clinton signed FDAMA into law (Pub. L. 105–115). Section 111 of the Modernization Act (21 U.S.C. 355A(b)) requires FDA, after consultation with experts in pediatric research, to develop, prioritize, and publish a list of approved drugs for which additional pediatric information may produce health benefits in the pediatric population (the list). FDA is to publish

the list on or before May 20, 1998, and will update the list regularly. The purpose of the list is to identify drugs for which certain information is necessary to determine if an approved drug can be used safely and effectively in the pediatric population. Inclusion of a drug on the list does not necessarily mean that the drug is entitled to pediatric exclusivity.

II. Procedure for Development of the Draft List

To develop a draft list, FDA requested that experts in pediatric research, trade organizations, and other interested persons, including the American Academy of Pediatrics, the Pharmaceutical Research and Manufacturers Association, the National Institutes of Health, the Pediatric Pharmacology Research Units Network, the National Pharmaceutical Alliance, the Generic Pharmaceutical Industry Association, the National Association of Pharmaceutical Manufacturers, and the United States Pharmacopeia, identify drugs for possible inclusion on the list. FDA then reviewed the drugs identified by these experts to determine whether studies on the drugs might produce health benefits in the pediatric population. FDA is making available in the above docket the draft list created as a result of this process, as well as a statement of the criteria used by the agency to determine whether a drug may produce a health benefit in the pediatric population.

III. Request for Comments

Interested persons may submit written comments regarding the draft list on or before April 15, 1998, 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. The draft list and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider the comments before publishing the list on May 20, 1998. Persons with access to the Internet may obtain the draft list by using the World Wide Web (WWW). For WWW access, connect to CDER at http://www.fda.gov/cder/pediatric.

Dated: March 4, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–6667 Filed 3–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4307–N–02]

Draft Environmental Impact Statement (DEIS); City of Porterville, CA Section 108 Loan Guarantee Funded Infrastructure Project

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of availability of DEIS and public comment dates.

SUMMARY: The Department of Housing and Urban Development gives notice that the City of Porterville, California, has prepared a combined Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for a Section 108 Loan Guarantee funded infrastructure project as described in this notice. This notice is in accordance with regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

Interested individuals, government agencies, and private organizations are invited to comment on the Draft Environmental Impact Report/Draft Environmental Impact Statement concerning the project to the specified person or address indicated below.

Particularly solicited are comments on the draft EIR/EIS and the major issues identified below.

Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid in the final EIR/EIS effort.

DATES: *Effective date:* This notice shall be effective on March 16, 1998.

Comment due date: Written comments must arrive by May 1, 1998 at the address given below. We will consider all comments received in preparing the Final Environmental Impact Statement.

ADDRESSES: All interested agencies, groups and persons are invited to submit written comments on the Draft Environmental Impact Statement to the following contact person: Ronald J. Mauck, City of Porterville, Department of Community Development and Services, 291 North Main Street, Porterville, CA 93257.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald J. Mauck (see address above), telephone (209) 782–7460.

SUPPLEMENTARY INFORMATION: A combined Draft Environmental Impact Report/Environmental Impact Statement has been completed and accepted for the proposed action described below. Comments on the Draft EIR/EIS are requested and will be accepted by the contact person until May 1, 1998.

Title of Action: City of Porterville Section 108 Loan Guarantee Funded Infrastructure Project.

Description of Action: The Draft Environmental Impact Report/Environmental Impact Statement examines the social, economic and environmental impacts on the City of Porterville and its environs from completion of the proposed action. Key objectives of the project include:

(1) Provision of new, and retention of existing, jobs through development of a variety of public infrastructure resulting in employment opportunities for low and moderate income persons; (2) rehabilitation of three central business district parking lots; and (3) provision of financial assistance in rehabilitating existing commercial structures or acquisition of sites for, and construction of new, commercial buildings.

The combined EIR/EIS analyzes potential environmental effects of five alternative projects. The alternative projects described here are illustrative of varying options for development, enabling an evaluation of the full range of impacts identified within the EIR/EIS alternative.

Alternative 1 would provide for extension of water and sewer trunk lines within Indiana Street and Teapot Dome Avenue connecting the existing City water and sewer infrastructure system with industrial designated lands along Tea Pot Dome Avenue and within the easterly sector of the Porterville Municipal Airport. Alternative 1 would also include development of a new highway interchange at the intersection of State Highway 65 and Teapot Dome Avenue. Approximately 280 acres of vacant and agricultural land currently designated by the City General Plan for future industrial development would ultimately be converted to urbanized use under Alternative 1.

Alternative 2 would provide for extension of water trunk lines within South Newcomb Street from River Avenue south across the Tule River to a point just south of the intersection of South Newcomb Street and State Highway 190. Alternative 2 would also provide for the construction of South Newcomb Street to arterial width from Heritage Avenue south across the Tule River, inclusive of construction of a bridge across the river, to a point just south of the intersection of South Newcomb Street and State Highway 190. Street improvements would include curb, gutter, sidewalk, and streetlights. Approximately 280 acres of vacant land currently designated by the City General Plan for low-density

residential uses would be ultimately converted to Industrial/Commercial Uses under Alternative 2.

Alternative 3 would provide for extension of sewer and water trunk lines from Indiana Street north of Gibbons Avenue to the intersection of Indiana Street and Scranton Avenue then west along Scranton Avenue across State Highway 65 to the intersection of Scranton Avenue and South Newcomb Street. Construction of State Highway on and off ramps at the intersection of State Highway 65 and Scranton Avenue would also be provided by Alternative 3. Approximately 300 acres of vacant land designated for highway commercial uses and 150 acres of primarily vacant land designated for industrial uses would ultimately be converted to urbanized uses under Alternative 3.

Alternative 4 (the Proposed Action) would provide for infrastructure improvements within two (2) distinctly separate locations. Alternative 4—Area No. 1 would provide for extension of water and sewer trunk lines in the vicinity of the Porterville Municipal Airport, improvement of Tea Pot Dome Avenue, and Newcomb and West Streets proximate to the Municipal Airport, improvements to the abandoned runway located at the Municipal Airport, and installation of master planned storm drain improvements in the vicinity of the municipal airport. Alternative 4-Area No. 2 would provide for extension of water trunk lines in the vicinity of South Jaye Street, State Highway 65 and Gibbons Avenue. South Jaye Street would be extended as an arterial width street from its southerly terminus to Gibbons Avenue. Alternative 4 would also accomplish installation of storm drain facilities in South Jaye Street and Gibbons Avenue. Under Alternative 4, approximately 380 acres of primarily vacant land designated for industrial uses would ultimately be converted to urbanized use.

Alternative 5 is the No Project alternative, consideration of which is required by the California Environmental Quality Act (CEQA) and by the National Environmental Policy Act (NEPA). Under this alternative, the proposed infrastructure project would not occur precluding industrial/commercial development of any of the areas discussed in Alternatives 1–4.

Location: City of Porterville, Tulare County, California

Potential Environmental Impacts: Land use and planning; population and housing; water impacts; air quality impacts; transportation and circulation impacts; biological resource impacts; energy and mineral resource impacts; hazards, noise impacts; demands on public services and utilities; aesthetic impacts; recreation impacts; and cumulative effects. Most of these impacts would be reduced to a level of insignificance following implementation of proposed mitigation measures.

The Draft Environmental Impact Report/Environmental Impact Statement will be published on or about March 16, 1998 and will be on file at 291 North Main Street, Porterville, California 93257 and available for public inspection, or copies may be obtained at the same address, upon request.

Dated: March 11, 1998.

Richard H. Broun,

Director, Office of Community Viability.

[FR Doc. 98–6679 Filed 3–13–98; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Incidental Take Permit for the City of Austin for the Operation and Maintenance of Barton Springs Pool and Adjacents Springs

SUMMARY: The City of Austin has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The applicant has been assigned permit number PRT—839031. The requested permit, which is for a period of 15 years, would authorize the incidental take of the endangered Barton Springs salamander (*Eurycea sosorum*). The proposed take would occur as the result of the operation and maintenance of Barton Springs Pool and adjacent springs in Austin, Travis County, Texas.

The City of Austin has prepared an Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take permit application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will be made at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10© of the Act and National Environmental Policy Act regulations (40 CFR 1506.6)

DATES: Written comments on the application should be received on or before April 15, 1998.

ADDRESSES: Person wishing to review the EA/HCP may obtain a copy by contacting Matthew Lechner, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) U.S. Fish and Wildlife Service, Austin, Texas.

Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas, at the above address. Please refer to permit number PRT—839031 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Matthew Lechner at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Barton Springs salamander. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

The City of Austin plans to maintain and operate Barton Springs Pool and the adjacent springs in Austin, Travis County, Texas. This action may cause the incidental take of less than 20 salamanders per year, for the 15-year term of the permit. The applicant proposes to minimize and mitigate for the incidental take of the Barton Springs salamander by placing 10 percent of the total revenues generated at Barton Springs Pool into a conservation fund. The fund would be used for enhancing habitat and for ecological and biological research on the Barton Springs salamander. In addition, mitigation measures are included in the Habitat Conservation Plan.

Don Ciccone,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–6621 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) (formerly 25 CFR 54.9(a)) notice is hereby given that the: Saponi Nation of Ohio, P.O. Box 423, Rio Grande, Ohio 45674, has filed a letter of intent to submit a petition for Federal acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The letter of intent was received by the Bureau of Indian Affairs (BIA) on September 23, 1997, and was signed by members of the group's governing body.

This is a notice of receipt of letter of intent to submit a petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) (formerly 54.8(d)) of the Federal regulations, third parties may submit factual and/or legal arguments in support of or in opposition to the group's petition or request to be informed of any general actions affecting the petition. Any information submitted will be made available on the same basis as other information in the BIA's files. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Room 3427–MIB, 1849 C Street, N.W., Washington, D.C. 20240, (202) 208–3592.

Dated: March 3, 1998.

Hilda Manuel,

Deputy Commissioner of Indian Affairs.

[FR Doc. 98–6709 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(a) notice is hereby given that the: Tap Pilam—The Coahuiltecan Nation, Attn. Mr. Stephen Cassanova, P.O. Box 100113, San Antonio, Texas 78201 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on December 3, 1997, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under Section 83.9(a) of the Federal regulations, third parties may submit factual and/or legal arguments in support of or in opposition to the group's petition, and/or may request to be kept informed of all general actions affecting the petition. Any information submitted will be made available on the same basis as other information in the BIA's files. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, MIB, 1849 C Street, N.W., Washington, D.C. 20240, (202) 208–3592.

Dated: March 3, 1998.

Hilda Manuel,

Deputy Commissioner—Indian Affairs.

[FR Doc. 98–6681 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: San Carlos Irrigation Project, Arizona

ACTION: Notice of operation and maintenance (O&M) rate adjustment.

SUMMARY: The Bureau of Indian Affairs is adjusting the assessment rates for operating and maintaining the San Carlos Irrigation Project for 1998. The following table illustrates the impact of the rate adjustment.

SAN CARLOS IRRIGATION PROJECT IRRIGATION RATE PER ASSESSABLE ACRE

	1997	1998
Rate	$30.00	$20.00

COMMENTS: On September 17, 1997, the Bureau of Indian Affairs published a notice in the **Federal Register**, 62 FR 44992, proposing to adjust the assessment rates for operating and maintaining the San Carlos Irrigation Project, Arizona, for 1998, 1999, and subsequent years. The notice of proposed rate adjustment provided a thirty (30) day public comment period. No comments were received for the proposed adjustment to the assessment for 1998.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001, telephone (602) 379–6956.

DATES: The new irrigation assessment rate for 1998 will become effective upon publication of this notice.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with Section 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for fixing and announcing the rates for annual operation and maintenance assessments and related information for BIA operated and owned irrigation projects.

The assessment rates are based on an estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his/her management control;

(b) Materials and supplies;

(c) Major and minor vehicle and equipment repairs;

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;
(d) Capitalization expenses;
(e) Acquisition expenses, and
(f) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures. Beginning 30 days after the due date interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90 days old and will accrue from the date the debt became delinquent. After 180 days a delinquent debt will be forwarded to the United States Treasury for further action in accordance with the Debt Collection Improvement Act of 1996 (Public Law 104-134).

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates.'' 5 U.S.C. § 601(2).

Executive Order 12630

The Department has determined that this rate adjustment does not have significant ''takings'' implications.

Executive Order 12612

The Department has determined that this rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995

This rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Dated: March 5, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–6665 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–1020–00]

Pelican Lake/Ouray National Wildlife Refuge Plan Amendment; Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of proposed plan amendment

SUMMARY: The Bureau of Land Management (BLM), Vernal Field Office has completed an Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) of the Proposed Pelican Lake/Ouray National Wildlife Refuge Plan Amendment to the Diamond Mountain Resource Area Resource Management Plan (DMRA–RMP). The Proposed Plan Amendment would modify existing DMRA–RMP management prescriptions within the plan amendment area through reclassification of about 2,197.64 acres of public land from their current classification as Level 4, open management land and unclassified land to Level 3, active management land; about 754.75 acres of public land within the plan amendment area are currently classified as Level 3, open management land. The 160 acres of public land currently classified as Level 1, restricted management land and 1,794.66 acres of public land currently classified as Level 2, careful management land would not be reclassified. Multiple use of the public land within the proposed plan amendment area would continue in a manner that is compatible, to the extent possible, with the objectives of the Ouray National Wildlife Refuge (Refuge). Future management would focus on curbing or restricting activities or land uses which, if not mitigated, may contribute to or exacerbate the selenium problem currently affecting the Refuge.

The proposed plan amendment would enhance the BLM's ability to provide for economic growth through multiple use as well as provide additional protection for sensitive resources.

DATES: The protest period for this Proposed Plan Amendment will commence with the date of publication of this notice and last for 30 days. Protests must be received on or before March 16, 1998.

ADDRESS: Protests must be addressed to the Director (WO–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, N.W., Washington, D.C. 20240 within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Peter Kempenich, Natural Resource Specialist, Vernal Field Office, at 170 South 500 East, Vernal, Utah 84078, (435) 781–4432. Copies of the proposed Plan Amendment EA are available for review at the Vernal Field Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to Section 202(a) of the Federal Land Policy and Management Act (1976) and 43 CFR Part 1610. This Proposed Amendment is subject to protests by any party who has participated in the planning process. Protest must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest
—A statement of the issue(s) being protested
—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps et cetera, of the Proposed Plan Amendment
—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the

protester discussed the issue(s) for the record

—A concise statement as to why the protester believes the BLM State Director is incorrect

Dated: March 10, 1998.

Douglas M. Koza,

Acting State Director, Utah

[FR Doc. 98–6686 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61417]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive sale of public lands in White Pine County, Nevada.

SUMMARY: The below listed public land in Newark Valley, White Pine County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 and Section 209 of the Act of October 21, 1976; 43 U.S.C. 1761.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Assistant District Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Assistant District Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Michael McGinty, Realty Specialist, at the above address or telephone (702) 289–1882.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in White Pine County is being offered as a direct sale to Mr. Warren Scoppettone.

Mount Diablo Meridian, Nevada

T. 17 N., R. 55 E.,
Section 18, S½S½SE¼.
Containing 40.00 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for the conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the sodium, potassium, oil and gas mineral deposits in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittee, licensees and lessees, the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under law and implementing regulations. Unless otherwise provided by separate agreement with surface owner, permittee, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior. All cause of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against permittee, licensees and lessees of the United States; and the United States shall not be liable for the acts or omissions of its permittee, licensees and lessees. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant District Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: March 4, 1998.

Gene A. Kolkman,

District Manager.

[FR Doc. 98–6612 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

National Park Service

Intent To Issue a Prospectus for Operation of a Gas Service Station at Yosemite National Park

SUMMARY: The National Park Service will be releasing a concession Prospectus authorizing continued operation of a gas service station adjacent to the west entrance of Yosemite National Park. The operation is located on land administered by the park near the community of El Portal. The operation is considered a full service station and has one service bay for minor car repair and lubrication service. The sales consist of automotive gasoline (three grades), oil, propane, lubricants, batteries, tires and other related automobile supplies. The operation is year round with the peak season during the summer months. The annual gross receipts average between $424,000 to $459,000. The new contract will be for eight (8) years and five (5) months expiring December 31, 2006. The new operator will be required to replace four (4) underground storage tanks by December 1998 in accordance with the Federal Law. There is an existing concessioner which has operated satisfactorily under the existing permit and has a right of preference in renewal.

SUPPLEMENTARY INFORMATION: The cost for purchasing a Prospectus is $30.00. Parties interested in obtaining a copy should send a check (NO CASH) made payable to ''National Park Service'' to

the following address: National Park Service, Pacific Great Basin Support Office, Office of Concession Program Management, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372. A Tax Identification Number (TIN) OR Social Security Number (SSN) MUST be provided on all checks. The front of the envelope should be marked ''Attention: Office of Concession Program Management—Mail Room Do Not Open''. Please include in your request a mailing address indicating where to send the Prospectus. Inquiries may be directed to Ms. Teresa Jackson, Office of Concession Program Management at (415) 427–1369.

Dated: March 5, 1998.

Sondra S. Humpries,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–6625 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; General Management Plan; National Park of American Samoa; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service has prepared a Final Environmental Impact Statement (FEIS) for the General Management Plan (GMP) for the National Park of American Samoa, Territory of American Samoa. The GMP proposes implementation of management strategies to ensure the long-term protection of the natural, cultural, and subsistence resources of this national park. Also included in the actions proposed is development of a full program to interpret those resources for visitors, and limited construction of facilities needed to provide for visitor enjoyment of this new and, as yet, undeveloped national park. Development within the national park is to be restrained and low-key. Major visitor use facilities are proposed at locations outside of the national park. Villages located near the national park are encouraged to provide visitor services in the traditional Samoan style.

Alternatives and Proposed Action: Four alternatives and corresponding mitigation measures were identified and analyzed. This consisted of No Action (Alternative B); Minimum Requirements (Alternative C, minimal facility development, visitor services and resource management); and Alternative D (same as proposed action, with the added element of developing a visitor center *within* the national park). The Proposed Action is Alternative A, and is briefly summarized above.

Background: The Draft Environmental Impact Statement (DEIS) was released for public review for a 75-day period which ended March 15, 1997. Public meetings were held in American Samoa during the review period to hear comments on the draft plan; meetings were also held in each of the nine villages with lands in the national park to hear comments from village council members. Both the DEIS and the FEIS evaluate the same proposed action and three alternatives. The information in the FEIS remains essentially unchanged from the DEIS. The FEIS contains responses to the comments received on the draft and the modifications and clarifications to the text in response to those comments. Modifications and clarifications made were minor and few in number.

SUPPLEMENTARY INFORMATION: The no-action period for the FEIS/GMP will extend for 30 days after EPA's listing of the filing of the document in the **Federal Register**. Requests for information or copies of the final document should be directed to the Superintendent, National Park of American Samoa, Pago Pago, American Samoa 96799; or to Park Planner, Pacific Islands Support Office, 300 Ala Moana Blvd, Box 50165, Honolulu, Hawaii 96850.

Dated: March 1, 1998.

John J. Reynolds,

Regional Director, Pacific West.

[FR Doc. 98–6626 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of a Plan of Operations and Environmental Assessment for Duke Energy Field Services Inc.; Padre Island National Seashore Kenedy and Kleberg Counties, TX

The National Park Service has received from Duke Energy Field Services, Inc. a Plan of Operations for the continued operation of an existing natural gas pipeline at Padre Island National Seashore, Kenedy and Kleberg Counties, Texas.

Pursuant to § 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B (36 CFR 9B); the Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas. Copies of the documents are available from the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418, and will be sent upon request.

Dated: March 5, 1998.

Patrick C. McCrary,

Superintendent, Padre Island National Seashore.

[FR Doc. 98–6624 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision, General Management Plan/ Final Environmental Impact Statement, Manhatten Sites, New York, NY

AGENCY: National Park Service, Department of the Interior.

INTRODUCTION: This Record of Decision (ROD) concludes compliance with the National Environmental Policy Act for decision making to approve a General Management Plan (GMP) for Manhattan Sites. This compliance was initiated upon a Notice of Intent to prepare an Environmental Impact Statement (EIS), published in the **Federal Register** (FR) March 10, 1992. That notice called for a normal 30-day scoping period during which open houses were held at each of the sites to encourage public input. This period was extended to April 30, 1992 by a subsequent FR notice on April 21. Notices of Availability of the Draft and Final EIS's were published in the FR on June 16, 1996 and February 14, 1997 respectively.

SUMMARY: The ROD is a concise statement of the decisions made, other alternatives considered, the basis for the decision, the environmentally preferable alternative, the mitigating measures, and the public involvement in the decision making process.

Public Law 965–625, the National Parks and Recreation Act, requires the preparation and timely revision of GMP's for each unit of the National Park system. The purpose of the GMP for these sites is to guide the overall management, development, resource conservation and use of each site. Presented are alternatives for the preservation and development of each site and the impacts of implementing each alternative.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969,(P.L. 910190 as amended), and

specifically to regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared this Record of Decision following the Final EIS, on the GMP for five (5) of the six (6) sites administered by the National Park Service as Manhattan Sites, including; Castle Clinton National Monument, Federal Hall National Memorial, Theodore Roosevelt Birthplace National Historic Site, General Grant National Memorial, and Saint Paul's Church National Historic Site. A separate GMP/EIS was completed earlier for Hamilton Grange National Memorial with a Record of Decision date July 24, 1995.

The National Park Service will now commence to implement action features of selected alternatives from the Final EIS as described in the ROD and set forth in the GMP for each of the units comprising the Manhattan Sites.

ADDRESSES: Copies of the ROD are available upon request from: Superintendent, Manhattan Sites, 26 Wall Street, New York, NY 10005, Telephone (212) 825–6990.

Dated: March 6, 1998.

Marie Rust,

Regional Director, Northeast Field Area, (215) 597–7013.

[FR Doc. 98–6627 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Substance Resource Commission meeting.

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to Order (Chairman).

(2) Roll Call; Confirmation of Quorum.

(3) Introduction of Commission members and guests.

(4) Review Agenda.

(5) Superintendent's welcome and review of the Commission purpose.

(6) Commission membership status.

(7) Election of Chair and Vice Chair.

(8) Review and approval of minutes from November 3–4, 1997 meeting.

(9) Superintendent's report:

a. Wrangell-St. Elias National Park and Preserve Subsistence Specialist position.

b. Mentasta Herd update.

(10) Wrangell-St. Elias National Park and Preserve staff reports.

(11) Public and other agency comments.

(12) Old business:

a. Review comments on draft subsistence plan for Wrangell-St. Elias National Park and Preserve.

b. Review comments on draft Subsistence Hunting Program Recommendation 97–01 (establish minimum residency requirement for resident zone communities).

c. Status of draft proposed rulemaking to add Northway, Tetlin, Tanacross and Dot Lake as resident zone communities. (Review comments/recommendations on draft proposed rule).

d. Status of Malaspina Forelands ATV study project.

(13) New Business:

a. Review actions taken by Regional councils on Federal Subsistence Program 1997–98 proposed regulation changes.

b. Federal Subsistence Program update.

(14) Subsistence Resource Commission work session to develop/finalize recommendations.

(15) Set time and place of next Subsistence Resource Commission meeting.

(16) Adjourn meeting.

DATES: The meeting will begin at 9 a.m. on Tuesday, April 7, 1998, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Wednesday, April 8, 1998, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The meeting location is: Tanacross Community Hall, Tanacross, Alaska.

FOR FURTHER INFORMATION CONTACT: Jonathan B. Jarvis, Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Phone (907) 822–5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Robert D. Barbee,

Regional Director.

[FR Doc. 98–6623 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 7, 1998 Pursuant to section 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, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by March 31, 1998.

Carol D. Shull,

Keeper of the National Register.

COLORADO

Arapahoe County

Foster—Buell Estate, 2700 E. Hampden Ave., Cherry Hills Village, 98000294

Littleton Main Street, Roughly along W. Main St., from S. Curtice St. to S. Sycamore St., Littleton, 98000291

Garfield County

Earnest Ranch, 6471 Co. Rd. 117, Glenwood Springs vicinity, 98000292

Gunnison County

Edgerton House, 514 W. Gunnison Ave., Gunnison, 98000293

Larimer County

Stanley Hotel District Boundary Increase, Fish Hatchery Rd. at Fall R., Estes Park vicinity, 98000321

FLORIDA

Clay County

St. Margaret's Episcopal Church and Cemetery, 6874 Old Church Rd., Green Cove Springs, 98000296

Pinellas County

Roser Park Historic District, Roughly bounded by 5th and 9th Sts. S, and 6th and 11th Aves. S, St. Petersburg, 98000295

GEORGIA

Glynn County

U.S. Coast Guard Station—St. Simons Island, 4201 First St., St. Simons Island, 98000297

INDIANA

Huntington County

Rangeline Road Bridge, Co. Rd. 475 W over Wabash R., Huntington vicinity, 98000306

Lake County

Dell Plain, Morse, House and Garden, 7109 Knickerbocker Pkwy., Hammond, 98000298

Stallbohn Barn—Kaske House, 1154 Ridge Rd., Munster, 98000303

Marion County

Manchester Apartments, 960–962 N. Pennslyvania St., Indianapolis, 98000302
Sheffield Inn, 956–58 N Pennsylvania St., Indianapolis, 98000301

Morgan County

Martinsville Commercial Historic District, Roughly bounded by Pike, Mulberry, Jackson, and Sycamore Sts., Martinsville, 98000300

St. Joseph County

Tivoli Theater, 208 N. Main St., Michawaka, 98000304

Spencer County

Huffman Mill Covered Bridge, Co. Rd. 1490 N over Anderson R, Fulda vicinity, 98000299
Lincoln Pioneer Village, Jct. of 9th St. and Eureka Rd., Rockport, 98000305

MAINE

Cumberland County

Dyer, Isaac E., Estate, 180 Fort Hill Rd., Gorham vicinity, 98000307
Portland Soldiers and Sailors Monument, Jct. of Congress St. and Federal St., Portland, 98000308

Knox County

Webster, Moses, House, Atlantic Ave., 0.05 mi. E of jct. of Main St. and Atlantic Ave., Vinalhaven, 98000309

Oxford County

Cole Block, 19 Main St., Bethel, 98000310

MINNESOTA

Ramsey County

Hill's, James J., North Oaks Farm Granary and Root Cellar (James J. Hill's North Oaks Farm Buildings MPS) Red Barn Rd., jct. of Hill Farm Circle and Evergreen Rd., North Oaks vicinity, 98000311
Hill's, James J., North Oaks Farm Blacksmith and Machine Shop (James J. Hill's North Oaks Farm Buildings MPS) Red Barn Rd., jct. of Hill Farm Circle and Evergreen Rd., North Oaks vicinity, 98000312

MISSISSIPPI

Lincoln County

Foxx—Cox House, 402 Monticello St., Bogue Chitto, 98000314

MISSOURI

St. Louis Independent City

International Bur Exchange Building, 2–14 S. Fourth St., St. Louis, 98000313

NEW MEXICO

Otero County

Fresnal Shelter (Rockshelter Site of the Western Encarpment of the Sacremento Mountains MPS) Address Restricted, High Rolls vicinity, 98000315

NEW YORK

Kings County

Old First Reformed Church, 729 Carroll St., Brooklyn, 98000316

OHIO

Ashtabula County

Blackeslee Log Cabin, 441 Seven Hills Rd., Ashtabula vicinity, 98000319

Cuyahoga County

Hotel Statler, 1127 Euclid Ave., Cleveland, 98000317

Lucas County

Maumee Theater, 601 Conant St., Maumee, 98000318

TENNESSEE

Davidson County

Acme Farm Supply Building, 101 Broadway, Nashville, 98000320

[FR Doc. 98–6684 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 98 09]

Draft Programmatic Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR), CALFED Bay-Delta Program, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, Natural Resources Conservation Service, Army Corps of Engineers, and the California Resources Agency, as co-lead agencies, have prepared a Draft EIS/EIR for the CALFED Bay-Delta Program. The CALFED Bay-Delta Program is a cooperative effort by 15 State and Federal agencies with regulatory and management responsibilities in the San Francisco Bay-Sacramento/San Joaquin River Bay-Delta to develop a long-term plan to restore ecosystem health and improve water management for beneficial uses of the Bay-Delta system. The objective of this collaborative planning process is to identify comprehensive solutions to the problems of ecosystem quality, water supply reliability, water quality, and Delta levee and channel integrity. The Draft EIS/EIR identifies 12 alternative methods to achieve this objective and analyzes the environmental impacts of each of those alternatives. Public hearings will be held in 12 cities throughout California to receive written or verbal comments on the Draft EIS/EIR from interested organizations and individuals on the environmental impacts of the proposal.

DATES: Public comments on the Draft EIS/EIR should be submitted in writing on or before June 1, 1998. Public hearings to receive oral comments on the Draft EIS/EIR will be held in various locations in California. See **SUPPLEMENTARY INFORMATION** section for hearing dates.

ADDRESSES: Written comments on the Draft EIS/EIR should be addressed to Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, California 95814. Requests for a printed copy of the Draft EIS/EIR should be addressed to Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, California 95814; telephone: (800) 900–3587. When requesting a copy, please specify whether you would like the Executive Summary or a complete set of the Draft EIS/EIR with 11 Appendices. Copies of the Draft EIS/EIR are also available for public inspection and review. See **SUPPLEMENTARY INFORMATION** section for locations.

FOR FURTHER INFORMATION CONTACT: To request copies of the Draft EIS/EIR or for additional information, contact Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, CA 95814; telephone: (800) 900–3587.

SUPPLEMENTARY INFORMATION:

Hearing Dates

- April 21, 1998, at 7:00 p.m. in Ontario, California
- April 22, 1998, at 7:00 p.m. in Fresno, California
- April 23, 1998, at 7:00 p.m. in Oakland, California
- April 28, 1998, at 7:00 p.m. in Burbank, California
- April 29, 1998, at 7:00 p.m. in Bakersfield, California
- April 30, 1998, at 7:00 p.m. in Santa Cruz, California
- May 5, 1998, at 7:00 p.m. in Irvine, California
- May 6, 1998, at 7:00 p.m. in Walnut Grove, California
- May 7, 1998, at 7:00 p.m. in Chico, California
- May 12, 1998, at 7:00 p.m. in Encinitas, California
- May 13, 1998, at 7:00 p.m. in Pittsburg, California
- May 14, 1998, at 7:00 p.m. in Redding, California

Hearing Locations

- Holiday Inn, 3400 Shelby Street, Ontario, California

• Ramada Inn, 324 E. Shaw Avenue, Fresno, California
• Oakland Masonic Center, 3903 Broadway, Oakland, California
• Fire Training Center, 1845 N. Ontario, Burbank, California
• Kern Agricultural Pavillion, 501 S. Mount Vernon, Bakersfield, California
• Pacific Cultural Center, 1307 Seabright, Santa Cruz, California
• University High School, 4771 Campus Drive, Irvine, California
• Gean Harvie Center, 14273 River Road, Walnut Grove, California
• Chico Community Center, 545 Vallombrosa Avenue, Chico, California
• Encinitas City Council Center, 505 S. Vulcan Avenue, Encinitas, California
• Marina Center, 340 Marina Center, Pittsburg, California
• The Doubletree, 1830 Hilltop Drive, Redding, California

Copies of the Draft/EIR are available for public inspection at:

• Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW, Washington DC; telephone: (202) 208–4662
• Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO; telephone: (303) 236–6963
• Bureau of Reclamation, Regional Director, Attention: MP–140, 2800 Cottage Way, Sacramento, CA; telephone: (916) 978–5100
• Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC

Copies will also be available for inspection at the following libraries: Amador County Library; Auburn-Placer County Library; Berkeley Public Library; Butte County Library; Calaveras County Library; California State Archives; California State Library; California State Polytechnic University, Pomona; California State Resources Library; California State University, Bakersfield; California State University, Chico; California State University, Fresno; California State University, Long Beach; California State University, Sacramento; California State University, San Diego; California State University, San Francisco; California State University, San Jose; California State University, Stanislaus; Colusa County Free Library; Contra Costa County Library; Contra Costa Library; The Council of State Governments; County of Los Angeles Public Library, Government Publications; County of Los Angeles Public Library, Lancaster Library; Dixon Unified School District Library; El Dorado County Library; Fresno County Public Library; Golden Gate University; Grass Valley Library, Nevada County Library; Humboldt County Library; Inyo County Free Library; Kern County Library; Kings County Library; Lake County Library; Library of Congress; Lodi Public Library; Los Angeles County Law Library; Los Angeles Public Library; Los Banos Branch Library, Merced County Library; Madera County Library; Marin County Library; Mariposa County Library; Mendicino County Library; Merced County Library; Mono County Free Library; Monterey County Free Libraries, Napa City-County Library; Natural Resources Library; Nevada County Library; Oakland Public Library; Orange County Public Library; Orland Free Library; Plumas County Library; Quincy Library Group; Sacramento County Law Library; Sacramento Public Library; San Diego County Library; San Diego Public Library; San Francisco Public Library; San Jose Public Library; San Luis Obispo City-County Library; Santa Barbara Public Library; Santa Clara County Library; Santa Cruz Public Library; Shasta County Library; Solano County Library; Sonoma County Library; Stanford University; Stanislaus County Free Library; Stockton-San Joaquin County Public Library; Sutter County Library; Tehama County Library; Tulare County Free Library; Tulare Public Library; Tuolumne County Free Library; University of California, Berkeley; University of California, Davis; University of California, Los Angeles; University of California, San Diego; University of California, Santa Barbara Library; Willows Public Library; Yolo County Library; Yuba County Library.

Dated: March 4, 1998.

Roger K. Patterson,

Regional Director.

[FR Doc. 98–6593 Filed 3–13–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 20, 1998 at 10:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 701-TA–374 and 731-TA–780 (Preliminary) (Butter Cookies in Tins from Denmark)—briefing and vote.
5. Outstanding action jackets:
   1. Document No. GC–98–008: APO matters in Title VII investigation.
   2. Document No. GC–98–009: APO matters in Title VII investigation.

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: March 11, 1998.

By order of the Commission:

Donna R. Koehnke,

Secretary.

[FR Doc. 98–6858 Filed 3–12–98; 1:32 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Cash Drug Store; Revocation of Registration

On January 2, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Cash Drug Store (Respondent) of Donalsonville, Georgia, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AF1198072, and deny any pending application for renewal of such registration as a retail pharmacy, under 21 U.S.C. 824 (a)(2) and (a)(4), for reason that Respondent's owner/pharmacist was convicted of a controlled substance related felony offense, and Respondent's continued registration would be inconsistent with the public interest.

The Order to Show Cause provided Respondent with an opportunity to request a hearing on the issues raised by the order. By letter dated February 4, 1998, Respondent, through counsel, waived its opportunity for a hearing and submitted a written statement regarding its position on the issues raised in the Order to Show Cause as provided for in 21 CFR 1301.43(c). Therefore, the Acting Deputy Administrator deems that Respondent has waived its opportunity for a hearing, and hereby enters his final order pursuant to 21 CFR 1301.43(e) and 1301.46, based upon the investigative file and Respondent's written submission.

The Acting Deputy Administrator finds that on February 27, 1995, the Georgia Bureau of Investigations received information from a local sheriff's department that an individual

had allegedly been purchasing controlled substances from Respondent pharmacy without a prescription. A confidential informant of the local sheriff's department arranged to introduce an undercover agent to the individual. On March 9, 1995, the confidential informant and the undercover agent drove with the individual to Respondent pharmacy. The undercover agent gave the individual $50.00, and the individual went into the pharmacy alone. When he emerged from the pharmacy, the individual gave the undercover agent 49 pills in a white paper bag. On March 15, 1995, the confidential informant and undercover agent again went to Respondent pharmacy with the individual. The undercover agent gave the individual $60.00 on this occasion, and asked if the individual could get him 70 Lorcet pills, a Schedule III controlled substance. The individual ultimately emerged from the pharmacy and gave the undercover agent a white paper bag containing 10 pills later identified as Lorcet, and 58 pills later identified as Darvocet, a Schedule IV controlled substance.

After leaving Respondent pharmacy on March 15, 1995, the individual was arrested. At the time of his arrest, the individual had in his possession 10 Darvocet pills and some crack cocaine. During an interview of the individual following his arrest, he admitted that he had purchased Darvocet and Lorcet from Thomas Faircloth, the owner/pharmacist of Respondent for approximately eight years. The individual stated that he sometimes had a prescription for the controlled substances, but more often he would not have a prescription, but would just tell Mr. Faircloth what drugs he wanted. He estimated that he purchased controlled substances from Mr. Faircloth hundreds of times over the years, and probably only presented a prescription for the drugs on 10 occasions.

The individual then agreed to cooperate in an investigation of Thomas Faircloth and Respondent pharmacy. On March 15, 1995, while monitored, the cooperating individual placed a telephone call to Mr. Faircloth at his home to arrange to purchase controlled substances without a prescription. Respondent pharmacy was closed, but Mr. Faircloth agreed to meet the cooperating individual at the pharmacy. The cooperating individual was searched to ensure that he did not have any contraband in his possession at the time he went into Respondent pharmacy, and he was given $100.00. The cooperating individual met Mr. Faircloth at the pharmacy, gave him the $100.00 and ultimately emerged with a white paper bag containing 174 pills, which were later determined to be 123 Darvocet and 51 Lorcet.

The cooperating individual returned to Respondent pharmacy on March 17, 1995. Again he was monitored and searched prior to entering the pharmacy. The cooperating individual gave Mr. Faircloth $100.00, and emerged from Respondent with a while paper bag containing 121 Darvocet and 57 Lorcet.

Later that day, Mr. Faircloth was approached by law enforcement officers who advised him of the investigation. Mr. Faircloth consented to the search of Respondent and agreed to be interviewed. During the interview, Mr. Faircloth confessed to supplying controlled substances to the cooperating individual and others without a prescription. Mr. Faircloth stated that he had known the cooperating individual for several years. At first the individual would bring a doctor's prescription usually for Darvocet. According to Mr. Faircloth, the individual would then bring in an old prescription vial to the pharmacy and he would fill the vial with pills. Ultimately, the individual stopped bringing in either a prescription or a vial, and he (Mr. Faircloth would put Lorcet and Darvocet in a white paper bag. Mr. Faircloth stated that he sold drugs to the individual approximately once every two weeks. Mr. Faircloth further stated that while he did not know for certain, he suspected that individuals were reselling the drugs he sold them. Mr. Faircloth complained that ''[i]ndependent pharmacies don't make it anymore,'' and it is difficult to make a living.

Thereafter, on April 8, 1996, Mr. Faircloth was indicted in the Superior Court for Seminole County on four felony counts of unlawful distribution of a controlled substance. On June 7, 1996, he pled guilty to one count of the indictment and was sentenced to five years probation.

On October 23, 1996, the Georgia State Board of Pharmacy entered into a Consent Order with Thomas Faircloth whereby his pharmacist license was suspended for three months. Following his suspension, Mr. Faircloth was placed on probation for five years and fined $2,500.00.

In its written statement, Respondent does not deny that Mr. Faircloth dispensed Lorcet and Darvocet without a physician's authorization; that he was indicted on four counts of unlawful distribution of controlled substances in violation of Georgia law; that he pled guilty to one count of the indictment; and that the Board took action against his pharmacist's license. In the written statement, Respondent's counsel states that ''Mr. Faircloth is now 64 years old and desperately needs to retain his DEA Certificate of Registration to continue to operate his retail pharmacy, his only business pursuit.'' He further contends that ''[t]he fact that the Court and State Board of Pharmacy saw fit to extend leniency would account for Mr. Faircloth's good record, his sincerity, his age and the outpouring of support from his fellow citizens.'' Finally, Respondent's counsel states that ''Mr. Faircloth has been most remorseful about this matter since his infractions were discovered. He has rehabilitated himself to the letter of the law.''

Respondent's written statement was accompanied by letters dated June 18, 1996, to the State Board of Pharmacy from the Mayor of Donalsonville, the President of a local bank, and the Chairman of the Board of Commissioners, Seminole County. The Mayor stated that he has known Mr. Faircloth for 35 years; that he is aware of Mr. Faircloth's plea to drug violation; that Mr. Faircloth's illegal activities are not representative of his normal behavior; that loss of his license would destroy his business; and that his loss would be a loss ''to our rural community''. The President of the Bank stated that he has known Mr. Faircloth for 25 years; that he is aware of Mr. Faircloth's plea to some form of a drug violation; that he believes that Mr. Faircloth's illegal acts were ''an isolated act which does not reflect Mr. Faircloth's normal conduct''; and that any suspension of his pharmacist's license would destroy Mr. Faircloth's business. Finally, the Chairman of the Board of County Commissioners stated that he has known Mr. Faircloth for more than 30 years; and that he urges leniency since Mr. Faircloth ''has been an upstanding citizen and a plus to our community in his business and personal life.''

Also attached to Respondent's written statement is a letter from Thomas Faircloth dated February 4, 1998. Mr. Faircloth stated that he is 64 years old and has worked in a pharmacy for 53 years. After high school, he enrolled in pharmacy school and has been employed at Respondent pharmacy since 1958. In 1962, Respondent's previous owner died, and Mr. Faircloth bought Respondent, and has been the owner and pharmacist ever since. Mr. Faircloth stated that ''[d]uring my career the local doctors have always allowed me to use my discretion about refilling prescriptions. In March of 1995, I suppose I was doing that in excess.* * *'' Mr. Faircloth then

enumerated the fines and court costs that he has had to pay as a result of his illegal activities, and stated that ''I have made these restitutions and repented of my actions and am now abiding strictly by the law.'' He further stated that ''the matter has had great impact on my feelings of guilt and has caused me much embarrassment which I am still seeking to overcome.''

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.

The Acting Deputy Administrator finds that on June 7, 1996, Thomas Faircloth, Respondent's owner/pharmacist, pled guilty to and was convicted of one felony count of the unlawful distribution of a controlled substance in violation of Georgia law. It is well settled that a pharmacy operates under the control of owners, stockholders, pharmacists or other employees, and if any such person is convicted of a felony offense related to controlled substances, grounds exist to revoke the pharmacy's registration under 21 U.S.C. 824(as)(2). See Rick's Pharmacy, Inc., 62 FR 42,595 (1997); Maxicare Pharmacy, 61 FR 27,368 (1996); Big-T Pharmacy, Inc., 47 FR 52,830 (1982). Therefore, the Acting Deputy Administrator concludes that grounds exist to revoke Respondent's registration under 21 U.S.C. 824(a)(2), based upon the controlled substance related felony conviction of its owner/pharmacist, Mr. Faircloth.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may also revoke a DEA Certificate of Registration and deny any pending applications, is he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989). In this case, all five factors are relevant.

As to factor one, its undisputed that in October 1996, the Georgia State Board of Pharmacy suspended Mr. Faircloth's pharmacist license for three months and then placed him on probation for five years. There is no evidence in the record that any action has been taken against the Respondent's pharmacy permit. However, since state licensure is a necessary but not sufficient condition for DEA registration, this factor is not dispositive.

Factors two and four, Respondent's experience in dispensing controlled substance and compliance with laws relating to controlled substances, are extremely relevant in determining whether Respondent's continued registration is inconsistent with the public interest. Mr. Faircloth admitted to dispensing controlled substances to the cooperating individual and others over a number of years without a physician's authorization. Such dispensing violates both 21 U.S.C. 841(a)(1) and the laws of the State of Georgia. The only explanation offered by Mr. Faircloth for this behavior is that ''local doctors have always allowed me to use my discretion about refilling prescriptions. In March of 1995, I suppose I was doing that in excess * * *.'' The Acting Deputy Administrator finds that these are clearly not the words of someone who truly understands and appreciates the gravity of his illegal acts. Controlled substances are potentially dangerous drugs. Accordingly, pursuant to 21 U.S.C. 829, Schedule III and IV controlled substances cannot be dispensed without a physician's written or oral prescription. Over a number of years, Mr. Faircloth dispensed Lorcet and Darvocet to the cooperating individual every two weeks without a prescription.

As to factor three, it is undisputed that Mr. Faircloth, Respondent's owner/pharmacist was convicted on June 7, 1996, of a controlled substance related felony offense in violation of the laws of the State of Georgia.

Regarding factor five, the Acting Deputy Administer is not aware of any conduct, other than that discussed above, by Respondent or Mr. Faircloth that would threaten the public health and safety.

The Acting Deputy Administrator must decide whether Respondent pharmacy can be trusted to responsibly handle controlled substances in the future. While Respondent's counsel states that Mr. Faircloth is remorseful, the Acting Deputy Administrator is not convinced that this is the case. In Mr. Faircloth's letter dated February 4, 1998, he appears to be more concerned about the fines and court costs that he has had to pay and the embarrassment that he has suffered as a result of his actions. Based upon the evidence submitted by Respondent, the Acting Deputy Administrator is not convinced that Respondent fully understands the serious nature of his illegal acts nor appreciates the responsibilities that accompany a DEA registration. Therefore, the Acting Deputy Administrator concludes that Respondent's continued registration would be inconsistent with the public interest.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.11104, hereby order the DEA Certificate of Registration AF1198072, previously issued to Cash Drug Store, be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective April 15, 1998.

Dated: March 10, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–6631 Filed 3–13–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under emergency review at OMB; Reinstatement, with change, of a previously approved collection for which approval has expired: Bureau of Justice Assistance—Application Form—State Criminal Alien Assistance Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by March 26, 1998. If granted, the emergency approval is valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, D.C. 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until May 15, 1998. Request written comments and suggestions from the public and affected agencies concerning this proposed collection of information. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1590.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information, will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which OMB Clearance has expired.

(2) *The title of the form/collection:* Bureau of Justice Assistance—Application Form—State Criminal Alien Assistance Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State and local governments that have correctional facilities for incarceration of criminal offenders and those accused of crimes. *Other:* None. SCAAP was created by the Crime Act of 1994, and is designed to provide assistance to state and local correctional agencies that incarcerate illegal aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Of the possible, 3200 governmental entities that are eligible to apply, it is estimated that only approximately 500 will actually apply for SCAAP. The time burden of the 500 applicants is 30 minutes per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the applications is 250 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: March 11, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–6708 Filed 3–13–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1164]

RIN 1121–ZB01

National Institute of Justice Law Enforcement and Corrections Family Support Solicitation for Research, Evaluation, Development, and Demonstration Projects

AGENCY: Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Law Enforcement and Corrections Family Support: Solicitation for Research, Evaluation, Development, and Demonstration Projects.''

DATES: Due date for receipt of proposals is close of business May 18, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201B03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) requests proposals for research, evaluation, development, and demonstration projects in response to Title XXI of the Violent Crime Control and Law Enforcement Act of 1994 in which Congress established the Law Enforcement Family Support Program. In support of this program NIJ is calling for proposals to:

(1) Develop, demonstrate, and test innovative stress prevention or treatment programs for State or local law enforcement personnel and their families.

(2) Conduct research on the nature, extent, and consequences of stress experienced by correctional officers and their families, or to evaluate the effectiveness of law enforcement and/or correctional prevention or treatment programs.

(3) Develop, demonstrate, and test effective ways to change law enforcement or correctional agency policies, practices, and organizational culture to ameliorate stress experienced by law enforcement and correction officers and their families.

Grants totaling approximately $938,000 will be made available under this solicitation for periods of generally 18 months, although longer award periods may be considered. The Act specifies that a grant to a State or local law enforcement agency may not exceed $100,000 and that a grant to an organization representing law enforcement or correctional personnel may not exceed $250,000. Funds under this program may be used to supplement existing stress-reduction or employee assistance programs.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Law Enforcement and Corrections Family Support: Solicitation for Research, Evaluation, Development, and Demonstration Projects'' (refer to document no. SL000266). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–6721 Filed 3–13–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1165]

RIN 1121–ZB02

National Institute of Justice Extension of Deadline for Solicitation for Evaluation of Victims of Crime Act State Compensation and Assistance Programs, 1998

AGENCY: Office of Justice Programs, National Institute of Justice (NIJ), Justice.

ACTION: Extension of deadline for solicitation.

SUMMARY: Announcement of the deadline extension for the National Institute of Justice solicitation ''Evaluation of Victims of Crime Act State Compensation and Assistance Programs, 1998.''

DATES: The extended due date for receipt of proposals is close of business April 28, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice is calling for proposals for an evaluation of Victims of Crime Act (VOCA) funded compensation and assistance programs. These programs have an overall goal of providing a seamless web of services and support to reduce the financial, physical, psychological, and emotional costs of victimization. One grant of $750,000 for a 30-month period, will be awarded to evaluate the effectiveness of these programs in meeting their goals and victim needs.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of Evaluation of Victims of Crime Act State Compensation and Assistance Programs (refer to document no. SL000242). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–6723 Filed 3–13–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1163]

RIN 1121–ZB00

National Institute of Justice Solicitation for a National Evaluation of the Arrest Policies Program Under the Violence Against Women Act

AGENCY: Office of Justice Programs, National Institute of Justice (NIJ), Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Solicitation for a National Evaluation of the Arrest Policies Program Under the Violence Against Women Act.''

DATES: Due date for receipt of proposals is close of business April 3, 1998.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice calls for proposals to evaluate Arrest Policies Programs established under the Violence Against Women Act. One grant of up to $625,000 will be awarded under this solicitation for research that examines the process associated with, and the impact resulting from, arrest policies that are implemented in the context of system-wide and coordinated approaches to domestic violence. This national evaluation should provide a broad overview of the entire program sponsored by the Violence Against Women Grants Office and an in-depth evaluation in a number of sites.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for a National Evaluation of the Arrest Policies Program Under the Violence Against Women Act'' (refer to document no. SL000263). For World Wide Web access, connect either to either NIJ at

http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–6722 Filed 3–13–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,989]

Allegheny Ludlum Corporation, Leechburg, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 5, 1998, the United Steelworkers of America, Local Union 1138, 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 Union presents evidence regarding declines in employment at the subject firm.

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 23rd day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6736 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,064]

American Metal Products, LaFollette, Tennessee; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 8, 1997 in response to a worker petition which was filed on November 22, 1997 on behalf of workers at American Metal Products in LaFollette, Tennessee.

A certification covering the petitioning group of workers remains in effect (TA–W–34,154). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6733 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than March 26, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 26, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance .

APPENDIX

[Petitions instituted on 03/02/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,266	Bladen Sportswear Tarheel (Wkrs)	Wilmington, NC	02/19/98	Children's Apparel.
34,267	Block Drug Co. (IBT)	Dayton, NJ	02/09/98	Dental Products.
34,268	Foot Tee Industries (Wkrs)	Miami, FL	02/17/98	Athletic Shoes.
34,269	Erickson Air-Crane Co. (Co.)	Central Point, OR	02/18/98	Helicopters & Components.
34,270	M.T.W., Inc. (Wkrs)	Kittanning, PA	02/18/98	Ladies' Skirts, Childrens' Dresses.
34,271	Danly Machine, L.P. (USWA)	Cicero, IL	02/20/98	Hydraulic & Pneumatic Stamping Presses.
34,272	Premier Knits, Inc. (Co.)	Daviston, AL	02/18/98	T-Shirts, Muscle-Tank Tops.
34,273	Harris Enterprises (Wkrs)	Marshfield, MO	02/19/98	Graphite Coated, Polyester Liners.
34,274	Copes Vulcan (IAM)	Lake City, PA	02/13/98	Boiler Cleaning Equipment.
34,275	U.P. Jacket Co., Inc. (Wkrs)	Menominee, MI	02/12/98	Polaris Winter Snowmobile Jackets.
34,276	IBM Corp. (Wkrs)	Charlotte, NC	02/09/98	Hybrid PCB's.
34,277	Bayer Corp. (Wkrs)	Ridgefield Park, NJ	02/02/98	Printing Plates.
34,278	Georgia Pacific Corp. (Co.)	Woodland, ME	02/18/98	Printing Paper and Market Pulp.
34,279	Harman Automotive (Wkrs)	Bolivar, TN	02/05/98	Automobile Exterior Rearview Mirrors.
34,280	Jandy Apparel (Wkrs)	Hellam, PA	02/20/98	Children's Clothing.

APPENDIX—Continued

[Petitions instituted on 03/02/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,281	Trico Products Corp. (Wkrs)	Vanceboro, NC	02/11/98	Windshield Wipers.
34,282	General Motors (UAW)	Warren, MI	02/16/98	Automotive Upholstery & Air Bags.
34,283	American Safety Razor (Wkrs)	Staunton, VA	02/05/98	Shaving Blade Cartridge.
34,284	Munekata America, Inc. (Co.)	Dalton, GA	02/16/98	Plastic TV Cabinets.
34,285	Dee's Manufacturing (Co.)	Burnsville, NC	02/13/98	Ladies' Apparel.

[FR Doc. 98–6731 Filed 3–13–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Workers 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 February, 1998.

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 to Section 222 of the Act must be met.

(1) That a significant number or proportion 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–34,036; Conagra/Maple Leaf Milling, Inc, Buffalo, NY

TA–W–34,049; Buehler Lumber Co., Dimension Mill, Ridgway, PA

TA–W–34,032; Everbrite, Inc., Everbrite, Neon Div., South Milwaukee, WI

TA–W–34,060; Delphi Automotive Systems, Albany, GA

TA–W–34,085; Weyerhaeuser Co., Western Lumber Div., Coos Bay Export Sawmill, North Bend, OR

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–34,124; Wilson Sporting Goods Co., Chicago, IL

TA–W–34,194; Otis Elevator, Tucson, AZ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,168; Chrysler Corp., Belvidere, IL

TA–W–33,880; Braden Manufacturing, Ft. Smith, AR

TA–W–34,018; Aluminum Conductor Products Corp., Vancouver, WA

TA–W–33,887; General Electric Co., Ohio Coil, Newcomerstown, OH

TA–W–34,038; Alltrista Zinc Products Co., Greenville, TN

TA–W–33,988; Elf Atochem North America, Inc., Tonawanda, NY

TA–W–33–949; Metro Plastics Technologies, Inc., Columbus, IN

TA–W–34,012; Carrier Corp., Syracuse, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,160; Renfro Corp., Jefferson Avenue Plant, Pulaski, VA

Renfro Corp. Closed is Jefferson Ave. Plant and transferred all production to another domestic plant.

TA–W–34,129 National Electrical Carbon Products, East Stroudburg, PA

Corporate sales and production increased; Company decided to consolidate production with another domestic facility.

TA–W–34,052; Matsushita Home Appliance Corp., Microwave Div., Franklin Park, IL

Subject firm made a business decision to transfer the production of microwave ovens to another company owned facility in Kentucky which is responsible for manufacturing microwave ovens for the North American market.

TA–W–34,107; Fort James Corp., Packaging Division, Portland, OR

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA–W–34,120; Dettra Flag Co., Oaks, PA

TA–W–34,072, TA–W–34,073 & TA–W–34,074; Greenfield Industries, Inc, South Deerfield, MA, Anaheim, CA and Greensboro, NC

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–34,133; Outokumpu Copper, Inc., Kenosha Div., Kenosha, WI

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–34,206; U.S. steel Mining Co., LLC, Pineville, WV

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–34,130 & TA–W–34;131; UNIFI, Inc., Graham, NC and Lincolnton, NC

Aggregate US imports of covered yarn like or directly competitive with what is produced at the subject firm are negligible during the relevant period.

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–34,098; Goldtex, Inc., Goldsboro, NC: December 5, 1996.

TA–W–34,189; VF Knitwear, Inc., Chatham, VA: January 12, 1997.

TA–W–33,786; Strauss Underwear Corp., Jersey City, NJ: August 15, 1997.

TA–W–34,236; Dana Corp., Parish Light Vehicle Structures Div., Reading, PA: October 3 1996.

TA–W–34,169 & A; VF Knitwear, Inc., Stoneville, NC & Franklin, NC: January 2, 1997.

TA–W–33,984; Hartsville Garment Corp., Hartsville, TN: October 30, 1996.

TA–W–34,142; Red Kap Industries, Ripley, KS: December 18, 1996. TA–W–34,056 & A; Crown Pacific, Gilchrist, OR and Prinesville, OR: November 18, 1996.

TA–W–34,187; Overly Door Co., Greensburg, PA: January 16, 1997. TA–W–33,034; AST Research, Inc., Fort Worth, TX: November 18, 1996.

TA–W–33,914; Dexter Shoe Co., Dexter, ME: April 6, 1997. TA–W–33,034,020; San Antonio Garment Finishers, Inc., San Antonio, TX: November 7, 1996

TA–W–34,015 & A; Hood Lumber Co., Green Veneer, Inc., Div., North Santiam Plywood Mill City, OR & Green Veneer, Inc., Idanha, OR: November 5, 1996.

TA–W–34,176; Hewlett—Packard, Printed Circuit Board Div., Vancouver, WA: January 6, 1997.

TA–W–34,200; Getinge\Castle, Scientific Div., Lakewood, NJ: January 15, 1997.

TA–W–34,029; Louisiana Pacific, Northern Regional Office, Hayden Lake, ID: November 11, 1996.

TA–W–34,182, A & B; Mountainsmith, Cotter, AR, Melbourne, AR and Golden, CO: January 9, 1997.

TA–W–34,202; Tennessee River; Inc., Lawrenceburg, TN & Operating at the following Locations; A; Florence, AL, B; Killen, AL, C; Waterloo, AL, D; Florence, AL, E; Waynesboro, TN, F; Loretto, TN, G; Collinwood, TN, H; Columbia, TN: January 21, 1997.

TA–W–34,183; Ashmore Sportswear, Womelsdorf, PA: January 12, 1997.

TA–W–34,089; General Cable Corp., Kenly, NC: November 25, 1996.

TA–W–34,042; Rotorex Co., Inc., Walkersville, MD: October 28, 1996.

TA–W–34,209; Dexter Sportswear, Inc., Dexter, GA: January 23, 1997.

TA–W–34,201 & A; Sunrise Medical, Simi Valley, CA and Westlake Village, CA: November 19, 1996.

TA–W–34,147; Empire Jewelry Contracting, Inc., New York, NY: December 25, 1996.

TA–W–34,136; Delco Remy America, Inc., Meridian, MS: December 15, 1996.

TA–W–34,151; NCR Corp., Systemedia Group, Morristown, TN: January 2, 1997.

TA–W–33,779 & A; True Form Intimate Apparel, Sharon Hill, PA and Maidenform, Inc., Caguas, PR: August 21, 1996.

TA–W–33,589; KAO Information Systems, Plymouth, MA: March 23, 1997.

TA–W–34,155; Arjo Manufacturing Co., Aurora, NE: December 15, 1996.

TA–W–34,092; Thomson Consumer Electronics, Bloomington, IN: February 9, 1998.

*TA–W–34,143; Prentiss Manufacturing Co., Plant #*3, Jumpertown, MS: December 30, 1996.

TA–W–34,067; Duracell North Atlantic Group, Waterbury, CT: November 21, 1996.

TA–W–34,161; ABB Power T & D Co., Inc., Muncie, IN: January 8, 1997.

TA–W–34,093; Honeywell/Micro Switch, Hycal Sensing Products, EL Monte, CA: December 1, 1996.

TA–W–34,113; Morgan Products, LTD, Oshkosh, WI: December 10, 1996.

TA–34,110; Dal-Tile Corp., Mt. Gilead, NC: December 11, 1996.

TA–W–34,135; Anchor Glass Container Corp., Keyser, WV: July 12, 1997.

TA–W–33,003; Maidenform, Bayonne, NJ: November 24, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.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 February, 1998.

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 worker's 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 or 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–01977; Rockwell Automation/Reliance Electric, Ashtabula, OH

NAFTA–TAA–02036; Conagra/Maple Lead Milling, Inc., Buffalo, NY

NAFT–TAA–01946; Braden Manufacturing, Ft. Smith, AR

NAFTA–TAA–02018; Aluminum Conductor Products Corp., Vancouver, WA

NAFTA–TAA–02032; Alltrista Zinc Products Co., Greeneville, TN

NAFTA–TAA–01895; Chrysler Corp., Belvidere, IL

NAFTA–TAA–02103 & NAFTA–TAA–02104; UNIFI, Inc., Spanco, Graham, NC and Lincolnton, NC

NAFTA–TAA–02039; Everbrite, Inc., Everbrite Neon Div., South Milwaukee, WI

NAFTA–TAA–02137; Barry Callebaut USA, Inc., Pennsauken, NJ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02138; Otis Elevator, Tucson, AZ

NAFTA–TAA–02088; Wilson Sporting Goods Co., Latin America Div., Chicago, IL

NAFTA–TAA–02111; Zenith Electronics Corp., Purchasing Department, Glenview, IL

The investigation revealed that the workers of the subject firm did not

produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–02155; Dettra Flag Co., Oaks, PA

The investigation revealed that criteria (2) and criteria (4) have not been met. Sales or production, or both did not decline during the relevant period as required for certification. There has not been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinaitons NAFTA–TAA

NAFTA–TAA–02118; Sara Lee Hosiery, Marion, SC: January 9, 1997.
NAFTA–TAA–02106; United Steering Systems, Inc., Grabille, IN: November 20, 1996.
NAFTA–TAA–02055 & A; Kessler Foundry and Machine, Manutillo, TX and El Paso, TX: November 26, 1996.
NAFTA–TAA–02060; Honeywell/Micro Switch, Hycal Sensing Products, El Monte, CA: December 2, 1996.
NAFTA–TAA–02021; San Antonio Garment Finishers, Inc., San Antonio, TX: November 4, 1996.
NAFTA–TAA–02147; Overly Door Co., Greensburg, PA: January 16, 1997.
NAFTA–TAA–02128; ABB Power T & D Co., Inc., Muncie, IN: January 8, 1997.
NAFTA–TAA–01982; Ellen B. Sport, Whitehall, IL: October 8, 1996.
NAFTA–TAA–02086; General Electric Co., Medium Transformer Operation, Rome, GA: December 19, 1996.
NAFTA–TAA–02134; VF Knitwear, Inc., Franklin, NC: January 12, 1997.
NAFTA–TAA–02132; VF Knitwear, Inc., Chatham, VA: January 12, 1997.
NAFTA–TAA–02133; VF Knitwear, Inc., Stoneville, NC: January 12, 1997.
NAFTA–TAA–02153; Biscayne Apparel, Inc., Arlington, GA: January 27, 1997.
NAFTA–TAA–02059; Northern Technologies Manufacturing Corp., Pocahontas, AR: December 8, 1996.
NAFTA–TAA–02114; Allied Signal, Aerospace Equipment Div., Eatontown, NJ: December 17, 1996.
NAFTA–TAA–02030 & A; Crown Pacific, Gilchrist, OR and Prinesville, OR: November 18, 1996.
NAFTA–TAA–02053; General Cable Corp., Kenly, NC: December 4, 1996.
NAFTA–TAA–02015; Carrier Corp., Global Heavy Absorption Design Center, Syracuse, NY: November 5, 1996.
NAFTA–TAA–02058; Eastman Kodak Co., Kodak Colorado Div., Windsor, CO: December 5, 1996.
NAFTA–TAA–02183; Federal Mogul Corp., Powertrain Div., Greenville, MI: January 16, 1997.
NAFTA–TAA–02079; Alcoa Fujikura Limited, Electro-Mechanical Products Div., Owosso, MI: December 11, 1996.
NAFTA–TAA–01955; Best Manufacturing Co., Inc., Salisbury, NC: October 3, 1996.
NAFTA–TAA–02083; Tree Free Fiber L.L.C., Augusta, ME: December 16, 1996.

I hereby certify that the aforementioned determinations were issued during the month of February 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 25, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6724 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 914, TA–W–33, 914A, TA–W–33, 914B, and TA–W–33, 914C]

Dexter Shoe Company, Dexter, Newport, Skowhegan, and Milo, Maine; 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 4, 1998, applicable to all workers of Dexter Shoe Company located in Dexter, Maine. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department's certification inadvertently omitted the workers producing men's and women's leather boots and shoes at the Dexter Shoe Company locations in Newport, Skowhegan, and Milo, Maine. Accordingly, the Department is amending the certification to include workers at these locations.

Other findings on review show that workers at the Milo plant were covered under an earlier certification, TA–W–31,254, which did not expire until August 25, 1997. To avoid an overlap in worker coverage for workers at the Milo plant, the Department is establishing an impact date of August 26, 1997, for that location.

The amended notice applicable to TA–W–33,914 is hereby issued as follows:

All workers of Dexter Shoe Company, Dexter, Maine (TA–W–33,914), Newport, Maine (TA–W–33,914A), and Skowhegan, Maine (TA–W–33,914B) who became totally or partially separated from employment on or after April 6, 1997 through February 4, 2000; and all workers of Dexter Shoe Company, Milo, Maine (TA–W–33,914C) who became totally or partially separated from employment on or after August 26, 1997 through February 4, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 19th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6727 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade

Adjustment Assistance, at the address show below, not later than March 26, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 26, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 23rd day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 02/23/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,251	Donna Maria's Sewing (Co.)	Ripley, WV	02/04/98	Sew Ladies' Clothing.
34,252	Roper and Broderick (Wkrs)	Agawam, MA	02/13/98	Robots and Granulators Equipment.
34,253	Oxford Automotive (UAW)	Winchester, IN	01/30/98	Stamped Auto Parts.
34,254	American National Can (UPIU)	Mt. Vernon, OH	02/11/98	Flexible Packaging.
34,255	Leshner Corporation (Wkrs)	Phenix City, AL	02/13/98	Kitchen Textile Products.
34,256	Bosch Braking Systems (UAW)	Frankort, OH	01/30/98	Steel Disc Wheels for Trucks & Trailers.
34,257	Weyerhaeuser (Co.)	North Bend, OR	02/02/98	Logs.
34,258	New America Wood Products (Wkrs)	Winlock, WA	02/10/98	Finished Wood Products.
34,259	Cleveland Knitting Mills (UNITE)	Cleveland, OH	02/09/98	Ladies' Skirts, Pants, Jackets, etc.
34,260	Northland (Wkrs)	Watertown, NY	02/02/98	Fractional Horsepower Elect. Motors.
34,261	General Electric Co (IUE)	Salem, VA	02/05/98	Electrical Drives, AC and DC.
34,262	Oh My Goodknits (Wkrs)	Allentown, PA	01/29/98	Knit Apparel—Infant to Adults.
34,263	Kwikset Corporation (Wkrs)	Anaheim, CA	01/26/98	Door Knobs, Deadbolts & Handlesets.
34,264	Charles Navasky (Co.)	Philipsburg, PA	02/11/98	Men's & Boys' Suits, Pants, Sportswear.
34,265	H.H. Cutler Co (Wkrs)	Grand Rapids, MI	02/04/98	Children's Clothing.

[FR Doc. 98–6732 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 26, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 26, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 02/09/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,215	Federal Mogul (UAW)	Greenville, MI	01/21/98	Engine Bearings.
34,216	JoLene Co., Inc (Comp.)	Provo, UT	01/19/98	Girl's & Infant's Dresses.
34,217	Fluor Daniel (NPOSR), Inc (Comp)	Casper, WY	01/21/98	Crude Oil.
34,218	Kane Handle Co (Wrks)	Kane, PA	01/26/98	Wooden Hand Tool Handles.
34,219	Power Holding (Wrks)	Milwaukee, WI	01/15/98	Electrical Components.
34,220	Wyeth-Ayerst/Lederle (Comp)	Bound Brook, NJ	01/21/98	Bulk Pharmaceuticals.
34,221	Pekin Plastics Corp (Comp)	Pekin, IN	01/23/98	Plastic Video Boxes.
34,222	Woodward Coke Plant (Comp)	Dolomite, AL	01/26/98	Coke.
34,223	Geneva Steel (Comp)	Vineyard, UT	01/30/98	Carbon Plate & Hot Rolled Coil Products.
34,224	VIZ Manufacturing Co (Comp)	Philadelphia, PA	01/29/98	Meteorological Instruments & Sensors.
34,225	BTR Automotive Sealing (Wrks)	West Unity, OH	01/27/98	Rubber Decklid & Door Weatherseals.

APPENDIX—Continued

[Petitions Instituted on 02/09/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,226	New West (Wrks)	Cookeville, TN	01/28/98	Futon Frames and Mattresses.
34,227	Sparton Engineered Prod. (Wrks)	Flora, IL	01/09/98	Vehicle Horns.
34,228	Avery Dennison Office (Wrks)	Chicoppee, MA	01/28/98	Vinyl Ring Binders.
34,229	Kleinerts, Inc. of Ala. (Wrks)	Greenville, AL	01/31/98	Children's T-Shirts.
34,230	Wright Line, Inc (Wrks)	Worcester, MA	01/30/98	Drawings for Furniture.
34,231	Eagle Veneer (Wrks)	Harrisburg, OR	12/11/98	Softwood Plywood.
34,232	Verona Fashions (Wrks)	Hoboken, NJ	01/30/98	Ladies' Coats.
34,233	Eastman Kodak Co (Wrks)	Rochester, NY	01/22/98	Photographic Film.
34,234	Flavor Fresh (Wrks)	Lawrence, MA	01/26/98	Canned Fruit.
34,235	I-Stat Corp (Wrks)	Plainsboro, NJ	01/29/98	Disposable Cartridges.
34,236	Dana Corp (USWA)	Reading, PA	010/03/98	Light Duty Truck Frames.

[FR Doc. 98–6725 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 240]

G.H. Bass & Company, Wilton, Maine; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 17, 1998 in response to a worker petition which was filed January 28, 1998 on behalf of workers at G.H. Bass & Company, located in Wilton, Maine (TA–W–34, 240).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–34, 749). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6741 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,153C]

Haggar Clothing Company, Weslaco Cutting Center (a/k/a Weslaco Sewing, Inc. and a/k/a Haggar Apparel, Inc.,) Weslaco, 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 Notice of Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 28, 1997, applicable to workers of Haggar Clothing Company, Weslaco Cutting Center, Weslaco, Texas. The notice was published in the **Federal Register** on June 13, 1997 (62 FR 32379).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Workers of the subject firm produce men's dress and casual pants. New information provided to the Department shows that some of the workers at Weslaco Cutting Center in Weslaco, Texas, had their wages reported to the unemployment insurance (UI) tax accounts for Weslaco Sewing, Inc. and Haggar Apparel, Inc.

The intent of the Department's certification is to include all workers of Haggar Clothing Company who were affected by increased imports. According, the Department is amending the worker certification to include the workers of the subject firm also known as Weslaco Sewing, Inc. and Haggar Apparel, Inc., Weslaco, Texas.

The amended notice applicable to TA–W–33, 153C is hereby issued as follows:

All workers of Haggar Clothing Company, Weslaco Cutting Center, also known as Weslaco Sewing, Inc. and also known as Haggar Apparel, Inc., Weslaco, Texas, who became totally or partially separated from employment on or after January 13, 1996 through February 21, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 25th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6735 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,171]

Key Tronic Corporation, Las Cruces, New Mexico; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 26, 1998, in response to a worker petition which was filed on behalf of workers at Key Tronic Corporation, Las Cruces, New Mexico.

An active certification covering the petitioning group of workers remains in effect (TA–W–31,973B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6734 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,941]

Maine Yankee Atomic Power Company (Including Workers of American Protective Services) Wascasset, ME; 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 January 23, 1998, applicable to all workers of Main Yankee Atomic Power Company, located in Wiscasset, Maine. The notice was published in the **Federal Register** on February 18, 1998 (63 FR 8211).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers separated from employment at Maine Yankee Atomic Power Company had their wages reported under a separate unemployment insurance (UI) tax account at American Protective Services. Workers from American Protective Services provided the security detail for the Wiscasset, Maine location on Maine Yankee Atomic Power Company. Worker separations occurred at American Protective Services as a result of decommissioning the Main Yankee Atomic Power Company.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Main Yankee Atomic Power Company adversely affected by imports.

The amended notice applicable to TA–W–33,941 is hereby issued as follows:

All workers of Maine Yankee Atomic Power Company, Wiscasset, Maine and all workers of American Protective Services, Wiscasset, Maine that provided security detail for Main Yankee Atomic Power Company, Wiscasset, Main who became totally or partially separated from employment on or after October 21, 1996, through January 23, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6728 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 031 and TA–W–34,031A]

MKE-Quantum Components Recording Heads Group, Louisville, Colorado and Shrewsbury, MA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at MKE-Quantum Components, Recording Heads Group, Louisville, Colorado and Shrewsbury, Massachusetts. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–34,031 & TA–W–34,031A; MKE-Quantum Components, Recording Heads Group, Louisville, Colorado and Shrewsbury, Massachusetts (February 23, 1998)

Signed at Washington, DC, this 25th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6739 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,581]

Pro-Line Cap Company, (a/k/a Star Point Enterprise, Incorporated, a/k/a Carlye Golf, Incorporated), Bowie, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 17, 1997, applicable to all workers of Pro-Line Cap Company, Bowie, Texas. The notice was published in the **Federal Register** on December 10, 1997 (62 FR 6100).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of athletic headwear (officially-licensed, National Football League, National Hockey League and Major League Baseball caps). Findings show that some workers separated from employment at Pro-Line Cap Company had their wages reported under two separate unemployment insurance (UI) tax accounts, Star Point Enterprise, Incorporated and Carlye Golf, Incorporated, Bowie, Texas. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–33,581 is hereby issued as follows:

All workers of Pro-Line Cap Company, also known as Star Point Enterprise, Incorporated, also known as Carlye Golf, Incorporated, Bowie, Texas, who became totally or partially separated from employment on or after May 9, 1996 through November 17, 1999, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of March, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6737 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the

subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 26, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 26, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 17th day of February, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 02/17/98]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
34,237	Smartflex Systems, Inc (Comp)	Tustin, CA	02/09/98	Test Flexible Circuit Assemblies.
34,238	Murata Electronics (Comp)	Rockmart, GA	02/03/98	RPE Monolithic Ceramic Capacitors.
34,239	American Garment (Wrks)	El Paso, TX	01/27/98	Stone Wash & Dye Clothes.
34,240	G.H. Bass and Co. (Comp)	Wilton, ME	01/28/98	Footwear.
34,241	ChamberDoor Industries (Wrks)	Hot Springs, AR	01/26/98	Aluminum and Glass Storm Doors.
34,242	Tennessee Woolen Mills (UNITE)	Lebanon, TN	01/23/98	Blankets.
34,243	Cooper Sportswear (UNITE)	Newark, NJ	01/12/98	Men's, Ladies' & Children's Apparel.
34,244	Glenbrook Nickel Co (Comp)	Riddle, OR	01/30/98	Ferronickel.
34,245	Bethlehem Steel Corp (USWA)	Bethlehem, PA	01/27/98	Metallurgical Coke.
34,246	General Electric Co (IBEW)	New Concord, OH	02/03/98	Distribution Center for Appliance Parts.
34,247	Most Manufacturing, Inc (Wrks)	Colo Springs, CO	01/28/98	Optical Disk Drive.
34,248	Michigan Carton (Wrks)	Battle Creek, MI	02/05/98	Cereal Boxes.
34,249	Niagara Mohawk Power Corp (IBEW)	Syracuse, NY	02/02/98	Electric Power Generation.
34,250	New Ponce Shirt Company (Comp)	Ponce de Leon, FL	02/17/98	Sew Ladies' Shirts & Blouses.

[FR Doc. 98–6738 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,786]

Strauss Underwear Corporation, Jersey City, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 9, 1998, applicable to workers of Strauss Underwear Corporation located in Jersey City, New Jersey. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produced ladies' intimate apparel. Findings show that the Department incorrectly set the worker certification impact date at August 15, 1997. The impact date should be July 16, 1996, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–33,786 is hereby issued as follows:

All workers of Strauss Underwear Corporation, Jersey City, New Jersey engaged in employment related to the production of ladies' intimate apparel who became totally or partially from employment on or after July 16, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6730 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,957]

Tubed Products, Incorporated Freehold, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 3, 1998 in response to a worker petition which was filed October 15, 1998 on behalf of workers at Tubed Products, Inc., Freehold, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6742 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–1987]

Maine Yankee Atomic Power Company (Including Workers of American Protective Services), Wiscasset, ME; 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 January 23, 1998, applicable to all workers of Maine Yankee Atomic Power Company, Wiscasset, Maine. The notice was published in the **Federal Register** on February 18, 1998 (63 FR 8212).

At the request of the State agency, the Department reviewed the certification

for workers of the subject firm. New information provided by the State shows that some workers separated from employment at Maine Yankee Atomic Power Company had their wages reported under a separate unemployment insurance (UI) tax account at American Protective Services. Workers from American Protective Services provided the security detail for the Wiscasset, Maine location of Maine Yankee Atomic Power Company. Worker separations occurred at American Protective Services as a result of decommissioning the Maine Yankee Atomic Power Company.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Maine Yankee Atomic Power Company adversely affected by imports from Canada.

The amended notice applicable to NAFTA–01987 is hereby issued as follows:

All workers of Maine Yankee Atomic Power Company, Wiscasset, Maine and all workers of American Protective Services, Wiscasset, Maine that provided security detail for Maine Yankee Atomic Power Company, Wiscasset, Maine who became totally or partially separated from employment on or after October 21, 1996 through January 23, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of March 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6729 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02141]

Kered Clothing, Incorporated Manchester, New Hampshire

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 January 20, 1998 in response to a petition filed on behalf of workers at Kered Clothing, Incorporated, located in Manchester, New Hampshire. Workers produce ladies' sports apparel.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 17th day of February 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6726 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–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 February, 1998.

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 proportion 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–34,118; Tree Free Fiber L.L.C., Augusta, ME

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,874; Altec Lansing Technologies, Inc., Milford, PA TA–W–33,937 & A; O.R. Technology, Inc., Boulder, CO and Campbell, CA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,882; Rockwell Automation/ Reliance Electric, Ashtabula, OH

TA–W–34,111; Rhone-Paulenc, Inc., Rasmussen Ridge Mine, Soda Springs, ID

TA–W–34,185; Oryx Energy Corp., Dallas, TX

TA–W–34,207; Tenneco Packaging, Clayton, NJ

TA–W–33,999; American Tissue Corp., Tomahawk, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,084; Hunt-Wesson, Inc., Fullerton Cannery & Distribution Center, Fullerton, CA

Layoffs were due to a corporate decision to consolidate operations and move production to other existing domestic company facilities.

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–34,197; Rittenhouse LLC, Imaging Supplies Div., Jefferson City, TN: January 13, 1997.

TA–W–33,910; Best Manufacturing Co., Inc., Salisbury, NC: September 25, 1996.

TA–W–34,215; Federal Mogul Corp., Powertrain Div., Greenville, MI: January 21, 1997.

TA–W–34,120; Alcoa Fujikura Limited, Electro-Mechanical Products Div., Owosso, MI: December 11, 1996.

TA–W–34,177; Paul Bruce/L.V. Myles, Scotland Neck, NC: January 8, 1997.

TA–W–34,186; Biljo, Inc., Dublin, GA: January 14, 1997.

TA–W–34,203; American Olean Tile Co., Lansdale, PA: February 26, 1998.

TA–W–34,217; Flour Daniel (NPOSR), Inc., Casper, WY: January 26, 1998.

TA–W–34,230; Wright Line, Inc., AutoCAD Department, Worcester, MA: January 30, 1997.

TA–W–33,154; American Metal Products, LaFollette, TN: December 15, 1996.

TA–W–34,125; Healtex, Inc., Warrenton, GA: March 11, 1998.

TA–W–34,028; Gentex Printing a/k/a General Textile Printing, Rock Mount, NC: November 11, 1996.
TA–W–34,181; Specialty Manufacturing, Bristol, TN: January 5, 1997.
TA–W–34,222; Koppers Industries, Inc., Woodward Coke Plant, Dolomite, AL: January 26, 1997.
TA–W–34,140; International Jensen, Inc., Punxsutawney, PA: December 19, 1996.
TA–W–34,090; United Steering Systems, Inc., Grabill, IN: November 20, 1996.
TA–W–34,021; Bosch Braking Systems Corp., Johnson City, TN: November 7, 1996.
TA–W–34,149; Zenith Electronics Corp., Purchasing Dept., Glenview, IL: January 2, 1997.
TA–W–34,025; Carter Footwear, Inc., Wilkes-Barre, PA: January 31, 1998.
TA–W–34,105; Struble & Moffitt Co., Isolyser Div., Runnemede, NJ: December 9, 1996.
TA–W–34,071 & A; Kessler Industries, Inc., El Paso, TX and Canutillo, TX: November 6, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.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 February, 1998.

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 agricultural 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 increased 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–02067; New Ponce Shirt Co., Inc., Ponce De Leon, FL
NAFTA–TAA–02095; National Electrical Carbon Products, East Stroudsburg, PA
NAFTA–TAA–012167; Metro Plastics Technologies, Inc., Columbus, IN
NAFTA–TAA–02122; Gentex Printing, L.L.C., a/k/a/ General Textile Printing, Rocky Mount, NC
NAFTA–TAA–02071; Weyerhaeuser Co., Coos Bay Export Sawmill, North Bend, OR
NAFTA–TAA–02127; Omak Wood Products, Inc., Omak, WA
NAFTA–TAA–02073; Hunt-Wesson, Inc., Fullerton Cannery & Distribution Center, Fullerton, CA
NAFTA–TAA–02033; Identity Headwear, Maysville, MO
NAFTA–TAA–02010; American Tissue Corp., Tomahawk, WI

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02142; Computech Data Entry, Orlando, FL
NAFTA–TAA–02176; Pecos Valley Field Service, Pecos, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–02052, A & B; Greenfield Industries, Inc., So. Deerfield, MA, Anaheim, CA and Greensboro, NC
NAFTA–TAA–02051; Koch Refining Co., St. Paul, MN

The investigation revealed that criteria (2) and criteria (4) have not been met. Sales or production, or both, did not decline during the relevant period as required for certification. There has not been a shift in production by the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

NAFTA–TAA–02070; Fort James Corp., Packaging Div., Portland, OR

The investigation revealed that criteria (1) and criteria (4) have not been met. A significant number or proportion of the workers (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated as required for certification. There has not been a shift in production of the workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02162; Seattle Gear, Inc., WA: January 23, 1997.
NAFTA–TAA–02152; American Home Products Corp., Wyeth-Ayerst Laboratories, Bound Brook, NJ: January 21, 1997.
NAFTA–TAA–02150; Dexter Sportswear, Inc., Dexter, GA: January 23, 1997.
NAFTA–TAA–02160 & A; Sunrise Medical, Simi Valley, CA and Westlake Village, CA: November 19, 1996.
NAFTA–TAA–02046; Freeport Sulphur Co., Pecos, TX (Including Leased workers of Pecos Valley Field Services, Inc., Pecos, TX): October 24, 1996.
NAFTA–TAA–02020; Hood Lumber Co., Green Veneer, Inc., Div., North Santiam Plywood, Mill City, OR and Green Veneer, Inc., Idanha, OR: November 7, 1996.
NAFTA–TAA–02102; Spalding & Sons, Inc., Grants Pass, OR: December 16, 1996.
NAFTA–TAA–02097; Healthtex, Inc., Warrenton, GA: December 22, 1996.
NAFTA–TAA–02089; Newell Company Acme Frame—a/k/a Intercraft Harrisburg, AR: December 18, 1996.
NAFTA–TAA–02161; Glit/Gemtex, Inc., Buffalo, NY: January 23, 1997.
NAFTA–TAA–02136; Biljo, Inc., Dublin, GA: January 16, 1997.
NAFTA–TAA–02139; Scientific Atlanta, Tempe, AZ and Devau Resources, Working at Scientific Atlanta, Tempe, AZ: January 16, 1997.
NAFTA–TAA–02151; Flour Daniel (NPOSR), Inc., Casper, WY: January 26, 1998.
NAFTA–TAA–02185; Gambro Healthcare, Inc., Deland, FL: January 29, 1997.
NAFTA–TAA–02129; Hewlett-Packard Co., Printed Circuit Board Div., Vancouver, WA: January 6, 1997.
NAFTA–TAA–02181; MIJA Industries, Inc., Plymouth, MA: February 2, 1997.
NAFTA–TAA–02090; Farah USA, Inc., El Paso, TX: December 9, 1996.

NAFTA–TAA–02194; New America Wood Products, Winlock, WA: February 10, 1997.

NAFTA–TAA–02154; Calgon Carbon Corp., Advanced Oxidation Technologies, Tucson, AZ: January 19, 1997.

NAFTA–TAA–02062; Criterion Plastics, Inc., Kingsville, TX: December 5, 1996.

NAFTA–TAA–02166; SPM/Denver, A Dynacast Co., Denver, CO: January 28, 1997.

I hereby certify that the aforementioned determination were issued during the month of February 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 27, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–6740 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–10; Exemption Application No. D–10328, et al.]

Grant of Individual Exemptions; MS Commodity Investments Portfolio II

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

MS Commodity Investments Portfolio II, L.P. (the Partnership) and Morgan Stanley Commodities Management, Inc. (MSCM, collectively the Applicants) Located in New York, NY

[Prohibited Transaction Exemption 98–10 Application Nos. D–10328 and D–10329]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code,[1] shall not apply, effective April 3, 1996, to the acquisition or redemption of units (the Units or Unit) in the Partnership by certain plans (the Plans or Plan) that invest in the Partnership, where MSCM, the general partner of the Partnership, and/or its affiliates are parties in interest and/or disqualified persons with respect to such Plans; provided that the conditions, as set forth below in Section II are satisfied as of the effective date of this exemption.

Section II. General Conditions

This exemption will be subject to the express condition that the material facts and representations contained in the applications are true and complete, and that the applications accurately describe all material terms of the transactions to be consummated pursuant to the exemption.

(a) Prior to the investment of the assets of a Plan in the Partnership, a fiduciary of such Plan (the Plan Fiduciary or Plan Fiduciaries) who is/are independent of MSCM and its affiliates must approve such investment.

(b) MSCM has determined and documented and will determine and document, pursuant to a written procedure, that the decision of a Plan to invest in the Partnership was and will be made by a Plan Fiduciary who was and is independent of MSCM and its affiliates and who was and is capable of making an informed investment decision about investing in the Partnership.

(c) The independent Plan Fiduciary of each Plan investing in the Partnership has retained and will retain complete discretion with respect to transactions initiated by such Plan involving the acquisition or redemption of Units in the Partnership.

(d) Neither MSCM nor its affiliates has any discretionary authority or control with respect to the investment of assets by Plans in the Partnership nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of such assets.

(e) No Plan investing in the Partnership has acquired and held or will acquire or hold Units in the Partnership that represent more than 20 percent (20%) of the assets of the Partnership.

(f) At the time of any acquisition of Units by a Plan, the aggregate value of the Units acquired and held by such Plan does not exceed 10 percent (10%) of the assets of such Plan.

(g) At the time transactions are entered into, the terms of such transactions are at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party.

(h) No Plan has paid or will pay a fee or commission to MSCM or any of its affiliates by reason of the acquisition or redemption of Units in the Partnership.

(i) The total fees paid to MSCM have constituted and will constitute no more than reasonable compensation, within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(j) Only Plans with assets having an aggregate market value of at least $25 million have been and will be permitted to invest in the Partnership, except that in the case of two or more Plans maintained by a single employer or controlled group of employers, the $25 million dollar requirement may be met by aggregating the assets of such Plans, if the assets are commingled for investment purposes in a single master trust.

(k) Prior to making an investment in the Partnership, the independent Plan Fiduciary of each potential Plan investor, and/or such Plan investor's authorized representative has been and will be provided by MSCM or by an affiliate with a written copy of the following offering materials:

(1) The Private Placement Memorandum of the Partnership (the Memorandum) (which contains among other things, a description of the offering of Units, all material facts concerning the purpose, structure, and operation of the Partnership, as well as any associated risk factors, and a description of the relationships existing between MSCM, Morgan Stanley Asset Management Inc. (MSAM), Morgan Stanley & Co. Incorporated (MS&Co), and Morgan Stanley Group Inc. (the MS Group));

(2) The then-current limited partnership agreement (the LP Agreement) between MSCM and the investors in the Partnership; and

(3) The then-current subscription agreement (the Subscription Agreement) (an executed copy of which is delivered to a subscriber and/or its authorized representative as soon as practicable following such subscriber's investment in the Partnership) and the Investor Certification previously furnished by MSCM or its affiliates to the independent Plan Fiduciaries for completion which contains information about each potential Plan investor, specifies such Plan's proposed investment in such Partnership, and documents the fact that the investment decision is being made by an independent Plan Fiduciary who is capable of making an informed investment decision about investing in the Partnership.

(l) With respect to the ongoing participation in the Partnership, the independent Plan Fiduciary of each Plan invested in the Partnership has received and will receive within the time periods specified below, the following additional written disclosures from MSCM or from its affiliates:

(1) Within ninety (90) days after the close of each fiscal year, audited financial statements of the Partnership, prepared annually by a qualified, independent, public accountant including:

(i) A balance sheet; (ii) a statement of income or a statement of loss; (iii) the net asset value of the Partnership, as of the end of the two preceding fiscal years; (iv) either: (A) the net asset value per outstanding Unit as of the end of the reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such period; (v) a statement of changes in partner's capital; and (vi) the amount of the total fees paid to MSCM or to its affiliates by the Partnership during such period.

(2) Within thirty (30) days after the end of each calendar month, a monthly statement of account prepared by MSCM or by its affiliates containing the following unaudited financial information:

(i) The total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period; (ii) the change in unrealized net gain or loss on commodity interest positions during such reporting period; (iii) the total amount of net gain or loss from all other transactions in which the Partnership engaged during such reporting period; (iv) the total amount of management fees, advisory fees, brokerage commissions, and other fees for commodity interests and other investment transactions incurred or accrued by the Partnership during such reporting period; (v) the net assets value of the Partnership as of the beginning of such reporting period; (vi) the total amount of additions to Partnership capital made during such reporting period; (vii) the total amount of withdrawals from and redemption of Units in the Partnership during such reporting period; (viii) the total net income or loss of the Partnership during such reporting period; (ix) the net assets value of the Partnership as of the end of such reporting period; and (x) either (A) the net asset value per outstanding Unit as of the end of such reporting period or (B) the total value of each participant's interest in the Partnership as of the end of such reporting period.

(m) The Partnership has not engaged and will not engage in swaps transactions, as defined in Section III (d) below.

(n) The Partnership has not invested in and will not invest in any entity in which the MS Group or any of its affiliates has an ownership interest.

(o) Affiliates of MSCM have not invested in and will not invest in the Partnership.

(p) The non-U.S. commodity trading activities of the Partnership have been and will be limited to the London Metals Exchange (the LME).

(q) The Applicants have not accepted and will not accept subscriptions from Plans which permit participants to exercise control over the decision to acquire or redeem Units;

(r) MSCM has maintained and shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (s) of this Section II to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MSCM and/or its affiliates, the records are lost or destroyed prior to the end of the six (6) year period, and (b) no party in interest or disqualified person other than MSCM shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records have not been maintained or are not maintained, or have not been available or are not available for examination as required by paragraph (s) of this Section II below.

(s)(1) Except as provided in subsection (2) of this paragraph (s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (r) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(a) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(b) any fiduciary of any Plan investing as a limited partner in the Partnership or any duly authorized representative of such fiduciary;

(c) any contributing employer to any Plan investing as a limited partner or any duly authorized employee representative of such employer;

(d) any participant or beneficiary of any participating Plan investing as a limited partner, or any duly authorized representative of such participant or beneficiary; and

(e) any other limited partner.

(2) None of the persons described above in subparagraphs (b)-(e) of paragraph (s)(1) of this Section II shall be authorized to examine the trade secrets of MSCM or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(a) An ''affiliate'' of a person includes—

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control of such person. (For purposes of this subsection, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) any officer, director, or partner in such person, and

(3) any corporation or partnership of which such person is an officer, director, or a 5 percent (5%) or more partner or owner.

(b) A ''Plan'' or the ''Plans'' has not included and will not include any individual account plan(s) where participants have the right to exercise control over the decision to acquire or redeem Units.

(c) A ''Plan Fiduciary'' or ''Plan Fiduciaries'' is defined as a fiduciary or fiduciaries of a Plan who is/are independent of MSCM and its affiliates.

(d) A ''swap transaction'' is defined as an individually negotiated, non-standardized agreement between two parties to exchange cash flows at specified intervals known as payment or settlement dates. The cash flows of a swap are either fixed, or calculated for each settlement date by multiplying the quantity of the underlying asset (notional principal amount) by specified reference rates or prices. Depending upon the type of underlying asset, the great majority of these transactions are classified into interest rate, currency, commodity, or equity swaps. Interim payments are generally netted, with the difference being paid by one party to the other.

EFFECTIVE DATE: The exemption will be effective retroactively, as of April 3, 1996.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on November 24, 1997, 62 FR 62622.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.) National Rural Utilities Cooperative Finance Corporation (CFC), Located in Washington, D.C. [Prohibited Transaction Exemption No. 98–11; Application No. D–10394]

EXEMPTION

Section I—Transactions

A. Effective as of November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions relating to the refinancing by CFC of certain rural utility cooperative loans made to the Kansas Electric Power Cooperative, Inc. (KEPCO), and certain notes issued by KEPCO in connection with such loans which are assigned to trusts for which CFC acts as servicer, and certificates evidencing interests in such trusts:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between CFC or an underwriter and an employee benefit plan when CFC, the underwriter, or the trustee is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates;

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2); and

(4) The purchase by CFC of existing notes issued by KEPCO from the existing trusts and the contribution by CFC of new notes to new trusts pursuant to the refinancing of KEPCO's existing loans on the scheduled refinancing date (i.e. December 18, 1997).

B. Effective as of November 18, 1997, the restrictions of sections 406(a) and 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding trust agreement; and

(2) The trust agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[2]

C. Effective as of November 18, 1997, the restrictions of sections 406(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates issued pursuant to this exemption or issued pursuant to Prohibited Transaction Exemption 89–93 (PTE 89–93, 54 FR 45816, October 31, 1989).[3]

Section II—General Conditions

A. The relief described under Section I of this exemption will be available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Service (S&P's) or Moody's Investors Service, Inc. (Moody's; together, the Rating Agencies);

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of CFC, as servicer, solely because the trustee has succeeded to the rights and responsibilities of CFC pursuant to the terms of a trust agreement providing for such succession upon the occurrence of one or more events of default by CFC;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by CFC, as sponsor, pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by CFC, as servicer, represents not more than reasonable compensation

[2] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

[3] PTE 89–93 permits, as of July 22, 1987, certain transactions between CFC and employee benefit plans where CFC may be deemed to be a party in interest with respect to the plans as a result of providing services to a trust in situations where the assets of the trust are considered to be ''plan assets'' as a result of the plans acquiring significant ownership interests in the trust in the form of pass-through certificates.

for CFC's services under the trust agreement and reimbursement of CFC's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (SEC) under the Securities Act of 1933;

(7) Any swap transaction entered into by KEPCO which is assigned to a trust is entered into with a bank or other financial institution of high credit standing, initially Morgan Guaranty Trust Company of New York (Morgan), with a credit rating of at least AA or an equivalent rating from the Rating Agencies;

(8) The bank or other financial institution acting as the swap counterparty to the trust is required, if there is an adverse change in such counterparty's credit rating, to either: (i) post collateral with the trustee of the trust in an amount, determined daily, equal to all payments owed by the counterparty if the swap transaction were terminated; or (ii) find a replacement swap counterparty for the trust, within a specified period under the terms of the swap agreement with the trust, which has a credit rating of at least AA or an equivalent rating from the Rating Agencies; provided that if the swap counterparty fails to abide by its obligations under either (i) or (ii) above, the swap agreement shall terminate in accordance with the rights and obligations of each counterparty under the terms thereof, which shall be enforced by the trustee to protect the rights of certificateholders of such trust;

(9) Each swap transaction between a trust and Morgan, or other swap counterparty, in connection with the refinancing of KEPCO's loans requires payments to be made to the trust monthly (or at such other times as required under the swap agreement) and requires payments to be made by the trust no less frequently than semi-annually, but in no event shall the trust be obligated to make payments to a swap counterparty more frequently than those which it is entitled to receive from a swap counterparty;

(10) The certificateholders have the right to exit the transaction by tendering the certificates to an underwriter (initially, Alex. Brown & Sons, Inc.) for purchase at par (plus accrued interest) on seven (7) days' notice;

(11) The U.S. Government guarantees the payment of principal and interest on the loans made by CFC to KEPCO;

(12) The purchase of notes issued by KEPCO from the existing trusts is for a price which is at least equal to the outstanding principal balance of such notes, plus accrued (but unpaid) interest, at the time of the scheduled refinancing of the loans made by CFC to KEPCO (i.e. December 18, 1997); and

(13) The certificates are not sold to any plans established and maintained by KEPCO or CFC, or to plans for which any other member of the Restricted Group (as defined in Section III.E. below) is an investment fiduciary for the assets of the plan that are to be invested in the certificates.

B. Neither CFC nor the trustee shall be denied the relief that would be provided under Section I of this exemption if the provision of Section II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that: (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6) above.

Section III—Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust, and consists solely of:

(1) One or more notes issued by KEPCO which shall be guaranteed as to payment of principal and interest by the U.S. Government, acting through the U.S. Department of Agriculture's Administrator of the Rural Utilities Service (RUS), including fractional undivided interests in any such obligations;

(2) Property which has secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the trust agreement, and rights under any insurance policies, third-party guarantees, swap agreements, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

C. ''Underwriter'' means an entity which has received an individual prohibited transaction exemption from the Department that provides relief for the operation of asset pool investment trusts that issue ''asset-backed'' pass-through securities to plans, that is similar in format and structure to this exemption (the Underwriter Exemptions);[4] any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

E. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter/remarketing agent;

(2) The trustee;

(3) CFC;

(4) KEPCO;

(5) The swap counterparty/liquidity provider; or

(6) Any affiliate of a person described in subsection E.(1)–(5) above.

F. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

[4] For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97–34 (62 FR 39021, July 21, 1997).

G. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

H. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

I. ''Sale'' includes the entrance into a forward delivery commitment (as defined in subsection J. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of this delivery, all conditions of this exemption applicable to sales are met.

J. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

K. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

L. ''Trust Agreement'' means the agreement or agreements among KEPCO, CFC and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Trust Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

M. ''RUS'' means the U.S. Department of Agriculture, acting through the Administrator of the Rural Utilities Service or any successor to the guarantee obligations of such organization.

The Department notes that this exemption is included within the meaning of the term ''Underwriter Exemption'' as that term is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This exemption is effective as of November 18, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 24, 1997 at 62 FR 62630.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Hawaii Laborers' Apprenticeship and Training Trust Fund (the Trust Fund)

[Prohibited Transaction Exemption No. 98–12; Application No. L–10485]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the proposed purchase of a certain parcel of unimproved real property (the Property) by the Trust Fund from the Laborers International Union of North America, Local 368, AFL-CIO (a/k/a the Hawaii Laborers Union), a party in interest with respect to the Trust Fund, provided that the following conditions are met:

(a) The purchase of the Property by the Trust Fund is a one-time transaction for cash;

(b) The Trust Fund pays no more than the lesser of: (i) $1,570,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property is established by an independent, qualified real estate appraiser that is unrelated to the Hawaii Laborers Union or any other party in interest with respect to the Trust Fund;

(d) The Trust Fund does not pay any commissions or other expenses with respect to the transaction;

(e) The Hawaiian Trust Company, Ltd. (Hawaiian Trust), acting as an independent, qualified fiduciary for the Trust Fund, determines that the proposed transaction is in the best interest of the Trust Fund and its participants and beneficiaries;

(f) Hawaiian Trust monitors various aspects of the purchase of the Property until closing, including the environmental reports concerning the Property, and takes whatever action is necessary to protect the interests of the Trust Fund; and

(g) The purchase price paid by the Trust Fund for the Property represents no more than 25 percent of the Trust Fund's total assets at the time of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 24, 1997, at 62 FR 62643.

WRITTEN COMMENTS: The Department received one written comment from an interested person which did not raise any issues relating to the proposed transaction by the Trust Fund. No other comments or hearing requests were received by the Department. Therefore, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 10th day of March, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–6613 Filed 3–13–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps 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 National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, is soliciting comments concerning renewal of the Application for Indemnification. A copy of this collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below on or before May 16, 1998. The National Endowment for the Arts 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting the electronic submissions of responses.

ADDRESSES: Alice Whelihan, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 726, Washington, DC 20506–0001, telephone (202) 682–5574 (this is not a toll-free number), fax (202) 682–5603.

Murray Welsh,

Director, Administrative Services.

[FR Doc. 98–6682 Filed 3–13–98; 8:45 am]

BILLING CODE 7536–01–M

PANAMA CANAL COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13. 109 Stat. 163), the Panama Canal Commission hereby gives notice it has forwarded to the Office of Management and Budget for review and clearance a Paperwork Reduction Act Submission (OMB 83-I) for an extension of a currently approved collection of information entitled Personnel Administration Forms, OMB No. 3207–0005. In accordance with sec. 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Commission published a notice in the **Federal Register** [62 FR 66400, December 18, 1997] requesting comment on this proposed collection. The comment period ended February 17, 1998. The Commission received no comments in response to that notice.

DATES: Written comments on this proposed action regarding the collection of information must be submitted by April 15, 1998.

ADDRESSES: Address all comments concerning this notice to Edward H. Clarke, Desk Officer for Panama Canal Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Building, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Ruth Huff, Office of the Secretary, Panama Canal Commission, 202–634–6441.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995 requires Federal agencies to provide a notice in the **Federal Register** stating the agency has made such submission and setting forth the following information:

Title: Personnel Administration Forms.

Abstract: The information requested is authorized by 35 Code of Federal Regulations (CFR), Parts 251 and 253 and sections 3652, 3654, 3661–3664 of Title 22, United States Code. The information is needed to determine the qualifications, suitability and availability of applicants for Federal employment in the Panama Canal area so U.S. Federal agencies can be supplied with eligibles to fill vacant positions.

On December 30, 1981, PCC requested OMB approval for a collection of information entitled ''Personnel Administration Forms.'' OMB approved this collection for use through January 31, 1985 and assigned it OMB Number 3207–0005. On December 17, 1984, PCC requested another extension and received approval and use through March 31, 1988. Prior to the expiration of the collection of information in subsequent years, PCC continued requesting review and clearance for a revision of the collection and received approval through July 31, 1991, September 30, 1994, and February 28, 1998.

Needs and Uses: The information is used by Recruitment and Examining Division employees performing examining and suitability duties; by subject-matter experts on rating panels, and by agency officials making selections to fill vacancies.

Description of Respondents: Applicants for employment.

Estimated Burden: The estimated burden of providing the information varies, depending upon the applicant's individual circumstances. The burden time for a full application is estimated to vary from 40 to 300 minutes with an average of 120 minutes per response, including supplemental qualifications forms when required, and 10 to 60 minutes with an average of 30 minutes to update applications already on file.

Total Annual Reporting Hour Burden: 9082.

Frequency of Response: When persons apply or update applications.

Estimated Number of Respondents: 7453.

Jacinto Wong,

Chief Information Officer, Senior Official for Information Resources Management.

[FR Doc. 98–6693 Filed 3–13–98; 8:45 am]

BILLING CODE 3640–04–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23063; 812–10838]

Delaware Group Foundations Funds, et al.; Notice of Application

March 9, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1)(G)(i)(II).

SUMMARY OF THE APPLICATIONS: Applicants seek an order that would permit a fund of funds relying on section 12(d)(1)(G) of the Act to make direct investments in securities and other instruments.

APPLICANTS: Delaware Group Foundation Funds, Delaware Group Equity Funds I, Inc., Delaware Group Equity Funds II, Inc., Delaware Group Equity Funds III, Inc., Delaware Group Equity Funds IV, Inc., Delaware Group Equity Funds V, Inc., Delaware Group Income Funds, Inc., Delaware Group Government Fund, Inc., Delaware Group Limited-Term Government Funds, Inc., Delaware Group Cash Reserve, Inc., Delaware Group Tax-Free Money Fund, Inc., Delaware Group State Tax-Free Income Trust, Delaware Group Tax-Free Fund, Inc., Delaware Pooled Trust, Inc., Delaware Group Premium Fund, Inc., Delaware Group Global & International Funds, Inc., Delaware Group Adviser Funds, Inc. (collectively, the ''Delaware Funds''), Voyageur Funds, Inc., Voyageur Insured Funds, Inc., Voyageur Intermediate Tax Free Funds, Inc., Voyageur Investment Trust, Voyageur Investment Trust II, Voyageur Mutual Funds, Inc., Voyageur Mutual Funds II, Inc., Voyageur Mutual Funds III, Inc., Voyageur Tax Free Funds, Inc. (collectively, the ''Delaware-Voyageur Funds''), any future registered open-end management investment companies or series thereof which are part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act as: (a) the Delaware or Delaware-Voyageur Funds; or (b) other registered open-end management investment companies that are advised by Delaware Management Company, Inc. or any entity that controls, is controlled by, or under common control with Delaware Management Company, Inc. (together with any future series of existing Delaware Funds or Delaware-Voyageur Funds, the ''Future Funds'') (Delaware Funds, Delaware-Voyageur Funds, and Future Funds, collectively, the ''Delaware Group Funds'') and Delaware Management Company, Inc. (''DMC''), Delaware International Advisers Ltd. (''DIAL'') (together, the ''Advisers''), and Delaware Distributors, L.P. All existing entities that currently intend to rely on the order are named as applicants.

FILING DATES: The application was filed on October 27, 1997 and amended on December 16, 1997. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 3, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Commerce Square, 2005 Market Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Annmarie J. Zell, Staff Attorney, at (202) 942–0532, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. Delaware Group Foundation Funds (the ''Asset Allocator Fund''), a Delaware business trust, is registered under the act as an open-end management investment company and currently intends to offer three series, the Income Portfolio, the Balanced Portfolio and the Growth Portfolio (collectively, the ''Asset Allocator Portfolios''). Each Asset Allocator Portfolio will invest primarily in a combination of Delaware Group Funds (the ''Underlying Funds'') and, pursuant to the relief requested in the application, directly in individual securities, such as equity or fixed income securities and investment instruments including options and futures on securities or indices.

2. DMC, an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser for the Asset Allocator Portfolios. DMC will charge an investment advisory fee that will be for services that are in addition to, rather than duplicative of, advisory services provided to the Underlying Funds, including asset allocation and re-allocation among the Underlying Funds and the management of direct investments in securities or other instruments. The Asset Allocator Portfolios will invest in the institutional class of shares of the Underlying Funds. These shares will be sold to and redeemed by the Asset Allocator Portfolios without the imposition of any front-end or deferred sales charges or redemption fees and will not carry rule 12b–1 fees.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term

paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G).

3. The Asset Allocator Fund requests relief from section 12(d)(1)(G)(i)(II) to the extent necessary to permit an Asset Allocator Portfolio and any Future Funds to operate as a fund of funds within each requirement of section 12(d)(1)(G) of the Act, with the exception of the requirement that the Asset Allocator Portfolios limit their investments in individual securities to Government securities and short-term paper.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent the exemption is consistent with the public interest and the protection of investors. Applicants believe that the structure of the Asset Allocator Portfolios will be substantially the same as the statutory fund of funds now permitted under section 12(d)(1)(G). Applicants also believe that Asset Allocator Portfolios' proposed direct investments in securities and instruments as described in the application do not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will company with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Asset Allocator Portfolios from investing in individual securities or instruments described in the application.

2. Before approving any investment advisory contract for the Asset Allocator Fund under section 15 of the Act, the Board of Trustees of the Asset Allocator Fund, including a majority of the Trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act, shall find that the investment advisory fee, if any, charged under the contract is based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's investment advisory contract. The finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Asset Allocator Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6595 Filed 3–13–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39734; File No. SR–Amex–97–41]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Trading Differentials for Option Contracts

March 9, 1998.

On November 3, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1935 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Exchange to establish, upon the filing of a rule change proposal pursuant to Section 19(b)(3)(A) of the Exchange Act, the trading differentials for option contracts traded on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on December 1, 1997.[3] No comments were received on the proposal. This order approves the proposal.

Exchange Rule 952 currently provides that the minimum fractional change for stock options trading at $3.00 or higher shall be one-eighth and for stock options trading under $3.00 shall be one-sixteenth. Additionally, Rule 951C provides that the minimum fractional change for stock index options shall be one-eighth for stock index options trading at a premium greater than $300.00 and stock index options less than $300.00 shall be one-sixteenth. The Exchange now proposes to amend Rules 952 and 951C to give the Board of Governors the authority to establish the minimum fractional changes for options. Until such time as the Board determines to use its authority to change the minimum fractional changes, the current rules described above will apply. The Exchange believes that the proposal will allow the Exchange to revise its minimum fractional changes quickly in response to changes adopted in the underlying stock markets and at the other options exchanges. When the Board of Governors determines to change the minimum trading increments, the Exchange will designate such a change as a stated policy, practice, or interpretation with respect to the administration of Rules 952 and 951C within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for immediate effectiveness upon filing with the Commission.

As derivatives securities, the prices of options are determined in references to the prices of the underlying securities. Consequently, the Exchange believes that where practicable, the Exchange should have minimum increments comparable to those applicable to the securities underlying its options.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[5] Specifically, the Commission believes that permitting the Exchange to establish trading differentials for option contracts upon the filing of a proposal under Section 19(b)(3)(A) of the Act will help to facilitate securities transactions, to remove impediments to and perfect the mechanism of a free and open market, to foster competition and coordination with persons engaged in regulating securities, and to promote just an equitable principles of trade.

The Commission previously has approved a rule proposal that allows the Exchange to establish trading increments for equity securities.[6] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 39347 (November 21, 1997), 62 FR 63576 (December 1, 1997).

[4] *See* Exchange Act Release No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (Commission order approving a change in the minimum increment to 1/16th for equity securities listed on the American Stock Exchange); Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997), (Commission order approving a change in the minimum increment to 1/16th for Nasdaq-listed equity securities); and Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (Commission order approving a change in the minimum increment to 1/16th for NYSE-listed equity securities).

[5] *See* 15 U.S.C. 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[6] *See* Exchange Act Release No 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (Commission order approving a change in the minimum increment to 1/16th for equity securities listed on the American Stock Exchange); Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997), (Commission order approving a change in the minimum increment to 1/16th for Nasdaq-listed equity securities); and Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (Commission order approving a change in the

Commission believes that permitting the Exchange to establish trading differentials for option contracts upon the filing of a proposal under Section 19(b)(3)(A) of the Act will provide flexibility to the Exchange and thereby enhance the quality of the market for affected Amex-listed options. Allowing the Amex to quote in finer increments will facilitate quote competition. This should help produce more accurate pricing of options and should result in tighter quotations. Furthermore, if the quoted markets are improved by reducing the minimum increment, the change could result in added benefits to the markets such as reduced transaction costs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–97–41) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6663 Filed 3–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39730; File No. SR–BSE–97–09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

March 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 1997, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its specialist performance evaluation program (''SPEP'') pilot with the addition of several objective measures, the deletion of the floor broker questionnaire, a change from using trade statistics to using share statistics for the price improvement and depth measures, a readjusted point system, readjusted threshold levels and/or weights for all of the measures, and a change in the review period for the program from tri-annual to quarterly. The proposed pilot program is intended to expire on December 31, 1998.[3]

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Since the inception of the pilot program in February 1993, the Exchange has continuously reviewed and fine-tuned the SPEP to ensure that its specialists are providing competitive and quality executions. In addition to looking for new objective measures of performance, the Exchange has periodically changed the threshold levels and weights of the existing measures. After an extensive review of overall Exchange performance in the areas of price improvement and depth, areas which the Exchange's Market Performance Committee and Board of Governors has determined are critical to market quality, the Exchange is proposing to measure price improvement in three categories covering all market spreads (the current program focuses only on greater than eighth spreads) and to heavily weight both the price improvement and depth measures.

As occurs under the current program, only regular way, unconditioned buy and sell market and marketable limit orders will qualify for inclusion in the program, blocks of time will be excluded from the program in the event of trading halts and system problems which impact the validity of quotes; orders will be eligible for measurement only if received after the primary market opens the stock; stocks subject to competition will be included in the program; the same staff and committee review time frames and available actions will apply; and quarterly results will continue to be used in allocating stocks.

The Exchange seeks to change the review periods from tri-annual to quarterly, with each period beginning January, April, July, and October. The Exchange believes that these shortened review periods will permit a more frequent review process and a faster response to evident performance, as well as enable specialists to address potential low performance areas more efficiently.

Turnaround Time, which measures the average number of seconds from the receipt of an order for 1299 shares or less in BEACON until it is executed (in whole or in part), stopped or canceled, will remain unchanged. Holding Orders Without Action, which measures the percentage of orders (all order sizes included) which are neither executed (in whole or in part), stopped nor canceled within twenty-five seconds,

minimum increment to 1/16th for NYSE-listed equity securities).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission initially approved the BSE's SPEP pilot program in Securities Exchange Act Release No. 22993 (March 10, 1986), 51 FR 8298 (March 14, 1986) (File No. SR–BSE–84–04). The Commission subsequently extended the pilot program in Securities Exchange Act Release Nos. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988) (File No. SR–BSE–87–06); 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990) (File No. SR–BSE–90–01); 28919 (February 26, 1991), 56 FR 9990 (March 8, 1991) (File No. SR–BSE–91–01); and 30401 (February 24, 1992), 57 FR 7413 (March 2, 1992) (File No. SR–BSE–92–01). The BSE was permitted to incorporate objective measures of specialist performance into its pilot program in Securities Exchange Act Release No. 31890 (February 19, 1993), 58 FR 11647 (February 26, 1993) (File No. SR–BSE–92–04) (''February 1993 Approval Order''), at which point the initial pilot program ceased to exist as a separate program. The current pilot program was subsequently extended in Securities Exchange Act Release Nos. 33341 (December 15, 1993), 58 FR 67875 (December 22, 1993) (''December 1993 Approval Order''); 35187 (December 30, 1994), 60 FR 2406 (January 9, 1995); 36668 (January 2, 1996), 61 FR 672 (January 9, 1996) (January 1996 Approval Order) (Pilot extended until December 31, 1996); and 38128 (January 17, 1997), FR (January, 1997) (Pilot extended until December 31, 1997).

will also remain unchanged. However, the point system and weights for these two measures will be modified as described below.

The existing Trading Between the Quote measure is being replaced by three separate price improvement measures. Each of these categories will measure the percentage of shares [4] executed at a price better than the displayed national best bid or offer (''NBBO'') price at the time the order is received. A separate category of orders will be measures for less than one-eighth spreads, one-eighth spreads, and greater than one-eighth spreads. Qualification in a category will be based on the spread at the time the order is received.

The existing Executions in Size Greater than the Best Bid and Offer (''BBO'') is being renamed as ''Depth'' and modified to measure shares rather than trades. This calculation will measure the percentage of shares exceeding the displayed NBBO size which are executed at or better than the displayed NBBO price.[5] Only orders which at the time of receipt exceed the displayed NBBO size will qualify for this measure. An additional depth measure is being added to the program, called ''Added Depth,'' which will measure the number of shares executed by each specialist at the displayed NBBO price in excess of the displayed NBBO size at the time the order is received, as a percentage of the total number of shares executed by all specialists at the displayed NBBO price in excess of the displayed NBBO price.[6] This measure will also include only those orders that exceed the displayed NBBO at the time of receipt of the order, and will provide the raw score percentage attributable to each specialist relative to all other specialists being evaluated.

The Specialist Performance Evaluation Questionnaire (''SPEQ''), which has been a part of the Exchange's performance evaluation program since 1984, is being eliminated. For some time now, it has been the Market Performance Committee's and BSE staff's view that the Questionnaire is too subjective to have any meaningful value in the overall performance of a specialist. Over time, its weight has been significantly reduced in the overall evaluation program. The Committee intends to redevelop the questionnaire and reintroduce it at some point in the future, possibly as a tool to aid the Committee in effectively assessing the performance of specialists required to appear as a result of deficient performance in the objective measures and overall program.

The current ten point scale that is applied to the raw scores for each measure is also being changed in an effort to better differentiate among scores. Ranges of scores will be given points of either 0, 5, 10, 15 or 20 points, with 5 points being at the threshold level for each measure. Specialists who fall below the threshold level will receive 0 points, whereas under the current scale can be given for unacceptable performance. The Exchange believes that these changes will provide an incentive to specialists to improve lower levels of performance and will reward those specialists who are significantly outperforming their peers.

The proposed range point scales for each of the measures is as follows:

1. TURNAROUND TIME

Time in seconds	Points
>=21.0	0
16.0–20.9	5
11.0–15.9	10
0–10.9	15

2. HOLDING ORDERS WITHOUT ACTION

Percentage of orders	Points
>=21.0	0
16.0–20.9	5
11.0–15.9	10
6.0–10.9	15

2. HOLDING ORDERS WITHOUT ACTION—Continued

Percentage of orders	Points
0–5.9	20

3. PRICE IMPROVEMENT (<⅛ SPREADS)

Percentage of orders	Points
<2.0	0
2.0–3.9	5
4.0–5.9	10
6.0–9.9	15
>=10.0	20

4. PRICE IMPROVEMENT (⅛ SPREADS)

Percentage of orders	Points
<15.0	0
15.0–19.9	5
20.0–24.9	10
25.0–29.9	15
>=30.0	20

5. PRICE IMPROVEMENT (>⅛ SPREADS)

Percentage of orders	Points
<25.0	0
25.0–34.9	5
35.0–39.9	10
40.0–44.9	15
>=45.0	20

6. DEPTH

Percentage of orders	Points
<75.0	0
75.0–79.9	5
80.0–84.9	10
85.0–89.9	15
>=90.0	20

7. ADDED DEPTH

Percentage of orders	Points
<1.0	0
1.0–1.9	5
2.0–3.9	10
4.0–5.9	15
>=6.0	20

The following minimum threshold levels have been set, at which a Specialist will be deemed to have adequately performed:

Overall Program—at or above weighted score of 5.00

Turnaround Time—below 21.0 seconds (5 points)

Holding Orders Without Action—below 21.0% (5 points)

[4] The Commission notes that the current Trading Between the Quote criterion measures a specialist's performance in terms of trades, not shares.

[5] For example, assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares. Under the current test, if the specialist executed 700 shares at the NBBO price, he would effectively receive credit for executing the whole order at the NBBO or better even though part of the order may have been executed at a price inferior to the NBBO. (He would receive credit for 1 trade out of 1 trade, or 100%). Under the proposed revised test, measured in terms of shares versus trades, if the specialist executed 600 shares at the NBBO price, the specialist would receive credit for 600 shares out of 1200 shares, or 50%. If the specialist executed 900 shares at the NBBO price, he would receive credit for 900 out of 1200, or 75%.

[6] For example assume the NBBO size is 500 shares displayed and the BSE specialist receives an order for 1200 shares, and that the specialist executes 600 shares at the displayed NBBO price. Calculate how many shares over the NBBO size the specialist executed by subtracting 500 from 600; the specialist has 100 shares of ''added depth.'' Then calculate the added depth for each qualifying order for each specialist, add the added depth for each specialist for each qualifying order, and total the added depth for all specialists combined. Next, you compare each specialist's added depth to the overall added depth for the floor to arrive at the percentage for each specialist relative to the other specialists. For example: 100 added depth for specialist A ÷ 10,000 added depth for all specialists = 10% added depth for specialist A.

Price Improvement (<⅛—at or above 2.0% (5 points)
Price Improvement (⅛)—at or above 15.0% (5 points)
Price Improvement (>⅛—at or above 25.0% (5 points)
Depth—at or above 75.0% (5 points)
Added Depth—at or above 1.0% (5 points)

Assuming that a specialist performed at the above minimum threshold levels for each measure, the breakdown of weighted points would be as follows:

Measure	Weight (percent)	Points	Weighted points
Turnaround Time	5	5	0.25
Holding Orders Without Action	5	5	0.25
Price Improvement (<⅛)	20	5	1.00
Price Improvement (⅛)	15	5	0.75
Price Improvement (>⅛)	15	5	0.75
Depth	20	5	1.00
Added Depth	20	5	1.00
Overall Weighted Score	.....	.....	5.00

The Exchange is requesting accelerated approval of the proposed rule change pursuant to Section 19(b)(2) of the Act. The Exchange believes that such action is appropriate in that the existing Specialist Performance Evaluation Program's heavily weighted objective measure regarding price improvement in greater than one-eighth markets has become obsolete as the sole determinant of price improvement statistics. That category alone accounts for only ten percent of the Exchange's overall trade volume. The Exchange also believes that the current program's use of trade data is less effective than using share data will be because share data will present a better overall picture of execution quality. In addition, the Exchange believes that the proposed changes will create a more meaningful and effective overall program for evaluating its specialists, with the heavily weighted market quality measures for price improvement and depth. Finally, the Exchange seeks to implement this amended program as soon as possible and has informed its specialists that such changes have been proposed to the Commission for approval on an accelerated basis, and has begun making the system programming changes necessary to accumulate, calculate and store statistics for the program.

2. Statutory Basis

The Exchange believes that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–97–09 and should be submitted by April 6, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the reasons discussed below, the Commission finds that the BSE's proposal to extend the revised SPEP pilot program until December 31, 1998 is consistent with the requirements of Sections 6 and 11 of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act[9] and Rule 11b–1 thereunder[10] which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system.

The Commission believes that specialists play a crucial role in providing stability, liquidity, and continuity to the trading of stocks. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their designated securities.[11] To ensure that specialists fulfill these obligations, it is important that the Exchange conduct effective

[7] 15 USC. 78f(b)–(5).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k(b).

[10] 17 CFR 240.11b–1.

[11] Rule 11b–1, 17 CFR 240.11b–1; BSE Rules Ch. XV, ¶ 2155.01.

oversight of their performance. The BSE's SPEP is critical to this oversight.

The Commission believes that the Exchange's development of two new objective criteria, Price Improvement and Added Depth, is a positive step forward in establishing meaningful objective specialist performance criteria. These new objective measures are designed to measure market quality in two important areas of specialist performance, price improvement and depth. By replacing Trading Between the Quote with Price Improvement, the amount of time the specialist executes orders at a price better than the NBBO [12] will be measured in three categories covering all market spreads, rather than just in greater than ⅛th markets. The Added Depth measure will allow BSE to measure in percentage terms, how often a specialist executes an order at a size greater than the NBBO size, at the NBBO price, relative to all the other specialists. In addition, the Commission believes it is reasonable to measure Price Improvement and Depth and Added Depth in terms of shares executed, rather than trades, because it should give a better picture of a specialist's execution quality by giving specialists credit for the number of shares in a trade actually executed above the NBBO size at the NBBO price, rather than for an entire trade where the specialist may have only executed part of the trade at or better than the NBBO price.[13]

The Commission believes it is reasonable under the Act to amend the point system for all of the objective measures of specialist performance. The Commission believes that the revised test, where specialists who fall below the adequate threshold levels will not receive any points, as compared to the current scale where points are still awarded for performance below the adequate threshold level, should provide an added incentive to specialists to receive partial credit for unacceptable performance. Regarding BSE's proposed reliance on share statistics (versus trade statistics), the Commission believes that the threshold levels set for each objective measure are reasonable. The Commission nevertheless reiterates its previous request that BSE continually monitor the adequate threshold levels and propose adjustments as necessary. The Commission also believes that the change in the weighting of each objective measure is reasonable, in that the Price Improvement and depth measures, which measure market quality and liquidity, are more highly weighted than Turnaround Time and Holding Orders Without Action, which have been reduced to 10% combined weight. The Commission believes it is reasonable for BSE to eliminate the current SPEQ, a subjective measure of specialist performance, particularly given the breadth of the proposed performance measures, which rely on objective criteria. The Commission also believes it is consistent with the Act to allow the Exchange to review the specialist performance quarterly, rather than tri-annually. By allowing for more frequent review of specialist performance, BSE should be able to respond more rapidly and efficiently in order to identify deficient performance by specialists.

Extending the pilot program until December 31, 1998 will allow the Exchange to gain experience in administering the new specialist performance program and provide sufficient time for BSE to respond to the Commission's continuing concerns about the SPEP. In particular, the Commission expects the BSE to incorporate additional objective criteria into the SPEP, most importantly, a measure of quote performance [14] The Commission recently observed, in its study on the practice of preferencing, that BSE specialists' quotes are only equal to the NBBO a very low percentage of the time.[15] In response to a request from the Division of Market Regulation to address the issue of measuring specialist quote performance, BSE has stated that it is currently developing the technological means to evaluate quote performance and will submit a rule amendment in September 1998 modifying its SPEP to include an objective measure of quote performance.[16]

During the next year of the pilot's operation, BSE should continue to assess whether each SPEP measure is assigned an appropriate weight.[17] In addition, the Commission expects the Exchange to continue to conduct an on-going examination of its minimum adequate performance thresholds, in order to ensure that they continue to be set at appropriate levels.[18] The Commission notes its continued belief that relative performance rankings that subject the bottom 10% of all specialist units to review by an Exchange committee are important part of an effective evaluation program. The BSE should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review. In the Commission's opinion, a meaningful review process would ensure that adequate corrective actions are taken with respect to each deficient specialist.[19] The Commission would have difficulty granting permanent approval to a SPEP that did not include a satisfactory response to the concerns described above.

The Commission therefore requests that the BSE submit a report to the

[12] In Trading Between the Quote, the performance was measured against BSE's BBO rather than the NBBO.

[13] *See supra* example note 5. In that example, under the current regime, a specialist who executed 600 out of the 1200 shares would receive the same credit as one who executes 800 out of 1200. However, under the proposed rule change, the specialist who executed 800 shares would receive a higher score than the one who executes 600 shares.

[14] For example, the BSE could develop additional measures of market depth, such as how often the specialist's quote exceeds 500 shares or how often the BSE quote, in size, is larger than the NBBO (excluding quotes for 100 shares). Another possible objective criteria could measure quote performance; how often the BSE specialist's quote, in price, is alone at or the same as the NBBO. *See* January 1996 Approval Order.

[15] *See* Report on the Practice of Preferencing Pursuant to Section 510(c) of the National Securities Markets Improvement Act of 1996, Commission, April 11, 1997 at Table V–5 (BSE specialists' quotes are equal to the NBBO approximately only 5% of the time).

[16] *See* letter from Karen A. Aluise, Vice President, BSE, to Howard Kramer, Associate Director, Market Regulation, Commission, dated February 13, 1998.

[17] The Commission had recommended in its January 1996 Approval Order that the BSE consider either having only one measure out of the Turnaround Time and Holding Orders Without Action categories or reducing the weights of these existing measures, which together accounted for 30% of the current SPEP, given the substantial overlap between those two measures. In response to this recommendation, the BSE first reduced the weights of two measures to 25% of the overall program, and decreased the weight of the SPEQ to 5% and increasing the weight of each of the other objective criteria from 25% to 35%. *See* August 1996 Release. In addition, the current proposed rule change further reduces the weights of the two measures to 5% each.

[18] In August 1996, in response to this same recommendation the BSE some of the minimum adequate performance levels to provide a higher benchmark for acceptable specialist performance on the Exchange. *See* August 1996 Release.

In the current proposed rule change, BSE has further amended the performance level of price improvement (which replaces Trading Between the Quote) and the two depth measures by slightly lowering them, to reflect the change from measuring performance in terms of trades to shares.

[19] In response to these comments, the BSE previously revised its review process by tightening the standards for committee review for substandard specialist performance both in the overall program and in individual measures. The criteria for PIAC review for substandard performance in any one objective measure was reduced from two out of three consecutive review periods to any one review period. The crieteria for MPC review of substandard performance in any one objective measure was reduced from three out of four consecutive review periods to two out of three consecutive review periods, while MPC review for substandard overall performance was reduced from two out of three consecutive review periods to any one review period. *See* August 1996 Release.

Commission, by September 17, 1998, describing its experience with the pilot. At a minimum, this report should contain data, for the last review period of 1997 and the first two review periods of 1998, on (1) the number of specialists who fell below acceptable levels of performances for each objective measure, [20] the questionnaire (for the last review period of 1997) and the overall program, and the specific measures in which each such specialist was deficient; (2) the number of specialists who, as a result of the objective measures, appeared before the PIAC for informal counseling; (3) the number of such specialists then referred to the MPC and the type of action taken; (4) the number of specialists who, as a result of the overall program, appeared before the MPC and the type of action taken; (5) the number of specialists who, as a result of the questionnaire (for the last review period of 1997) or falling in the bottom 10% were referred by the Exchange staff to the PIAC and the type of action taken (this should include the number of specialists then referred to the MPC and the type of action taken by that Committee); and (6) a list of stocks reallocated due to substandard performance and the particular unit involved. The report also should discuss the specific action taken by the BSE to develop additional objective measures and address the other concerns noted above. Any requests to modify this pilot, to extend its effectiveness or to seek permanent approval for the SPEP should be submitted to the Commission by September 17, 1998, as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This will permit the pilot program to continue and allow the BSE time to consider improvements to its program. In addition, the rule change that implemented the pilot program was published in the **Federal Register** for the full comment period, and no comments were received.[21] Accordingly, the Commission believes that it is consistent with the Act to accelerate approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) [22] that the proposed rule change is hereby approved on an accelerated basis, through December 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6662 Filed 3–13–98; 8:45 am]

BILLING CODE 8010–01–M

[20] For objective measure, the Commission also requests that the BSE provide the mean and median scores.

[21] *See* February 1993 Approval Order, *supra* note 4.

[22] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39736; File No. SR–CBOE–97–49]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Trading Differentials for Option Contracts

March 9, 1998.

On October 21, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Exchange to establish, upon the filing of a rule change proposal pursuant to Section 19(b)(3)(A) of the Exchange Act, the trading differentials for option contracts traded on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on December 1, 1997.[3] No comments were received on the proposal. This order approves the proposal, as amended.

The Exchange is proposing to amend Exchange Rule 6.42 to give the Board of Directors the authority to establish the minimum trading increments for option contracts. Currently, Rule 6.42 that bids and offers shall be express in eighths of $1 unless a different increment is approved by the Floor Procedure Committee for an option contract of a particular series. An interpretation to the Rule states that bids and offers for all option series trading below $3 shall be expressed in sixteenths of a dollar. Until such time as the Board determines to make a change, the current standards will apply.

The proposed change would allow the Exchange to change the trading increments on an expedited basis and thus, allow the Exchange to respond appropriately to changes in the minimum trading increment in the markets for the securities underlying CBOE options or to changes in the minimum trading increments for one of the other options exchanges. When the Board of Directors determines to change the trading increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for immediate effectiveness upon filing with the Commission.

The Exchange notes that there has been a movement within the industry to reduce the minimum trading and quotation increments imposed by the various SROs.[4] As derivative securities, the prices of options are determined in reference to the prices of the underlying securities. Consequently, the Exchange believes that where practicable, the Exchange should have minimum increments comparable to those applicable to the securities underlying CBOE options.

The Exchange also believes that the proposed rule change would give the Exchange the flexibility to follow the suit of the principal exchanges for the underlying securities without having to update its rules continually but at the same time would give the Exchange the flexibility it needs to deviate from the minimum increments established by the principal markets for the underlying securities in the event that the CBOE's systems were not immediately able to handle such increments. The Exchange, therefore, believes the quality of the market for CBOE options will be

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 39348 (November 21, 1997), 62 FR 63577 (December 1, 1997). The Exchange submitted on amendment to the proposed rule change on November 17, 1997. *See* Letter from Timothy H. Thompson, CBOE, to Christine Richardson, Division of Market Regulation, Commission (Nov. 14, 1997). The amendment was published for comment along with the originally submitted filing. By adding the term ''appropriate'' before the term ''Floor Procedure Committee'' in the text of proposed Rule 6.42, the amendment clarifies that the decision to change the increments with respect to a particular class of options will be made by whichever Floor Procedure Committee has jurisdiction over trading in that option class. The amendment also replaced Exhibit 1 to the submitted filing with a revised Exhibit 1.

[4] *See* Exchange Act Release No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (Commission order approving a change in the minimum increment to 1/16th for equity securities listed in the American Stock Exchange); Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997) (Commission order approving a change in the minimum increment to 1/16th for Nasdaq-listed equity securities); and Exchange Act Release No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (Commission order approving a change in the minimum increment to 1/16th for NYSE=listed equity securities).

enhanced by allowing for more accurate pricing of CBOE options.

The Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6 and 11A of the Act.[5] Specifically, the Commission believes that permitting the Exchange to establish trading differentials for option contracts upon the filing of a proposal under Section 19(b)(3)(A) of the Act will help to facilitate securities transactions, to remove impediments to and perfect the mechanism of a free and open market, to foster competition and coordination with persons engaged in regulating securities, and to promote just and equitable principles of trade.

As noted above, the Commission previously has approved a rule proposal that allows the Exchange to establish trading increments for equity securities. The Commission believes that permitting the Exchange to establish trading differentials for option contracts upon the filing of a proposal under Section 19(b)(3)(A) of the Act will provide greater flexibility to the Exchange and thereby enhance the quality of the market for affected CBOE-listed options. Allowing the CBOE to quote in finer increments will facilitate quote competition. This should help produce more accurate pricing of options and should result in tighter quotations. Furthermore, if the quoted markets are improved by reducing the minimum increment, the change could result in added benefits to the markets such as reduced transaction costs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–97–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6661 Filed 3–13–98; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* 15 U.S.C. 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39735; File No. SR–PCX–97–39]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Trading Differentials for Option Contracts

March 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 21, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On December 10, 1997, the Exchange submitted to the Commission an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to allow the Exchange to establish, upon the filing of a rule change proposal pursuant to Section 19(b)(3)(A) of the Exchange Act, the trading differentials for option contracts traded on the Exchange. The Exchange also proposes to amend its rules to clarify that the Exchange shall file a rule change proposal with the Commission pursuant to Section 19(b)(3)(A) of the Exchange Act when it determines to change the trading differentials for equity securities.[4] The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 6.72 currently provides that bids and offers in option contracts shall be expressed in eighths of $1, unless a different fraction of $1 is approved by the Exchange's Options Floor Trading Committee for an option contract of a particular series. Commentary .01 to Rule 6.72 currently provides that the Options Floor Trading Committee has determined that bids and offers for all option series trading below $3 shall be expressed in sixteenths of a dollar.

The Exchange is now proposing to amend Rule 6.72 to provide that the Exchange shall determine the trading differentials for option contracts traded on the Exchange. The Exchange is proposing this rule change in order to provide itself with greater flexibility, so that it can change the trading differentials for option contracts traded on the Exchange on an expedited basis. Amendment No. 1 amends Commentary .01 to Rule 6.72 to clarify that when the Exchange determines to change the trading increments for option contracts, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.72 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for immediate effectiveness upon filing with the Commission. The Exchange notes that the proposed rule change is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson, PCX, to Christine Richardson, Division of Market Regulation, Commission (December 10, 1997) (''Amendment No. 1'').

[4] The Exchange already has the authority to determine the trading differentials for equity securities traded on the Exchange. *See* Exchange Act Release No. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997) (order approving SR–PCX–97–15). The approval order for SR–PCX–97–15 stated that, when the Exchange determined to change a trading differential for an equity security, the Exchange would file with the Commission a rule change proposal pursuant to Section 19(b)(3)(A) of the Exchange Act (effective upon filing).

The Exchange is now proposing to add Commentary .01 to Rule 5.3(b) to clarify that, when it determines to change a trading differential for an equity security, it shall file with the Commission a rule change proposal pursuant to Section 19(b)(3)(A) of the Exchange Act. *See* Amendment No. 1, *supra* note 3. This new language will conform the Exchange's Rule 5.3(b) to what is required by the order that gives the Exchange its authority to change the trading differentials for equity securities.

substantively similar to a recently approved PCX rule change proposal governing equity securities traded on the Exchange.[5]

The Exchange recognizes that there has been a movement within the securities industry to reduce the minimum trading and quotation increments for equity securities imposed by the various self-regulatory organizations (''SROs''). The NYSE, The Nasdaq Stock Market (''Nasdaq''), and the Amex have recently reduced their minimum increments.[6] Furthermore, several third market makers have begun quoting equity securities in increments smaller than the primary markets. As derivative securities, the prices of options are determined in reference to the prices of the underlying securities. Consequently, the Exchange believes that the proposed rule change will give it the flexibility it needs to change the minimum trading and quotation increments for option contracts traded on the Exchange.

In addition to adding the Section 19(b)(3)(A) filing requirement to the text of the proposed rule change for option contracts trading differentials, Amendment No. 1 to the filing also adds the same requirement to Rule 5.3(b) concerning a change in trading differentials for equity securities. Amendment No. 1 adds Commentary .01 to Rule 5.3(b) to clarify that, when the Exchange determines to change the trading increments for equity securities, it will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 5.3(b) within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for immediate effectiveness upon filing with the Commission.

[5] *See* Exchange Act Release No. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997) (order approving File No. SR–PCX–97–15, modifying PCX Rule 5.3(b) to provide that ''The Exchange shall determine the trading differentials for equity securities traded on the Exchange''); *see also* Exchange Act Release No. 38575 (May 6, 1997), 62 FR 26606 (May 14, 1997) (order granting temporary accelerated approval, for a ninety-day period, of rule change relating to trading differentials for equity securities) (File No. SR–PCX–97–16).

[6] *See, e.g.*, Exchange Act Release No. 38744 (June 18, 1997), 62 FR 34334 (June 25, 1997) (granting temporary accelerated approval to a NYSE proposal to replace eighths with sixteenths as the minimum trading increment for NYSE-listed equity securities); Exchange Act Release No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment from ⅛ to 1/16 for Amex-listed equity securities); Exchange Act Release No. 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a proposed rule change by Nasdaq to reduce the minimum quotation increment from ⅛ to 1/16 for Nasdaq-listed equity securities).

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to promote just and equitable principles of trade.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has determined to approve the proposed rule change on an accelerated basis, thereby permitting the Exchange to establish a procedure whereby it may determine the trading differentials for option contracts traded on the Exchange, as well as to permit the Exchange to clarify in its rules the necessary procedure to be followed by the Exchange when it determines to change the trading differentials for equity securities. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal comports with the requirements of Section 6 and Section 11A of the Act.[9] Specifically, the Commission believes that permitting the Exchange to establish trading differentials for option contracts upon the filing of a proposal under Section 19(b)(3)(A) will help to facilitate securities transactions, to remove impediments to and perfect the mechanism of a free and open market, to foster competition and coordination with persons engaged in regulating securities, and to promote just and equitable principles of trade. The Commission believes that permitting the Exchange to establish trading differentials for option contracts upon the filing of a proposal under Section 19(b)(3)(A) will provide greater flexibility to the Exchange and thereby enhance the quality of the market for the affected PCX-listed options. Allowing the PCX to quote in finer increments will facilitate quote competition. This should help produce more accurate pricing of options and should result in tighter quotations. Furthermore, if the quoted markets are improved by reducing the minimum increment, the change could result in added benefits to the market such as reduced transaction costs.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the Commission previously has approved a similar set of procedures applicable to PCX equity securities.

The Commission also notes that substantively similar rule proposals submitted by the Chicago Board Options Exchange (''CBOE'') and American Stock Exchange (''Amex'')[10] are being approved contemporaneously with the approval of this PCX filing. Notice of the CBOE and Amex proposals was published in the **Federal Register** and no comments were received.[11] Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. Specifically, the Commission believes that, by adding the Section 19(b)(3)(A) filing requirement to the text of Rule 6.72, the Exchange clarifies the necessary procedure to be followed upon a determination to change the trading differentials for option contracts. The Commission further believes that the clarifying language being added to the PCX's Rule 5.3(b), concerning the Exchange's authority to establish trading differentials for equity securities, conforms the rule to what is required by

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* 15 U.S.C. 78f(b) and 78k–1. In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[10] *See* File Nos. SR–CBOE–97–49 and SR–Amex–97–41.

[11] *See* Exchange Act Release No. 39348 (November 21, 1997), 62 FR 63577 (December 1, 1997) (notice for File No. SR–CBOE–97–49); Exchange Act Release No. 39347 (November 21, 1997), 62 FR 63576 (December 1, 1997) (notice for File No. SR–Amex–97–41).

the original approval order.[12] The Commission recognizes that this proposed additional language does not raise any new regulatory issues because the Exchange merely is seeking to clarify the process that it is already required to follow upon a determination to change trading differentials for equity securities. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

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, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–39 and should be submitted by April 6, 1998.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change, as amended, (SR–PCX–97–39) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

[12] *See* Exchange Act Release No. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997) (order approving SR–PCX–97–15).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–6660 Filed 3–13–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Request for Emergency Review by the Office of Management and Budget

The Social Security Administration publishes a list of information collection packages that will require clearance by OMB in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collections listed below have been submitted to OMB for emergency clearance. OMB approval has been requested by March 20, 1998:

0960–NEW. The Government Performance and Results Act (GPRA) requires agencies to evaluate the effectiveness of their programs. In compliance with GPRA and as part of the Agency's strategic planning process, one of SSA's major goals is ''To Strengthen Public Understanding of the Social Security Programs.'' The Agency Strategic Plan provides that SSA develop an overall public education strategy to ensure that, by the year 2005, 9 of 10 adults are knowledgeable in five broad areas of the Social Security program. As a first step towards its goal, the Agency proposes to conduct focus groups with adults age 18 and over to assess their understanding of the program and determine what they wish to know. The information from the focus group testing will be used for the development of a subsequent national survey which will measure the public's baseline knowledge of Social Security programs.

Number of Respondents: 90.

Frequency of Response: 1.

Average Burden Per Response: 2 hours.

Estimated Annual Burden: 180 hours.

To receive a copy of the form or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed below. Written comments and recommendations regarding the information collection(s) should be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA)

Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Date: March 10, 1998.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–6743 Filed 3–13–98; 8:45 am]

BILLING CODE 4190–29–U

DEPARTMENT OF STATE

[Public Notice 2761]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: 30-Day Notice of Proposed Information Collection; Application for Passport by Mail (DSP–82).

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Application for Passport by Mail.

Frequency: On occasion.

Form Number: DSP–82.

Respondents: U.S. Citizens and Nationals of the United States.

Estimated Number of Respondents: 1,700,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 425,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: March 2, 1998.

Glen H. Johnson,

Acting, Chief Information Officer.

[FR Doc. 98–6616 Filed 3–13–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 2762]

30-Day Notice of Proposed Information Collection; Application for Passport/ Registration (DSP–11)

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs.

Title of Information Collection: Application for Passport/Registration.

Frequency: On occasion.

Form Number: DSP–11.

Respondents: Citizens and Nationals of the United States who are applying for registration as a U.S. citizen abroad.

Estimated Number of Respondents: 4,400,000.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 1,466,666.6 hours.

Public comments are being solicited to permit the agency to—

• Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed form by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: March 2, 1998.

Glen H. Johnson,

Acting Chief Information Officer.

[FR Doc. 98–6617 Filed 3–13–98; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets OST–97–3017 and OST–97–3113].

Application of Sky King, Inc. for Issuance of New Certificate Authority

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of order to show cause (Order 98–3–12).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding Sky King, Inc., fit, willing, and able, and (2) awarding it certificates to engage in interstate and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than March 25, 1998.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–97–3017 and OST–97–3113 and addressed to Department of Transportation Dockets (SVC–120.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–9721.

Dated: March 11, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–6680 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Proceedings, Agreements Filed During the Week of March 6, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3586
Date Filed: March 5, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC3 Telex Mail Vote 915
TC3 Special Amending Reso 010r (US Territories)
Intended effective date: July 1, 1998

Docket Number: OST–98–3587
Date Filed: March 5, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC3 Telex Mail Vote 914
TC3 Special Passenger Amending Reso
r1–010q, r4–084f
r2–070uu, r5–084g
r3–002d
Intended effective date: March 15, 1998

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–6703 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 6, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's

Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3217
Date Filed: March 5, 1998
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 2, 1998
Description: Supplement to the Application of JHM Cargo Expresso, S.A. pursuant to 49 U.S.C. Section 40109, and Subpart Q, states that it no longer seeks a Permit to engage in nonscheduled foreign air transportation. Rather, in accordance with the Costa Rican governments grant of scheduled authority and the airline's attendant designation under the Costa Rica-United States aviation treaty, the airline supplements its application to seek a Section 402 Foreign Air Carrier Permit for scheduled, including charter, foreign air transportation of property and mail between Costa Rica and Miami, Florida and Los Angeles, California.

Docket Number: OST–97–2486
Date Filed: March 6, 1998
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 3, 1997
Description: Amendment No. 1 to the Application of ALM Antillean Airlines N.V. and ALM 1997 Airline N.V. pursuant to 49 U.S.C. Section 40109 and Subpart Q of the Regulations, requests when transferred and reissued, a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail from points behind the Netherlands Antilles via the Netherlands Antilles and intermediate points to a point or points in the United States and beyond.

Paulette V. Twine,

Federal Register Liaison.

[FR Doc. 98–6704 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: New London County, Connecticut

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a joint Environmental Impact Statement/Major Investment Study (EIS/MIS) will be prepared for transportation improvements within the Connecticut Route 82/85/11 (RT 82/85/11) corridor in the towns of Salem, Montville, Waterford, and East Lyme Connecticut.

FOR FURTHER INFORMATION CONTACT: Donald West, Division Administrator, Federal Highway Administration, Connecticut Division Office, 628–2 Hebron Avenue, Suite 303, Glastonbury, Connecticut 06033. Telephone: (860) 659–6703; or Edgar T. Hurle, Director of Environmental Planning, Connecticut Department of Transportation, 2800 Berlin Turnpike, P.O. Box 317546, Newington, Connecticut 06131–7546. Telephone; (860) 594–2920.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Connecticut Department of Transportation (ConnDOT), will prepare a joint Environmental Impact Statement/Major Investment Study (EIS/MIS) to analyze potential impacts to transportation improvements within the RT 82/85/11 corridor in southeastern Connecticut. The approximate length of the study area corridor is ten miles. Improvements to the corridor are considered necessary to improve safety and provide for projected traffic demand. The alternatives that will be considered in the EIS/MIS include, but are not limited to, the no action, minor roadway improvements, roadway widening, new roadway alignments, transit, transportation demand management and transportation system management. An advisory committee was established with representation from the corridor towns. The committee has met, and will continue to meet and advise the FHWA. A public informational meetings has been held.

To ensure that a 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. Due to the extensive public input received to date and the history of corridor transportation studies, no formal scoping meeting is planned. Comments or questions concerning this EIS/MIS should be directed to the FHWA at the address provided above.

During the EIS/MIS, a number of public informational meetings will be held at major milestones in the process. In addition, the Department will hold a public hearing or hearings approximately 30 days after the Draft EIS/MIS has been made available for public and agencies review and comment.

(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)

Authority: 12 USC 315; 49 CFR 1.48.

Issued: March 4, 1998.

Carl L. Gottschall,

Assistant Division Administrator, Hartford, Connecticut.

[FR Doc. 98–6598 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement: Sacramento Amtrak and Folsom Corridor LRT Extensions and Double Tracking project in Sacramento County, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA), in cooperation with the Sacramento Regional Transit District (RT), will prepare an Environmental Impact Statement (EIS) for the Sacramento Amtrak and Folsom Corridor LRT Extensions and Double Tracking project in accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

The EIS will consider alternatives for improving direct transit service within a corridor generally following U.S. Highway 50 between the Amtrak station in downtown Sacramento and downtown Folsom, California. The EIS will evaluate the following alternatives: a No-Build Alternative, a Transportation Systems Management (TSM) Alternative, and a Light Rail Transit (LRT) Alternative.

The Major Investment Study (MIS) for this project, the U.S. 50 Corridor Major Investment Study, was completed by the Sacramento Area Council of Governments in December, 1997. Other previous studies include various program- and construction-level environmental analyses conducted by RT over the past eight years, and a City of Folsom Environmental Impact Report (EIR) for a light-rail extension along the easternmost segment of the corridor. RT will perform additional preliminary engineering for the downtown Sacramento Amtrak extension, the

Folsom extension, and double tracking, for a single, construction-level Draft EIS/EIR for the entire corridor.

Scoping will be accomplished through meetings and correspondence with interested persons, organizations, the general public, federal and state agencies. Letters describing the proposed action and soliciting comments were sent to the appropriate federal, state and local agencies, and to private organizations and citizens who have expressed or are known to have interest in this proposal.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered must be postmarked no later than April 20, 1998 and should be sent to the Sacramento Regional Transit District at the address below. *Scoping Meetings:* Two public scoping meetings will be held: April 7, 1998 from 7:00 until 9:00 p.m., at the Nimbus Winery, 12401 Folsom Boulevard, Rancho Cordova, and on April 8, 1998 from 2:00 until 4:00 p.m. at the Energy Commission Building, Hearing Room A, 1516 9th Street, Sacramento. A brief presentation of the project purpose and alternatives will be provided at the beginning of each meeting. RT and consultant staff will be present to take agency and public input regarding the scope of the environmental studies, key issues, and other suggested alternatives.

ADDRESSES: Written comments should be sent to Mr. Anthony Palmere, Planning Manager, RT, 1400 29th Street, Sacramento, CA. 95816. Phone: (916) 321–2866. The public scoping meetings will be held at the Nimbus Winery, 12401 Folsom Boulevard, Rancho Cordova (April 7, 1998 from 7:00 until 9:00 p.m.), and at the Energy Commission Building, Hearing Room A, 1516 9th Street, Sacramento (April 8, 1998 from 2:00 until 4:00 p.m.).

FOR FURTHER INFORMATION CONTACT: Robert Hom, Director, Office of Program Development (415) 744–3116.

SUPPLEMENTARY INFORMATION:

I. Description of Project Area and Scope

The FTA, as joint lead agency with the Sacramento RT, will prepare an EIS on a proposal to improve direct transit service within an approximately 23-mile-long corridor generally following U.S. Highway 50 between the Amtrak station in downtown Sacramento and downtown Folsom, California. Studies will build upon previous evaluations of route and mode alternatives and LRT extensions conducted over the past 8 years. RT will perform preliminary engineering for the downtown Sacramento Amtrak station extension, the Folsom extension, and double-tracking segments, for a single, construction-level Draft EIS/EIR that satisfies both NEPA and CEQA requirements.

II. Project Purpose and Need

The basic project purpose is to improve public transit service in this rapidly growing corridor by providing increased transit capacity and faster, convenient access between downtown Folsom and downtown Sacramento. Associated needs include the following: enhancing regional connectivity through expanded, interconnected LRT services along the primary travel corridors in Sacramento County; accommodating future travel demand by expanding modal options; alleviating growing traffic congestion in the U.S. 50 corridor and on major east-west arterials; alleviating the downtown Sacramento congestion and circulation impacts of increased peak hour traffic; improving regional air quality by reducing auto emissions; improving mobility options to employment, education, medical, and retail centers for corridor residents, in particular low-income, youth, elderly, disabled, and ethnic minority populations; and supporting local economic and land development goals.

III. Alternatives

The No-Build Alternative will consist of all presently programmed, that is, existing and fiscally committed elements of the Region's Transportation Plan for this corridor and nearby areas. These are expected to include HOV lanes on portions of U.S. 50; and RT, Folsom Stage and El Dorado County Transit bus service improvements in the Folsom corridor to meet projected employment growth and transit travel demand.

The TSM Alternative will include low-capital cost bus system enhancements and traffic engineering, signalization, and other modest capital improvements in addition to the programmed projects included in the No-Build Alternative. The bus service enhancements are expected to include RT shuttle buses between the Mather Field light rail station and the employment centers in the White Rock Road, Mather Field, and Sunrise Boulevard areas; new express buses from Folsom and El Dorado County to the White Rock Road, Mather Field Road, and Sunrise Boulevard employment centers and to the Mather Field Road station; and continuation of Folsom Stage and El Dorado County express buses to downtown Sacramento.

The LRT Alternative is the Sacramento Amtrak and Folsom Corridor LRT Extensions and Double Tracking project. It incorporates extension of the existing LRT tracks from 7th and K streets in downtown Sacramento, to the Amtrak Station in downtown Sacramento; extension of the LRT tracks from the Mather Field station to downtown Folsom; and track relocation and other facility modifications to provide for double-tracking from Amtrak to a point approximately two miles east of Sunrise Boulevard, becoming single track to Iron Point Road and downtown Folsom. LRT stations are included at Sunrise Boulevard, Hazel Avenue, and Iron Point Road, in addition to the downtown Sacramento Amtrak station and a station in downtown Folsom. The LRT Alternative may be constructed in stages, depending on ridership and cost projections to be developed during the studies. Proposed implementation phasing and LRT and bus system operational changes to accommodate the proposed LRT extensions will be described and evaluated in the Draft EIS/EIR. Also, environmental review of four additional stations, at Horn Road, Coloma Road, Kilgore Road, and Silverbrook Drive, will be provided to enable construction of these stations as funding permits. An LRT maintenance facility will be considered in the area between Sunrise Boulevard and the Iron Point Road stations.

The EIS/EIR will address the full range of other alternatives that have been considered in developing the proposed project.

IV. Probable Effects

Impacts proposed for analysis include changes in the physical environment (natural resources, air quality, noise, water quality, geology, visual); changes in the social environment (land use, business and neighborhood disruptions); changes in traffic and pedestrian circulation; impacts on parklands and historic sites; changes in transit service and patronage; associated changes in highway congestion; capital, operating, and maintenance costs; and financial implications. Impacts will be identified both for the construction period and for the long-term operation of the alternatives. The proposed evaluation criteria include transportation, environmental, social, economic, and financial measures as required by current federal (NEPA), and State (CEQA) environmental laws and current Council on Environmental Quality (CEQ) and FTA guidelines.

The TSM and LRT alternatives are expected to increase transit ridership, and therefore may improve air quality and reduce automobile traffic

congestion in the U.S. 50 corridor. Possible adverse environmental effects of these alternatives include localized traffic congestion or delay, property acquisition/ displacement, visual, noise/ vibration, wetlands/natural resources, hazardous materials, and temporary construction-phase impacts. Mitigating measures will be explored for identified adverse effects.

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/EIR should be directed to RT at the address provided above.

Issued on: March 11, 1998.

Leslie Rogers,

Region IX Administrator.

[FR Doc. 98–6688 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–98–3337]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 15, 1998.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, S.W., Plaza 401, Washington, D.C. 20590. Docket No. NHTSA–98–3337.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Block, Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Room 6240, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) 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) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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 technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

1998 Motor Vehicle Occupant Safety Survey

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—December 31, 1999.

Summary of the Collection of Information—NHTSA proposes to conduct a 1998 Motor Vehicle Occupant Safety Survey by telephone among a national probability sample of 8,000 adults (age 16 and older). Participation by respondents would be voluntary. NHTSA's information needs require seat belt and child safety seat sections too large to merge into a single survey instrument without producing an inordinate burden on respondents. Rather than reduce these sections, the proposed survey instrument would be divided into two series of modules. Each module would be administered to one-half the total number of subjects to be interviewed. Module Series #1 of the questionnaire would focus on seat belts and include smaller sections on air bags, motorcyclist safety, and general driving (including speed). Module Series #2 would focus on child safety seats, accompanied by smaller sections on bicyclist safety and Emergency Medical Services. Both series would contain sections on crash injury experience, and on drinking and driving because of the extensive impact of alcohol on the highway safety problem. Some basic seat belt questions contained in Module Series #1 would be duplicated on Module Series #2.

In conducting the proposed survey, the interviewers would use computer-assisted telephone interviewing to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers would be used to minimize language barriers to participation. The proposed survey would be anonymous and confidential.

Description of the Need for the Information and Proposed Use of the Information—The National Highway Traffic Safety Administration (NHTSA) was established to reduce the mounting number of deaths, injuries and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

During the late 1960s and early 1970s, more than 50,000 persons were killed each year in motor vehicle crashes in the United States. Diverse approaches were taken to address the problem. Vehicle safety designs and features were improved; restraint devices were improved; safety behaviors were mandated in state legislation (including seat belt use, child safety seat use, and motorcycle helmet use); alcohol-related legislation was enacted; this legislation was enforced; public information and education activities were widely implemented; and roadways were improved.

As a result of these interventions and improvements, crash fatalities dropped significantly. By 1996, total fatalities had fallen to 41,907, representing an 18% decline from 1966. In addition, the resident population and the number of vehicle miles traveled increased greatly over the past 30 years. When fatality rates are computed per 100,000 population, the rate for 1996 (15.80) was about 40 percent lower than the 1966 rate (26.02). In sum, heightened highway safety activity conducted over the past three decades corresponds with

major strides in reducing traffic fatalities.

Remaining barriers to safety will be more resistant to programmatic influences now that the easy gains have already been accomplished. Moreover, crash fatalities have been edging higher since dropping to slightly under 40,000 in 1992, indicating that significant effort will be needed just to preserve the gains that already have been made. Up-to-date information is essential to plot the direction of future activity that will achieve reductions in crash injuries and fatalities in the coming years.

In order to collect the critical information needed by NHTSA to develop and implement effective countermeasures that meet the Agency's mandate to improve highway traffic safety, NHTSA conducted its first Motor Vehicle Occupant Safety Survey in 1994. The survey included questions related to seat belts, child safety seats, air bags, bicyclist safety, motorcyclist safety, and Emergency Medical Services. It also contained small segments on alcohol use and on speeding. The survey was repeated in 1996, with the survey instrument updated to incorporate emergent issues and items of increased interest.

The proposed survey is the third Motor Vehicle Occupant Safety Survey. The survey would collect data on topics included in the preceding surveys and would monitor changes over time in the use of occupant protection devices and in attitudes related to vehicle occupant safety. It is important that NHTSA monitor these changes so that the Agency can determine the effects of its efforts to promote the use of safety devices and to identify areas where its efforts should be targeted and where new strategies may be needed. As in 1996, NHTSA proposes to make a small number of revisions to the survey instrument to address new information needs.

If approved, the proposed survey would assist NHTSA in addressing the problem of motor vehicle occupant safety and in formulating programs and recommendations to Congress. The results of the proposed survey would be used to: (a) identify areas to target current programs and activities to achieve the greatest benefit; (b) develop new programs and initiatives aimed at increasing the use of occupant safety devices by the general public; and (c) provide informational support to States and localities in their traffic safety efforts. The findings would also be used directly by State and local highway safety and law enforcement agencies in the development and implementation of effective countermeasures to prevent injuries and fatalities to vehicle occupants.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—Under this proposed effort, a telephone interview averaging approximately 20 minutes in length would be administered to each of 8,000 randomly selected members of the general public age 16 and older in telephone households. The respondent sample would be selected from all 50 states plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected through random digit dialing. Businesses are ineligible for the sample and would not be interviewed. No more than one respondent would be selected per household. Each member of the sample would complete one interview.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information—NHTSA estimates that each respondent in the sample would require an average of 20 minutes to complete the telephone interview. Thus, the number of estimated reporting burden hours a year on the general public (8,000 respondents multiplied by 1 interview multiplied by 20 minutes) would be 2667 for the proposed survey. The respondents would not incur any reporting cost from the information collection. The respondents also would not incur any record keeping burden or record keeping cost from the information collection.

James Nichols,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 98–6630 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on March 17, 1998, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Clarion Inn, Detroit Metro Airport, 9191 Wickham Road, Romulus, Michigan.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the twentieth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on March 17, 1998. The meeting was announced on February 20, 1998 (63 FR 8734). For additional information about the meeting, consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Research and Development Overview; Test Procedures to Measure Rollover Propensity; Automated Collision Notification System—Update on Testing; Pedestrian Research; and 30 MPH Unbelted Barrier Tests with Depowered Air Bags.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received in response to the announcement published February 20, 1998.

As announced on February 20, 1998, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing to Raymond P. Owings, Ph.D., Associate Administrator for Research and Development, NRD-01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: March 11, 1998.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 98–6685 Filed 3–13–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 6, 1998.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 1998 to be assured of consideration.

Special Request: In order to conduct the surveys described below during the week of March 9, 1998, the Department of the Treasury has requested that the Office of Management and Budget (OMB) review and approve this information collection by 2:00 PM on March 9, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.
Project Number: M:SP:V 98–003–G.
Type of Review: Revision.
Title: Taxpayer Survey for Citizen Advocacy Panels (CAPs).
Description: On October 10, 1997, President Clinton called for the creation of Citizen Advocacy Panels (CAPs) to ensure that the Internal Revenue Service (IRS) is responsive to taxpayer needs. The CAPs offer citizens a unique opportunity to participate in the improvement of their tax system. CAP members will be able to provide input into enhancing IRS customer service identifying problems and making recommendations for improvements in IRS systems and procedures. CAP will also monitor the progress to effect the changes.

The CAPs will have a highly visibility and serve a critical role for the IRS. Therefore, it is crucial that the panel members have the requisite skills and abilities to fulfill this role, as well as be representative of their district. To ensure appropriate selection of CAP members, IRS contracted a ''Team'' to develop a selection process. The first Citizen Advocacy Panel will be establish in south Florida. As past of the process, the ''Team'' will conduct a survey of the general population of south Florida to seek their input on what type of citizens should be selected to sit on the CAP.

Respondents: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Response: 9 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 60 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 98–6669 Filed 3–13–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 6, 1998

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1555.
Regulation Project Number: REG–115795–97 NPRM and Temporary.
Type of Review: Extension.
Title: General Rules for Making and Maintaining Qualified Electing Fund Elections.
Description: The temporary and proposed regulations provide rules for making section 1295 elections and satisfying annual reporting requirements for such elections, revoking section 1295 elections, and making retroactive section 1295 elections.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Respondents/Recordkeepers: 1,290.
Estimated Burden Hours Per Respondent/Recordkeeper: 29 minutes.
Frequency of Response: Other (one-time only).
Estimated Total Reporting/Recordkeeping Burden: 623 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–6670 Filed 3–13–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 9, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0962.
Publication Number: Publication 1075.
Type of Review: Extension.
Title: Safeguard Procedures and Safeguard Activity Reports.
Description: Internal Revenue Code section 6103(p) requires that IRS provide periodic reports to Congress describing safeguard procedures, utilized by agencies which receive information from the IRS, to protect the confidentiality of the information. This section also requires that these agencies furnish reports to the IRS describing their safeguards.
Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 5,100.
Estimated Burden Hours Per Respondent: 5 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 25,500 hours.

OMB Number: 1545–1368.
Form Number: IRS Form 9513.
Type of Review: Extension.
Title: Self Assessment—SES Candidate Development Program
Description: The data collected from this form is to be used by the executive panels responsible for screening internal and external applicants for this SES Candidate Development Program.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1545–1369.
Form Number: IRS Form 9514.
Type of Review: Extension.
Title: Supervisor Assessment—SES Candidate Development Program.
Description: The data collected from this form is to be used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Respondent: 4 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–6671 Filed 3–13–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

March 9, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1316.
Form Number: IRS Form 9452.
Type of Review: Extension.
Title: Filing Assistance Program (Do You Have to File a Tax Return?).
Description: The RUP (Reduce Unnecessary Filing) Program was initiated in 1992. Each year approximately 72% of the taxpayers contacted through the RUP Program stop filing unnecessary returns. This has reduced taxpayer burden and been cost effective for the Service. This is in accord with the Service's compliance initiatives.
Respondents: Individuals or households.
Estimated Number of Respondents: 1,650,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 825,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–6672 Filed 3–13–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 9, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 1998 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0006.
Form Number: TD F 90–22.49.
Type of Review: Extension.
Title: Suspicious Activity Report by Casinos.
Description: Nevada casinos will file Form TD F 90–22.49 after a customer or individual conducts a potentially suspicious transaction or activity, pursuant to Nevada Gaming Commission Regulation 6A, Section 100, which took effect on 10/1/1997. This form will be used by Criminal Investigators and regulatory enforcement authorities, during the course of investigations involving financial crimes.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 94.
Estimated Burden Hours Per Respondent/Recordkeeper:
Reporting—30 minutes
Recordkeeping—5 minutes
Frequency of Response: Other (as required).
Estimated Total Reporting/Recordkeeping Burden: 1,020 hours.
Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 98–6673 Filed 3–13–98; 8:45 am]

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Corrections

Federal Register
Vol. 63, No. 50
Monday, March 16, 1998

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.

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 97-D313]

Defense Federal Acquisition Regulation Supplement; Restructuring Costs

Correction

In rule document 98–3714 beginning on page 7308, in the issue of Friday, February 13, 1998, make the following correction:

231.205-70 [Corrected]

On page 7309, in the third column, in 231.205-70(b)(4), in the sixth line, after ''employees'' insert ''early retirement incentive payments for employees,''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 29147, Amdt. No. 25-94]

Transport Category Airplanes, Technical Amendments and Other Miscellaneous Corrections

Correction

In rule document 98–4162 beginning on page 8847 in the issue of Monday, February 23, 1998 make the following correction:

§ 25.807 [Corrected]

On page 8848, in the third column, in § 25.807(f)(4), in the last line ''nearest edges'' should read ''nearest exit edges''.

BILLING CODE 1505-01-D

Monday
March 16, 1998

Part II

Postal Service

39 CFR Part 111

Domestic Mail Manual Changes to Implement the Rate, Fee, and Classification Changes Proposed in Docket No. R97–1; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Proposed Domestic Mail Manual Changes to Implement the Rate, Fee, and Classification Changes Proposed in Docket No. R97–1

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On July 10, 1997, the Postal Service, acting under sections 3622 and 3623 of the Postal Reorganization Act (39 U.S.C. 3622, 3623), filed a request for a recommended decision by the Postal Rate Commission (PRC) on proposed rate, fee, and classification changes. The PRC designated this filing as Docket No. R97–1. A notice of filing, with a description of the Postal Service's proposals, was published by the PRC on July 23, 1997, in the **Federal Register** (62 FR 39660–39708). This document provides information on the implementing rules for the rate, fee, and classification changes that the Postal Service proposes to adopt if the PRCs recommended decision on R97–1 is consistent with the Postal Service's request and the Governors of the Postal Service, acting pursuant to 39 U.S.C. 3625, approve that recommended decision.

DATES: Comments must be received on or before April 15, 1998.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2405. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, 202–268–6351 (all topics except delivery confirmation and prepaid reply mail), Paul Lettman, 202–268–6261 (information on Standard Mail (B)), Thomas DeVaughan, 202–268–4491 (information on business reply mail and prepaid reply mail), John Gullo, 202–268–7322 (information on delivery confirmation).

SUPPLEMENTARY INFORMATION: The Postal Service's request in Docket No. R97–1 included 17 major classification changes and increases in most existing rate and fee categories. The major classification changes would (1) for First-Class Mail, eliminate the additional ''heavy piece'' presort discount for mailpieces weighing more than 2 ounces; (2) for First-Class Mail, add a prepaid reply mail category with discounted first-ounce rates; (3) for First-Class Mail, add a qualified business reply mail category with discounted first-ounce rates; (4) for Priority Mail, eliminate the Presorted Priority Mail rate; (5) for Periodicals, provide separate per-piece rates for 5-digit presort and 3-digit presort in all rate categories and for all mail processing categories; (6) for Periodicals, apply the 3-digit presort rate to pieces sorted to all 3-digit ZIP Code prefixes (unique and nonunique 3-digits); (7) for Standard Mail (A), eliminate the single-piece rate category and provide for the mailing of keys and identification devices as First-Class Mail or Priority Mail plus fees; (8) for Standard Mail (A), apply a residual shape surcharge on pieces that are prepared as parcels or are not letter-size or flat-size; (9) for Express Mail, Priority Mail, First-Class Mail (other than cards), Standard Mail (A), Parcel Post, and Library Mail, apply a surcharge to those pieces containing mailable hazardous medical material and apply a higher surcharge to those pieces containing other mailable hazardous material; (10) for Standard Mail (B), provide a barcoded discount for mailings meeting certain volume and preparation criteria; (11) for Parcel Post, add discounts for entry at destination sectional center facilities (DSCFs) and destination delivery units (DDUs); (12) for inter-BMC Parcel Post, add two levels of discount (Origin BMC and BMC Presort) for sorting mailings to bulk mail centers (BMCs); (13) for Parcel Post, allow 10% or fewer of the pieces in a mailing to measure over 108 inches in combined length and girth, not to exceed 130 inches in combined length and girth, and subject to a rate equal to that for a 70-pound parcel for the zone to which the parcel is addressed; (14) for Parcel Post, add a balloon rate provision so that pieces exceeding 84 inches (but not exceeding 108 inches) in length and girth combined and weighing less than 15 pounds would be subject to a rate equal to that for a 15-pound parcel for the zone to which the parcel is addressed; (15) for registered mail, would provide insurance for all articles having a value of $0.01 or more under the current indemnity maximums and restrictions (mail with no value ($0.00) would be excluded from insurance coverage); (16) for insured mail, make available a new bulk insurance service category; and (17) for Priority Mail and Standard Mail (B), add a delivery confirmation service.

Part A of this document summarizes the proposed revisions to the Domestic Mail Manual (DMM) necessary to implement R97–1 by class, subclass, and special service category. Part B summarizes proposed changes to the DMM by module, followed by the proposed revisions to the DMM standards.

Comments are solicited on the implementing DMM standards in Part B. The proposed rates and proposed new rate categories and rate structures are included in Part B. However, the existence of the new categories and structures and the amount of the corresponding rates or fees attached to them and the proposed rate and fee changes for existing categories are outside the scope of this rulemaking process, because they are currently subject to evaluation by the Postal Rate Commission. For example, comments indicating delivery confirmation service should not be offered or should be offered at a different rate would not be appropriate, whereas comments suggesting changes in the proposed implementing rules for this service in DMM S918 would be appropriate.

A. Summary of Proposed DMM Revisions

1. Express Mail

Rate Highlights

Except for a $0.05 decrease in the 2-pound rate to $14.95, moderate rate increases are proposed for all Express Mail rates. The fee for pickup service is proposed to increase from $4.95 to $8.25 per occurrence.

Rate Structure

Surcharges for mailable hazardous material are proposed. Separate per-piece surcharges are proposed for hazardous medical material ($0.50) and for other hazardous material ($1.00).

2. Priority Mail

Rate Highlights

Increases are proposed for all Priority Mail rates. The fee for pickup service is proposed to increase from $4.95 to $8.25 per occurrence.

Rate Structure

Delivery Confirmation. It is proposed to offer delivery confirmation service with Priority Mail. This service would be obtained in two forms: (1) an electronic option at no additional fee for mailers who themselves apply the identifying barcodes to each piece, provide an electronic manifest, and retrieve confirmation information electronically; and (2) a retail (manual) option for a $0.35 fee, with delivery information provided through a USPS Internet address or a toll-free telephone number. See DMM S918 in Part B for

details on preparing delivery confirmation mail.

Keys and Identification Devices. It is proposed that keys and identification devices that weigh more than 11 ounces but no more than 2 pounds are subject to the 2-pound Priority Mail rate plus a $0.30 fee.

Elimination of Presort Category. It is proposed to eliminate the Presorted Priority Mail rate category.

Hazardous Material Surcharges. Surcharges for mailable hazardous material are proposed. Separate per-piece surcharges are proposed for hazardous medical material ($0.50) and for other hazardous material ($1.00).

3. First-Class Mail

Rate Highlights

It is proposed that the single-piece first-ounce letter rate increase only one cent from $0.32 to $0.33, and that the rate for additional ounces remain the same at $0.23. The nonstandard surcharge for one-ounce or less single-piece rate mail would increase from $0.11 to $0.16, and the nonstandard surcharge for one-ounce or less presorted pieces would increase from $0.05 to $0.11. Small increases are proposed for Automation and Presorted rates. The annual presort mailing fee is proposed to increase from $85.00 to $100.00.

Rate Structure

Heavy Piece Discount. It is proposed to eliminate the additional presort discount for the first ounce of mailpieces weighing more than 2 ounces.

Keys and Identification Devices. It is proposed that keys and identification devices that weigh 11 ounces or less are subject to the applicable single-piece letter rate, plus a $0.30 fee, and if applicable, the nonstandard surcharge.

Hazardous Material Surcharge. Surcharges for mailable hazardous material are proposed. Separate per-piece surcharges are proposed for hazardous medical material ($0.50) and for other hazardous material ($1.00).

Prepaid Reply Mail. It is proposed to add a new classification category and corresponding rate structure for prepaid reply mail. The rate structure includes lower first-ounce First-Class Mail rates. There are also proposed permit fees and monthly accounting fees. Requirements for this new classification are described under ''Special Services'' below.

Qualified Business Reply Mail. It is proposed to add a new classification category and rate structure for qualified business reply mail, which will replace the business reply mail accounting system (BRMAS). The rate structure includes a lower first-ounce rate. The fee structure requires an annual permit fee and an annual accounting fee for an advance deposit account. Requirements for this new classification category are described under ''Special Services'' below.

Mail Preparation

Rate Markings. It is proposed to allow the ''Presorted'' marking to be abbreviated ''PRSRT.''

4. Periodicals

Rate Highlights

It is proposed that delivery office and SCF pound rates will decrease, zones 1 through 3 advertising pound rates will decrease, zones 5 through 8 advertising pound rates will increase, the editorial pound rate will increase, and the editorial per-piece discount will increase. Authorization fees will not change, except that the additional entry fee will decrease from $85.00 to $50.00.

Rate Structure

Per-Piece Rates. Separate 5-digit and 3-digit presort per-piece rates are proposed for Regular, Nonprofit, Classroom, and In-County subclasses. It is further proposed that the 3-digit rates will apply to both unique and nonunique 3-digit ZIP Code prefixes.

To qualify for the nonautomation 5-digit rates, mail must be prepared in a 5-digit package of six or more pieces and must be containerized as follows: for letter mail, be placed in a 5-digit tray; for nonautomation flat mail, be placed in a 5-digit sack or on any level of pallet. To qualify for automation 5-digit rates for letters, mail must be part of a group of 150 pieces for the same 5-digit or 5-digit scheme, properly placed in a 5-digit or 5-digit scheme tray. To qualify for automation 5-digit rates for flats, mail must be prepared in a 5-digit package of six or more pieces and placed in any level of sack or on any level of pallet.

To qualify for the nonautomation 3-digit rates, sacked flat-sized mail must be prepared in a 5-digit or 3-digit package of six or more pieces each and must be placed in a 3-digit sack; trayed letter-size mail must be prepared in a 5-digit or 3-digit package of six or more pieces each, and must be placed in a 3-digit tray. Palletized flat-sized mail must be prepared in a 3-digit package of six or more pieces and placed on a 3-digit or higher level of pallet.

To qualify for automation 3-digit rates for letters, mail must be part of a group of 150 pieces for the same 3-digit or 3-digit scheme and be properly placed in a 3-digit or 3-digit scheme tray. To qualify for automation 3-digit rates for flats, mail must be prepared in a 3-digit package of six or more pieces and placed in a 3-digit or higher level of sack or on a 3-digit or higher level of pallet.

Mail Preparation

Automation Letters. It is proposed that preparation of the 5-digit or 5-digit scheme sort for letter-size automation rate mailings be revised from a required level of sort to an optional level of sort.

SCF Sack. It is proposed that the preparation of an SCF sack for nonletter mail be revised from an optional level of preparation to a required level of preparation. SCF packages will not be permitted. Preparation of an optional origin/required entry 3-digit sack will be eliminated and preparation of an optional origin/required entry SCF sack will be required.

Forwarding and Return

Charges for the return of Periodicals mail bearing the ''Address Service Requested'' endorsement will be paid at the First-Class Mail rates for pieces weighing 11 ounces or less and at the Priority Mail rates for pieces weighing over 11 ounces. This is due to the elimination of the Standard Mail (A) single-piece rates discussed below.

5. Standard Mail (A)

Rate Highlights

Reductions are proposed for most of the pound rates. A change in the relationship between the basic Enhanced Carrier Route rates and the 5-digit Automation letter rates is proposed. The 5-digit Automation letter rates would be lower than the basic Enhanced Carrier Route rates. The proposed basic Enhanced Carrier Route rates are the same for letter-size and for nonletter-size pieces. A $0.032 (regular) and $0.008 (nonprofit) per-piece rate (in addition to the pound rate) is proposed for saturation Enhanced Carrier Route mailings subject to the piece/pound rates. The annual presort mailing fee is proposed to increase from $85.00 to $100.00.

Rate Structure

Elimination of Single-Piece Rates. It is proposed to eliminate the single-piece Standard Mail (A) rates. If the single-piece Standard Mail (A) subclass were kept, its proposed rates would exceed the First-Class Mail rates. Standard Mail (A) rates are designed to be bulk or presorted rates. The elimination of single-piece Standard Mail (A) rates will eliminate the current dual system for processing and transporting individual

lightweight pieces (pieces weighing less than 16 ounces). The elimination of single-piece Standard Mail (A) rates will affect the treatment of pieces in mailing jobs that remain after preparing an Enhanced Carrier Route and/or an Automation rate mailing. See ''Mail Preparation'' below for further information. It also will affect the fees for forwarding and return of Standard Mail (A) as described under ''forwarding and return'' below. With one exception, single pieces that weigh less than 16 ounces will be subject to return postage at single-piece First-Class or Priority Mail rates (multiplied by 2.472). The exception is that single pieces weighing less than 16 ounces that could qualify for single-piece Special Standard Mail or Library Mail rates will continue to be eligible for those rates upon return if properly endorsed because there are no minimum weight requirements for those two subclasses of Standard Mail (B).

Residual Shape Surcharge. A $0.10 per-piece residual shape surcharge is proposed (in addition to the applicable nonletter postage) for pieces that are prepared as parcels or that are not letter size or flat size. This surcharge will apply to such pieces mailed at all Standard Mail (A) subclasses (Regular, Enhanced Carrier Route, Nonprofit, Nonprofit Enhanced Carrier Route).

Hazardous Material Surcharges. Surcharges for mailable hazardous material are proposed. Separate per-piece surcharges are proposed for hazardous medical material ($0.50) and for other hazardous material ($1.00).

Mail Preparation

Rate Markings and Nomenclature. Many mailers have indicated a preference for ''Presorted Standard'' over ''Bulk Rate'' as the basic rate marking for their mail. The Postal Service also prefers this marking because it indicates the mail class and is consistent with the rate markings for First-Class Mail. Accordingly, the Postal Service proposes revising the basic rate marking requirements for regular rate mailings (including Enhanced Carrier Route) from ''Bulk Rate'' or ''Blk. Rt.'' to ''Presorted Standard'' or ''PRSRT STD.'' Mailers will be given one year from the date of implementation of the R97–1 rate case to change their markings. During the one-year transition period, either the ''Bulk Rate'' or the ''Presorted Standard'' markings or their authorized abbreviations will be acceptable. For simplicity, July 1, 1999, is used in the proposed DMM language to represent the date that is one year after implementation of the R97–1 rate case. This date will be revised in the final rule to give effect to the actual date of implementation as decided by the Postal Service Board of Governors.

To provide further consistency, the DMM will use the term ''Presorted Standard Mail (A)'' or ''Presorted Standard'' when referring to the mailings and rates now referred to in the DMM as ''nonautomation presort (3/5 and basic) Standard Mail (A).''

It also is proposed that pieces subject to the $0.10 residual shape surcharge be required to have the marking ''RSS'' printed on each piece either in the postage area or on the line immediately above or two lines above the address.

''Residual'' Pieces to a Mailing Job. Currently, Standard Mail (A) Enhanced Carrier Route, Automation, and nonautomation 3/5 and basic presort (to be renamed Presorted) rate mailings must each meet a separate 200-piece or 50-pound minimum quantity per mailing requirement. Pieces that cannot meet the minimum quantity per mailing requirement must be mailed at the single-piece Standard Mail (A) rates.

Since it is proposed to eliminate the single-piece Standard Mail (A) rates, the Postal Service proposes a limited exception to the minimum volume requirements for mailings at Presorted (3/5 and basic) rates for ''residual'' pieces in a Standard Mail (A) mailing job. These residual pieces are groups of fewer than 200 pieces that remain after preparing an Enhanced Carrier Route or Automation mailing (or both).

Specifically, the Postal Service proposes that these ''residual'' pieces be subject to the applicable Presorted Standard Mail (A) rates (nonautomation 3/5 and basic rates). Under this proposal, pieces in an Enhanced Carrier Route rate mailing and/or in an Automation rate mailing that have each separately met a 200-piece or 50-pound minimum quantity requirement may be counted toward the minimum quantity requirement for a Presorted (3/5 and basic) rate mailing, provided that (1) the Enhanced Carrier Route rate mailing and/or the Automation rate mailing, and the Presorted rate mailing are part of the same mailing job, and (2) the mailings are all reported on the same postage statement. Under no circumstances may pieces mailed at the Presorted Standard (nonautomation 3/5 and basic) rates be counted toward the minimum volume requirements for an Enhanced Carrier Route or an Automation rate mailing. Furthermore, the pieces mailed at the Presorted Standard rates must not bear any Enhanced Carrier Route or Automation markings. Only ''Presorted Standard'' (or until July 1, 1999, ''Bulk Rate''), ''Nonprofit Organization,'' or applicable authorized abbreviations may appear on pieces mailed at the Presorted Standard rates.

The alternative of subjecting these ''residual'' pieces to First-Class Mail rates raises problems for both mailers and the Postal Service: mailers would have to submit two postage statements and the Postal Service would have to enter information from two postage statements into its Permit System. Also, the forwarding and return rules are different for the two classes of mail. Ancillary service endorsements intended for the majority of the mailing job that is being mailed as Standard Mail (A) might not be appropriate for the ''residual'' portion of the job that is mailed as single-piece First-Class Mail. For example, ''Change Service Requested'' is available to all Standard Mail (A), whereas for First-Class Mail it is available only to mailers participating in the electronic address change service (ACS). To ensure that ''residual'' pieces mailed at the First-Class Mail rates receive the correct forwarding and return services, mailers would have to use envelopes that bear First-Class Mail rate markings but did not bear the Standard Mail (A) markings ''Bulk Rate,'' ''Presorted Standard,'' or ''Nonprofit Organization'' or inappropriate ancillary service endorsements. However, re-enveloping the ''residual'' mailpieces would be time consuming, expensive, and impractical for most Standard Mail (A) mailers. If the Postal Service allowed mailers simply to add a ''single-piece'' or a ''First-Class single-piece'' marking to their ''residual'' mailpieces, mail processing and delivery personnel would have to visually verify the postage and address areas of each mailpiece to ensure proper handling and delivery—a costly and inefficient process. Furthermore, there are different service standards for First-Class Mail and Standard Mail (A). This would pose a significant complicating factor for mailers with time-sensitive advertising such as that for sales on certain dates. If the ''residual'' portion of a Standard Mail (A) mailing job were required to be mailed at First-Class Mail rates, it could arrive too early to have the intended effect on the recipient. It also would pose difficulties for mailers attempting to schedule follow-up activities, such as telemarketing, staffing, etc., around in-home delivery dates. The option to mail the ''residual'' portion at a later date so that its First-Class Mail delivery dates would better coincide with the Standard Mail (A) delivery dates for the major portion of the mailing job would not be possible for permit imprint mailers because the ''residual'' mail would not

meet the minimum quantity requirement of 200 pieces necessary to submit a single-piece rate permit imprint mailing.

Forwarding and Return

With two exceptions, charges for the forwarding and return of Standard Mail (A) will be paid at the First-Class Mail rates for pieces weighing 11 ounces or less and at the Priority Mail rates for pieces weighing over 11 ounces. This is due to the elimination of the single-piece Standard Mail (A) rates discussed above. The exceptions are (1) matter returned under Bulk Parcel Return Service (BPRS) and (2) matter that qualifies for a single-piece Special Standard Mail or Library Mail rate under DMM E630 and is endorsed to show that forwarding and return is requested at one of those rates.

6. Standard Mail (B)

Rate Highlights

Because of cost increases, Parcel Post as a whole is proposed to have higher than average rate increases. Increases are proposed to most Bound Printed Matter and Library Mail rates. On average, proposed Special Standard Mail rates will be about the same as current rates. The annual fees for destination bulk mail center (DBMC) rates and presorted Special Standard Mail have increased from $85.00 to $100.00. The fee for pickup service for Parcel Post is proposed to increase from $4.95 to $8.25 per occurrence. (Pickup service is not available for mailings claiming Parcel Post destination entry rates or Origin Bulk Mail Center (OBMC) discounts.)

Rate Structure

All Standard Mail (B). a. Barcoded Discount. A discount of $0.04 per piece is proposed for machinable pieces bearing a correct and properly prepared barcode representing the 5-digit ZIP Code of the address on the mailpiece. To be eligible, the pieces must be part of a mailing containing at least 50 pieces of Parcel Post. The Postal Service is investigating a process to certify the quality of barcodes. This barcoded discount would be available for all Standard Mail (B) rates except Parcel Post mail at the destination sectional center facility (DSCF) or destination delivery unit (DDU) rates, Parcel Post DBMC rate mail entered at an auxiliary service facility (ASF), Bound Printed Matter at the Carrier Route rates, and presorted Special Standard Mail at the 5-digit rate.

b. Delivery Confirmation. It is proposed to offer delivery confirmation service with Standard Mail (B). This service would be obtained in two forms: (1) an electronic option for a $0.25 fee for mailers who apply the identifying barcodes to each piece, provide an electronic manifest, and retrieve confirmation information electronically; and (2) a retail option for a $0.60 fee, with delivery information provided through a USPS Internet address or a toll-free telephone number. Mailers using the electronic option must have the quality of their printed barcodes certified by the USPS. See DMM S918 in Part B for details on preparing delivery confirmation mail.

Parcel Post. a. Presort Discounts for Inter-BMC Rates. An Origin BMC (OBMC) discount of $0.57 per piece is proposed for mail entered at a BMC that is sorted to BMCs if machinable parcels or sorted to BMCs and ASFs if nonmachinable parcels. A BMC Presort discount of $0.12 per piece is proposed for pieces sorted to BMCs if machinable parcels or sorted to BMCs and ASFs if nonmachinable parcels and entered at any postal facility other than a BMC that accepts bulk mailings. To qualify for either of these rates, pieces must be part of a mailing of at least 50 pieces mailed at Parcel Post rates. See ''Mail Preparation'' below for more details.

b. Drop Shipment Rates. A new rate schedule is proposed for pieces entered at the delivery unit from which the parcels are delivered (destination delivery unit (DDU) rate). DDU rate pieces must be part of a mailing of at least 50 pieces mailed at Parcel Post rates. A new rate schedule also is proposed for pieces entered at the destination sectional center facility (DSCF). DSCF rate pieces must be part of a mailing of at least 50 pieces mailed at Parcel Post rates. DSCF rate pieces must be sorted to 5-digit ZIP Codes as described under ''Mail Preparation'' below.

c. Balloon Rate. It is proposed that any item weighing less than 15 pounds and measuring over 84 inches (but less than 108 inches) in combined length and girth be charged the applicable Parcel Post rate for a 15-pound parcel.

d. Oversized Pieces. It is proposed to allow up to 10% of the pieces in each Parcel Post mailing to measure over 108 inches, but not more than 130 inches, in combined length and girth. Such oversized pieces would be charged the applicable Parcel Post rate for a 70-pound parcel.

e. Hazardous Material Surcharges. Surcharges for mailable hazardous material are proposed. Separate per-piece surcharges are proposed for hazardous medical material ($0.50) and for other hazardous material ($1.00).

Library Mail. Hazardous Material Surcharges. Surcharges for mailable hazardous material are proposed. Separate per-piece surcharges are proposed for hazardous medical material ($0.50) and for other hazardous material ($1.00).

Mail Preparation

Markings. a. General. It is proposed to require that the current subclass markings ''Bound Printed Matter,'' ''Special Standard,'' and ''Library Rate'' or ''Library Mail'' (or authorized abbreviations) be placed in the postage area on each mailpiece (i.e., be printed or produced as part of, or directly below or to the left of, the permit imprint indicia, meter stamp or impression, or adhesive or precanceled stamp). In addition, it is proposed that Standard Mail (A) mailed at one of these Standard Mail (B) rates under the exception in DMM E612.4.6 would be required to bear the appropriate Standard Mail (B) rate marking rather than the applicable Standard Mail (A) rate marking.

b. Parcel Post. It is proposed that all Parcel Post rate mail bear a ''Parcel Post'' or ''PP'' rate marking in the postage area. This would include Standard Mail (A) mailings paid at Parcel Post rates under the exception in DMM E612.4.6. Mailings qualifying for drop shipment rates must bear an additional marking. A new generic drop shipment marking is proposed, which will be required on each piece mailed at a DBMC, DSCF, or DDU rate. The proposed marking ''Drop Shipment'' or its abbreviation ''D/S'' must be printed or produced as part of, or directly below or to the left of, the permit imprint or meter indicia, or may appear in the line above or two lines above the address. The drop shipment marking would be in addition to the ''Parcel Post'' marking or abbreviation.

Because of the new generic drop shipment marking, the requirement for the marking ''DBMC Parcel Post'' or ''DBMC PP'' is eliminated for DBMC rate mail. Also eliminated is the requirement to show the 5-digit or 3-digit ZIP Code of the post office of mailing in the drop shipment marking if the postage for the piece is paid with a permit imprint and the office of mailing is in a different 3-digit ZIP Code area from the post office in the return address. For Parcel Post, the requirement for a ''Bulk Rate'' marking also has been eliminated. Mailpieces bearing the ''DBMC Parcel Post,'' the 3-digit ZIP Code of the office of mailing, and ''Bulk Rate'' markings will be accepted for one year after implementation of the R97–1 rate case.

c. Bound Printed Matter. It is proposed to change the marking ''Bulk Rate'' or ''Blk. Rt.'' to ''Presorted'' or ''PRSRT'' for bulk Bound Printed Matter mailings. The ''Presorted'' portion of the marking will be permitted to appear in either the postage area or in the line above or two lines above the address. The name of the rate category also will change from bulk Bound Printed Matter to presorted Bound Printed Matter. For carrier route Bound Printed Matter, the need for the ''Bulk Rate'' marking in addition to the ''Carrier Route Presort'' marking is eliminated. Carrier route Bound Printed Matter mailings must show ''Bound Printed Matter'' in the postage area and ''Carrier Route Presort'' or ''CAR-RT SORT'' in the postage area or in the line above or two lines above the address. Mailers will be permitted, but not required, to show the ''Presorted'' or ''PRSRT'' marking on carrier route Bound Printed Matter in addition to the required ''Bound Printed Matter'' and ''Carrier Route Presort'' or ''CAR-RT SORT'' markings. The ''Catalog'' or ''Catalog Rate'' marking is eliminated for Bound Printed Matter. Pieces bearing the ''Bulk Rate'' or ''Blk. Rt.'' and ''Catalog'' or ''Catalog Rate'' markings will be accepted for one year after implementation of the R97–1 rate case.

d. Special Standard. For Presorted Special Standard mail, it is proposed to allow the ''Presorted'' portion of the current marking to be abbreviated ''PRSRT'' and to allow it to appear either in the postage area or in the line above or two lines above the address. The ''Special Standard'' marking will be required to be placed in the postage area.

Origin BMC Discount. To qualify for the Origin BMC (OBMC) discount, a piece must be part of a mailing of at least 50 Parcel Post rate pieces. Pieces eligible for the Origin BMC rate must be entered at a BMC. Machinable parcels: (1) must be sorted to BMCs using DMM labeling list L601, (2) must be prepared in pallet boxes, each labeled to a BMC and each containing a minimum of 54 inches of mail, and (3) must not be sorted into overflow pallet boxes or sacks. Nonmachinable parcels: (1) must be sorted to BMCs and ASFs using new DMM labeling list L605, (2) must be placed directly on pallets (no pallet boxes are allowed), each labeled to a BMC or ASF and each pallet measuring at least 48 inches high from the floor (mail and pallet), and (3) must not be sorted into overflow pallets or sacks. Pallets and pallet boxes also must meet the provisions of M041.

BMC Presort Discount. To qualify for the BMC Presort discount, a piece must meet the same rules for sorting machinable parcels to BMCs and nonmachinable parcels to BMCs and ASFs as required for the Origin BMC discount above, except that BMC Presort mail may be entered at any postal facility (other than a BMC) that has a business mail entry unit.

DSCF Rate. To qualify for the DSCF rate, a piece must be part of a mailing of at least 50 Parcel Post rate pieces. Pieces eligible for the DSCF rate must be entered at an SCF listed in DMM L005 and must be for delivery within the service area of the entry SCF. To qualify, the pieces must be presorted and labeled to 5-digit sacks or pallets as follows. Machinable and nonmachinable parcels may be combined in the same sack or pallet to meet the minimum sortation requirements. If sacked, each 5-digit sack must contain a minimum of 10 pieces. If palletized, each 5-digit pallet must meet one of the following minimum preparation requirements: (1) contain at least 50 pieces and 250 pounds of mail, or (2) be at least 42 inches high (height of mail and pallet). Pallet boxes are not permitted.

If palletized, the following additional requirements or restrictions could apply. Currently, many BMCs transport mail for certain 5-digit ZIP Code areas directly to the 5-digit associate post office. A draft list of these 5-digit areas is found in DMM Exhibit E652.5.0 in Part B. It is likely that this list will be revised in the final rule. Five-digit pallets prepared for the DSCF rate for the 5-digit ZIP Codes listed in this exhibit will be required to be entered at the BMC rather than at the SCF to obtain the DSCF rate. This will avoid incurring additional handling and transportation of this mail at the affected SCFs. However, sacked mail for the 5-digit ZIP Codes listed in Exhibit E652.5.0 must always be entered at the SCF (not at the BMC). In addition, there are certain associate post offices that cannot unload pallets. A list of these facilities may be found in the Drop Shipment Product that is currently available from the National Customer Support Center (NCSC) in Memphis, TN, 1–800–238–3150. For these 5-digit ZIP Codes, the DSCF rate will be available only for mail that can be presented in 5-digit sacks containing a minimum of 10 pieces (i.e., the DSF rate will not be available for palletized mail). For DSCF mail, the Postal Service will unload palletized loads. Mailers must unload sacked and bedloaded mailings. Except for local mailings, appointments for dropping mail at an SCF must be scheduled through the appropriate district control center (see DMM E652 in Part B). Pallets also must meet the provisions of M041.

DDU Rate. To qualify for the DDU rate, a piece must be part of a mailing of at least 50 Parcel Post rate pieces. Pieces eligible for the DDU rate must be entered at the postal facility where the carrier who delivers the parcel is located. There are no specific sortation requirements other than the requirement that mail must be separated by 5-digit ZIP Code when unloaded at the DDU facility, and the mail must not be prepared in pallet boxes. If a mailer chooses to sack or palletize, there are no minimum sack or pallet requirements, but the sack or pallet must be labeled as a 5-digit sack or pallet. The mailer is responsible for unloading all DDU loads (even if palletized). Appointments must be made by contacting the DDU at least one day in advance. Mailers desiring electronic confirmation of DDU mail entry also must schedule the appointment through the district control center. A list of delivery unit facilities and their telephone numbers is available through the NCSC in the Drop Shipment Product.

Plant-Verified Drop Shipment (PVDS). Pieces must be part of a mailing of at least 50 Parcel Post rate pieces in order to qualify for DDU, DSCF, and DBMC rates, and to qualify for OBMC, BMC Presort, and barcoded discounts. When Parcel Post rate pieces are submitted under PVDS procedures, mailers may use the total of all line items for all destinations on a PVDS register or PVDS postage statement to meet the minimum 50-piece volume requirement. This means a mailer may enter fewer than 50 pieces at an individual destination, provided there are at least 50 Parcel Post rate pieces for the total of all the entry points for that single mailing job listed on the PVDS register or PVDS postage statement.

Bulk Parcel Post. Bulk Parcel Post is a separate subclass of Standard Mail (B). Currently, there are no rates in effect for this subclass, and no rates for this subclass were proposed by the Postal Service in Docket No. R97–1. DMM E620.2.4e currently states that ''the bulk Parcel Post rate is the rate applicable to each piece in a bulk Parcel Post rate mailing at the single-piece rate or DBMC rate for that zone for an item equal to the average weight per piece for all parcels in the mailing to that zone, rounded up to the next whole pound.'' This DMM section therefore establishes a method of computing postage at Parcel Post rates. For mailings of identical weight pieces, this averaging method is inconsequential, because the average weight of all the pieces to a zone will always be the weight of a single piece.

For mailings of nonidentical weight pieces, DMM E620.2.2b currently states that this method of postage payment can be used only if authorized by the rates and classification service center (RCSC) serving the post office of mailing. The Postal Service is proposing to remove sections E620.2.2 and E620.2.4e from the DMM. Postal Service Headquarters is not aware of any mailer that is currently authorized to use this method of postage payment. If in fact there are mailers using this method, they may request that their RCSC issue an authorization for continuation of their postage payment procedure as an alternate mailing system under DMM P730. This measure promotes clarity in the DMM. The Postal Service is proposing various new rates and discounts for Parcel Post that could be considered ''bulk rates'' because they require a minimum volume of 50 pieces per mailing. Therefore, removing references to ''Bulk Parcel Post rates'' in DMM E620 will reduce confusion with the eligibility section for Parcel Post rates in new DMM E630. As indicated above, the Postal Service also is proposing to remove the requirement to mark pieces with a ''Bulk Parcel Post'' rate marking. New DMM E630.6.0 is reserved for any future rates and requirements for the Bulk Parcel Post subclass.

7. Special Services

Address Correction

No change is proposed to address correction service fees ($0.50 manual, $0.20 automated, per notice issued).

Address Changes for Election Boards

The fee is proposed to increase from $0.17 to $0.20. See DMM R900.10.3 in Part B.

Business Reply Mail (BRM)

It is proposed that the annual permit fee increase from $85.00 to $100.00, and the annual accounting fee increase from $205.00 to $300.00. For regular BRM, mailers will pay the applicable First-Class Mail rates plus a per-piece charge. The per-piece charge for regular BRM with an advance deposit account will decrease from $0.10 to $0.08. The per-piece charge for regular BRM without an advance deposit account will decrease from $0.44 to $0.30.

It is proposed that a new category of BRM, Qualified Business Reply Mail (QBRM), replace the current Business Reply Mail Accounting System (BRMAS) category. For QBRM, mailers also will pay postage plus a fee; however, a lower first-ounce rate of postage of $0.30 for letters and $0.18 for cards is proposed for QBRM. Mailers of QBRM also will pay a $0.06 per-piece charge and be required to use a business reply mail advance deposit account.

Mailpiece design and barcoding requirements are revised for both regular BRM and QBRM. Regular BRM and QBRM pieces that bear a barcode will be required to meet the automation letter mailpiece design requirements in DMM C810 and the barcoding standards in C840, so that there are uniform requirements for mail that is processed on barcode sorters. This will result in revised standards for preparation of barcode window envelopes, including the placement of barcodes as they appear through the windows. It also will allow a company logo to appear beneath the delivery address line, provided that it is placed no lower than ⅝ inch from the bottom edge of the mailpiece and does not interfere with the barcode clear zone. For barcoded and nonbarcoded BRM, references to mailpiece design requirements in DMM C810 and C830 will replace current BRM standards relative to reflectance requirements, paper weight, and self-mailers. This will lower paper basis weight requirements for envelopes from 20-pound paper to 16-pound paper and add basis weight, tabbing, and other requirements for self-mailers. It is likely that self-mailers will be processed on automated equipment. Meeting these requirements will ensure their ability to be processed without damage.

The minimum thickness requirements for cards that are not barcoded will not change. However, cards that bear a barcode under either regular BRM or QBRM will be required to meet the thickness requirements in DMM C810, to bring the barcoded BRM standards in line with automation standards for other mail. For barcoded pieces, this will increase the minimum thickness for cards measuring greater than 4¼ inches high by 6 inches long from .007 inch to .009 inch. These larger cards are subject to the rate for ''other than cards'' (now and under the proposed standards). The minimum thickness for barcoded cards that are eligible for the card rate (measuring 4¼ inches by 6 inches or less) will continue to be .007 inch.

Carrier Sequencing of Address Cards

The fee is proposed to increase from $0.17 to $0.20. See DMM R900.1.1 in Part B.

Certificate of Mailing

Fees are proposed to increase. See DMM R900.4.0 in Part B.

Certified Mail

The fee is proposed to increase from $1.35 to $1.55. See DMM R900.5.0 in Part B.

Collect on Delivery (COD)

Fees are proposed to increase. See DMM R900.6.0 in Part B. It also is proposed to revise COD by removing its applicability to single-piece Standard Mail (A), and to allow it to be used in conjunction with delivery confirmation service (with Priority Mail and Standard Mail (B) only).

Correction of Mailing Lists

The per-correction and minimum per-list fees are proposed to increase. See DMM R900.10.1 in Part B.

Delivery Confirmation

A new delivery confirmation service is proposed for Priority Mail and Standard Mail (B). This service will provide the mailer with information about the date of delivery or attempted delivery. It is anticipated that a signature (electronic return receipt) service also will be available in early 1999. Until then, return receipt service under DMM S915 may be used with delivery confirmation only if purchased in connection with insurance for over $50.00, COD, or registry service. Delivery confirmation service will be available at the time of mailing only. This service will be obtained in two forms: (1) an electronic option for mailers who apply identifying barcodes to each piece, provide an electronic manifest, and retrieve confirmation information electronically; and (2) a retail (manual) option, for which delivery information would be provided through a USPS Internet address or a toll-free telephone number. It is proposed that delivery confirmation may be combined with insured mail, registered mail, COD, or special handling. Delivery Confirmation also may be combined with restricted delivery only if purchased along with insurance for over $50.00, COD, or registry service. See DMM S918 in Part B for further details on preparing delivery confirmation mail and R900.7.0 for fees.

Express Mail Insurance

Fees for merchandise insured for $500.01 to $5,000.00 are proposed to increase. See DMM R900.8.0 in Part B.

Insured Mail

Fees for existing insurance service are proposed to increase. See DMM R900.9.0 in Part B. The applicability of insurance to single-piece Standard Mail (A) is deleted. Pieces formerly mailed at

single-piece Standard Mail (A) rates will be mailed as First-Class Mail or Priority Mail and therefore will retain eligibility for insurance. The proposal contains provisions for providing delivery confirmation service in conjunction with insurance (for Priority Mail and Standard Mail (B) only). In addition, a bulk insurance discount of $0.40 per piece is proposed. To qualify for the bulk insurance discount, mailers will be required to (1) enter mailings of insured articles under an approved manifest mailing system agreement, (2) mail a minimum of 10,000 insured articles annually (a total of all insured articles mailed at multiple locations), (3) provide a hard copy of Form 3877, Firm Mailing Book for Accountable Mail, or facsimile (4) effective early 1999, also provide a soft (electronic) copy of Form 3877, in an approved format. Mailers will be required to request authorization from the manager of Claims and Processing at the St. Louis Accounting Service Center (ASC) to mail at the bulk insured rates and to file claims under the alternative procedures for bulk insured mail. It is anticipated that in early 1999 programming changes will have been made at the St. Louis ASC that will tie in to the anticipated completion of systems to electronically capture information on accountable mail at delivery units. When or before these changes and systems are completed, bulk insurance mailers will be provided with instructions for electronically filing claims. The bulk insurance discount will be available when rates are implemented and is not dependent on electronic claim filing.

Merchandise Return Service

It is proposed that the annual permit fee increase from $85.00 to $100.00. There is no proposed increase in the charge per returned mailpiece. Revisions are made to the postage that is applicable to pieces returned that weigh less than 16 ounces and to the marking requirements that specify the return rate of postage. These changes are necessary due to the proposed elimination of single-piece Standard Mail (A) rates. The proposed postage and marking requirements are as follows. If the permit holder desires matter weighing over 16 ounces to be returned at a rate other than Parcel Post, the permit holder must preprint the appropriate rate marking on the label (''Priority'' or ''Priority Mail,'' ''Bound Printed Matter,'' ''Special Standard,'' or ''Library Mail'' or ''Library Rate''). Pieces weighing more than 11 ounces and less than 16 ounces may be returned only at Priority Mail rates, or, if the contents meet the applicable standards, at the Special Standard or Library Mail rates. The permit holder must preprint the applicable rate marking on matter weighing more than 11 ounces and less than 16 ounces. Pieces weighing 11 ounces or less may be returned only at First-Class Mail or Priority Mail rates, or, if the contents meet the applicable standards, at the Special Standard or Library Mail rates. The permit holder must preprint the applicable rate marking on matter weighing 11 ounces or less returned at the Priority Mail, Special Standard, or Library Mail rates. It is recommended but not required that matter weighing 11 ounces or less to be mailed at the First-Class Mail rates bear the preprinted marking ''First-Class'' or ''First-Class Mail.''

Money Orders

No changes are proposed for money orders.

On-Site Meter Settings

The Postal Service is proposing to increase two of the on-site meter setting fees. The current fee of $3.25 for additional meter setting will increase to $4.00, and the fee for checking a meter in and out of service is proposed to increase from $7.50 to $8.50. No increases are proposed to the scheduled appointment setting fee for the first meter or to the unscheduled or emergency setting fee for the first meter.

Parcel Airlift

Individual parcel airlift fees are proposed to increase from $0.40 to $0.45 for up to two pounds, from $0.75 to $0.85 for over two up to three pounds, from $1.15 to $1.30 for over three to up to four pounds, and from $1.55 to $1.75 for over four pounds.

Permit Imprint

The application fee for permit imprints is proposed to increase from $85.00 to $100.00.

Post Office Boxes, Caller Service, and Reserve Call Numbers

Post office box fees (except the $0 fee for all box sizes in Group E) are proposed to increase. Fees for caller service and reserve call numbers are also proposed to increase (see DMM R900.16.0 and R900.3.0 in Part B).

Prepaid Reply Mail

A proposed new classification, Prepaid Reply Mail (PRM), will allow businesses or other organizations to provide their correspondents with Postal Service-approved envelopes or cards that have postage prepaid. This will allow a PRM permit holder's customers to return mail such as bill payments without affixing postage. Mailers who participate in PRM must use automation-compatible and prebarcoded letters and cards. A new, reduced first-ounce rate of postage of $0.30 for letters and $0.18 for cards that is prepaid by the envelope or card provider prior to or at the time of original mailing is proposed. Mailers prepay postage on PRM pieces based on an estimated number of returns through the mail. The mailer (permit holder) must keep records of the actual number of returns. The actual postage owed is reconciled by the mailer and the USPS through a periodic audit. A yearly $100.00 permit fee is proposed. In addition, the permit holder will pay a monthly fee of $1,000.00 to cover Postal Service auditing and administrative activities. PRM mailers will have to obtain authorization to distribute PRM pieces from the post office where the PRM pieces are initially distributed.

Registered Mail

The maximum value level for registered mail without postal insurance is decreased from $100.00 to $0.00. All registered mail with a value of $0.01 or more will be automatically provided with insurance (up to a maximum indemnity of $25,000 per piece). Insurance coverage is included in the applicable registered mail fee. Only mail of no value may be mailed as uninsured registered mail. In addition, registered mail fees are proposed to increase (see DMM R900.18.0 in Part B). Proposed DMM revisions will allow the use of delivery confirmation service with registered mail.

Restricted Delivery

No changes are proposed to restricted delivery fees. Proposed DMM revisions will allow the use of restricted delivery with delivery confirmation service provided it is purchased along with insurance for more than $50.00, COD, or registry service.

Return Receipt

Fees for return receipt are proposed to increase (see DMM R900.20.0 in Part B). Proposed revisions are made to the DMM to allow use of return receipt service with delivery confirmation service only if purchased in connection with insurance for over $50, COD, or registry service. In 1999, signature (electronic return receipt) service will be offered with delivery confirmation service, without a requirement to purchase any other special service to receive it.

Return Receipt for Merchandise

Fees for return receipt for merchandise are proposed to increase (see DMM R900.21.0 in Part B). It also is proposed to delete the availability of this service with single-piece Standard Mail (A), because single-piece Standard Mail (A) will be eliminated.

Special Handling

Substantial increases are proposed to the special handling fees, because the costs of providing this service have more than tripled since the last omnibus rate case proceeding (see R900.22.0 in Part B). In addition, the DMM is revised to conform to the Domestic Mail Classification Schedule (DMCS) by making it clear that special handling may be used with First-Class Mail and Priority Mail. Proposed DMM revisions also will allow the use of delivery confirmation service with special handling.

Stamped Cards

It is proposed to add a $0.02 fee per stamped card and a $0.04 fee per double stamped card to cover manufacturing and printing costs. Additionally, a fee of $0.80 would be added to the sale of a sheet of 40 stamped cards. This is consistent with the existing fee structure for stamped envelopes, where customers are charged the postage plus a small fee for the envelope itself.

Stamped Envelopes

It is proposed to increase fees for some stamped envelopes and decrease fees for others. In addition, the fee structure has been simplified: except for the hologram and banded stamped envelopes, all stamped envelopes are grouped together by size and whether they are plain or printed.

ZIP Coding of Mailing Lists

Fees are proposed to increase from $60.00 to $70.00 per 1,000 addresses or fraction thereof.

B. Summary of Domestic Mail Manual (DMM) Changes

The following are proposed changes organized by DMM module. They are intended as an overview only and should not be viewed by commenters as defining every proposed revision.

A (Addressing)

A060.5.3 is amended to eliminate the option to pay postage for excess or undeliverable detached address labels (DALs) or items being returned at the single-piece Standard Mail (A) rates. Postage for excess or undeliverable DALs or items being returned is computed at the applicable single-piece rate (First-Class Mail, Priority Mail, or Standard Mail (B)) for the combined weight of the DAL and the accompanying item, regardless of whether both are being returned.

C (Characteristics and Content)

References to single-piece Standard Mail (A) are deleted throughout. C050 is revised to add ''Nonmachinable'' to the title of 5.0 and 6.0 (Irregular and Outside Parcels). C100.4.0 is revised to include keys and identification devices as items that may be considered nonstandard mail. C600.1 is amended to allow Parcel Post mailings to include pieces measuring over 108 inches, but not exceeding 130 inches in combined length and girth, if the number of such pieces does not exceed 10% of each mailing, and a rate is paid equal to that for a 70-pound parcel for the zone to which the parcel is addressed. C600.1 also is amended to require Parcel Post pieces that weigh less than 15 pounds but measure more than 84 inches in combined length and girth to pay a rate equal to that of a 15-pound parcel for the zone to which the parcel is addressed. C600.2 is amended to delete the nonstandard surcharge criteria that formerly applied to single-piece Standard Mail (A). C810 is amended to provide new maximum weights for automation ''heavy'' letters. A new C850 is added to provide standards for barcodes on parcels.

D (Deposit, Collection, and Delivery)

D010.1 is amended to exclude Parcel Post pieces mailed at the DDU and DSCF rates, or claiming the Origin BMC discount, from obtaining pickup service. D042.1.7 is amended to reflect the operational conditions in plants that employ an automated delivery receipt system for processing accountable mail. D600.2 is amended to remove the sentence that allowed single-piece Standard Mail (A) bearing adhesive stamps to be placed in collection boxes.

E (Eligibility)

E060 is revised to remove single-piece Standard Mail (A) as a permissible rate for the return of items under penalty merchandise return service. E110 is revised to delete references to Presorted Priority Mail. E120 is revised to remove references to Presorted Priority Mail, to add information on rates and fees applicable to keys and identification devices, to add information on hazardous material surcharges, and to make minor organizational changes. E130 is revised to add information on rates and fees applicable to keys and identification devices, and surcharges for nonstandard sizes and for hazardous material. E200 is revised to provide for separate 5-digit and 3-digit rates for Regular, Nonprofit, Classroom, and In-County subclasses, and to show that the applicable 3-digit rates will apply to both unique and nonunique 3-digit ZIP Code areas. E500 is revised to add information on hazardous material surcharges. E600 is revised to delete references to single-piece Standard Mail (A), and to change the name ''nonautomation presort'' to ''Presorted'' or ''Presorted Standard.'' E612 is revised to change the weight breakpoints for the Standard Mail (A) minimum per-piece rates, specify that delivery confirmation service may not be used with Standard Mail (A), and require Standard Mail (A) mailed at a Standard Mail (B) rate to show the applicable Standard Mail (B) marking. E620 and E630 are reorganized so that E620 contains standards for Standard Mail (A) and E630 contains standards for Standard Mail (B). E620 is revised to add new minimum volume requirements for Presorted Standard mailings and add provisions for the new residual shape surcharge and the hazardous material surcharges. E630 is revised to add provisions for new DSCF and DDU rates and new OBMC, BMC Presort discounts, the oversized parcel provisions, and balloon rate provisions. E630 is revised to add provisions for a barcoded discount and delivery confirmation for all Standard Mail (B). E630 is revised to add provisions for hazardous material surcharges for Parcel Post and Library Mail and to revise marking requirements for Parcel Post drop shipments, Bound Printed Matter, and Special Standard Mail. E640 is revised to add hazardous material surcharges for Standard Mail (A). E652 is revised to add provisions for DSCF and DDU Parcel Post rates.

F (Forwarding and Related Services)

F010 revises forwarding and related services for Periodicals and for Standard Mail (A) to show that return postage is subject to the First-Class or Priority Mail rates based on weight, except for machinable Standard Mail (A) parcels returned under Bulk Parcel Return Service (BPRS). F020 is revised to remove references to single-piece Standard Mail (A).

L (Labeling Lists)

Section L100, including labeling list L102, ADCs—Presorted Priority Mail, is deleted. New labeling list L605, BMCs—Nonmachinable Parcel Post, is added.

M (Mail Preparation and Sortation)

M011 is revised to amend the definition of a mailing. M012 is revised to change marking requirements for

Standard Mail (A) and (B). In M032, Exhibit 1.3 is revised to show headings for new Periodicals rate levels and for new Parcel Post rates. M041 is revised to reflect new Standard Mail (B) rate requirements. M045 is revised to add new Standard Mail (B) preparation requirements. M072 is amended for clarity. M073 is revised to add information about combining Standard Mail (A) and Standard Mail (B) parcels in mailings prepared under new Parcel Post rate preparation requirements. M120 is revised to delete the sections on Presorted Priority Mail. M200 is revised to require preparation of an SCF level of sack. M600 is revised to change ''nonautomation presort'' to ''Presorted,'' to revise references to E620 and E630, and to revise marking requirements. M810 is reorganized and revised to add new rate categories for Periodicals and to make the 5-digit/scheme sortation level optional for Periodicals automation letters. M820 is revised to make the SCF sack a required level of presort for Periodicals automation flats.

P (Postage and Payment Methods)

P011 is revised to delete references to single-piece Standard Mail (A). P012 revises standardized documentation for Periodicals to add separate 5-digit and 3-digit rates for both automation and nonautomation and to add new rate abbreviations for nonautomation 5-digit and 3-digit rates. P013 is revised to reflect payment for keys and identification devices at First-Class Mail and Priority Mail rates plus a $0.30 fee instead of single-piece Standard Mail (A) rates, to delete sections concerning computation of single-piece Standard Mail (A) rates, and to revise the breakpoints for Standard Mail (A) rates. P014 is revised to delete references to single-piece Standard Mail (A) and to indicate that a full refund may be given for delivery confirmation if no service is provided. P030.5.4 is revised to delete a reference to single-piece Standard Mail (A). P600 is revised to establish postage payment methods for Standard Mail (B) containing a combination of discounts, to delete information on payment and use of ''SNGLP'' marking for single-piece Standard Mail (A), and to clarify that for mailings of identical weight, Standard Mail (A) postage may be affixed to all pieces in the mailing at the lowest rate in the mailing job. P710 is revised to require manifest information concerning limits on oversize Parcel Post. P750 is revised to include instructions on the new Parcel Post DSCF and DDU rates. P760 is revised to change ''nonautomation'' to ''Presorted'' for Standard Mail (A) and to delete references to single-piece Standard Mail (A).

R (Rates and Fees)

The entire module is revised to reflect new rates and fees.

S (Special Services)

S010 is revised to reflect claims for the new bulk insurance service. S070 is revised to clarify applicability of Priority Mail Drop Shipment. S911 is revised to reflect changes to indemnity coverage for registered mail and to include delivery confirmation as an authorized additional service. S913 is revised to eliminate references to single-piece Standard Mail (A), to provide clarification to matter eligible for insurance, to include rules for the new bulk insurance service, and to include delivery confirmation as an authorized additional service. S915 is amended to reflect limited use of return receipt with delivery confirmation service. S916 is amended to reflect limited use of restricted delivery together with delivery confirmation service. S917 is amended to delete availability of return receipt for merchandise with single-piece Standard Mail (A). S918 is added to provide rules for the proposed new delivery confirmation service. S921 is amended to delete availability of COD with single-piece Standard Mail (A) and to reflect limited use of COD with delivery confirmation service. S922 is revised to include requirements for new QBRM service, to require all BRM bearing barcodes to meet the requirements of C810 and C840, and to replace current BRM standards relative to reflectance requirements, paper weight, and self-mailers with current mailpiece design requirements in C810 and C830. S923 is revised to eliminate the return of merchandise return service pieces at single-piece Standard Mail (A) rates, to prescribe new rates of return and corresponding markings, and to reflect new standards concerning registered mail used with that service. S924 is revised to eliminate references to single-piece Standard Mail (A). S925 is added to provide rules for the proposed new prepaid reply mail classification. S930 is amended to remove availability of special handling service for single-piece Standard Mail (A), to correct the rules to allow First-Class Mail and Priority Mail to receive special handling, and to reflect availability of delivery confirmation service with special handling for the applicable subclasses.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111 [AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise the following sections of the Domestic Mail Manual to read as follows:

A ADDRESSING

A000 Basic Addressing

* * * * *

A060 Detached Address Labels (DALs)

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5.0 POSTAGE

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5.3 Returns

[Amend the first sentence of 5.3 by replacing ''Standard Mail'' with ''First-Class Mail'' to read as follows:]

Postage for excess or undeliverable DALs that are properly endorsed, or items being returned, is computed at the applicable single-piece rate (First-Class Mail, Priority Mail, or Standard Mail (B)) for the combined weight of the DAL and the accompanying item, regardless of whether both are being returned.

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C CHARACTERISTICS AND CONTENT

C000 General Information

C010 General Mailability Standards

1.0 MINIMUM AND MAXIMUM DIMENSIONS

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1.6 Nonstandard Surcharge

[Amend 1.6 by removing ''C600'' and ''Single-Piece Standard Mail'' to read as follows:]

Because of address placement (orientation) under C100, a mailable piece of First-Class Mail weighing 1 ounce or less can be subject to the corresponding nonstandard surcharge.

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C024 Other Restricted or Nonmailable Matter

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12.0 ODD-SHAPED ITEMS IN ENVELOPES

12.1 Nonmailable

[Amend 12.1 by removing ''Standard Mail (A) rate'' to read as follows:]

Pens, bottle caps, and similar odd-shaped items are not acceptable in letter-size envelopes at the single-piece First-Class Mail rate.

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C022 Perishables

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3.0 LIVE ANIMALS

3.1 Day-Old Poultry

[Amend 3.1f by adding ''or Priority Mail'' for clarity as follows:]

Day-old poultry vaccinated with Newcastle disease (live virus) is nonmailable. Live day-old chickens, ducks, geese, partridges, pheasants (mailable only from April through August), guinea fowl, quail, and turkeys are acceptable in the mail only if:

* * * * *

f. The shipment bears special handling postage in addition to regular postage, unless sent at the First-Class Mail or Priority Mail rate.

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C023 Hazardous Matter

* * * * *

12.0 Hazardous Material Surcharge

Mailable hazardous material described and prepared under C023.10 is subject to a Hazardous Medical Material surcharge if mailed at the Priority Mail, First-Class Mail (other than cards), Standard Mail (A), Parcel Post, or Library Mail rates. Mailable hazardous material mailed under C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge if mailed at the Priority Mail, First-Class Mail (other than cards), Standard Mail (A), Parcel Post, or Library Rate. Both surcharges may apply to some material.

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C050 Mail Processing Categories

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[Amend 5.0 to add ''Nonmachinable'' to the title as follows:]

5.0 IRREGULAR PARCEL (NONMACHINABLE)

* * * * *

[Amend 6.0 to add ''Nonmachinable'' to the title as follows:]

6.0 OUTSIDE PARCEL (NONMACHINABLE)

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C100 First-Class Mail

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4.0 NONSTANDARD MAIL

[Revise 4.0 to include keys and identification devices as items subject to the nonstandard classification as follows:]

Except for Priority Mail, any piece of First-Class Mail (including keys or identification devices) weighing 1 ounce or less and not claimed at a card rate is nonstandard and subject to the applicable surcharge if its thickness exceeds 1/4 inch or, if based on the placement (orientation) of the address, its length exceeds 11–1/2 inches, its height exceeds 6–1/8 inches, or its aspect ratio (length divided by height) is less than 1.3 or more than 2.5.

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C600 Standard Mail

1.0 DIMENSIONS

1.1 Standard Mail (A)

[Amend 1.1b to read as follows:]

These dimensional standards apply to Standard Mail (A):

* * * * *

b. Presorted (3/5 and basic rate) Regular and Nonprofit Standard Mail (A) are subject only to the basic mailability standards in C010.

* * * * *

1.2 Standard Mail (B)

[Amend and renumber 1.2 as follows to specify a 10% limit on oversize Parcel Post, and add a Parcel Post balloon rate:]

These dimensional standards apply to Standard Mail (B):

a. No piece may weigh more than 70 pounds, except matter at Bound Printed Matter rates may not weigh more than 15 pounds.

b. Except for Parcel Post under 1.2c, the combined length and girth of a piece (i.e., the length of its longest side plus the distance around its thickest part) may not exceed 108 inches.

c. Parcel Post pieces exceeding 108 inches in combined length and girth, but no greater than 130 inches in combined length and girth, are mailable provided that they constitute not more than 10% of the total number of Parcel Post pieces entered in a single mailing or included on an approved daily manifest prepared for mailings that originate at a single mailing location. The 10% limitation is applicable to all Parcel Post mailings regardless of mailing size or acceptance location. Such oversized Parcel Post pieces must be paid at a rate equal to that of a 70 pound parcel for the zone to which the parcel is addressed.

d. Parcel Post pieces exceeding 84 inches in combined length and girth, but not exceeding 108 inches in combined length and girth, and weighing less than 15 pounds are mailable at a rate equal to that of a 15-pound parcel for the zone to which the parcel is addressed.

e. Two or more packages may be mailed as a single parcel, if they are about the same size or shape or if they are parts of one article, if they are securely wrapped or fastened together, and if they do not together exceed the weight or size limits.

f. Lower size or weight standards apply to mail claimed at certain rates, addressed to certain APOs and FPOs, or sent by the Department of State to U.S. government personnel abroad.

g. Pieces might be subject to minimum weight or dimensions based on the standards for specific rates.

[Delete current 2.1, renumber current 2.2 as 2.0 and revise to read as follows:]

2.0 NONMACHINABLE SURCHARGE

Items described in E630 and mailed at the inter-BMC/ASF Parcel Post rates are subject to a nonmachinable surcharge unless the applicable special handling fee is paid.

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C800 Automation-Compatible Mail

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C810 Letters and Cards

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2.0 DIMENSIONS

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2.3 Maximum Weight

[Amend 2.3c through 2.3f to amend the maximum ounce weights for heavy letters to read as follows:]

Maximum weight limits are as follows:

* * * * *

c. 3.2873 ounces: automation Nonprofit Standard Mail heavy letters, subject to 7.5.

d. 3.2906 ounces: automation Enhanced Carrier Route heavy letters, subject to 7.5.

e. 3.2914 ounces: automation Nonprofit Enhanced Carrier Route heavy letters, subject to 7.5.

f. 3.2985 ounces: automation First-Class Mail, automation Periodicals, and automation Regular Standard Mail heavy letters, subject to 7.5.

* * * * *

[Add new C850 to provide parcel barcode requirements as follows:]

C850 Standard Mail (B) Barcode Standards

1.0 PARCEL BARCODE CHARACTERISTICS

1.1 Basic Standards

Every addressed piece eligible for the Standard Mail (B) barcode discount described in E630 must bear the correct 6-digit barcode (a 5-digit ZIP Code and a 1-digit verifier character) in an Interleaved 2 of 5, Code 39, or Code 128 format. Technical specifications for these three barcode formats appear in Uniform Symbology Specification (USS) documents USS-I2/5, USS–39, and USS–128, respectively, available from Automatic Identification Manufacturers (AIM), Material Handling Institute, Inc., 1326 Freeport Rd., Pittsburgh, PA 15238–3131. Only one 6-digit barcode ending in a ''9'' character may appear on the mailpiece. The barcode must be located as specified in 1.6. No printing may appear in an area 1/8 inch above and below the barcode regardless of location. A minimum clear zone equal to 10 times the average measured narrow element (bar or space) width must be maintained on either side of the barcode.

1.2 Dimensions

The preferred range of widths of narrow bars and spaces is 0.015 inch to 0.017 inch. The width of the narrow bars or spaces must be no less than 0.013 inch and no greater than 0.021 inch.

1.3 Verifier

The verifier character must be the last digit of the 6-digit barcode. The correct verifier digit is always 9. The verifier appears only as part of the barcode and is not printed as part of the human-readable ZIP Code.

1.4 Reflectance

When measured in the red spectral range between 630 nanometers and 675 nanometers, the minimum white bar (space) reflectance (Rs) must be greater than 50%, and the maximum bar reflectance (Rb) must be less than 25%. The minimum print reflectance difference (Rs-Rb) is 40%. The measurements must be made using a USPS-specified reflectance meter or barcode verifier.

1.5 Barcode Quality

At least 70% of the barcodes must measure American National Standards Institute (ANSI) grade A or B and none of the remaining portion can measure lower than ANSI grade C. Information concerning ANSI guidelines X3.182–1990 may be obtained from the American Standards Institute, Inc., 1430 Broadway, New York, NY 10018–3308.

1.6 Address and Barcode Placement

The address and barcode must be on the mailpiece side with the largest surface area, except that the address and barcode must be on the top surface of the mailpiece when its shape requires specific orientation for stability during automated processing. The delivery address and/or the barcode may be printed on an attachment or on an enclosure in a window envelope, subject to the reflectance standards in 1.4.

1.7 Numeric Barcode

In addition to the ZIP Code, or ZIP+4 code included in the delivery address, human-readable characters representing the numeric equivalent of the barcode (omitting the verifier character) must be printed near the barcode but outside the barcode clear zone. These numeric characters must be preceded by the word ''ZIP.''

D DEPOSIT, COLLECTION, AND DELIVERY

D000 Basic Information

D010 Pickup Service

1.0 BASIC STANDARDS

1.1 Availability

[Amend 1.1b to delete the term ''single-piece rate'' to read as follows:]

Subject to the standards in D010, pickup service is available from designated post offices for:

* * * * *

b. Priority Mail.

* * * * *

1.2 Not Available

[Amend 1.2c to include all destination entry rate pieces as follows:]

Pickup service is not available for pieces:

* * * * *

c. Claimed at the Parcel Post DBMC, DSCF, or DDU destination entry rates, or claiming the Parcel Post Origin BMC discount.

* * * * *

D042 Conditions of Delivery

1.0 BASIC STANDARDS

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1.7 Express Mail and Accountable Mail

[Amend 1.7a and b to reflect the operational conditions in plants that employ automated delivery receipt system as follows:]

The following specific conditions also apply to the delivery of Express Mail and accountable mail (registered, certified, insured for more than $50, or COD, as well as mail for which a return receipt or a return receipt for merchandise is requested or for which the sender has specified restricted delivery):

a. The recipient (addressee or addressee's representative) may obtain the sender's name and address and may look at the mailpiece before accepting delivery and endorsing the delivery receipt.

b. The mailpiece may not be opened or given to the recipient before the recipient signs and legibly prints his or her name on the delivery receipt (and return receipt, if applicable) and returns the receipt(s) to the USPS employee; or, for organizations such as the IRS, which receive large numbers of return receipts, before the recipient signs a manifest listing all the Express Mail and accountable mailpieces being delivered.

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D600 Standard Mail

* * * * *

2.0 MAIL DEPOSIT

[Amend the heading and contents of 2.1 to read as follows:]

2.1 Single-Piece Standard Mail (B) Rates

Single-piece rate Standard Mail (B) must be deposited at a time and place specified by the mailing post office postmaster. Metered mail must be deposited in locations under the jurisdiction of the licensing post office, except as permitted in D072. Permit imprint mail must be presented at the post office under P040 or P700. Precanceled stamp mail must be presented at the post office under P023.

E ELIGIBILITY

E000 Special Eligibility Standards

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E060 Official Mail (Penalty)

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12.0 PENALTY MERCHANDISE RETURN SERVICE

12.1 Description

[Amend 12.1 by inserting ''(B)'' and by removing ''Single Piece Standard Mail'' to read as follows:]

Merchandise return service allows a merchandise return permit holder to authorize individuals and organizations to send single-piece First-Class Mail (including Priority Mail) and single-piece Standard Mail (B) (Parcel Post, Special Standard Mail, and Bound Printed Matter) to the permit holder.

The permit holder pays the return postage and fees.

* * * * *

E100 First-Class Mail

E110 Basic Standards

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4.0 FEES

4.1 Presort Mailing

[Amend the first sentence of 4.1 to delete the reference to Presorted Priority Mail to read as follows:]

A First-Class Mail presort mailing fee must be paid once each 12-month period at each office of mailing by any person or organization entering mailings at automation or Presorted First-Class Mail rates. Payment of one fee allows a mailer to enter mail at all those rates. Persons or organizations paying this fee may enter mail of their clients as well as their own mail. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that which is in effect on the date of payment.

* * * * *

E120 Priority Mail

1.0 BASIC STANDARDS

* * * * *

[Delete current 1.4, renumber current 2.2 as new 1.4 to read as follows:]

1.4 Marking

The marking ''Priority'' or ''Priority Mail'' must be placed prominently on the address side of each piece of Priority Mail.

[Amend 2.0 to read as follows:]

2.0 RATES

2.1 Application

Priority Mail rates apply to pieces meeting the standards in 1.0.

2.2 Flat Rate Envelope

Any amount of material that can be mailed in the special flat rate envelope available from the USPS is subject to the 2-pound Priority Mail rate, regardless of the weight of the material placed in the envelope.

2.3 Balloon Rate

Items weighing less than 15 pounds but measuring more than 84 inches in combined length and girth are charged a minimum rate equal to that for a 15-pound parcel for the zone to which it is addressed.

2.4 Keys and Identification Devices

Keys and identification devices (identification cards or uncovered identification tags) that weigh more than 11 ounces but no more than 2 pounds are returned at the 2-pound Priority Mail rate plus a $0.30 fee if they bear, contain, or have securely attached the name and complete address of a person, organization, or concern, with instructions to return the piece to that address and a statement guaranteeing payment of postage due on delivery.

[Delete current 3.0 pertaining to Presorted Priority Mail. Insert new 3.0 as follows:]

3.0 HAZARDOUS MATERIAL SURCHARGES

3.1 Hazardous Medical Material

Mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 material mailable under C023.10) are subject to the hazardous medical material surcharge.

3.2 Other Hazardous Material

Mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge. This includes all DOT division 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

3.3 Application of Surcharges

Both surcharges may apply to some material.

E130 Nonautomation Rates

1.0 BASIC STANDARDS

[Delete 1.3.]

2.0 SINGLE-PIECE RATE

[Revise 2.1, renumber 2.2 as 2.5, and insert new 2.2 through 2.4 to read as follows:]

2.1 Rate Application

The single-piece rates for First-Class Mail are applied as follows:

a. The card rate applies to a card meeting the applicable standards in C100 that is not eligible for or claimed at the Presorted rate, an automation rate, or a qualified business reply mail (QBRM) or prepaid business reply mail (PRM) rate.

b. The letter rate applies to any other (letter, flat, and parcel) First-Class Mail weighing 11 ounces or less that is not eligible for and claimed at the card rate, the Presorted rate, an automation rate, a qualified business reply mail (QBRM) or prepaid business reply mail (PRM) rate, or required to be paid at a rate for keys and identification devices.

2.2 Prepaid Reply Mail (PRM) Rates

The single-piece rates for PRM First-Class Mail are applied as follows:

a. The PRM rate for cards applies to a card meeting the applicable standards in C100 and the applicable standards in S925, including automation compatibility and barcoding under C810 and C840.

b. the PRM rate for letters applies to a letter meeting the applicable standards in S925, including automation compatibility and barcoding under C810 and C840, that is not eligible for and claimed at the PRM rate for cards.

c. Fees described in S925 and R900 also apply

2.3 Qualified Business Reply Mail (QBRM) Rates

The single-piece rates for QBRM First-Class Mail are applied as follows:

a. The QBRM rate for cards applies to a card meeting the applicable standards in C100 and the applicable standards in S922, including automation compatibility and barcoding under C810 and C840.

b. the PRM rate for letters applies to a letter meeting the applicable standards in S922, including automation compatibility and barcoding under C810 and C840, that is not eligible for and claimed at the QBRM rate for cards.

c. Fees described in S922 and R900 also apply.

2.4 Keys and Identification Devices

Keys and identification devices (identification cards or uncovered identification tags) that weigh no more than 11 ounces are mailed at the applicable single-piece letter rate, plus a $0.30 fee, and if applicable, the nonstandard surcharge. The keys and identification devices must bear, contain, or have securely attached the name and complete address of a person, organization, or concern, with instructions to return the piece to that address and a statement guaranteeing payment of postage due on delivery.

* * * * *

[Insert new 4.0 to read as follows:]

4.0 SURCHARGES

4.1 Nonstandard Surcharge

Single-piece (including keys and identification devices) and Presorted First-Class Mail is subject to a nonstandard surcharge if it is not mailed at the card rate, weighs 1 ounce or less, and meets the definition of nonstandard mail in C100.

4.2 Hazardous Material Surcharges

a. Hazardous Medical Material. Single-piece and Presorted First-Class

Mail is subject to the hazardous medical material surcharge if it is not mailed at the card rate, and if it consists of mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 materials mailable under C023.10).

b. Other Hazardous Material. Single-piece or Presorted First-Class Mail is subject to the other hazardous material surcharge if it is not mailed at the card rate, and if it consists of mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023. This includes all DOT hazard class 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

c. Application of Surcharges. Both surcharges may apply to some material.

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E200 Periodicals

E210 Basic Standards

E211 All Periodicals

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14.0 BASIC RATE ELIGIBILITY

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14.4 Copies Mailed by Public

[Amend 14.4 to read as follows:]

The applicable single-piece First-Class, Priority, or Standard Mail (B) rate is charged on copies of publications mailed by the general public (i.e., other than publishers or registered news agents) and on copies returned to publishers or news agents.

* * * * *

E230 Nonautomation Rates

1.0 BASIC INFORMATION:

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1.3 ZIP Code Accuracy

[In the first sentence, change ''3/5'' to ''5-digit, 3-digit,'' to read as follows:]

All 5-digit ZIP Codes in addresses on pieces claimed at the 5-digit, 3-digit, or basic rates must be verified and corrected within 12 months before the mailing date by a USPS-approved method. * * *

* * * * *

[Replace current 3.0 through 5.0 with new 3.0 through 5.0 to read as follows:]

3.0 5-DIGIT RATES

Subject to M200, 5-digit rates apply to:

a. Letter-size pieces in 5-digit packages of six or more pieces each, placed in 5-digit trays.

b. Flat-size pieces in 5-digit packages of six or more pieces each, placed in 5-digit sacks.

4.0 3-DIGIT RATES

Subject to M200, 3-digit rates apply to:

a. Letter-size pieces in 5-digit and 3-digit packages of six or more pieces each, placed in 3-digit trays.

b. Flat-size pieces in 5-digit and 3-digit packages of six or more pieces each, placed in 3-digit sacks.

5.0 BASIC RATES

Basic rates apply to pieces prepared under M200 that are not claimed at carrier route, 5-digit, or 3-digit rates.

* * * * *

7.0 COMBINING MULTIPLE PUBLICATIONS OR EDITIONS

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7.4 Documentation Elements

[Amend the first sentence to read as follows:]

Presort documentation required under P012 also must show the total number of addressed pieces and copies of each publication or edition mailed to each carrier route, 5-digit, and 3-digit destination. * * *

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E240 Automation Rates

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2.0 RATE APPLICATION

[Replace current 2.1 through 2.3 with new 2.1 through 2.3 to read as follows:]

2.1 5-Digit Rates

a. Letters. 5-digit rates apply to groups of 150 or more pieces to the same 5-digit or 5-digit scheme placed in a 5-digit or 5-digit scheme tray or trays prepared under M810. (Preparation to qualify for the 5-digit rate is optional, and if performed, need not be done for all 5-digit or 5-digit scheme destinations.)

b. Flats. 5-digit rates apply to pieces in 5-digit packages of six or more pieces each, prepared under M820 or M045.

2.2 3-Digit Rates

a. Letters. 3-digit rates apply to groups of 150 or more pieces to the same 3-digit or 3-digit scheme placed in a 3-digit/scheme tray or trays under M810.

b. Flats. 3-digit rates apply to pieces in 3-digit packages of 6 or more pieces each, prepared under M820 or M045.

2.3 Basic Rates

a. Letters. Basic rates apply to pieces prepared under M810 that are not claimed at carrier route, 5-digit, or 3-digit rates.

b. Flats. Basic rates apply to pieces prepared under M820 or M045 that are not claimed at 5-digit, or 3-digit rates.

* * * * *

E500 Express Mail

[Renumber current 3.0 through 7.0 as 4.0 through 8.0, respectively. Insert new 3.0 to read as follows:]

3.0 HAZARDOUS MATERIAL SURCHARGES

3.1 Hazardous Medical Material

Mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 material mailable under C023.10) are subject to the hazardous medical material surcharge.

3.2 Other Hazardous Material

Mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge. This includes all DOT division 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

3.3 Application of Surcharges

Both surcharges may apply to some material.

* * * * *

E600 Standard Mail

E610 Basic Standards

E611 All Standard Mail

1.0 BASIC INFORMATION

* * * * *

1.8 Documentation

[Amend the reference to single-piece rate mail to specify single-piece Standard Mail (B) as follows:]

A postage statement, completed and signed by the mailer, using the correct USPS form or an approved facsimile, must be submitted with each mailing except for single-piece rate Standard Mail (B) mailings in which the correct postage is affixed to each piece. Additional supporting documentation may be required by the standards for the rate claimed or postage payment method used.

E612 Additional Standards for Standard Mail (A)

* * * * *

4.0 RATES

4.1 General Information

[Revise the section numbers and the names of nonautomation rates, and

remove information about special services to read as follows:]

All Standard Mail (A) rates are bulk rates (sometimes referred to as presort rates). Bulk rates apply to mailings meeting the basic standards in E611 and the corresponding standards for Enhanced Carrier Route, automation, Presorted, and destination entry in E620, E640, and E650 as appropriate for the rate claimed. Nonprofit rates may be used only by organizations authorized by the USPS under E670. Not all processing categories qualify for every bulk rate.

4.2 Minimum Per-Piece Rates

[In the first sentence, change ''nonautomation'' to ''Presorted'' and amend the weight breakpoints for the minimum per-piece rates as follows:]

The minimum per-piece rates (i.e., the minimum postage that must be paid for each piece) apply to Enhanced Carrier Route rate pieces weighing no more than 0.2057 pound rounded (3.2906 ounces rounded); Regular Presorted and automation rate pieces weighing no more than 0.2062 pound rounded (3.2985 ounces rounded); Nonprofit Enhanced Carrier Route rate pieces weighing no more than 0.2057 pound rounded (3.2914 ounces rounded); and Nonprofit Presorted and automation rate pieces weighing no more than 0.2055 pound rounded (3.2873 ounces rounded). * * *

* * * * *

4.6 Exception

[Amend 4.6 to read as follows:]

When the postage computed at the bulk Standard Mail (A) rates is higher than a Standard Mail (B) rate for which the matter and the mailing could qualify except for its weight, the Standard Mail (B) rate may be paid without adding needless weight. When the Standard Mail (B) rate is paid, the pieces must bear the rate marking appropriate for the Standard Mail (B) rate at which postage is paid. All other standards for bulk Standard Mail (A) apply, including mail preparation.

* * * * *

4.9 Preparation

[Amend 4.9c to read as follows:]

Each bulk rate mailing is subject to these general standards:

* * * * *

c. The same mailing may not contain both automation and nonautomation rate pieces, except under E620.1.2.

* * * * *

[Add new 4.10 as follows:]

4.10 Special Services

Bulk rate Standard Mail (A) may not use certified, collect on delivery (COD), insurance, registered, return receipt, return receipt for merchandise, special handling, or delivery confirmation services.

* * * * *

[Revise the title of E620. Delete current 1.0. Move current E620.2.0 through 5.7 into E630. Renumber current E630.1.0 through E630.2.9 as E620.1.0 through E620.2.9, add new E620.1.5 and E620.16, add new E620.2.10 and E620.2.11, and revise to read as follows:]

E620 Nonautomation Standard Mail (A) Rates

1.0 PRESORTED REGULAR AND NONPROFIT RATES

1.1 Basic Standards

All pieces in a Presorted Regular or Nonprofit Standard Mail (A) mailing must:

a. Meet the basic standards for Standard Mail in E611 and E612.

b. Except as provided in 1.2, be part of a single mailing of at least 200 pieces or 50 pounds of pieces qualifying for Presorted rate Standard Mail (A). Regular and Nonprofit mailings must meet separate minimum volumes.

c. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code, unless an alternative address format is used subject to A040. Upgradable pieces are subject to additional standards in M610. Pieces prepared with detached address labels are subject to additional standards in A060.

d. Be marked, sorted, and documented as specified in M610.

1.2 Residual Volume Requirement

Pieces in an Enhanced Carrier Route rate mailing that has separately met a 200 piece or 50 pound minimum quantity requirement may be counted toward the minimum quantity requirement for a Presorted rate mailing, provided that the Enhanced Carrier Route rate mailing and the Presorted rate mailing are part of the same mailing job and are reported on the same postage statement. Likewise, pieces in an automation rate mailing that has separately met a 200 piece or 50 pound minimum quantity requirement may be counted toward the minimum quantity requirement for a Presorted rate mailing, provided that the automation rate mailing and the Presorted Mailing are part of the same mailing job and are reported on the same postage statement. Pieces mailed at Presorted Standard Mail (A) rates must not be counted toward the minimum volume requirements for an Enhanced Carrier Route rate or an automation rate mailing.

1.3 ZIP Code Accuracy

All 5-digit ZIP Codes included in addresses on pieces claimed at Presorted Regular and Nonprofit rates must be verified and corrected within 12 months before the mailing date, using a USPS-approved method. The mailer must certify that this standard has been met when the corresponding mail is presented to the USPS. This standard applies to each address individually, not to a specific list of mailing. An address meeting this standard may be used in mailings at any other rates to which the standard applies during the 12-month period after its most recent update.

1.4 Presorted Rates

Presorted Regular or Nonprofit Standard Mail (3/5 and basic) rates apply to Regular or Nonprofit Standard Mail letters, flats, and machinable and irregular parcels weighing less than 16 ounces, that are prepared under M610 or palletized under M045. Basic rates apply to pieces that do not meet the standards for the 3/5 rates described below. Basic rate and 3/5 rate pieces prepared as part of the same mailing are subject to a single minimum volume standard. Pieces that do not qualify for the 3/5 rate must be paid at the basic rate and prepared accordingly. Pieces may qualify for the 3/5 rate if:

a. In quantities of 150 or more letter-size pieces for a single 3-digit area, prepared in 5-digit or 3-digit packages of 10 or more pieces each and placed in 5-digit or 3-digit trays.

b. In quantities of 150 or more upgradable letter-size pieces (as defined in M610) for a single 3-digit area and placed in 5-digit or 3-digit trays.

c. In a 5-digit or 3-digit package of 10 or more flat-size pieces and placed in a 5-digit or 3-digit sack containing at least 125 pieces or 15 pounds of pieces.

d. In a 5-digit or 3-digit package of 10 or more flat-size pieces palletized under M045.

e. In a 5-digit, destination ASF (if required), or destination BMC sack containing at least 10 pounds of machinable parcels. (The 3/5 rates are available only if all possible 5-digit sacks are prepared.)

f. On a 5-digit, destination ASF (if required), or destination BMC pallet of machinable parcels. (The 3/5 rates are available only if all possible 5-digit pallets are prepared.)

g. In a 5-digit or 3-digit sack of irregular parcels containing at least 125 pieces or 15 pounds of pieces.

1.5 Hazardous Material Surcharges

a. Hazardous Medical Material. Mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 material mailable under C023.10) are subject to the hazardous medical material surcharge.

b. Other Hazardous Material. Mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge. This includes all DOT division 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

c. Application of Surcharges. Both surcharges may apply to some material.

1.6 Residual Shape (Parcel) Surcharge

Presorted Standard Mail that is prepared as a parcel, or is not letter-size or flat-size as defined in C050, is subject to the residual shape surcharge.

2.0 ENHANCED CARRIER ROUTE RATES

2.1 All Pieces

All pieces in an Enhanced Carrier Route Standard Mail mailing (letters, flats, or irregular parcels, including merchandise samples distributed with detached address labels) must:

a. Meet the basic standards for Standard Mail in E611 and E612

b. Be part of a single mailing of at least 200 pieces or 50 pounds of pieces of Enhanced Carrier Route Standard Mail, except that automation basic carrier route rate pieces are subject to a separate 200-piece/50-pound minimum volume standard and may not be included in the same mailing as other Enhanced Carrier Route mail.

c. Be sorted to carrier routes, marked, and documented under M045 (if palletized) or M620.

2.2 Flats and Merchandise Samples

Enhanced Carrier Route rate mail may not be more than 11–3/4 inches high, 14 inches long, or 3/4 inch thick. Merchandise samples with detached address labels may exceed these dimensions if the labels meet the standards in A060.

2.3 Preparation

Preparation to qualify for any of the Enhanced Carrier Route rates is optional and need not be performed for all carrier routes in a 5-digit area. An Enhanced Carrier Route mailing may include pieces at basic, high-density, and saturation Enhanced Carrier Route rates. Automation basic carrier route rate pieces must be prepared as a separate mailing, subject to the eligibility standards in E640.

2.4 Carrier Route Information

Except for mailings prepared with a simplified address under A040, carrier route codes must be applied to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme, hard copy CRIS files, or another AIS product containing carrier route information, subject to A930 and A950. Carrier route information must be updated within 90 days before the mailing date.

2.5 Sequencing

Basic carrier route rate mail must be prepared either in carrier walk sequence or in line-of-travel (LOT) sequence according to LOT schemes prescribed by the USPS (see M050). High-density and saturation rate mailings must be prepared in carrier walk sequence according to schemes prescribed by the USPS.

2.6 Addressing

Saturation rate mail may be prepared with detached address labels, subject to A060, or with an alternative addressing format, subject to A040. High-density pieces must have a complete delivery address or an address in occupant or exceptional format. Saturation pieces addressed for delivery on a city route must have a complete delivery address or an address in occupant or exceptional format, except that official mail from certain government entities also may use the simplified format. Saturation pieces for delivery on rural or highway contract routes, or through general delivery or a post office box, must have a complete delivery address or an alternative address format.

2.7 Density

High-density and saturation rate mailings are subject to these density standards:

a. There is no minimum volume per 5-digit ZIP Code delivery area. Pieces need not be sent to all carrier routes within a 5-digit delivery area.

b. For the high-density rate, at least 125 pieces must be prepared for each carrier route for which that discount is claimed, except that fewer pieces may be prepared and the high-density rate may be claimed for carrier routes of 124 or fewer possible deliveries if a piece is addressed to every possible delivery on the route. Multiple pieces per delivery address can count toward this density standard.

c. For the saturation rate, pieces must be addressed either to 90% or more of the active residential addresses or to 75% or more of the total number of active possible delivery addresses, whichever is less, on each carrier route receiving this mail, except that mail addressed in the simplified address format must meet the 100% coverage standard in A040. Multiple pieces per delivery address do not count toward this delivery standard. Sacks with fewer than 125 pieces and less than 15 pounds of pieces may be prepared to a carrier route when the saturation rate is claimed for the contents and the applicable density standard is met.

2.8 Basic Rates

Basic (nonautomation) carrier route rates apply to each piece that is sorted under M620 into the corresponding qualifying groups:

a. Letter-size pieces in a full carrier route tray, or in a carrier route package of 10 or more pieces placed in a 5-digit carrier routes or 3-digit carrier routes tray.

b. Flat-size pieces in a carrier route package of 10 or more pieces palletized under M045, or placed in a carrier route sack containing at least 125 pieces or 15 pounds of pieces or in a 5-digit carrier routes sack.

c. Irregular parcels in a carrier route sack containing 125 pieces or 15 pounds of pieces, in a carrier route carton(s) of merchandise samples prepared with detached address labels under A060 containing a total of 125 pieces or 15 pounds of pieces, or in a 5-digit carrier routes sack or carton. (Pieces must be in packages of 10 or more irregular parcels each if packaging is required under M610.)

2.9 High-Density and Saturation

High-density and saturation rates apply to pieces qualified for the basic rates that also meet the applicable addressing and density standards in 2.6 and 2.7.

2.10 Hazardous Material Surcharges

a. Hazardous Medical Material. Mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 material mailable under C023.10) are subject to the hazardous medical material surcharge.

b. Other Hazardous Material. Mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge. This includes all DOT

division 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

c. Application of Surcharges. Both surcharges may apply to some material.

2.11 Residual Shape (Parcel) Surcharge

Enhanced Carrier Route mail that is prepared as a parcel, or is not letter-size or flat-size as defined in C050, is subject to the residual shape surcharge.

[Revise the title of E630 as follows:]

E630 Standard Mail (B)

[Delete current 630.1 through 630.2. Insert new 630.1 through 630.5.9 which combines former E620.2 through E620.5, with former E630.3 and E630.4 to reorganize and separate standards for Standard Mail (A) from those for Standard Mail (B) and to include new Standard Mail (B) rate categories to read as follows:]

1.0 PARCEL POST

1.1 Basic Standards

Parcel Post is Standard Mail weighing 16 ounces or more that is not mailed as Bound Printed Matter, Special Standard Mail, or Library Mail. Any Standard Mail (B) matter may be mailed at Parcel Post rates, subject to the basic standards in E611 and E613.

1.2 Enclosures

Parcel Post may contain any printed matter mailable as Standard Mail (A), in addition to the enclosures and additions listed in E611.

1.3 Rate Eligibility

There are five Parcel Post rate categories: Intra-BMC, Inter-BMC, destination bulk mail center (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU). Intra-BMC, Inter-BMC, and DBMC Parcel Post rates are calculated based on the zone to which the parcel is addressed and the weight of the parcel. DSCF and DDU rates are calculated based on the weight of the parcel. Generally, Intra-BMC rates apply to parcels mailed and delivered within the same BMC service area and Inter-BMC rates apply to parcels mailed in one BMC service area and delivered in a different BMC service area. Specific standards for Inter-BMC and Intra-BMC rates and applicable discounts are described below. Generally, to qualify for destination entry rates (DBMC, DSCF, DDU) mailers must enter their parcels at the destination BMC, SCF, or delivery unit postal facility that will process or deliver the parcels (see additional requirements in E652). Additional requirements for Parcel Post rates and discounts (other than destination entry rates) are set forth below.

a. Intra-BMC rates apply to all Parcel Post originating and destinating in the service area of the same BMC or ASF. Intra-BMC rates also apply to Parcel Post originating and destinating in the same state for Alaska and Hawaii and in the same territory for Puerto Rico. See Exhibit 1.3.

b. Inter-BMC rates for machinable parcels apply to all Parcel Post mail that weighs 35 pounds or less; is machinable; originates in the service area of a BMC/ASF, or in Alaska, Hawaii, or Puerto Rico, and destinates outside that area; and is not eligible for destination entry rates.

c. Inter-BMC rates for nonmachinable Parcel Post include the nonmachinable surcharge and apply to all inter-BMC/ASF Parcel Post mail that weighs more than 35 pounds or otherwise is nonmachinable as defined in 1.4; originates in the service area of a BMC/ASF, or in Alaska, Hawaii, or Puerto Rico, and destinates outside that area; and is not eligible for destination entry rates.

d. Parcel Post for which OBMC, BMC Presort, and/or barcoded discounts are claimed, or are mailed at a destination entry rate (DBMC, DSCF, DDU (E652)), must be part of a mailing of 50 or more Parcel Post rate pieces.

e. The bulk mail center (BMC) Presort per-piece discount applies to pieces of inter-BMC Parcel Post sorted to BMC destinations under L601 for machinable pieces and sorted to BMC and ASF destinations for nonmachinable pieces under L605. To qualify, machinable pieces must be placed in pallet boxes and nonmachinable pieces must be placed on pallets under M041 and M045. The mail must be entered at a postal facility that is not a BMC, and be part of a mailing containing 50 or more Parcel Post rate pieces.

f. The origin bulk mail center (OBMC) per-piece discount applies to pieces of inter-BMC Parcel Post sorted to BMC destinations under L601 for machinable pieces and sorted to BMC and ASF destinations for nonmachinable pieces under L605. To qualify, machinable pieces must be placed in pallet boxes and nonmachinable pieces must be placed on pallets under M041 and M045. The mail must be entered at a BMC listed in L601 and be part of a mailing containing 50 or more Parcel Post rate pieces.

g. The barcoded discount applies to machinable pieces of Parcel Post mail that bear a correct, readable 6-digit barcode under C850 for the ZIP Code shown in the delivery address, are part of a mailing of 50 or more Parcel Post rate pieces, and are not mailed at the DSCF or DDU rates, or entered at an ASF if claiming the DBMC rates.

h. Pieces exceeding 108 inches in combined length and girth, but not greater than 130 inches in combined length and girth, are mailable at the applicable 70-pound Parcel Post rate provided that such pieces do not exceed 10% of all Parcel Post pieces in a mailing, or 10% of all Parcel Post pieces listed on an approved daily manifest (P710) for a single mailing operation. The 10% limitation is applicable to all Parcel Post mailings regardless of mailing size or acceptance location.

i. Parcel Post pieces exceeding 84 inches (but not exceeding 108 inches) in combined length and girth and weighing less than 15 pounds are subject to a rate equal to that of a 15-pound parcel for the zone to which the parcel is addressed.

Exhibit 1.3 BMC/ASF Service Areas

[Insert former E620 Exhibit 2.4 as Exhibit 1.3:]

1.4 Nonmachinable Surcharge

The nonmachinable surcharge applies only to the items listed in 1.4a through 1.4i if mailed at the Inter-BMC/ASF Parcel Post rates and no special handling fee is paid. The nonmachinable surcharge applies to items within these categories:

a. A parcel more than 34 inches long, 17 inches wide, 17 inches high, or weighing more than 35 pounds.

b. A parcel containing more than 24 ounces of liquid in glass containers, or 1 gallon or more of liquid in metal or plastic containers.

c. An insecurely wrapped or metal-banded parcel.

d. A can (paint, etc.), roll, or tube, or wooden or metal box.

e. A shrub or tree.

f. A perishable, such as eggs.

g. Books, printed matter, or business forms weighing more than 25 pounds.

h. A high-density parcel weighing more than 15 pounds and exerting more than 60 pounds per-square-foot pressure on its smallest side.

i. A film case weighing more than 5 pounds or with strap-type closures, except any film case the USPS authorizes to be entered as a machinable parcel under C050 and to be identified by the words ''Machinable in United States Postal Service Equipment,'' permanently attached as a nontransferable decal in the lower right corner of the case.

[Add new section 1.5 as follows:]

1.5 Hazardous Material Surcharges

a. Hazardous Medical Material. Mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 material mailable under C023.10) are subject to the hazardous medical material surcharge.

b. Other Hazardous Material. Mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge. This includes all DOT division 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

c. Application of Surcharges. Both surcharges may apply to some material.

1.6 Fees

Parcel Post mail is subject to these fees, as applicable:

a. The fee for mailing at destination BMC (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU) Parcel Post rates must be paid once each 12-month period at each post office of mailing by or for any person or organization that mails at the destination entry rates, except as provided otherwise for plant-verified drop shipments. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that which is in effect on the date of payment (R 600).

b. The Parcel Post pickup fee must be paid every time pickup service is provided, subject to the corresponding standards in D010.

2.0 BOUND PRINTED MATTER

2.1 Description and Rate Categories

[Renumber former E620.3.1 as 2.1 and revise to include new rate categories as follows:]

Bound Printed Matter is Standard Mail weighing at least 1 pound but not more than 15 pounds and meeting the standards in E611, E613, and E630. Bound Printed Matter rates are based on zones and on the weight of the piece. The rate categories are as follows:

a. Single-Piece Rate. The single-piece rate applies to Bound Printed Matter not mailed at the presorted rate or carrier route rate.

b. Presorted Rate. The presorted rate applies to Bound Printed Matter prepared in a mailing of at least 300 pieces, prepared and presorted as specified in M045 and M630.

c. Carrier Route Rate. The carrier route rate applies to Bound Printed Matter prepared in a mailing of at least 300 pieces presorted to carrier routes, prepared and presorted as specified in M045 and M630.

2.2 Characteristics

[Renumber former E620.3.2 as 2.2.]

* * * * *

2.3 Combining Pieces

[Renumber former E620.3.3 as 2.3.]

* * * * *

2.4 Enclosures

[Renumber former E620.3.4 as 2.4.]

* * * * *

[Add new 2.5 to specify barcoded discount standards as follows:]

2.5 Barcoded Discount

The barcoded discount applies to machinable pieces (C050) of single-piece and presorted rate Bound Printed Matter bearing a correct, readable 6-digit barcode under C850 for the ZIP Code shown in the delivery address, that are part of a mailing of at least 50 Bound Printed Matter pieces. The discount does not apply to carrier route Bound Printed Matter.

[Renumber E630.3.1 as 2.6 and revise to delete references to E620 and to add delivery confirmation service as follows:]

2.6 Preparation for Presorted Rates

Presorted Bound Printed Matter must meet the basic standards in E630 and the applicable preparation standards in M630. Mailings may contain nonidentical-weight pieces only if the correct postage is affixed to each piece or if the RCSC serving the post office of mailing has authorized payment of postage by permit imprint under P710, P720, or P730 or M630.8. Each mailing must contain 300 or more pieces of Bound Printed Matter. Insurance, special handling, delivery confirmation, and COD services may be used, but selective use of these services for individual parcels must be approved by the RCSC.

[Renumber former E630.3.2 as 2.7.]

2.7 Additional Standards for Carrier Route Rates

Carrier route Bound Printed Matter is subject to these additional standards:

a. Each mailing must contain 300 or more pieces sorted under M630 into groups of at least 10 pieces, 20 pounds, or 1,000 cubic inches each for the same carrier route, rural route, highway contract route, post office box section, or general delivery unit.

b. Residual pieces (not sorted as described in 2.7a) do not count toward the minimum specified in 2.7a, are ineligible for the carrier route Bound Printed matter rates, and must have postage paid at the appropriate presorted Bound Printed Matter rates. Residual pieces may be included in a carrier route Bound Printer Matter rate mailing and be endorsed ''Carrier Route Presort'' or ''CAR–RT SORT.'' The number of residual pieces to any single 5-digit ZIP Code area may not exceed 5% of the total qualifying carrier route pieces addressed to that 5-digit area. Residual pieces must be separated from the pieces that qualify for the carrier route rate and must be prepared under M630.

c. Subject to A930, the mailer must apply carrier route codes to mailings using CASS-certified software and the current USPS Carrier Route Information System (CRIS) scheme or another AIS product containing carrier route information. The carrier route information must be updated within 90 days before the mailing date.

3.0 SPECIAL STANDARD MAIL

[Renumber former E620.4.0 as 3.0.]

3.1 Qualification

[Renumber former E620.4.1 as 3.1 and add rate categories as follows:]

Special Standard Mail is Standard Mail matter meeting the standards in E611, E613, and those below. Special Standard Mail rates are based on the weight of the piece, without regard to zone. The rate categories are as follows:

a. Single-Piece Rate. The single-piece rate applies to Special Standard Mail not mailed at a 5-digit or BMC rate.

b. Presorted 5-Digit Rate. The 5-digit rate applies to Presorted Special Standard Mail mailings of at least 500 pieces prepared and presorted to 5-digit destination ZIP Codes as specified in M630 or M041 and M045.

c. Presorted BMC Rate. The BMC rate applies to Presorted Special Standard Mail mailings of at least 500 pieces prepared and presorted to destination bulk mail centers as specified in M630 or M041 and M045.

3.3 Qualified Items

[Renumber former E620.4.2 as 3.3.]

* * * * *

3.4 Loose Enclosures

[Renumber former E620.4.3 as 3.4.]

* * * * *

3.5 Enclosures in Books

[Renumber former E620.4.4 as 3.5.]

* * * * *

4.0 PRESORTED SPECIAL STANDARD MAIL

[Renumber former E630.4.0 as 620.4.0. Add new 4.7 as follows:]

* * * * *

4.7 Barcoded Discount

The barcoded discount applies to machinable pieces (C050) mailed at single-piece rates and Presorted Special Standard Mail BMC rates that bear a correct, readable 6-digit barcode under C850 for the ZIP Code shown in the delivery address, and that are part of a mailing of at least 50 pieces of Special Standard Mail. The discount does not apply to pieces mailed at the Presorted Special Standard Mail 5-digit rates.
[Renumber former E620.5.0 and 5.1 as E630.5.0 and E630.5.1 as follows:]

5.0 LIBRARY MAIL

5.1 Qualification

Library Mail is Standard Mail matter that meets the standards in E611, E613, and those below. Library Mail rates are based on the weight of the piece, without regard to zone. The basic rate category applies to all Library Mail.
[Renumber former E620.5.2 through E620.5.7 and add as E630.5.2 through E630.5.7.]
[Add new 5.8 and 5.9 as follows:]

5.8 Barcoded Discount

The barcoded discount applies to machinable pieces (C050) of Library Mail bearing a correct, readable 6-digit barcode under C850 for the ZIP Code shown in the delivery address and that are part of a mailing of at least 50 Library Mail pieces.

5.9 Hazardous Material Surcharges

a. Hazardous Medical Material. Mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 material mailable under C023.10) are subject to the hazardous medical material surcharge.

b. Other Hazardous Material. Mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge. This includes all DOT division 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

c. Application of Surcharges. Both surcharges may apply to some material.

6.0 BULK PARCEL POST

[Reserved]

[Revise the title of E640 and the first sentence of E640.1.1 to read as follows:]

E640 Automation Standard Mail (A) Rates

1.0 REGULAR AND NONPROFIT RATES

1.1 All Pieces

All pieces in an automation rate Regular or Nonprofit Standard Mail (A) mailing must: * * *

* * * * *

[Add new E640.1.5 to read as follows:]

1.5 Hazardous Material Surcharges

a. Hazardous Medical Material. Mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 material mailable under C023.10) are subject to the hazardous medical material surcharge.

b. Other Hazardous Material. Mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge. This includes all DOT division 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

c. Application of Surcharge. Both surcharges may apply to some material.

2.0 ENHANCED CARRIER ROUTE RATES

* * * * *

[Add new E640.2.6 to read as follows:]

2.6 Hazardous Material Surcharges

a. Hazardous Medical Material. Mailable medical material described in and prepared under C023.10 (all Department of Transportation (DOT) division 6.2 material mailable under C023.10) are subject to the hazardous medical material surcharge.

b. Other Hazardous Material. Mailable hazardous material described in C023.1.0 through 6.0 and in C023.9.0 and prepared under C021 and C023 are subject to the other hazardous material surcharge. This includes all DOT division 1–5, division 6.1, and class 7–9 material mailable under C023 except division 6.2 material mailable under C023.10.

c. Application of Surcharges. Both surcharges may apply to some material.

E650 Destination Entry

* * * * *

E652 Parcel Post

1.0 BASIC STANDARDS

[Amend 1.1 through 1.4 to add information on DSCF and DDU destination entry rates to read as follows:]

1.1 Definitions

Destination entry discounts apply to Parcel Post mailings prepared as specified in M041, M045 and M630 and addressed for delivery within the service area of a destination BMC (or auxiliary service facility), sectional center facility (SCF), or delivery unit (DU) where they are deposited by the mailer. For this standard, the following destination facility definitions apply:

a. A destination bulk mail center (DBMC) includes all bulk mail centers (BMCs) and auxiliary service facilities (ASFs) under L602, and designated sectional center facilities (SCFs) under 4.0.

b. A destination sectional center facility (DSCF) includes all processing and distribution centers or facilities under L005. Mail that is prepared on pallets for 5-digit ZIP Codes listed in Exhibit 5.0 must be entered at the BMC shown in the exhibit instead of at the SCF serving the 5-digit ZIP Codes of the delivery addresses appearing on mailpieces.

c. A destination delivery unit (DDU) is a facility that delivers to the addresses appearing on the deposited pieces in a destination entry rate Parcel Post mailing.

1.2 General

A destination entry mailing is a Parcel Post mailing that:

a. May be bedloaded, on pallets, or in pallet boxes, sacks, or other authorized containers depending on the facility at which the pieces are deposited and as specified in 2.0 through 5.0; and

b. Is not plant-loaded.

1.3 DBMC, DSCF, and DDU Rates

For DBMC, DSCF, or DDU rates, pieces must meet the applicable standards in 1.0 through 5.0 and meet the following criteria:

a. Be part of a single mailing of 50 or more pieces, each eligible for and claimed at a Parcel Post rate.

b. Be deposited at a destination BMC (DBMC) or auxiliary service facility, or other equivalent facility; destination sectional center (DSCF); or destination delivery unit (DDU) as applicable for the rate claimed and as specified by the USPS.

c. Be addressed for delivery within the ZIP Code ranges that the applicable entry facility serves.

d. For destination BMC (DBMC) rates, be part of a Parcel Post mailing that is deposited at a BMC or ASF under L602, or other designated facility under 4.0, addressed for delivery within the ZIP Code range of that facility; and prepared in accordance with M041 and M045 or M630.

e. For destination sectional center facility (DSCF) rates, be part of a Parcel Post mailing deposited at a designated processing and distribution center or facility under L005 (or at a BMC under Exhibit 5.0); addressed for delivery within the ZIP Code service area of that SCF facility under L005; and prepared in accordance with M041 and M045 or M630. For 5-digit ZIP Code areas listed under Exhibit 5.0, mail prepared on pallets must be entered at the corresponding BMC facility shown in that Exhibit (not at the SCF). The DSCF rate is not available for parcels prepared on pallets for facilities that are unable to handle pallets. Refer to the Drop Ship Product maintained by the National Customer Support Center (NCSC) (see G043) to determine which 5-digit delivery facilities can handle pallets. (There is a charge for this information.)

f. For destination delivery unit (DDU) rates, be part of a Parcel Post mailing deposited at a designated destination delivery unit that delivers parcels to the addresses appearing on the deposited pieces and prepared in accordance with M041 and M045 or M630. There is no required minimum number of pieces that must be deposited for the DDU rate; however, they must be part of a mailing of at least 50 pieces and separated by 5-digit ZIP Codes.

1.4 Postage Payment

Postage payment for DBMC, DSCF, and DDU rate mail is subject to the same standards as apply generally to Standard Mail (B). Except for plant-verified drop shipments (see P750) or metered mail drop shipment (see D072), the mailer must have a meter license or permit imprint authorization at the destination facility parent post office for mailings deposited for entry at a DBMC or ASF; at a destination sectional center facility; or at the parent post office of a destination delivery unit. Postage and fees (under E630) are paid to the post office that verifies the mailings. The mailer must ensure that Form 8125 accompanies all plant-verified drop shipments.

[Rename 1.5 to read as follows:]

1.5 BMC as Agent

The DBMC may act as acceptance agent only for its parent post office (see Exhibit 1.5) and only if authorized by Form 4410 for each mailer depositing DBMC entry rate mail.

[Delete 1.6.]

2.0 PREPARATION

[Amend 2.0 to include new destination entry rates as follows:]

2.1 Bedloaded Parcels

[Revise 2.1 to limit bedloaded destination entry mailings to BMCs and DDUs as follows:]

A mailer may present bedloaded DBMC parcels if the mailer's vehicle has a road-to-bed height of 50 (±2) inches. If applicable, the mail to be entered at different destinations must be separated to prevent mixing of mailings for deposit at different destinations. If perishable and nonperishable items are transported together, they must be separated. DBMC and DDU destination rate mailings may be bedloaded for deposit at BMCs/ASFs or DDUs. Refer to the Drop Shipment Product available from the National Customer Support Center (NCSC) (see G043) to determine dock requirements for a DDU facility. (There is a charge for this information.)

2.2 Containers

[Reorganize and revise 2.2 to include DSCF and DDU mailings and delete use of BMC over-the-road containers for the DBMC rate as follows:]

DBMC (if not bedloaded), DDU rate mailings (if not bedloaded), and all DSCF mailings must be prepared as follows:

a. Machinable parcels for which a DBMC, DSCF, or DDU rate is claimed must be sacked under M630 unless prepared under M041 and M045.

b. DSCF rate mail, if sacked, must contain at least 10 pieces per sack under M630 (machinable and nonmachinable pieces may be included in the same sack).

c. For DDU rate mail, there are no sacking or palletizing minimums. DDU rate mail must be separated by 5-digit ZIP Code (even if bedloaded), and if sacked or palletized must be properly labeled to the 5-digit ZIP Code. Machinable and nonmachinable pieces may be included in the same sack or on the same pallet.

d. For DBMC rate mail, nonmachinable parcels each weighing 35 pounds or less must be sacked under M630 if the parcels do not contain perishables and the size of the parcels allows a sack to hold at least two pieces. DBMC rate nonmachinable parcels that cannot be sacked in this manner or weigh more than 35 pounds must be transported as outside (unsacked) pieces. If authorized in advance by the USPS, DBMC rate nonmachinable parcels may be palletized.

e. For DSCF rate and DDU rate mail nonmachinable parcels may be palletized. Nonmachinable parcels may be combined with machinable parcels on 5-digit pallets claimed at DSCF or DDU rates under M041 and M045.

3.0 DEPOSIT

[Revise to include requirements for DSCF and DDU destination entry mailings as follows:]

* * * * *

3.2 Presentation

[Revise 3.2 as follows:]

Destination entry rate mailings must be verified under a plant-verified drop shipment authorization by a detached mail unit (DMU) in the mailer's plant or at the origin post office business mail entry unit (BMEU) serving the mailer's plant. They also may be deposited for verification at a business mail entry unit located at a destination BMC, destination sectional center facility, or other designated destination postal facility. Only plant-verified drop shipments may be deposited at a destination delivery unit not co-located with a post office or other postal facility having a business mail entry unit. When presented to the USPS, destination entry mailings must meet the following requirements:

a. Separation by zone for DBMC rate mailings is required only for permit imprint mailings of identical-weight pieces that are not mailed using a postage payment system under P710, P720, or P730 or mailed under M630.8.0.

b. Each mailing must be separated from other mailings, and destination entry rate mailings for deposit at one destination postal facility must be separated from mailings for deposit at other facilities.

c. Mail must be separated from freight transported on the same vehicle.

d. Each piece of DBMC, DSCF, or DDU rate Parcel Post must be marked as specified in M012 and M630.

e. The mailer must ensure that Form 8125 accompanies all plant-verified drop shipments.

[Rename the title of 3.3 to read as follows:]

3.3 BMC as Agent

The DBMC may verify and accept mail if authorized by Form 4410 to act as agent for the parent post office where the mailer's account or license is held.

3.4 Appointments

[Revise 3.4 to change and update appointment procedures as follows:]

a. Except for mailings of perishable commodities and local mailers under 3.5, appointments for deposit of DBMC mail at ASFs and SCFs must be scheduled through the appointment control center at least a day in advance. Same day appointments may be granted by a control center on the basis of a

telephone request. All appointments for BMC loads must be scheduled by the appropriate BMC control center and appointments for SCFs must be scheduled through the appropriate district control center. Appointments may be made up to thirty (30) calendar days prior to a desired appointment date. Mailers must comply with the scheduled mail deposit time and location. The mailer must cancel any appointment by notifying the appropriate control center at least 12 hours in advance of a scheduled appointment time.

b. Electronic appointments may be made by mailers/agents using a USPS-issued computer log-on ID. Electronic appointments must be made at least 12 hours prior to the desired time and date. All information required by the USPS appointment system regarding a mailing must be furnished.

c. For deposit of DDU mailings, an appointment must be made by contacting the DDU at least 24 hours in advance. If the appointment must be canceled, a mailer must notify the DDU at least a day in advance of a scheduled appointment. Mailers desiring electronic confirmation of DDU mail entry must also schedule the appointment through the district control center.

* * * * *

3.7 Deposit Conditions

[Revise 3.7a to clarify that rescheduling is permitted for refused mailings as follows:]

Deposit of mail also is subject to these conditions:

a. Destination facilities may refuse mailings that are unscheduled or late (i.e., if vehicles arrive more than 2 hours after the scheduled appointment at ASFs, BMCs, or SCFs and more than 1 hour late at delivery units). If a mailing is refused, a mailer is permitted to make a new appointment.

* * * * *

3.8 Vehicle Unloading

[Revise 3.8 to include DSCF and DDU rate mail as follows:]

Unloading of destination entry mailings is subject to these conditions:

a. Properly prepared containerize loads (e.g., pallets) are unloaded by the USPS at BMCs, ASFs, and SCFs that can handle pallets. The USPS does not unload or permit the mailer (or mailer agent) to unload palletized loads that are unstable or severely leaning or that have otherwise not maintained their integrity in transit.

b. The driver must unload bedloaded shipments within 8 hours of arrival at BMCs, ASFs, and SCFs. Combination containerized and bedloaded drop shipment mailings are classified as bedloaded shipments for unload times. The USPS may assist in unloading.

c. At delivery units, the driver must unload containerized (palletized), sacked, and bedloaded drop shipments (i.e., all DDU mail) within 1 hour of arrival.

d. The driver or assistant must stay with and continue to unload the vehicle once at the dock. The driver must remove the vehicle from USPS property after unloading. The driver and assistant are not permitted in USPS facilities except the dock and designated driver rest area.

3.9 Charges

[Revise 3.9 to include all destination rate mailings as follows:]

The USPS is not responsible for demurrage or detention charges incurred by a mailer who presents destination rate mailings.

3.10 Appeals

Mailers who believe that they are denied equitable treatment may appeal to the manager, customer service (district), responsible for the destination postal facility.

3.11 Documentation

[Revise 3.11 to include DSCF and DDU mailings as follows:]

A postage statement must accompany each destination entry rate mailing. Any other documentation must be submitted as required by the standards for the rate claimed or the postage payment method used.

* * * * *

[Add 5.0 to provide for deposit of some DSCF mail at a BMC:]

5.0 DSCF MAIL ENTERED AT A DESIGNATED BMC

DSCF rate mail prepared on pallets that is for a 5-digit ZIP Code listed in Exhibit 5.0 must be entered at the corresponding BMC facility listed on that exhibit instead of at the DSCF. Sacked DSCF rate mail for the 5-digit ZIP Codes in Exhibit 5.0 must be entered at the DSCF.

EXHIBIT E652.5.0, BMC DEPOSIT OF DSCF RATE PALLETS

BMC	Destination ZIP code
ATLANTA	30006–08,30,32–36,60–69,71,80–90. 30305–06,19,24,28–29,38,40–42,45–46,59,62–63,66,76. 31101. 39901.
CHICAGO	53140–44. 53401–08. 60016–17,19,25,53,56,68,70,76–77. 60103,05,07,20–23,26,31,53–54,60. 60301–04,06–99. 60504–05,07,40,42,63–64,66–68,98. 60601,05,08–60,67,81,90,93–94. 60714. 60803–05.
CINCINNATI	45207,12–13,15,18,22,36–37,40–42,46,49,62.
DALLAS	75040–49. 76001–07,10–19,94,96.
DENVER	69180,90. 80001–19,28,32,40–42,44,46–47. 80110–15,20–29,50–56,60–62,64–67. 80215,21–22,24,26–29,31–33,35–37,51. 80401–19. 80521–28,53–54. 80631–39.
DES MOINES	None.

EXHIBIT E652.5.0, BMC DEPOSIT OF DSCF RATE PALLETS—Continued

BMC	Destination ZIP code
DETROIT	48021,34,37,43–46,66–67,75–76,80–84,86,89–93,98–99. 48103–04,06–09,11–12,20–28,41,50–54,61–62,70,80,83–84,92,97–98. 48204,21,27–28,35. 48310–14,50–54,97.
GREENSBORO	27101–02. 27408–10. 27514–16. 27701.
JACKSONVILLE	31520–25,27. 32065,67,73,84–86,91–92,95. 32173–76. 32205,07,10–11,16,20–22,24–25,30,36,38–39,44. 32901–02,04,22–24,26–27,31–32,40–41,51,58,60–89. 33427–29,31–34,60–67,81,86–87,96–98. 33755–67,70–79. 33880–85. 34101–06,08–10,12–14,16,19. 34470–82. 34945–51,54,79–82,94–97.
KANSAS CITY	64015,50–51,55–56,58. 64116,18–19,51,53–54,59,63–64,90. 66002,27,44–49.
LOS ANGELES	90220–23,40–42,80.
MEMPHIS	38614. 38732.
MINNEAPOLIS/ST. PAUL	55014. 55104–06,15,19–21,24. 55306,16,31,43. 55418,20–21,24,28–30,32–33,41,45.
NEW JERSEY	None.
PHILADELPHIA	19001–04,06–10,12–18,20–23,25–26,28–41,43–44,46–50. 19052–53,61,63–67,70,72–76,78–91,93–96. 19111,14–16,19–20,24,28,34–37,40,44,49,52,54–55,60.
PITTSBURGH	None.
ST. LOUIS	62040. 62202,20–23,26. 62521. 62881. 63005–06,11,17,21–22,24,31–34,42–45,74. 63104–47,51,57–58. 63301–04.
SAN FRANCISCO	93921–23. 94002–03,10–12,21–28,30,35,39,41–43,59,61. 94401–99. 94504,06,08,11–14,16–29,33,35–46,48. 94555–56,58–63,67,70–71,73–74,76–81,83–85,89–99. 96708,13,20–21,27,32,43,49. 96753,55,58,60–61,67–68,71,72,78–79,81,84–85,88,90,93. 97321,30. 97526. 98002–04,23,31,35,63–64,92–93. 98660–66,68,82–87. 99362.
SEATTLE	97321,30. 97526. 98002–04,23,31,35,63–64,92–93. 98660–66,68,82–87. 99362.
SPRINGFIELD	None.
WASHINGTON	None.

E670 Nonprofit Standard Mail

* * * * *

9.0 MAILING WHILE APPLICATION PENDING

* * * * *

9.2 Postage Record

[Amend 9.2 by removing ''or Single-Piece Standard Mail'' in the last sentence to read as follows:]

While an application is pending, postage must be paid at the applicable First-Class Mail or Regular or Enhanced Carrier Route Standard Mail rates. The USPS records the difference between postage paid at the Regular or Enhanced Carrier Route Standard Mail rates and the postage that would have been paid at the Nonprofit Standard Mail rates. No record is kept if postage is paid at First-Class Mail rates.

9.3 Refund

[Amend 9.3b by removing ''or Single-Piece Standard Mail'' to read as follows:]

If an authorization to mail at Nonprofit Standard Mail rates is issued, the mailer may be refunded the postage paid at that office in excess of the Nonprofit Standard Mail rate since the effective date of the authorization. No refund is made:

* * * * *

b. If postage was paid at First-Class Mail rates.

* * * * *

F FORWARDING AND RELATED SERVICES

F000 Basic Services

F010 Basic Information

* * * * *

3.0 DIRECTORY SERVICE

[Amend 3.0d by removing ''or Single-Piece Standard Mail'' to read as follows:]

USPS letter carrier offices give directory service to the types of mail listed below that have an insufficient address or cannot be delivered at the address given (the USPS does not compile a directory of any kind):

* * * * *

d. Parcels mailed at any Standard Mail (B) rate or endorsed by the mailer.

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

* * * * *

5.2 Periodicals

[Amend 5.2e and 5.2g to read as follows:]

Undeliverable Periodicals publications (including publications pending Periodicals authorization) are treated as described in the chart below and under these conditions:

* * * * *

e. The publisher may request the return of copies of undelivered Periodicals publications by printing the endorsement ''Address Service Requested'' on the envelopes or wrappers, or on one of the outside covers of unwrapped copies, immediately preceded by the sender's name, address, and ZIP+4 or 5-digit ZIP Code. The per-piece rate charged for return is the appropriate single-piece First-Class Mail or Priority Mail rate as applicable for the weight of the piece. When the address correction is provided incidental to the return of the piece, there is no charge for the correction. This endorsement obligates the publisher to pay return postage.

* * * * *

g. Periodicals matter is forwarded only to domestic addresses.

[Amend the ''Address Service Requested'' portion of 5.2g (chart) to read as follows:]

Mailer endorsement	USPS action on UAA pieces
''Address Service Requested'' [1]	First 60 days: piece forwarded; no charge. After 60-day period, or if undeliverable: piece returned with address correction or reason for nondelivery attached; single-piece First-Class or Priority rate as applicable for weight of piece charged.
''Forwarding Service Requested''	* * * * *
''Return Service Requested''	* * * * *
''Change Service Requested''	* * * * *
No endorsement [1]	* * * * *

[1] Valid for all pieces, including Address Change Service (ACS) participating pieces.

5.3 Standard Mail (A)

[Amend 5.3 by deleting 5.3a and renumbering 5.3b through 5.3i as 5.3a through 5.3h. Revise renumbered 5.3a and 5.3b, and 5.3f through 5.3h, to read as follows:]

Undeliverable Standard Mail (A) is treated as described in the chart below and under these conditions:

a. Mail that qualifies for a single-piece Special Standard or Library Standard Mail (B) rate under the applicable standards is forwarded and returned at that rate, if the mailer's endorsement includes the name of the applicable Standard Mail (B) rate.

b. Mail that qualifies for Shipper Paid Forwarding (F020) under the applicable standards is forwarded at, and (if necessary) returned at, the single-piece First-Class or Priority Mail rate as applicable for the weight of the piece.

* * * * *

f. The weighted fee is the appropriate single-piece First-Class or Priority Mail rate, as applicable for the weight of the piece, multiplied by 2.472 and rounded up to the next whole cent (if the computation yields a fraction of a cent). The weighted fee is computed (and rounded if necessary) for each piece individually. Neither the applicable postage, the factor, nor any necessary rounding is applied cumulatively to multiple pieces. The fee is charged when an unforwardable or undeliverable piece is returned to the sender and the piece is endorsed ''Address Service Requested'' or ''Forwarding Service Requested.'' These endorsements obligate the sender to pay the weighted fee on all returned pieces.

g. Mail that qualifies for Bulk Parcel Return Service (BPRS) under the applicable standards in S924 is returned at the BPRS per piece fee if the mailer uses one of the endorsements that includes ''—BPRS.''

Mailer endorsement	USPS Action on UAA pieces
''Return Service Requested—BPRS''	* * * * *
''Address Service Requested—BPRS''	Months 1 through 12: piece forwarded; no charge to addressee; separate ACS notice of new address provided; ACS address correction fee and postage at single-piece First-Class or Priority Mail rate as applicable for weight of piece charged via ACS participant code.
	* * * * *

h. Standard Mail (A) is forwarded only to domestic addresses.

Mailer endorsement	USPS action on UAA pieces
"Address Service Requested"[1]	* * * * *
	Months 13 through 18: piece returned with new address attached; only weighted fee charged (address correction fee not charged).
	After month 18, or if undeliverable: piece returned with reason for nondelivery attached; only weighted fee charged (address correction fee not charged).
"Forwarding Service Requested"	* * * * *
	Months 13 through 18: piece returned with new address attached; only weighted fee charged (address correction fee not charged).
	After month 18, or if undeliverable: piece returned with reason for nondelivery attached; only weighted fee charged (address correction fee not charged).
"Return Service Requested"	Piece returned with new address or reason for nondelivery attached; only return postage at single-piece First-Class or Priority Mail rate as applicable for weight of piece charged (address correction fee not charged).
"Change Service Requested"[1]	* * * * *
No endorsement	Piece disposed of by USPS.

[1] Valid for all pieces, including Address Change Service (ACS) participating pieces.

* * * * *

6.0 ENCLOSURES AND ATTACHMENTS

[Amend the first sentences of 6.1 and 6.2 to read as follows:]

6.1 Periodicals

Undeliverable Periodicals publications (including publications pending Periodicals authorization) with a nonincidental First-Class Mail attachment or enclosure are returned at the single-piece First-Class or Priority Mail rate as applicable for the weight of the piece. * * *

6.2 Standard Mail (A)

Undeliverable, unendorsed Standard Mail (A) with a nonincidental First-Class Mail attachment or enclosure is returned at the single-piece First-Class or Priority Mail rate as applicable for the weight of the piece.* * *

* * * * *

8.0 DEAD MAIL

8.1 Basic Information

[Amend 8.1 to read as follows:]

Dead mail is matter deposited in the mail that is or becomes undeliverable and cannot be returned to the sender from the last office of address. Every reasonable effort is made to match articles found loose in the mail with the envelope or wrapper from which lost and to return or forward the articles.

a. Nonmail matter (e.g., wallets and bank deposits) found in collection boxes or at other points within USPS jurisdiction is returned postage due at the single-piece First-Class Mail or Priority Mail rate for keys and identification devices that is applicable based on the weight of the matter.

* * * * *

F020 Forwarding

* * * * *

2.0 FORWARDABLE MAIL

* * * * *

2.3 Discontinued Post Office

[Amend 2.3 by removing "and all Single-Piece Standard Mail" to read as follows:]

All Express Mail, First-Class Mail, Periodicals, and Standard Mail (B) addressed to a discontinued post office may be forwarded without added charge to a post office that the addressee designates as more convenient than the office to which the USPS ordered the mail sent.

2.4 Rural Delivery

[Amend 2.4 by removing "and all Single-Piece Standard Mail" to read as follows:]

When rural delivery service is established or changed, a customer of any office receiving mail from the rural carrier of another office may have all Express Mail, First-Class Mail, Periodicals, and Standard Mail (B) forwarded to the latter office for delivery by the rural carrier without added charge, if the customer files a written request with the postmaster at the former office.

* * * * *

2.6 Mail for Military Personnel

[Amend the first sentence of 2.6 by removing "and all Single-Piece Standard Mail" to read as follows:]

All Express Mail, First-Class Mail, Periodicals, and Standard Mail (B) addressed to persons in the U.S. Armed Forces (including civilian employees) serving where U.S. mail service operates is forwarded at no added charge when the change of address is caused by official orders. * * *

3.0 POSTAGE FOR FORWARDING

* * * * *

3.5 Standard Mail (A)

[Amend the second sentence of 3.5 to read as follows:]

* * * Shipper Paid Forwarding, used in conjunction with Address Change Service (F030), provides mailers of Standard Mail (A) machinable parcels an option of paying forwarding postage at the single-piece First-Class or Priority Mail rate as applicable for the weight of the piece. * * *

* * * * *

L LABELING LISTS

* * * * *

[Delete the heading "L100 First-Class Mail" and labeling list L102.]

L600 Standard Mail

* * * * *

[Insert new labeling list L605 as follows:]

L605 BMCs—Nonmachinable Parcel Post

Mailers preparing BMC Presort and OBMC Parcel Post mailings of nonmachinable parcels must sort the parcels and label pallets according to this list.

Column A—Destination ZIP codes	Column B—Label to
005–007, 009, 068–079, 085–098, 100–119, 124–127, 340	BMC NEW JERSEY NJ 00102.
006–009	SCF SAN JUAN PR 006[1].
008	BMC NEW JERSEY NJ 00102[2].
008	BMC JACKSONVILLE FL 32099[3].

Column A—Destination ZIP codes	Column B—Label to
010–067, 120–123, 128, 129	BMC SPRINGFIELD MA 05500.
130–136, 140–149	ASF BUFFALO NY 140.
150–168, 260–266, 439–447	BMC PITTSBURGH PA 15195.
080–084, 137–139, 169–199	BMC PHILADELPHIA PA 19205.
200–212, 214–239, 244, 254, 267, 268	BMC WASHINGTON DC 20499.
240–243, 245–249, 270–297, 376	BMC GREENSBORO NC 27075.
298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399	BMC ATLANTA GA 31195.
299, 313–316, 320–339, 341, 342, 344, 346, 347, 349	BMC JACKSONVILLE FL 32099.
369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729	BMC MEMPHIS TN 38999.
250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474	BMC CINCINNATI OH 45900.
434–436, 465–468, 480–497	BMC DETROIT MI 48399.
500–516, 520–528, 612, 680, 681, 683–689	BMC DES MOINES IA 50999.
498, 499, 540–551, 553–564, 566	BMC MPLS/ST PAUL MN 55202.
570–577	ASF SIOUX FALLS SD 570.
565, 567, 580–588	ASF FARGO ND 580.
590–599, 821	ASF BILLINGS MT 590.
463, 464, 530–532, 534, 535, 537–539, 600–611, 613	BMC CHICAGO IL 60808.
420, 423, 424, 475–479, 614–620, 622–631, 633–639	BMC ST LOUIS MO 63299.
640, 641, 644–658, 660–662, 664–679, 739	BMC KANSAS CITY KS 64399.
730, 731, 734–738, 740, 741, 743–746, 748, 749	ASF OKLAHOMA CITY OK 730.
706, 710–712, 718, 733, 747, 750–799, 885	BMC DALLAS TX 75199.
690–693, 800–816, 820, 822–831	BMC DENVER CO 80088.
832–834, 836, 837, 840–847, 893, 898, 979	ASF SALT LAKE CTY UT 840.
850, 852, 853, 855–857, 859, 860, 863, 864	ASF PHOENIX AZ 852.
865, 870–875, 877–884	ASF ALBUQUERQUE NM 870.
889–891, 900–908, 910–928, 930–935	BMC LOS ANGELES CA 90901.
894, 895, 897, 936–969	BMC SAN FRANCISCO CA 94850.
835, 838, 970–978, 980–986, 988–999	BMC SEATTLE WA 98000.

[1] Mailed from ZIP Code areas 006–009.
[2] If the entry post office is in ZIP Code areas 010–269, combine with mail for ZIP Code areas 005–007, 009, 068–079, 085–098, 100–119, 124–127, and 340, and label to BMC NEW JERSEY NJ 00102.
[3] If the entry post office is in ZIP Code areas 270–999, combine with mail for ZIP Code areas 299, 313–316, 320–339, 341, 342, 344, 346, 347, and 349, labeled to BMC JACKSONVILLE FL 32099.

* * * * *

M MAIL PREPARATION AND SORTATION

M000 General Preparation Standards

M010 Mailpieces

M011 Basic Standards

1.0 TERMS AND CONDITIONS

* * * * *

1.4 Mailing

[Amend 1.4 to read as follows:]

a. General. A mailing is a group of pieces within the same class of mail and, except for certain parcel rates, the same processing category that may be sorted together and/or may be presented under a single minimum volume mailing requirement under the applicable standards. Generally, types of mail that follow different flows through the postal processing system (e.g., automation, nonautomation carrier route, and other nonautomation) and mail for each separate class and subclass must be prepared as a separate mailing. Other specific standards may define whether separate mailings may be combined, palletized, reported, or deposited together.

b. First-Class Mail. The following types of First-Class Mail may not be part of the same mailing despite being in the same processing category:

(1) automation rate and any other type of mail;

(2) nonautomation Presorted rate and any other type of mail;

(3) nonautomation Presorted rate mail prepared under the optional upgradable preparation and nonautomation Presorted rate mail prepared under the required preparation;

(4) single-piece rate and any other type of mail.

c. First-Class Postcards. Postcards and letters must be prepared as separate mailings, or may be sorted together if each meets separate minimum volume mailing requirements.

d. Standard Mail (A). Except as provided in E620.1.2, the following types of Standard Mail (A) may not be part of the same mailing:

(1) automation Enhanced Carrier Route and any other type of mail;

(2) non-carrier route automation and any other type of mail;

(3) nonautomation Enhanced Carrier route and any other type of mail;

(4) Presorted rate mail and any other type of mail;

(5) Presorted rate mail prepared under the optional upgradable preparation and Presorted rate mail prepared under the required preparation;

(6) except as provided by standard, Regular mail may not be in the same mailing as Nonprofit mail, and Enhanced Carrier Route mail may not be in the same mailing as Nonprofit Enhanced Carrier Route mail.

e. Standard Mail (B). The following types of Standard Mail (B) may not be part of the same mailing despite being in the same processing category:

(1) Parcel Post mail and any other type of mail;

(2) Bound Printed Matter and any other type of mail;

(3) Special Standard and any other type of mail;

(4) Library Mail and any other type of mail.

* * * * *

M012 Markings and Endorsements

[Renumber current M012.3.0 and M012.4.0 as M012.4.0 and M012.5.0, respectively. Reorganize and revise M012.1.0 and M012.2.0 and insert new M012.3.0 to read as follows:]

1.0 MARKINGS—BASIC STANDARDS

1.1 Class and Rate

Mailpieces must be marked under the corresponding standards to show the class of service and/or rate paid:

a. First-Class Mail and Standard Mail (A) must be marked under 2.0;

b. Standard Mail (B) must be marked under 3.0;

c. Priority Mail must be identified under E120;

d. Periodicals must be identified under E211;

e. Express Mail is identified with the Express Mail mailing label (Label 11 or Form 5625) without any other required class or rate marking.

f. All mailable hazardous material must be labeled and/or marked as required in C020.

1.2 Enclosures

Enclosures, attachments, and mixed rate mailpieces must be marked under the applicable standards in E070, M070, and P070.

1.3 Printing and Designs

Required markings may be printed by a postage meter, special slug, ad plate, or other means that ensures a legible marking. A marking may not include or be part of a decorative design or advertisement.

2.0 MARKINGS—FIRST-CLASS MAIL AND STANDARD MAIL (A)

2.1 Placement

a. Basic Marking. The basic required marking that indicates the class or subclass—''First-Class;'' ''Presorted Standard'' or ''PRSRT STD'' (or, until July 1, 1999, ''Bulk Rate'' or ''Blk. Rt.''); or ''Nonprofit Organization'' or ''Nonprofit Org.'' or ''Nonprofit'' must be printed or produced as part of, or directly below or to the left of, the permit imprint indicia, meter stamp or impression, or adhesive or precanceled stamp.

b. Other Markings. Other rate-specific markings (''Presorted'' or ''PRSRT,'' ''Single-Piece'' or ''SNGLP'' (First-Class Mail only); ''AUTO'' and ''AUTOCR'' (First-Class Mail and Standard Mail (A)); ''ECRLOT,'' ''ECRWSH,'' ''ECRWSS,'' and ''RSS'' (Standard Mail (A) only)), may be placed in the location specified in 2.1a; or in the address area on the line directly above or two lines above the address if the marking appears alone or if no other information appears on the line with the marking except postal optional endorsement line information under M013 or postal carrier route package information under M014. If preceded by two asterisks, the ''AUTO,'' ''AUTOCR,'' ''Single-Piece,'' or ''SNGLP'' markings also may be placed on the line above or two lines above the address in a mailer keyline or a manifest keyline, or placed above the address and below the postage in an MLOCR ink-jet printed date correction/meter drop shipment line. Alternatively, the ''AUTO'' or ''AUTOCR'' may be placed to the left of the DPBC (subject to the barcode location and clear zone standards in C840).

c. Additional Requirements for Carrier Route. ''AUTOCR,'' ''ECRLOT,'' ''ECRWSH,'' and ''ECRWSS'' must appear in their entirety wherever placed, except ''ECR'' may be placed in the postage area if ''LOT,'' ''WSH,'' or ''WSS,'' as applicable, is placed in the line above or two lines above the address, as specified in 2.1b.

2.2 Exceptions to Markings

a. AUTO Marking. Non-carrier route automation rate First-Class and Standard Mail (A) pieces do not require an ''AUTO'' marking if they bear a DPBC in the address block or on an insert visible through a window in the address block or lower right corner. Non-carrier route automation rate First-Class pieces not marked ''AUTO'' must bear both the ''Presorted'' and ''First-Class'' markings.

b. Manifest Mailings. The basic marking must appear in the postage area on each piece as required in 2.1a. The two-letter rate category code required in the keyline on manifest mailing pieces prepared under P710 meets the requirement for other rate markings (e.g., on a First-Class piece mailed at automation carrier route rates, the ''AC'' code may replace the ''AUTOCR'' marking).

3.0 PLACEMENT OF MARKINGS—STANDARD MAIL (B)

3.1 Basic Markings

The basic required marking that indicates the subclass—''Parcel Post'' or ''PP;'' ''Bound Printed Matter;'' ''Special Standard Mail'' or ''SPEC STD;'' ''Library Rate'' or ''Library Mail''—must be printed or produced as part of, or directly below or to the left of, the permit imprint indicia or meter stamp or impression.

3.2 Other Bound Printed Matter Markings

The required markings ''Presorted'' (or ''PRSRT'') or ''Carrier Route Presort'' (or ''CAR-RT SORT'') may be placed in the location specified in 3.1. Alternatively, these markings may be placed in the address area on the line directly above or two lines above the address if the marking appears alone or if no other information appears on the line with the marking except postal optional endorsement line information under M013 or postal carrier route package information under M014.

3.3 Other Parcel Post and Special Standard Markings

The required markings ''Drop Shipment'' or ''D/S'' for Parcel Post, or ''Presorted'' or ''PRSRT'' for Special Standard, may be placed in the location specified in 3.1. Alternatively, it may be placed in the address area on the line directly above or two lines above the address if the marking appears alone.

* * * * *

M032 Barcoded Labels

1.0 BASIC STANDARDS—TRAY AND SACK LABELS

* * * * *

1.3 Content Line (Line 2)

[Amend Exhibit 1.3a by deleting the following headings and all information under them: Priority Mail Letters—Presorted; Priority Mail Flats—Presorted; and Priority Mail Parcels—Presorted.]

[Amend Exhibit 1.3a, Periodicals (PER), by changing the heading ''PER Letters—3/5 and Basic'' to ''PER Letters—5-Digit, 3-Digit, and Basic.'']

[Amend Exhibit 1.3a, Periodicals (PER), by changing the heading ''PER Flats—3/5 and Basic'' to ''PER Flats—5-Digit, 3-Digit, and Basic.'']

[Amend Exhibit 1.3a, Periodicals (PER), by changing the heading ''PER Parcels—3/5 and Basic'' to ''PER Parcels—5-Digit, 3-Digit, and Basic.'']

[Amend Exhibit 1.3a, Periodicals (NEWS), by changing the heading ''NEWS Letters—3/5 and Basic'' to ''NEWS Letters—5-Digit, 3-Digit, and Basic.'']

[Amend Exhibit 1.3a, Periodicals (NEWS), by changing the heading ''NEWS Flats—3/5 and Basic'' to ''NEWS Flats—5-Digit, 3-Digit, and Basic.'']

[Amend Exhibit 1.3a, Periodicals (NEWS), by changing the heading ''NEWS Parcels—3/5 and Basic'' to ''NEWS Parcels—5-Digit, 3-Digit, and Basic.'']

[Amend Exhibit 1.3a, Standard Mail (B), by inserting a new Parcel Post category after Parcel Post Machinable Parcels, to read as follows:]

Class and mailing	Human-Readable	
	CIN	Content line
* * * * *		
Parcel Post DSCF and DDU Rates		
5-digit sacks	688	STD B 5D

Class and mailing			Human-Readable	
			CIN	Content line
*	*	*	*	*

M041 General Standards

[Revise 4.1 and 5.3 and add 4.2b and 5.4. Renumber current 5.4 through 5.7 as 5.5 through 5.8.]

4.0 PALLET BOXES

4.1 Use

A mailer may use pallet boxes constructed of single-, double-, or triple-wall corrugated fiberboard placed on pallets to hold sacks or parcels prepared under M045. M045 requires the use of pallet boxes for machinable Parcel Post claiming OBMC and BMC Presort discounts. Pallet boxes may not be used for DSCF or DDU Parcel Post rate mailings and may not be used for nonmachinable Parcel Post claiming OBMC and BMC Presort discounts. (Single-wall corrugated fiberboard may be used only for light loads (such as lightweight parcels) that do not require transportation by the USPS beyond the entry office.) Pallet boxes must protect the mail and maintain the integrity of the pallet loads throughout transportation, handling, and processing. The base of the boxes must measure approximately 40 by 48 inches.

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5.0 PREPARATION

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5.3 Minimum Load

A minimum load for the rate claimed may be stated in terms of weight, combined piece minimum and weight, or minimum height. M045 specifies a minimum mail height for pieces claimed at OBMC and BMC Presort rates and for the DSCF rate offers a choice between either a piece and pound minimum or a minimum height requirement. In a single mailing, unless otherwise specified by the standards for the rate claimed, the minimum load per pallet is 250 pounds of Periodicals or Standard Mail packages, parcels, and sacks (or three tiers/layers of letter trays of Periodicals or Standard Mail (A)), except that, for mail not entered at a BMC, the processing and distribution manager of the facility where the mailing is entered may issue a written authorization to the mailer allowing preparation of 5-digit, 3-digit, or SCF pallets containing less volume if the mail on those pallets is for that facility's service area. In a mailing or mailing job presented for acceptance at a single postal facility, one overflow pallet may be prepared containing less than 250 pounds or three tiers/layers of letter trays if the mail is for the service area of the entry facility and the pallet is properly labeled under M045, based on its contents. No special authorization is required.

[Insert new 5.4 to read as follows:]

5.4 Minimum Height for Certain Parcel Post Rates

a. Machinable Parcels at OBMC and BMC Presort Discounts. The minimum height of mail in a pallet box is the shortest vertical distance measured from the bottom of a pallet box to the top of the lowest mailpiece. The height of the pallet is not included in this measurement.

b. DSCF Rates and Nonmachinable Parcels at OBMC and BMC Presort Discounts. The minimum height of mail on a pallet is the shortest vertical distance measured from the floor to the top of the lowest mailpiece. The height of pallet is included in this measurement.

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M045 Palletized Mailings

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[Add sections 9.0 through 12.0 to specify preparation requirements for the new BMC, OBMC, DSCF, and DDU rates as follows:]

9.0 PARCEL POST—BULK MAIL CENTER (BMC) PRESORT DISCOUNT

9.1 Machinable Parcels

a. To qualify for the BMC Presort discount, machinable pieces must be sorted to BMCs in 72-inch pallet boxes. Each pallet box must contain at least 54 inches of mail (not including pallet) for a BMC (see M041). Overflow pallet boxes are not permitted. Preparation in sacks, directly on pallets, or in other containers is not permitted.

b. Pallet Box preparation and Line 1 labeling: destination BMC (required); for line 1 use L601.

c. Pallet Box Line 2 labeling: ''STD B MACH BMC.''

9.2 Nonmachinable Parcels

a. To qualify for the BMC Presort discount, nonmachinable pieces must be sorted to BMCs and ASFs under L605 on pallets. Each pallet for a BMC or ASF destination must have a minimum height of 48 inches (pallet and mail) (see M041). Overflow pallets are not allowed. Preparation in sacks, pallet boxes, or in other containers is not permitted.

b. Pallet preparation and Line 1 labeling: destination BMC or destination ASF (required); for line 1, use L601.

c. Pallet Line 2 labeling: ''STD B NON MACH BMC'' or ''STD B NON MACH ASF,'' as appropriate.

10.0 PARCEL POST—ORIGIN BULK MAIL CENTER (OBMC) DISCOUNT

10.1 Machinable Parcels

a. To qualify for the OBMC discount, machinable pieces must be sorted to BMCs in 72-inch pallet boxes. Each pallet box must contain at least 54 inches of mail (not including pallet) for a BMC (see M041). Overflow pallet boxes are not permitted. Preparation in sacks, directly on pallets, or in other containers is not permitted.

b. Pallet Box preparation and Line 1 labeling: destination BMC (required); for Line 1, use L601.

c. Pallet Box Line 2 labeling: ''STD B MACH BMC.''

10.2 Nonmachinable Parcels

a. To qualify for the OBMC discount, nonmachinable pieces must be sorted to BMCs and ASFs under L605 on pallets. Each pallet for a BMC or ASF destination must have a minimum height of 48 inches (pallet and mail) (see M041). Overflow pallets are not allowed. Preparation in sacks, pallet boxes, or in other containers is not permitted.

b. Pallet preparation and Line 1 labeling: destination BMC or destination ASF (required); for line 1, use L601.

c. Pallet Line 2 labeling: ''STD B NON MACH BMC'' or ''STD B NON MACH ASF,'' as appropriate.

11.0 PARCEL POST DSCF RATES

11.1 Sortation

a. To qualify for the DSCF rates, parcels for each SCF area must be sorted to 5-digit ZIP Codes on pallets (or in sacks under M630). Each 5-digit pallet must meet a minimum volume requirement under one of the criteria in 11.1b. Machinable and nonmachinable pieces may be combined on the same pallet to meet the minimum pallet volume requirements.

b. The minimum volume per 5-digit pallet can be met in either of the following ways:

(1) pieces may be placed on 5-digit pallets containing at least 50 pieces and 250 pounds, or

(2) pieces can be placed on 5-digit pallets having a minimum height of 42 inches (pallet and mail combined) (see M041).

c. No overflow pallets are permitted.

d. Preparation in pallet boxes or in other containers (except for sacks under M630) is not permitted.

e. 5-digit pallet labeling:

(1) for Line 1, use city, state, and 5-digit ZIP Code destination of contents.

(2) for Line 2 use: ''STD B 5D.''

f. Refer to the Drop Shipment Product available from the National Customer Support Center (NCSC) (see G043) to determine if the facility serving the 5-digit destination can handle pallets. (There is a charge for this information.) If a facility cannot do so, the DSCF rate is not applicable unless the mail can be prepared under the sacking requirement in M630.

g. Refer to Exhibit E652.5.0 for 5-digit destinations where palletized mail must be entered at the BMC that serves the SCF to obtain the DSCF rate.

12.0 PARCEL POST DDU RATES

Parcels may be bedloaded, sacked, or palletized. No pallet boxes are allowed. There are no preparation or presort requirements for DDU rate mailings other than separation by 5-digit. If pieces are sacked or palletized, they must be prepared to 5-digits and labeled as follows: Line 1 labeling—use city, state, and 5-digit ZIP Code destination; Line 2 use ''STD B 5D.'' Machinable and nonmachinable pieces may be combined. Refer to the Drop Shipment Product available from the National Customer Support Center (NCSC) (see G043) to determine if separation by 5-digit ZIP Codes is required and for other information on delivery unit facilities. (There is a charge for this information.)

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M070 Mixed Classes

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M072 Express Mail and Priority Mail Drop Shipment

1.0 BASIC STANDARDS

1.1 Standards

The express Mail or Priority Mail portion of the shipment must meet the standards in M500 or M100 respectively, and the applicable standards in M072 and D071.

* * * * *

[Revise title of M073 to read as follows:]

M073 Combined Mailings of Standard Mail (A) and Standard Mail (B) Parcels

[Revise title of 1.0 to read as follows:]

1.0 COMBINED MACHINABLE PARCELS—RATES OTHER THAN PARCEL POST OBMC, BMC PRESORT, DSCF AND DDU

[Insert new 1.1 to read as follows:]

1.1 Qualification

Machinable Standard Mail (A) and machinable Standard Mail (B) parcels may be combined under the sortation and other requirements in 1.0 except when claiming the following Parcel Post rates or discounts: Origin BMC, BMC Presort, DSCF, and DDU. When claiming the Origin BMC, BMC Presort, or DSCF rates, machinable Standard Mail (A) and machinable Standard Mail (B) parcels may be combined under the sortation and other requirements in 2.0. Standard Mail (A) parcels must not be combined with Standard Mail (B) parcels prepared for DDU rates.

[Renumber existing 1.1 as 1.2 and revise section references to read as follows:]

1.2 Description

Subject to 1.1 and authorization under 1.5, a mailer who is authorized plant load or plant-verified drop shipment privileges may prepare a combined mailing of Standard Mail (A) and Standard Mail (B) machinable parcels that have been merged and sorted together in sacks (under 1.5) or on pallets (under M040) to achieve the finest presort level. The combined mailing must meet the standards in 1.0 and those that apply to the rates claimed. Each parcel in a combined mailing is subject to the applicable Standard Mail rate, based on the corresponding standards. Required volume for bulk or presort rates is based solely on the quantity of pieces eligible for each rate at the required presort level. Pieces claimed at other rates in the same sack or on the same pallet do not count.

[Renumber existing 1.2 and 1.3 as 1.3 and 1.4, respectively.]

[Renumber existing 2.0 as 1.5. Renumber existing 2.1 through 2.3 as 1.5a through 1.5c, respectively.]

[Renumber existing 3.0 as 1.6. Renumber existing 3.1 as 1.6a and existing 3.1a through d as 1.6a(1) through a(4), respectively. Renumber existing 3.2 as 1.6b and existing 3.2a through e as 1.6b(1) through (5), respectively.]

[Add 2.0 to read as follows:]

2.0 COMBINED PARCELS—PARCEL POST OBMC, BMC PRESORT, AND DSCF RATES

2.1 Qualification

a. When claiming Parcel Post Origin BMC and BMC Presort discounts, and DSCF rates, machinable Standard Mail (A) parcels may be combined with machinable Standard Mail (B) parcels under 2.0.

b. When claiming the Parcel Post DSCF rate, machinable and nonmachinable Standard Mail (A) may be combined with machinable and nonmachinable Standard Mail (B) parcels under 2.0.

c. Standard Mail (A) parcels may not be combined with Standard Mail (B) parcels prepared for DDU rates.

2.2 Authorization

Mailers must be authorized under 2.1 to prepare mailings that combine Standard Mail (A) and Standard Mail (B) parcels.

2.3 Postage Payment

Postage for all pieces must be paid with permit imprint at the post office serving the mailer's plant under an approved manifest mailing system under P710. The applicable agreement must include procedures for combined mailings approved by the RCSC.

2.4 Preparation and Rates

a. Minimum Mailing Volume. Separate minimum mailing volume requirements must be met for Standard Mail (A) parcels and for Standard Mail (B) parcels.

b. Parcel Post Qualifying for DSCF Rates. The combined mailings must be prepared under the applicable 5-digit sack requirements in M630, or the applicable 5-digit pallet requirements in M040 for the Parcel Post DSCF rates. All other requirements for the Parcel Post DSCF rates and the Presorted Standard Mail (A) rates, as applicable must be met. The following additional requirements apply:

(1) If sacked under M630, the minimum requirement of 10 pieces per sack must be met with only Standard Mail (B) parcels. After the minimum sack volume has been met, Standard Mail (A) parcels may be included in the sack.

(2) If palletized under the option to prepare 5-digit pallets when there are at least 50 pieces and 250 pounds per pallet, the pallet minimum must be met with only Standard Mail (B) parcels. After the minimum pallet volume has been met, Standard Mail (A) parcels may be included on the pallet.

(3) If palletized under the option to prepare 5-digit pallets under the 42-inch high pallet minimum, any combination of Standard Mail (A) and Standard Mail (B) parcels may be used to meet the minimum pallet height requirement.

(4) Line 2 of 5-digit pallet and sack labels must read: ''STD A/B 5D.''

(5) Standard Mail (A) parcels are eligible for the Presorted 3/5 rate.

c. Parcel Post Qualifying for OBMC or BMC Presort rates. The combined mailings must be prepared under the M040 BMC pallet requirements for machinable parcels at Parcel Post OBMC or BMC Presort rates. All other

requirements for the Parcel Post OBMC or BMC Presort rates and the Presorted Standard Mail (A) rates must be met. The following additional requirements apply:

(1) The minimum height requirement for each pallet may be met using any combination of Standard Mail (A) and Standard Mail (B) parcels.

(2) Line 2 of BMC pallet box labels must read: ''STD A/B MACH BMC.''

(3) Standard Mail (A) parcels are eligible for the Presorted 3/5 rate only if it can be shown by documentation that there was insufficient volume of Standard Mail (A) parcels in the mailing to prepare separate 5-digit pallets required for Standard Mail (A) machinable parcels under M045. Otherwise, Presorted basic rates apply to the Standard Mail (A) parcels.

2.5 Documentation

Presort documentation is required as applicable for each rate claimed if the manifest does not list pieces in presort order. Separate postage statements must be prepared for the Standard Mail (A) and Standard Mail (B) pieces. Within each group, combined forms may be prepared where the standards and the forms permit. All postage statements must be provided at the time of mailing.

* * * * *

M120 Priority Mail

[Delete 2.0.]

M130 Presorted First-Class Mail

* * * * *

[Revise the title of 2.0 to read as follows:]

2.0 REQUIRED PREPARATION—LETTER- AND CARD-SIZE PIECES

* * * * *

[Revise the title of 3.0 to read as follows:]

3.0 OPTIONAL UPGRADABLE PREPARATION—LETTER- AND CARD-SIZE PIECES

* * * * *

M200 Periodicals (Nonautomation)

* * * * *

3.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)

3.1 Sack Preparation

[Revise 3.1d and 3.1e to read as follows:]

Sack size, preparation, and Line 1 labeling:

* * * * *

d. 3-digit: required at 24 pieces, optional with one six-piece package minimum except under 1.5; for Line 1, use L002, Column A.

e. SCF: required at 24 pieces (no minimum for required origin/optional entry SCF), optional with one six-piece package minimum except under 1.5; for Line 1, use L002, Column C.

* * * * *

M600 Standard Mail (Nonautomation)

[Amend the title of M610. Delete 610.1.0 and renumber 610.2.0 through 610.7.0 as 610.1.0 through 610.6.0, respectively. Make other revisions as shown below for clarity and to change ''nonautomation'' rate to ''Presorted'' rate and change ''Bulk Rate'' to ''Presorted Standard.'']

M610 Presorted Standard Mail (A)

1.0 BASIC STANDARDS

1.1 All Mailings

All mailings at Presorted rates (3/5 and basic) are subject to specific preparation standards in 2.0 through 6.0 and to these general standards (automation rate mail must be prepared under M810 or M820, as applicable):

a. Each mailing must meet the applicable standards in E620 and in M010, M020, and M030.

* * * * *

e. Subject to M012, all pieces eligible for and claimed at Nonprofit rates must be marked ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit''); all other pieces must be marked ''Presorted Standard'' (or ''PRSRT STD'') or, until July 1, 1999, ''Bulk Rate'' (or ''Blk. Rt.''). Subject to M012, all pieces for which the residual shape surcharge applies under E620 also must bear the marking ''RSS.''

* * * * *

1.3 Exception—Standard Mail (A)

When the size of the pieces in a Standard Mail (A) mailing job allows them to qualify for preparation as either letters or automation flats, if part of the job is prepared as palletized automation flats, the remainder may be prepared as palletized flats at Enhanced Carrier Route nonletter rates and Presorted nonletter rates if the number of Presorted rate pieces does not exceed 10% of the total number of pieces in the entire mailing job. Presorted rate pieces in the mailing job that exceed the 10% limit and therefore may not be palletized as flats must be prepared in trays as letter mail and be paid for at the letter rates.

1.4 Processing Instructions

[Change the phrase ''nonautomation rate'' to ''Presorted rate'' to read as follows:]

If a mailer prefers that the USPS not upgrade (automate) letter-size or card-size pieces presented at a Presorted rate, the mailer must identify each tray of such mail with a facing slip or other device marked ''DO NOT AUTOMATE'' and (for letter-size mail) a tray label on which Line 2 includes ''NON–OCR.''

[Revise the title of 2.0 to read as follows:]

2.0 LETTER-SIZE PIECES—REQUIRED PREPARATION

* * * * *

[Revise the title of 3.0 to read as follows:]

3.0 LETTER-SIZE PIECES—OPTIONAL UPGRADABLE PREPARATION

* * * * *

6.0 BEDLOADED BUNDLES OF FLAT-SIZE PIECES

6.1 Authorization

[In the first sentence of 6.1, change ''nonautomation rate'' to ''Presorted rate.'']

The RCSC manager serving the post office where the mailing is to be made may authorize preparation of Presorted rate Standard Mail (A) in bundles that are outside sacks if this preparation benefits the USPS. * * *

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M620 Enhanced Carrier Route Standard Mail

1.0 BASIC STANDARDS

1.1 All Mailings

[Revise 1.1a and 1.1e to read as follows:]

All nonautomation rate Enhanced Carrier Route mailings are subject to these general standards (automation rate Enhanced Carrier Route mailings must be prepared under M810):

a. Each mailing must meet the applicable standards in E620 and in M010, M020, and M030.

* * * * *

e. Subject to M012, all pieces eligible for and claimed at Nonprofit rates must be marked ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit''); all other pieces must be marked ''Presorted Standard'' (or ''PRSRT STD''), or, until July 1, 1999, ''Bulk Rate'' (or ''Blk. Rt.''). In addition, basic, high-density, and saturation rate pieces must each be marked ''ECRLOT,'' ''ECRWSH,'' or ''ECRWSS,'' respectively. Pieces not claimed at the corresponding Enhanced Carrier Route rate must not be marked ''ECRLOT,'' ''ECRWSH,'' or ''ECRWSS.'' Subject to M012, all pieces for which the residual shape surcharge applies under E620 also must bear the marking ''RSS.''

* * * * *

1.4 Exception—Standard Mail (A)

[In 1.4, change the phrase ''nonletter nonautomation rates'' to ''Presorted rates,'' and make further clarifications to read as follows:]

When the size of the pieces in a Standard Mail (A) mailing job allows them to qualify for preparation as either letters or automation flats, if part of the job is prepared as palletized automation flats, the remainder may be prepared as palletized flats at Enhanced Carrier Route nonletter rates and Presorted nonletter rates if the number of Presorted rate pieces does not exceed 10% of the total number of pieces in the entire mailing job. Presorted rate pieces in the mailing job that exceed the 10% limit and therefore may not be palletized as flats must be prepared in trays as letter mail and be paid for at the letter rates.

* * * * *

M630 Standard Mail (B)

[Amend 1.0 to add preparation requirements in 1.3–1.6 for new destination entry Parcel Post rates, introduce new dropship markings, eliminate the ''Catalog'' marking, and make other marking changes.]

1.0 PARCEL POST

1.1 Marking

[Amend 1.1 to provide for identifying Parcel Post pieces as follows:]

Pieces mailed at the Parcel Post rates must be marked ''Parcel Post'' or ''PP'' under M012. Each piece mailed at the DBMC, DSCF, or DDU Parcel Post rates must also be marked ''Drop Ship'' or ''D/S'' under M012. Pieces not marked as required are treated as single-piece rate Parcel Post and are subject to additional postage as necessary.

1.2 Separation

[Amend 1.2 to add requirements for the DSCF and DDU rate categories as follows:]

Parcel Post pieces must be separated by zones when presented for acceptance unless either the correct postage is affixed to each piece or the mailing is prepared under 8.0, P710, P720, or P730. When prepared in sacks, pieces for more than one zone may not be placed in the same sack. Sacks must be separated by zone when presented to the USPS unless the mailing is documented according to 8.0, P710, P720, or P730.

1.3 Documentation

[Amend 1.3 to read as follows:]

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each bulk mailing (a mailing that includes pieces qualifying for rates that require a 50-piece minimum volume requirement). When presented for acceptance, documentation of postage is required under P710, P720, or P730, except when the correct rate is affixed to each piece, or when each piece is of identical weight and the pieces are separated by zone and within each zone are grouped by pieces subject to the same combination of rates. In addition, at the time a mailing is presented for presort and postage verification, the mailer must submit presort documentation for pieces claimed at the OBMC and BMC Presort rates, unless a manifest submitted under P710 lists pieces in presort order. The presort documentation must show for each pallet box or pallet the destination and the number of pieces in each pallet box or on each pallet. A separate column that lists a running total of the number of pieces for each pallet or pallet box in the mailing must also be shown.

[Add 1.4 for DSCF mailings as follows:]

1.4 DSCF Rate

To qualify for the DSCF rate, pieces for the same SCF area (L005) must be sorted to 5-digit ZIP Code destinations either in sacks under 1.5 or on pallets under M041 and M045. Pieces must be part of a mailing of at least 50 Parcel Post pieces. They must be entered at the designated processing and distribution center or facility (SCF under L005) that serves the 5-digit ZIP Code destinations of the pieces except when palletized and entry is required at a BMC (see Exhibit E652.5.0). The DSCF rate is not available for mail prepared on pallets for facilities that are unable to handle palletized mailings. Refer to the Drop Shipment Product available from the National Customer Support Center (NCSC) (see G043) to determine if the facility serving the 5-digit destination can handle pallets. (There is a charge for this information.)

[Add 1.5 to describe sacking requirements for DSCF mailings as follows:]

1.5 DSCF Sack Preparation

Sacking requirements for DSCF rates are as follows:

a. Only 5-digit sacks are permitted.

b. Each 5-digit sack must contain a minimum of 10 pieces (smaller volume not permitted). Machinable and nonmachinable pieces may be combined in the same sack to meet this requirement.

c. Sack Line 1 labeling: use city, state, and 5-digit ZIP Code destination of pieces, preceded for military mail by the prefixes under M031.

d. Sack Line 2: ''STD B 5D.''

[Add 1.6 to describe preparation for DDU rate mailings as follows:]

1.6 DDU Rate

The requirements for the DDU rate are as follows:

a. For the DDU rate, pieces must be part of a mailing of at least 50 Parcel Post pieces.

b. The pieces must be entered by the mailer at the postal facility where the carrier delivers the parcels (delivery unit).

c. There are no minimum sacking or pallet preparation standards. DDU rate mailings may be bedloaded, sacked, or palletized. (Pallet boxes are not allowed.) Machinable and nonmachinable pieces may be combined in the same sack or on the same pallet.

d. If the delivery unit serves more than one 5-digit ZIP Code, the pieces must be separated by 5-digit ZIP Code when unloaded. Refer to the Drop Shipment Product available from the National Customer Support Center (see G043) to determine if the delivery unit serves more than one 5-digit ZIP Code. (There is a charge for this information.)

e. If mail is sacked it must be labeled as follows: Line 1, 5-digit ZIP Code destination; Line 2, ''STD B 5D.''

2.0 BOUND PRINTED MATTER

* * * * *

2.3 Marking

[Revise 2.3 to provide for using new Bound Printed Matter markings as follows:]

Each piece claimed at single-piece Bound Printed Matter rates must be marked ''Bound Printed Matter'' under M012. Each piece claimed at presorted Bound Printed Matter rates must be marked ''Presorted'' and ''Bound Printed Matter'' or ''PRSRT'' and ''Bound Printed Matter under M012. Pieces not marked as required are treated as single-piece rate Parcel Post, subject to additional postage as necessary.

[Delete 2.4. Renumber existing 2.5 through 2.7 as 2.4 through 2.6, respectively.]

3.0 CARRIER ROUTE BOUND PRINTED MATTER

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3.2 Marking

[Revise 3.2. to eliminate the markings ''Blk. Rt.'' and ''CATALOG'' as follows:]

Each piece claimed at carrier route Bound Printed Matter rates must be marked ''Bound Printed Matter'' and ''Carrier Route Presort'' or ''Bound Printed Matter'' and ''CAR-RT SORT''

under M012. The mailer also may opt to include the marking ''Presorted'' or ''PRSRT'' with the above required markings. Residual pieces in a carrier route Bound Printed Matter mailing may have the ''Carrier Route Presort'' or ''CAR-RT SORT'' marking if the number of residual pieces to any single 5-digit ZIP Code area does not exceed 5% of the total qualifying carrier route rate pieces addressed to that 5-digit area. The residual pieces must be separated from the qualifying pieces when presented to the USPS. Pieces not marked as required are treated as single-piece rate Parcel Post and subject to additional postage as necessary.

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4.0 SPECIAL STANDARD MAIL

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4.2 Marking

[Revise 4.2 to add the marking ''PRSRT'' as follows:]

Each piece claimed at Special Standard Mail rates must be marked ''Special Standard Mail'' or ''SPEC STD'' under M012. Each piece claimed at presorted Special Standard Mail rates must also be marked ''Presorted'' or ''PRSRT'' under M012. Pieces not marked as required are treated as single-piece Parcel Post, subject to additional postage as necessary.

* * * * *

M800 All Automation Mail

M810 Letter-Size Mail

1.0 BASIC STANDARDS

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[Amend 1.2 to delete the reference to 3/5 rates and to include information on mail qualifying for carrier route automation rates. Amend 1.2 and 1.3 to move information about postage statements and documentation from 1.2 to 1.3.]

1.2 Mailings

The requirements for mailings are as follows:

a. General. All pieces in a mailing must meet the standards in C810 and must be sorted together to the finest extent required. The definitions of a mailing and permissible combinations are in M011.

b. First-Class. A single automation rate First-Class mailing may include pieces prepared at carrier route, 5-digit, 3-digit, and basic automation rates.

c. Periodicals. A single automation rate Periodicals mailing may include pieces prepared at 5-digit, 3-digit, and basic automation rates.

d. Standard Mail (A). Pieces prepared to qualify for carrier route automation rates must be prepared as a separate mailing (meet a separate minimum volume requirement) from pieces prepared to qualify for 5-digit, 3-digit, and basic automation rates.

1.3 Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by documentation produced by PAVE-certified (or, except for Periodicals, MAC-certified) software or standardized documentation under P012. Mailers may use a single postage statement and a single documentation report for all rate levels in a single mailing. Standard Mail (A) mailers may use a single postage statement and a single documentation report for both an automation carrier route mailing and a mailing containing pieces prepared at 5-digit, 3-digit, and basic automation rates as applicable, submitted for entry at the same time. Documentation of postage is not required if the correct rate is affixed to each piece or if each piece is of identical weight and the pieces are separated by rate when presented for acceptance. Combined mailings of Periodicals publications also must be documented under M200.

* * * * *

3.0 PERIODICALS

3.1 Tray Preparation

[Amend 3.1a to read as follows:]

Tray size, preparation sequence, and Line 1 labeling:

a. 5-digit/scheme: optional, but 5-digit trays required for rate eligibility (150-piece minimum); overflow allowed; for Line 1, for 5-digit trays, use 5-digit ZIP Code destination of pieces, preceded for military mail by the prefixes under M031; for Line 1, for optional 5-digit scheme trays, use destination shown in the current City State File.

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M820 Flat-Size Mail

1.0 BASIC STANDARDS

* * * * *

[Amend 1.2 to add a reference to 5-digit and 3-digit rates. Amend 1.2 and 1.3 to move information about postage statements and documentation from 1.2 to 1.3.]

1.2 Mailings

All pieces in a mailing must meet the standards in C820 and must be sorted together to the finest extent required. First-Class Mail and Standard Mail (A) mailings may include pieces prepared at automation 3/5 and basic rates, as applicable. Periodicals mailings may include pieces prepared at automation 5-digit, 3-digit, and basic rates, as applicable. The definitions of a mailing and permissible combinations are in M011.

1.3 Documentation

[Insert the following after the first sentence in 1.3:]

* * * Mailers may use a single postage statement and a single documentation report for all rate levels in a single mailing. * * *

* * * * *

3.0 PERIODICALS

* * * * *

3.2 Sack Preparation

[Revise 3.2b and 3.2c to read as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. 3-digit: required at 24 pieces, optional with one six-piece package minimum except under 1.7; for Line 1, use L002, Column A.

c. SCF: required at 24 pieces (no minimum for required origin/optional entry SCF), optional with one six-piece package minimum except under 1.7; for Line 1, use L002, Column C.

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

P011 Payment

1.0 PREPAYMENT AND POSTAGE DUE

1.1 Prepayment Conditions

[Revise 1.1e to read as follows:]

The mailer is responsible for proper payment of postage. Postage on all mail must be fully prepaid at the time of mailing, except as specifically provided by standard for:

* * * * *

e. Keys and identification devices returned to owners (see E120 and E130).

* * * * *

1.5 Shortpaid Mail—Basic Standards

[Amend the first sentence of 1.5 by removing ''and nonstandard single-piece Standard Mail (A)'' to read as follows:]

Mail of any class, including mail indicating special services (except Express Mail, registered mail, and nonstandard First-Class Mail), that is received at either the office of mailing or office of address without enough postage is marked to show the total deficiency of postage and fees. * * *

* * * * *

1.8 Shortpaid Nonstandard Mail

[Amend 1.8 by removing ''nonstandard Single-Piece Standard Mail'' to read as follows:] Shortpaid nonstandard First-Class Mail is returned to the sender.

* * * * *

2.0 MAILABLE MATTER IN OR ON PRIVATE MAIL RECEPTACLES

* * * * *

2.3 Partial Distribution

[Amend 2.3 to read as follows:]

If there is a distribution of pieces to some, but not all, addresses on a route, pieces are returned to the delivery unit for use in computing the postage due.

First-Class Mail rates are applied to matter that would require First-Class Mail postage if mailed. For other matter, if the piece weighs less than 16 ounces, the applicable single-piece First-Class Mail or Priority Mail rate based on the weight of the piece is applied, or an applicable Standard Mail (B) rate is applied, whichever is lower. If the piece weighs 16 ounces or more, the Standard Mail (B) rate is applied.

* * * * *

P012 Documentation

* * * * *

2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

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2.3 Rate Level Column Headings

[Amend 2.3a and 2.3b to reflect the new separate 5-digit and 3-digit presort rate categories for Periodicals mail as follows:]

The actual name of the rate level (or corresponding abbreviation) is used for column headings required by 2.2 and shown below:

a. Automation First-Class Mail, Periodicals, and Standard Mail (A):

Rate	Abbreviation
Carrier Route [First-Class Mail letters/cards]	CB
5-Digit [First-Class Mail letters/cards, Periodicals letters and flats, and Standard Mail letters]	5B
3-Digit [First-Class Mail letters/cards, Periodicals letters and flats, and Standard Mail letters]	3B
3/5 [First-Class Mail and Standard Mail flats]	3/5B
Basic [letters/cards and flats]	BB

b. Presorted First-Class Mail, nonautomation presorted Periodicals, and Standard Mail (A):

Rate	Abbreviation
Presorted [First-Class Mail letters/cards, flats, and parcels]	Presort
5-Digit [Periodicals letters, flats, and parcels]	5D
3-Digit [Periodicals letters, flats, and parcels]	3D
3/5 [Standard Mail letters, flats, and parcels]	3/5
Basic [letters/cards and flats]	BS

* * * * *

2.4 Sortation Level

[Amend 2.4 by deleting row ''Unique 3-Digit [Periodicals]'' and ''3DGU.''

[Amend 2.4 by revising the SCF sortation level to read as follows:]

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below:

Sortation level	Abbreviation
* * * * * * *	
SCF [pallets, and Periodicals flats and parcels]	n/a
* * * * * * *	

* * * * *

P013 Rate Application and Computation

1.0 BASIC STANDARDS

* * * * *

1.4 Affixing Postage—Single-Piece Rate Mailings

[Amend the first sentence of 1.4 by removing ''or Standard Mail (A)'' to read as follows:]

In a postage-affixed single-piece rate Express Mail, First-Class Mail, or Priority Mail mailing, or in any postage-affixed Standard Mail (B) mailing, the mailer must affix to each piece a value in adhesive stamps, precanceled stamps, or meter impressions equal to at least the postage required for the piece. * * *

* * * * *

2.0 RATE APPLICATION—EXPRESS MAIL, FIRST-CLASS MAIL, AND PRIORITY MAIL

* * * * *

[Insert new 2.6 to read as follows:]

2.6 Keys and Identification Devices

Keys and identification devices weighing 11 ounces or less are charged the First-Class Mail rates per ounce or fraction thereof in accordance with 2.3, plus a $0.30 fee. Keys and identification devices weighing more than 11 ounces but no more than 2 pounds are mailed at the 2-pound Priority Mail rate in accordance with 2.4, plus a $0.30 fee.

* * * * *

4.0 RATE APPLICATION—STANDARD MAIL (A)

[Remove 4.1 and 4.2 and redesignate current 4.3 as 4.1. Amend 4.1 to revise the breakpoints as follows:]

4.1 Bulk Rates

Bulk rates are based on the weight of the pieces and are applied differently to pieces weighing less than or equal to a ''breakpoint'' (rounded to four decimal places) and those weighing more, as follows:

a. The appropriate minimum per-piece rate applies to Enhanced Carrier Route rate pieces weighing 0.2057 pound (3.2906 ounces) or less; Regular Presorted and automation rate pieces weighing 0.2062 pound (3.2985 ounces) or less; Nonprofit Enhanced Carrier Route rate pieces weighing 0.2057 pound (3.2914 ounces) or less; and Nonprofit Presorted and automation rate pieces weighing 0.2055 pound (3.2873 ounces) or less.

b. A rate determined by adding the appropriate fixed per-piece charge and the corresponding variable per-pound charge (based on the weight of the piece) applies to pieces weighing more than 0.2057 pound (3.2906 ounces) at Enhanced Carrier Route rates, weighing more than 0.2062 pound (3.2985 ounces) at Regular Presorted and automation rates; weighing more than 0.2057 pound (3.2914 ounces) at Nonprofit Enhanced Carrier Route rates; and weighing more than 0.2055 pound (3.2873 ounces) at Nonprofit Presorted and automation rates.

* * * * *

8.0 COMPUTING POSTAGE—STANDARD MAIL (A)

[Remove 8.1 and redesignate current 8.2 through 8.5 as 8.1 through 8.4, respectively; no other changes.]

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P014 Refunds and Exchanges

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2.0 POSTAGE AND FEES REFUNDS

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2.3 Torn or Defaced Mail

[Amend 2.3 by removing ''Single-Piece Standard Mail'' as follows:]

If First-Class Mail or Standard Mail (B) is torn or defaced during USPS handling so that the addressee or intended delivery point cannot be identified, the sender may receive a postage refund. This applies only when the failure to process and/or deliver is the fault of the USPS. Where possible, the damaged item is returned with the postage refund.

2.4 Full Refund

[Amend 2.4f to add delivery confirmation service as follows:]

A full refund (100%) may be made when:

* * * * *

f. Fees are paid for special handling, certified mail, or delivery confirmation, and the article fails to receive the special service for which the fee is paid.

* * * * *

P030 Postage Meters and Meter Stamps

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5.0 MAILINGS

* * * * *

5.4 Place of Mailing

[Amend 5.4a by removing ''Standard Mail (A)'' to read as follows:]

Except as noted below, metered mail must be deposited at a post office acceptance unit, retail unit, or other location designated by the postmaster of the licensing post office (i.e., the post office shown in the meter stamp) and may not be given to a delivery employee or deposited in a street collection box, mailchute, receiving box, cooperative mailing rack, or other mail collection receptacle. Exceptions to this general standard are:

a. Express Mail, Priority Mail (in a weight category for which rates do not vary by zone), or single-piece rate First-Class Mail, may be deposited in any street collection box or such other place where mail is accepted and that is served by the licensing post office.

* * * * *

P600 Standard Mail

1.0 BASIC INFORMATION

1.1 Payment Method

[Amend 1.1 to read as follows:]

a. Standard Mail (A). The mailer is responsible for proper postage payment. Postage for Standard Mail (A) must be paid with meters, permit imprints, or precanceled stamps. Postage-affixed pieces must bear the correct postage unless excepted by standard. A permit imprint may be used for mailings that contain nonidentical-weight pieces only if authorized by the RCSC serving the mailing office.

b. Standard Mail (B). The mailer is responsible for proper postage payment. Subject to the corresponding standards, postage for single-piece rate Standard Mail (B) may be paid by any method. Postage for bulk rate (rate has minimum mailing volume requirement) or presort rate Standard Mail (B) must be paid with meters or permit imprints. Postage-affixed pieces must bear the correct postage unless excepted by standard. A permit imprint may be used for mailings that contain nonidentical-weight pieces only under P710, P720, or P730. Permit imprints may be used for identical weight pieces provided that the mail can be separated into groups that each contain pieces subject to the same zone and same combination of rates (e.g., all are zone 4, Inter-BMC, with a BMC Presort discount and a barcode discount). Alternatively, identical weight permit imprint mail may be mailed under P710, P720, or P730.

* * * * *

[Delete 1.3.]

[Revise title of 2.0 and clarify the language in 2.1 to read as follows:]

2.0 STANDARD MAIL (A)—PRESORTED AND ENHANCED CARRIER ROUTE

2.1 Identical-Weight Pieces

Mailings of identical-weight pieces in a Presorted or Enhanced Carrier Route mailing may have postage affixed to each piece at the exact rate for which the piece qualifies, or each piece in the mailing may have postage affixed at the lowest rate applicable to pieces in the mailing or in the mailing job. Alternatively, a nondenominated precanceled stamp may be affixed to every piece in the mailing or mailing job, or each piece may bear a permit imprint. If exact postage is not affixed, all additional postage must be paid at the time of mailing with an advance deposit account or with a meter strip affixed to the required postage statement. If exact postage is not affixed, documentation meeting the standards in P012 must be submitted to substantiate the additional postage, unless the pieces are separated by rate when presented for acceptance.

* * * * *

[Revise the heading of 3.0 to read as follows:]

3.0 STANDARD MAIL (A)—AUTOMATION RATES

* * * * *

P710 Manifest Mailing System (MMS)

* * * * *

2.0 BASIC STANDARDS

* * * * *

2.2 Mailer System

* * * * *

[Insert new 2.2d to read as follows:]

d. If mailings include oversize Parcel Post (pieces exceeding 108 inches but not more than 130 inches in combined length and girth—see C600), a manifest

must show that the number of oversize parcels does not exceed 10% of all Parcel Post entered in a single mailing, or 10% of the Parcel Post included on an approved daily manifest of mailings that originates from a single location. In addition to other required information, a manifest must identify each oversize parcel, the total number of oversize parcels in the mailing, and the percentage of oversize parcels. If a daily manifest is prepared, it must include a listing of the total number of all pieces for each mailing, the number of oversize pieces for each mailing, and the percentage of oversize pieces calculated on the basis of the combined total of all Parcel Post shipped for the day.

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P750 Plant-Verified Drop Shipment (PVDS)

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2.0 PROGRAM PARTICIPATION

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2.11 Mailer Transport of PVDS Mailings

[Revise 2.11 to provide for additional DSCF and DDU rate Parcel Post mailings as follows:]

Using any means of transportation, including Express Mail or Priority Mail drop shipment, the mailer must transport PVDS mailings from the origin plant to the destination postal facility or facilities. The mailer must not transport PVDS mailings on the same vehicle with shipments not entered as PVDS. For Standard Mail PVDS, the mailer must meet the scheduling standards for mail deposit at destination entry postal facilities. If a vehicle contains mail paid at the Parcel Post destination entry rates, the applicable standards for scheduling of deposits and unloading of vehicles apply to any other mail on the same vehicle for the same destination facility. Any material classified as hazardous under C023 may not be carried in the same vehicle as PVDS mailings.

2.12 Separation of PVDS Mailings

[Renumber 2.12d and e as 2.12e and f, respectively. Add new 2.12d to provide for separation of Parcel Post at different destination entry rates in the same shipment as follows:]

PVDS mailings must be kept separate:

* * * * *

d. If more than one destination entry discount is claimed within a single Standard Mail (B) shipment for deposit at the same postal facility, the mail eligible for each destination discount must be physically separated.

* * * * *

5.0 POSTAGE

* * * * *

5.3 Standard Mail (B)

[Revise 5.3 to explain zone-based postage computation as follows:]

Postage for Standard Mail (B) PVDS must be paid with meter stamps or with a permit imprint under the applicable authorization at the post office serving the mailer's location. Postage for DBMC mailings is computed from the BMC parent post office.

* * * * *

P760 First-Class or Standard Mail Mailings With Different Payment Methods

* * * * *

2.0 POSTAGE

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2.2 Metered Pieces—Standard Mail (A)

[Revise the first sentence of 2.2 to change the term ''nonautomation'' to ''Presorted.'' Delete the last sentence.]

Metered pieces in a combined mailing must bear postage at a Presorted or automation rate for which the pieces are eligible. Additional postage due for metered pieces in a combined mailing is deducted from the mailer's postage due advance deposit account.

* * * * *

2.4 Precanceled Pieces—Standard Mail (A)

[Amend 2.4 by deleting the last sentence.]

* * * * *

3.0 PRODUCING THE COMBINED MAILING

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3.3 Rejected Pieces

[In 3.3a, change the phrase ''Standard Mail (A) 3/5 presort rate'' to ''3/5 Presorted Standard Mail (A) rate as follows:'']

Pieces rejected for any reason by the mailer's automated sorting system and pulled out of the combined mailing stream must be identified by the mailer, specifically accounted for in documentation, and:

a. If postage-affixed, bear postage or have additional postage affixed to equal a rate no lower than the correct Presorted First-Class rate or 3/5 Presorted Standard Mail (A) rate for letters, as applicable.

* * * * *

[Revise the entire R module to read as follows:]

R RATES AND FEES

R000 Stamps and Stationery

1.0 PLAIN STAMPED ENVELOPES

Plain stamped envelopes are priced as follows:

Type	Size [1]	Denomination or value	Quantity and price		
			Each (less than 500)	500	1,000
Basic [2]	6¾	$0.33	$0.40	$173.50	$347.00
	10	0.33	0.40	176.50	353.00
Hologram	6¾				
	10	0.33	0.41	180.50	361.00
Bulk Rate Regular	6¾	0.10		58.50	117.00
	10	0.10		61.50	123.00
Nonprofit Regular & Window	6¾	0.05		33.50	67.00
	10	0.05		36.50	73.00

[1] Size 10 includes all intermediate sizes through 10.
[2] Basic includes all types of envelopes other than those specifically listed.

2.0 PERSONALIZED STAMPED ENVELOPES

Type	Size [1]	Denomination or value	Quantity and price		
			50	500	1,000
Basic [2]	6¾	$0.33	19.50	179.00	358.00
	10	0.33	19.75	180.00	360.00
Hologram	6¾				
	10	0.33	20.00	184.00	368.00
Bulk Rate Regular	6¾	0.10		64.00	128.00
	10	0.10		65.00	130.00
Nonprofit Regular & Window	6¾	0.05		39.00	78.00
	10	0.05		40.00	80.00

[1] Size 10 includes all intermediate sizes through 10.
[2] Basic includes all types of envelopes other than those specifically listed.

3.0 STAMPED CARDS

Stamped cards are priced as follows:

Configuration	Postage	Fee	Total price
Cut single card	$0.21	$0.02	$0.23
Sheet of 40 cards	8.40	0.80	9.20
Double reply-paid card	0.42	0.04	0.46

4.0 POSTAGE STAMPS

Postage stamps are available in the following denominations:

Purposes	Form	Denomination
Regular Postage	Panes of up to 100	$0.01, .02, .03, .04, .05, .10, .15, .20, .21, .23, .25, .28, .29, .30, .32, .33, .40, .45, .46, .50, .52, .56, .60, .75, .79, $1, $2, $3.20, $5, $11.25.
	Booklets	$0.21 ($2.10 booklet).
		$0.33 ($3.30, 4.95, and $6.60 booklets).
	Coils of 100	$0.21, .23 (additional ounce postage), .33.
	Coils of 500	$0.01, .02, .03, .04, .05, .10, .21, .23, .33, $1.
	Coils of 3,000	$0.01, .02, .03, .04, .05, .10, .21, .23, .33.
	Coils of 10,000	$0.05, .33.
Precanceled Presort Rate Postage—First-Class Mail and Standard Mail (A).	Coils of 500, 3,000, and 10,000	Various nondenominated (available only to permit holders).
Commemorative	Panes of up to 50	$0.33 and other denominations.
	20-Stamp Booklets	$0.33 ($6.60 booklets).

R100 First-Class Mail

1.0 NONAUTOMATION—SINGLE PIECES WEIGHING 11 OZ OR LESS

1.1 Cards

Single and double stamped cards and postcards meeting the standards in C100 and E110:

Type	Rate
Single	$0.210.
Double	$0.420 ($0.210 each part).

1.2 Letters, Flats, and Parcels

Letters, flats, and parcels (i.e., matter not eligible for card rates); surcharge might apply under 9.0:

Weight Increment	Rate
First ounce or fraction of an ounce	$0.330.
Each additional ounce or fraction of an ounce	0.230.

2.0 AUTOMATION—SINGLE PIECES OF PRM AND QBRM

2.1 Cards

Single and double stamped cards and postcards meeting the standards in C100, C810, C840, E110, and S922 (QBRM) or S925 (PRM):

Type	Rate [1]
Prepaid Reply Mail (PRM): and Qualified Reply Mail (PRM):	

Type	Rate [1]
Single	$0.18.
Double	$0.36. ($0.18 each part).

[1] QBRM is also subject to fees in S922 and R900. PRM is also subject to fees in S925 and R900.

2.2 Letters

Letter-size mail other than card rate meeting the standards in C810, C840, and S922 (QBRM) or S925 (PRM):

Type	Rate [1]
Prepaid Reply Mail (PRM): and Qualified Reply Mail (PRM):	
Single	$0.18.
Double	$0.36 ($0.18 each part).

[1] QBRM is also subject to fees in S922 and R900. PRM is also subject to fees in S925 and R900.

3.0 NONAUTOMATION—PRESORTED

3.1 Cards

Single and double postcards meeting the standards in C100 and E110: $0.190 each.

3.2 Letters, Flats, and Parcels

Letters, flats, and parcels (i.e., matter not eligible for card rates); surcharge might apply under 9.0:

Weight increment	Rate
First ounce or fraction of an ounce	$0.310.
Each additional ounce or fraction of an ounce	0.230.

4.0 AUTOMATION—BASIC

4.1 Cards

Single and double postcards meeting the standards in C100 and E110: $0.176 each.

4.2 Letters

Letter-size pieces other than cards:

Weight increment	Rate
First ounce or fraction of an ounce	$0.275.
Each additional ounce or fraction of an ounce	0.230.

4.3 Flats

Flat-size pieces; surcharge might apply under 9.0:

Weight increment	Rate
First ounce or fraction of an ounce	$0.300.
Each additional ounce or fraction of an ounce	0.230.

5.0 AUTOMATION—3-DIGIT

5.1 Cards

Single and double postcards meeting the standards in C100 and E110: $0.170 each.

5.2 Letters

Letter-size pieces other than cards:

Weight increment	Rate
First ounce or fraction of an ounce	$0.265.
Each additional ounce or fraction of an ounce	0.230.

6.0 AUTOMATION—5-DIGIT

6.1 Cards

Single and double postcards meeting the standards in C100 and E110: $0.159 each.

6.2 Letters

Letter-size pieces other than cards:

Weight increment	Rate
First ounce or fraction of an ounce	$0.249.
Each additional ounce or fraction of an ounce	0.230.

7.0 AUTOMATION—3/5 (FLAT-SIZE PIECES)

Flat-size pieces; surcharge might apply under 9.0:

Weight increment	Rate
First ounce or fraction of an ounce	$0.280.
Each additional ounce or fraction of an ounce	0.230.

8.0 AUTOMATION—CARRIER ROUTE

8.1 Cards

Single and double postcards meeting the standards in C100 and E110: $0.156 each.

8.2 Letters

Letter-size pieces other than cards:

Weight increment	Rate
First ounce or fraction of an ounce	$0.246
Each additional ounce or fraction of an ounce	0.230

SUMMARY OF FIRST-CLASS RATES

Letters, flats, and parcels weight not over (ounces)[1]	Nonautomation		Automation					
			Letter-Size				Flat-Size	
	Single-piece	Presorted	Basic	3-Digit	5-Digit	Carrier route	Basic	3/5
1	[2] $0.330	[2] $0.310	$0.275	$0.265	$0.249	$0.246	[2] $0.300	[2] $0.280
2	0.560	0.540	0.505	0.495	0.479	0.476	0.530	0.510
3	0.790	0.770	0.735	0.725	0.709	0.706	0.760	0.740
4	1.020	1.000	[3] 0.965	[3] 0.955	[3] 0.939	[3] 0.936	0.990	0.970
5	1.250	1.230					1.220	1.200
6	1.480	1.460					1.450	1.430
7	1.710	1.690					1.680	1.660
8	1.940	1.920					1.910	1.890
9	2.170	2.150					2.140	2.120
10	2.400	2.380					2.370	2.350
11	2.630	2.610					2.600	2.580
Postcards and Stamped Cards[4]:								
Single	0.210	0.19	0.176	0.170	0.159	0.156		
Double	0.420							

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Nonstandard surcharge might apply, single piece $0.16; presort $0.11.
[3] Weight not to exceed 3.2985 ounces; pieces over 3 ounces subject to additional standards.
[4] Rates shown apply to each single or double postcard when originally mailed; reply half of double postcard must bear postage at applicable rate when returned unless prepared as business reply mail.

9.0 KEYS AND IDENTIFICATION DEVICES

Weight	Rate [1]
Not over 1 oz.[2]	$0.63
Over 1 oz., but not over 2 oz	0.86
Over 2 oz., but not over 3 oz	1.09
Over 3 oz., but not over 4 oz	1.32
Over 4 oz., but not over 5 oz	1.55
Over 5 oz., but not over 6 oz	1.78
Over 6 oz., but not over 7 oz	2.01
Over 7 oz., but not over 8 oz	2.24
Over 8 oz., but not over 9 oz	2.47
Over 9 oz., but not over 10 oz	2.70
Over 10 oz., but not over 11 oz	2.93
Over 11 oz., but not over 2 pounds	3.50

[1] Includes $0.30 fee.

[2] Nonstandard surcharge might apply.

10.0 PRIORITY MAIL[1 2 3]

Weight not over (pounds)[1]	Zone[2]2					
	L, 1, 2, & 3	4	5	6	7	8
2[3]	$3.20	$3.20	$3.20	$3.20	$3.20	$3.20
3	4.40	4.40	4.40	4.40	4.40	4.40
4	5.50	5.50	5.50	5.50	5.50	5.50
5	6.60	6.60	6.60	6.60	6.60	6.60
6	6.75	6.90	7.75	7.80	8.25	8.75
7	7.05	7.60	8.60	9.10	9.85	11.15
8	7.35	8.30	9.45	10.05	10.85	12.40
9	7.65	9.00	10.25	11.00	11.90	13.65
10	8.10	9.75	11.10	11.90	12.80	14.85
11	8.55	10.45	11.90	12.85	13.85	16.10
12	9.00	11.15	12.75	13.80	14.85	17.35
13	9.45	11.85	13.60	14.70	15.90	18.60
14	9.90	12.60	14.40	15.65	16.90	19.85
15	10.35	13.30	15.25	16.60	17.95	21.05
16	10.80	14.00	15.50	17.50	18.95	22.30
17	11.25	14.75	16.30	18.45	20.00	23.55
18	11.70	15.45	17.10	19.40	21.00	24.80
19	12.15	16.15	17.90	20.30	22.05	26.05
20	12.55	16.85	18.70	21.25	23.05	27.25
21	12.95	17.60	18.75	22.20	24.10	28.50
22	13.35	18.30	19.50	23.10	25.10	29.75
23	13.75	19.00	20.25	24.05	26.15	31.00
24	14.15	19.75	21.05	25.00	27.15	32.25
25	14.55	20.45	21.80	25.90	28.20	33.45
26	14.95	21.15	22.55	26.85	29.20	34.70
27	15.35	21.85	23.35	27.80	30.25	35.95
28	15.75	22.60	24.10	28.70	31.25	37.20
29	16.15	23.30	24.90	29.65	32.30	38.45
30	16.40	24.00	25.65	30.60	33.30	39.65
31	16.85	24.75	26.40	31.55	34.35	40.90
32	17.30	25.45	27.20	32.45	35.35	42.15
33	17.75	26.15	27.95	33.40	36.40	43.40
34	18.25	26.85	28.70	34.35	37.40	44.65
35	18.70	27.60	29.50	35.25	38.40	45.85
36	19.15	28.30	30.25	36.20	39.45	47.10
37	19.60	29.00	31.05	37.15	40.45	48.35
38	20.05	29.75	31.80	38.05	41.50	49.60
39	20.55	30.45	32.55	39.00	42.50	50.85
40	21.00	31.15	33.35	39.95	43.55	52.10
41	21.45	31.85	34.10	40.85	44.55	53.30
42	21.90	32.60	34.85	41.80	45.60	54.55
43	22.35	33.30	35.65	42.75	46.60	55.80
44	22.85	34.00	36.40	43.65	47.65	57.05
45	23.30	34.75	37.20	44.60	48.65	58.30
46	23.75	35.45	37.95	45.55	49.70	59.50
47	24.20	36.15	38.70	46.45	50.70	60.75
48	24.65	36.85	39.50	47.40	51.75	62.00
49	25.15	37.60	40.25	48.35	52.75	63.25
50	25.60	38.30	41.00	49.25	53.80	64.50
51	26.05	39.00	41.80	50.20	54.80	65.70
52	26.50	39.75	42.55	51.15	55.85	66.95
53	26.95	40.45	43.35	52.05	56.85	68.20
54	27.45	41.15	44.10	53.00	57.90	69.45
55	27.90	41.85	44.85	53.95	58.90	70.70
56	28.35	42.60	45.65	54.85	59.95	71.90
57	28.80	43.30	46.40	55.80	60.95	73.15
58	29.25	44.00	47.15	56.75	62.00	74.40
59	29.75	44.75	47.95	57.65	63.00	75.65
60	30.20	45.45	48.70	58.60	64.05	76.90
61	30.65	46.15	49.50	59.55	65.05	78.10
62	31.10	46.85	50.25	60.45	66.10	79.35
63	31.55	47.60	51.00	61.40	67.10	80.60
64	32.05	48.30	51.80	62.35	68.15	81.85
65	32.50	49.00	52.55	63.25	69.15	83.10
66	32.95	49.75	53.30	64.20	70.20	84.30
67	33.40	50.45	54.10	65.15	71.20	85.55
68	33.85	51.15	54.85	66.05	72.25	86.80
69	34.35	51.85	55.65	67.00	73.25	88.05

Weight not over (pounds)[1]	Zone[2]2					
	L, 1, 2, & 3	4	5	6	7	8
70	34.80	52.60	56.40	67.95	74.30	89.30

[1] Parcels weighing less than 15 pounds, but measuring over 84 inches in combined length and girth are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.
[2] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[3] The 2-pound rate is charged for matter sent in a flat rate envelope provided by the Postal Service, regardless of the actual weight of the piece.

11.0 SURCHARGES

11.1 Nonstandard Surcharge

Surcharge per piece:
a. Single-piece rate: $0.16.
b. Presorted and automation (flat-size) rate: $0.11.

11.2 Hazardous Material Surcharges

Surcharge per piece:
a. Hazardous Medical Material: $0.50.
b. Other Hazardous Material: $1.00.

12.0 FEES

12.1 Mailing

Presort fee, per 12-month period, per office of mailing: $100.00.

12.2 Address Correction Service

Charge per notice issued:
a. Manual: $0.50.
b. Automated: $0.20.

12.3 Pickup

Priority Mail only, per occurrence: $8.25.

R200 Periodicals

1.0 REGULAR

1.1 Pound Rates

Per pound or fraction:
a. For the nonadvertising portion: $0.174.
b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.158
SCF	0.180
1 & 2	0.203
3	0.216
4	0.251
5	0.305
6	0.361
7	0.416
8	0.474

1.2 Piece Rate

Per addressed piece:

Presort level	Nonautomation	Automation[1]	
		Letter-size	Flat-size
Basic	$0.263	$0.182	$0.221
3-Digit	0.217	0.166	0.188
5-Digit	0.214	0.162	0.186
Carrier Route	0.128	.....	.....
High Density	0.116	.....	.....
Saturation	0.102	.....	.....

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.2985 ounces for heavy letters); flat-size at 16 ounces.

1.3 Discounts

Piece rate discounts:
a. Nonadvertising adjustment for each 1% of nonadvertising content: $0.00059 per piece.
b. Delivery unit zone piece discount for each addressed piece claimed in the pound rate portion at the delivery unit zone rate: $0.023.
c. SCF zone piece discount for each addressed piece claimed in the pound rate portion at the SCF zone rate: $0.012.

2.0 PREFERRED—IN-COUNTY

2.1 Pound Rates

Per pound or fraction:

Zone	Rate
Delivery Unit	$0.117
All Others	0.130

2.2 Piece Rates

Per addressed piece:

Presort level	Non-automation	Automation[1]	
		Letter-size	Flat-size
Basic	$0.090	$0.062	$0.077
3-Digit	0.079	0.060	0.066
5-Digit	0.076	0.058	0.062
Carrier Route	0.044	.....	.....
High Density	0.040	.....	.....
Saturation	0.038	.....	.....

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.2985 ounces for heavy letters); flat-size at 16 ounces.

2.3 Discount

Delivery unit zone piece discount for each addressed piece claimed in the pound rate portion at the delivery unit zone rate: $0.004.

3.0 PREFERRED—NONPROFIT

3.1 Pound Rates

Per pound or fraction:

a. For the nonadvertising portion: $0.153.

b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.158
SCF	0.180
1 & 2	0.203
3	0.216
4	0.251
5	0.305
6	0.361
7	0.416
8	0.474

3.2 Piece Rates

Per addressed piece:

Presort level	Nonautomation	Automation	
		Letter-size	Flat-size
Basic	$0.243	$0.164	$0.206
3-Digit	0.184	0.155	0.158
5-Digit	0.182	0.150	0.154
Carrier Route	0.112	.....	.....
High Density	0.092	.....	.....
Saturation	0.079	.....	.....

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.2985 ounces for heavy letters); flat-size at 16 ounces.

3.3 Discounts

Piece rate discounts:

a. Nonadvertising adjustment for each 1% of nonadvertising content: $0.00044 per piece.

b. Delivery unit zone piece discount for each addressed piece claimed in the pound rate portion at the delivery unit zone rate: $0.012.

c. SCF zone piece discount for each addressed piece claimed in the pound rate portion at the SCF zone rate: $0.006.

4.0 PREFERRED—CLASSROOM

4.1 Pound Rates

Per pound or fraction:

a. For the nonadvertising portion: $0.153.

b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.158
SCF	0.180
1 & 2	0.203
3	0.216
4	0.251
5	0.305
6	0.361
7	0.416
8	0.474

4.2 Piece Rates

Per addressed piece:

Presort level	Nonautomation	Automation	
		Letter-size	Flat-size
Basic	$0.243	$0.164	$0.206
3-Digit	0.184	0.155	0.158
5-Digit	0.182	0.150	0.154
Carrier Route	0.112	.....	.....
High Density	0.092	.....	.....
Saturation	0.079	.....	.....

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.2985 ounces for heavy letters); flat-size at 16 ounces.

4.3 Discounts

Piece rate discounts:

a. Nonadvertising adjustment for each 1% of nonadvertising content: $0.00044 per piece.

1. Delivery unit zone piece discount for each addressed piece claimed in the pound rate portion at the delivery unit zone rate: $0.012.

c. SCF zone piece discount for each addressed piece claimed in the pound rate portion at the SCF zone rate: $0.006.

5.0 PREFERRED-SCIENCE-OF-AGRICULTURE

5.1 Pound Rates

Per pound or fraction

a. For the nonadvertising portion: $0.174.

b. For the advertising portion:

Zone	Rate
Delivery Unit	$0.119
SCF	0.135
1 & 2	0.152
3	0.216
4	0.251
5	0.305
6	0.361
7	0.416
8	0.474

5.2 Piece Rates

Per addressed piece:

Presort level	Nonautomation	Automation	
		Letter-size	Flat-size
Basic	$0.263	$0.182	$0.221
3-Digit	0.217	0.166	0.188
5-Digit	0.214	0.162	0.186
Carrier Route	0.128	.....	.....

Presort level	Nonautomation	Automation	
		Letter-size	Flat-size
High Density	0.116		
Saturation	0.102		

[1] Lower maximum weight limits apply: letter-size at 3 ounces (or 3.2985 ounces for heavy letters); flat-size at 16 ounces.

5.3 Discounts

Piece rate discounts:

a. Nonadvertising adjustment for each 1% of nonadvertising content: $0.00059 per piece.

b. Delivery unit zone piece discount for each addressed piece claimed in the pound rate portion at the delivery unit zone rate: $0.023.

c. SCF zone piece discount for each addressed piece claimed in the pound rate portion at the SCF zone rate: $0.012.

6.0 FEES

6.1 Application

Fees as appropriate, per application:
a. Original entry: $305.00.
b. News agent registry: $50.00.
c. Additional entry: $50.00.
d. Reentry: $50.00.

6.2 Address Correction Service

Charge per notice issued:
a. Manual: $0.50.
b. Automated: $0.20.

[Revise R500 to read as follows:]

R500 Express Mail

1.0 EXPRESS MAIL—ALL SERVICE LEVELS[1, 2]

Weight not over (pounds)	Service			
	Same day airport[1]	Custom designed[1]	Next day & second day PO to PO[1]	Net day & seond day PO to addressee[1]
½	$9.25	$9.50	$10.50	$11.25
2[2]	11.25	13.75	12.25	14.95
3	12.25	15.50	14.00	18.00
4	13.25	17.35	15.75	20.25
5	14.25	19.75	17.75	22.00
6	15.50	22.75	21.00	24.75
7	16.50	24.25	22.50	27.00
8	17.75	25.75	23.50	27.75
9	19.00	27.25	24.50	28.50
10	20.25	28.75	25.75	30.00
11	21.50	29.50	26.75	30.75
12	22.75	30.25	27.75	31.50
13	24.00	31.00	29.00	32.25
14	25.25	31.75	31.00	33.50
15	26.50	32.50	32.00	34.25
16	27.75	34.00	33.10	35.50
17	29.00	34.50	34.55	37.00
18	30.25	36.00	36.00	38.50
19	31.50	37.50	37.45	40.00
20	32.75	38.50	38.25	40.75
21	34.00	40.50	40.00	42.00
22	35.25	41.00	41.00	43.00
23	36.50	43.00	42.00	44.25
24	37.75	44.00	43.00	45.70
25	39.00	45.00	44.00	47.20
26	40.25	46.50	45.20	48.65
27	41.50	47.50	46.65	50.10
28	42.75	48.50	48.10	51.55
29	44.00	50.00	49.55	53.00
30	45.25	50.80	51.00	54.50
31	46.50	52.25	52.50	55.95
32	47.60	53.70	53.95	57.40
33	48.70	55.15	55.40	58.85
34	49.80	56.65	56.85	60.30
35	50.90	58.10	58.30	61.75
36	52.00	59.55	59.80	63.25
37	53.10	61.00	61.25	64.70
38	54.20	62.45	62.70	66.15
39	55.30	63.95	64.15	67.60
40	56.40	65.40	65.60	67.70
41	57.50	66.85	66.50	69.15
42	58.60	68.30	67.20	70.60
43	59.70	69.75	68.60	72.00
44	60.80	71.20	70.05	73.45
45	61.90	72.70	71.45	74.85
46	63.00	74.15	72.90	76.25

Weight not over (pounds)	Service			
	Same day airport[1]	Custom designed[1]	Next day & second day PO to PO[1]	Net day & seond day PO to addressee[1]
47	64.10	75.60	73.50	76.55
48	65.15	77.05	74.60	77.95
49	66.15	78.50	76.00	79.35
50	67.15	79.95	77.40	80.75
51	68.15	80.25	78.80	82.15
52	69.15	81.70	80.20	83.55
53	70.15	83.10	81.65	85.00
54	71.15	84.55	83.05	86.40
55	72.15	85.95	84.45	87.80
56	73.15	87.45	85.85	89.20
57	74.15	88.85	87.25	90.60
58	75.15	90.30	88.65	92.05
59	76.15	91.75	90.10	93.45
60	77.15	93.15	91.50	94.85
61	78.15	94.60	92.90	96.25
62	79.15	96.05	94.30	97.65
63	80.15	97.50	95.70	99.05
64	81.15	98.90	97.15	100.50
65	82.15	100.35	98.55	101.90
66	83.15	101.80	99.95	103.30
67	84.15	103.20	101.35	104.70
68	85.15	104.70	102.75	106.10
69	86.15	106.10	104.15	107.50
70	87.15	107.55	105.60	108.95

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] The applicable 2-pound rate is charged for matter sent in a flat rate envelope provided by the Postal Service, regardless of the actual weight of the piece.

2.0 FEES

2.1 Address Correction Service

Charge per notice issued:

a. Manual: $0.50.

b. Automated: $0.20.

2.2 Pickup

Per occurrence: $8.25.

2.3 Delivery Stops

Custom Designed Service only, each: $8.25.

3.0 HAZARDOUS MATERIAL SURCHARGES

a. Hazardous Medical Material: $0.50 per piece.

b. Hazardous Other Material: $1.00 per piece.

R600 Standard Mail

1.0 REGULAR STANDARD MAIL (A)

1.1 Letter-Size Minimum Per-Piece Rates [1]

Pieces 0.2062 pound (3.2985 ounces) or less:

Entry discount	Nonautomation		Automation [2]		
	Basic	3/5	Basic	3-Digit	5-Digit
None	$0.247	$0.209	$0.189	$0.178	$0.160
DBMC	0.232	0.194	0.174	0.163	0.145
DSCF	0.229	0.191	0.171	0.160	0.142
DDU	.....	.....	.....	.....	.....

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Pieces weighing over 3 ounces subject to additional standards.

1.2 Nonletter-Size Minimum Per-Piece Rates [1]

Pieces 0.2062 pound (3.2985 ounces) or less:

Entry discount	Nonautomation [2]		Automation [3]	
	Basic	3/5	Basic	3/5
None	$0.300	$0.240	$0.243	$0.207
DBMC	0.285	0.225	0.228	0.192
DSCF	0.282	0.222	0.225	0.189
DDU	.....	.....	.....	.....

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Add $0.10 per piece for items that are prepared as a parcel or are not flat-size.

[3] Available only for automation-compatible flats.

1.3 Piece-Pound Rates [1]

Pieces more than 0.2062 pound (3.2985 ounces):

Piece/pound rate [2]	Nonautomation [3]		Automation [4]	
	Basic	3/5	Basic	3/5
Per Piece Per Pound	$0.166	$0.106	$0.109	$0.073
(includes entry discount if applicable)	PLUS	PLUS	PLUS	PLUS
None	0.650	0.650	0.650	0.650
DBMC	0.578	0.578	0.578	0.578
DSCF	0.562	0.562	0.562	0.562
DDU	.....	.....	.....	.....

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Each piece is subject to both a piece rate and a pound rate. F[3] Add $0.10 per piece for items that are prepared as a parcel or are neither letter-size nor flat-size.
[4] Available only for automation-compatible flats.

2.0 ENHANCED CARRIER ROUTE STANDARD MAIL (A)

2.1 Letter-Size Minimum Per-Piece Rates [1]

Pieces 0.2057 pound (3.2906 ounces) or less:

Entry discount	Nonautomation			Automation [2]
	Basic	High density	Saturation	Basic
None	$0.164	$0.143	$0.134	$0.157
DBMC	0.149	0.128	0.119	0.142
DSCF	0.146	0.125	0.116	0.139
DDU	0.141	0.120	0.111	0.134

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Pieces weighing over 3 ounces subject to additional standards.

2.2 Nonletter-Size Minimum Per-Piece Rates [1 2]

Pieces 0.2057 pound (3.2906 ounces) or less:

Entry discount	Basic	High density	Saturation
None	$0.164	$0.153	$0.141
DBMC	0.149	0.138	0.126
DSCF	0.146	0.135	0.123
DDU	0.141	0.130	0.118

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Add $0.10 per piece for items that are prepared as a parcel or are not flat-size.

2.3 Piece/Pound Rates [1, 2]

Pieces more than 0.2057 pound (3.2906 ounces):

Piece/pound rates [3]	Basic	High density	Saturation
Per piece	$0.055	$0.044	$0.032
Per pound (includes entry discount if applicable)	PLUS	PLUS	PLUS
None	0.530	0.530	0.530
DBMC	0.458	0.458	0.458
DSCF	0.442	0.442	0.442
DDU	0.420	0.420	0.420

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Add $0.10 per piece for items that are prepared as a parcel or are neither letter-size nor flat-size.
[3] Each piece is subject to both a piece rate and a pound rate.

3.0 NONPROFIT STANDARD MAIL (A)

3.1 Letter-Size Minimum Per-Piece Rates [1]

Pieces 0.2055 pound (3.2873 ounces) or less:

Entry discount	Nonautomation		Automation [2]		
	Basic	3/5	Basic	3-Digit	5-Digit
None	$0.160	$0.138	$0.119	$0.107	$0.090
DBMC	0.145	0.123	0.104	0.092	0.075

Entry discount	Nonautomation		Automation [2]		
	Basic	3/5	Basic	3-Digit	5-Digit
DSCF	0.142	0.120	0.101	0.089	0.072
DDU					

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Pieces weighing over 3 ounces subject to additional standards.

3.2 Nonletter-Size Minimum Per-Piece Rates [1]

Pieces 0.2055 pound (3.2873 ounces) or less:

Entry discount	Nonautomation [2]		Automation [3]	
	Basic	3/5	Basic	3/5
None	$0.234	$0.171	$0.185	$0.150
DBMC	0.219	0.156	0.170	0.135
DSCF	0.216	0.153	0.167	0.132
DDU				

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Add $0.10 per piece for items that are prepared as a parcel or are not flat-size.
[3] Available only for automation-compatible flats.

3.3 Piece/Pound Rates [1]

Pieces more than 0.2055 pound (3.2873 ounces):

Piece/pound rate [2]	Nonautomation [3]		Automation [4]	
	Basic	3/5	Basic	3/5
Per Piece	$0.121	$0.058	$0.072	$0.037
Per Pound (includes entry discount if applicable)	PLUS	PLUS	PLUS	PLUS
None	$0.550	$0.550	$0.550	$0.550
DBMC	0.478	0.478	0.478	0.478
DSCF	0.462	0.462	0.462	0.462
DDU				

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Each piece is subject to both a piece rate and a pound rate.
[3] Add $0.10 per piece for items that are prepared as a parcel or are neither letter-size nor flat-size.
[4] Available only for automation-compatible flats.

4.0 NONPROFIT ENHANCED CARRIER ROUTE STANDARD MAIL (A)

4.1 Letter-Size Minimum Per-Piece Rates [1]

Pieces 0.2057 pound (3.2914 ounces) or less:

Entry discount	Nonautomation		Automation [2]	
	Basic	High density	Saturation	Basic
None	$0.096	$0.073	$0.067	$0.087
DBMC	0.081	0.058	0.052	0.072
DSCF	0.078	0.055	0.049	0.069
DDU	0.073	0.050	0.044	0.064

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Pieces weighing over 3 ounces subject to additional standards.

4.2 Nonletter-Size Minimum Per-Piece Rates [1 2]

Pieces more than 0.2057 pound (3.2914 ounces):

Entry discount	Basic	High density	Saturation
None	$0.096	$0.086	$0.080
DBMC	0.081	0.071	0.065
DSCF	0.078	0.068	0.062
DDU	0.073	0.063	0.057

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Add $0.10 per piece for items that are prepared as a parcel or are not flat-size.

4.3 Piece/Pound Rates [1 2]

Pieces more than 0.2057 pound (3.2914 ounces):

Piece/Pound rate[3]	Basic	High density	Saturation
Per Piece	$0.024	$0.014	$0.008
Per Pound (includes entry discount if applicable)	PLUS	PLUS	PLUS
None	0.350	0.350	0.350
DBMC	0.278	0.278	0.278
DSCF	0.262	0.262	0.262
DDU	0.240	0.240	0.240

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] Add $0.10 per piece for items that are prepared as a parcel or are neither letter-size nor flat-size.
[3] Each piece is subject to both a piece rate and a pound rate.

5.0 PARCEL POST STANDARD MAIL (B)

5.1 Inter-BMC/ASF Single-Piece Machinable Parcel Post[1 2 3 4 5 6]

Inter-BMC/ASF ZIP Codes only, no discount, no surcharge:

Weight not over (pounds)	Zone						
	1 & 2	3	4	5	6	7	8
2	$3.15	$3.15	$3.15	$3.15	$3.15	$3.15	$3.15
3	3.59	3.85	4.23	4.35	4.35	4.35	4.35
4	3.73	4.16	4.80	5.45	5.45	5.45	5.45
5	3.86	4.39	5.31	6.22	6.55	6.55	6.55
6	3.99	4.62	5.71	6.83	7.75	8.20	8.70
7	4.11	4.82	6.07	7.41	8.93	9.80	11.10
8	4.24	5.01	6.38	7.94	9.60	10.80	12.35
9	4.33	5.19	6.71	8.43	10.25	11.85	13.60
10	4.45	5.36	6.99	8.87	10.85	12.75	14.80
11	4.54	5.53	7.27	9.30	11.39	13.80	16.05
12	4.64	5.68	7.53	9.69	11.91	14.62	16.86
13	4.73	5.81	7.77	10.07	12.39	15.25	17.21
14	4.82	5.97	8.01	10.42	12.85	15.83	18.27
15	4.90	6.10	8.24	10.74	13.26	16.37	19.25
16	4.98	6.23	8.45	11.05	13.67	16.88	20.30
17	5.07	6.34	8.66	11.35	14.05	17.36	21.35
18	5.14	6.46	8.85	11.62	14.40	17.82	22.40
19	5.23	6.58	9.04	11.88	14.74	18.26	23.25
20	5.29	6.68	9.20	12.13	15.06	18.67	23.84
21	5.36	6.80	9.37	12.37	15.36	19.06	24.41
22	5.43	6.89	9.54	12.60	15.66	19.43	24.96
23	5.50	7.01	9.71	12.82	15.93	19.78	25.47
24	5.55	7.10	9.85	13.02	16.21	20.12	25.97
25	5.62	7.19	10.01	13.21	16.46	20.43	26.45
26	5.68	7.28	10.15	13.40	16.70	20.73	26.91
27	5.75	7.37	10.28	13.59	16.93	21.03	27.34
28	5.80	7.46	10.43	13.75	17.14	21.32	27.77
29	5.86	7.55	10.56	13.92	17.35	21.58	28.17
30	5.92	7.63	10.67	14.08	17.55	21.84	28.57
31	5.98	7.70	10.80	14.23	17.75	22.08	28.94
32	6.03	7.79	10.92	14.38	17.94	22.31	29.30
33	6.08	7.87	11.04	14.52	18.11	22.54	29.66
34	6.14	7.93	11.14	14.65	18.29	22.75	30.00
35	6.19	8.01	11.26	14.79	18.46	22.96	30.33

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.
[2] For OBMC discount, deduct $0.57 per piece.
[3] For BMC Presort discount, deduct $0.12 per piece.
[4] For barcoded discount, deduct $0.04 per piece.
[5] Pieces with combined length and girth over 84 inches (but not exceeding 108''), and weighing less than 15 lbs. pay the applicable 15-lb. rate.
[6] For pieces weighing more than 35 pounds, see 5.2.

5.2 Inter-BMC/ASF Single-Piece Nonmachinable Parcel Post[1 2 3 4 5]

Inter-BMC/ASF ZIP Codes only, nonmachinable surcharge of $1.35 included:

Weight not over (pounds)	Zone						
	1 & 2	3	4	5	6	7	8
2	$4.50	$4.50	$4.50	$4.50	$4.50	$4.50	$4.50
3	4.94	5.20	5.58	5.70	5.70	5.70	5.70
4	5.08	5.51	6.15	6.80	6.80	6.80	6.80
5	5.21	5.74	6.66	7.57	7.90	7.90	7.90
6	5.34	5.97	7.06	8.18	9.10	9.55	10.05
7	5.46	6.17	7.42	8.76	10.28	11.15	12.45

Weight not over (pounds)	Zone						
	1 & 2	3	4	5	6	7	8
8	5.59	6.36	7.73	9.29	10.95	12.15	13.70
9	5.68	6.54	8.06	9.78	11.60	13.20	14.95
10	5.80	6.71	8.34	10.22	12.20	14.10	16.15
11	5.89	6.88	8.62	10.65	12.74	15.15	17.40
12	5.99	7.03	8.88	11.04	13.26	15.97	18.21
13	6.08	7.16	9.12	11.42	13.74	16.60	18.56
14	6.17	7.32	9.36	11.77	14.20	17.18	19.62
15	6.25	7.45	9.59	12.09	14.61	17.72	20.60
16	6.33	7.58	9.80	12.40	15.02	18.23	21.65
17	6.42	7.69	10.01	12.70	15.40	18.71	22.70
18	6.49	7.81	10.20	12.97	15.75	19.17	23.75
19	6.58	7.93	10.39	13.23	16.09	19.61	24.60
20	6.64	8.03	10.55	13.48	16.41	20.02	25.19
21	6.71	8.15	10.72	13.72	16.71	20.41	25.76
22	6.78	8.24	10.89	13.95	17.01	20.78	26.31
23	6.85	8.36	11.06	14.17	17.28	21.13	26.82
24	6.90	8.45	11.20	14.37	17.56	21.47	27.32
25	6.97	8.54	11.36	14.56	17.81	21.78	27.80
26	7.03	8.63	11.50	14.75	18.05	22.08	28.26
27	7.10	8.72	11.63	14.94	18.28	22.38	28.69
28	7.15	8.81	11.78	15.10	18.49	22.67	29.12
29	7.21	8.90	11.91	15.27	18.70	22.93	29.52
30	7.27	8.98	12.02	15.43	18.90	23.19	29.92
31	7.33	9.05	12.15	15.58	19.10	23.43	30.29
32	7.38	9.14	12.27	15.73	19.29	23.66	30.65
33	7.43	9.22	12.39	15.87	19.46	23.89	31.01
34	7.49	9.28	12.49	16.00	19.64	24.10	31.35
35	7.54	9.36	12.61	16.14	19.81	24.31	31.68
36	7.59	9.42	12.73	16.26	19.96	24.51	31.99
37	7.64	9.49	12.82	16.39	20.12	24.70	32.29
38	7.69	9.57	12.93	16.50	20.27	24.89	32.59
39	7.75	9.63	13.02	16.62	20.41	25.06	32.88
40	7.79	9.70	13.12	16.72	20.55	25.24	33.16
41	7.85	9.77	13.21	16.85	20.68	25.41	33.42
42	7.89	9.83	13.30	16.95	20.81	25.56	33.68
43	7.93	9.89	13.40	17.04	20.93	25.72	33.93
44	7.98	9.94	13.48	17.14	21.05	25.87	34.18
45	8.02	10.01	13.57	17.23	21.16	26.01	34.41
46	8.07	10.07	13.65	17.33	21.28	26.15	34.65
47	8.12	10.13	13.73	17.41	21.38	26.28	34.87
48	8.16	10.19	13.82	17.50	21.49	26.41	35.08
49	8.20	10.24	13.90	17.59	21.59	26.53	35.30
50	8.24	10.29	13.96	17.66	21.70	26.66	35.50
51	8.29	10.35	14.05	17.74	21.79	26.77	35.70
52	8.33	10.41	14.12	17.82	21.88	26.89	35.89
53	8.37	10.46	14.18	17.89	21.97	26.99	36.09
54	8.41	10.52	14.26	17.96	22.06	27.11	36.27
55	8.45	10.55	14.34	18.04	22.14	27.20	36.45
56	8.50	10.62	14.40	18.10	22.23	27.31	36.62
57	8.54	10.67	14.47	18.17	22.30	27.40	36.79
58	8.58	10.71	14.53	18.23	22.39	27.49	36.95
59	8.62	10.76	14.60	18.30	22.47	27.59	37.11
60	8.66	10.81	14.68	18.36	22.54	27.67	37.27
61	8.71	10.87	14.73	18.42	22.61	27.75	37.42
62	8.75	10.91	14.79	18.47	22.69	27.84	37.57
63	8.77	10.96	14.86	18.54	22.75	27.93	37.72
64	8.81	11.00	14.92	18.59	22.81	28.01	37.85
65	8.85	11.05	14.97	18.64	22.87	28.09	37.99
66	8.90	11.10	15.03	18.69	22.94	28.16	38.12
67	8.94	11.14	15.09	18.74	23.00	28.23	38.26
68	8.97	11.18	15.16	18.80	23.06	28.31	38.39
69	9.01	11.22	15.21	18.85	23.11	28.37	38.50
70	9.05	11.28	15.27	18.90	23.18	28.43	38.63

[1] Add $0.50 per piece for hazardous medical material and $1.00 for other hazardous material.
[2] For OBMC discount, deduct $0.57 per piece.
[3] For BMC Presort discount, deduct $0.12 per piece.
[4] Pieces between 108″ and 130″ in combined length and girth pay the applicable 70-lb. rate.
[5] Pieces with combined length and girth over 84 inches (but not exceeding 108″), and weighing less than 15 lbs. pay the applicable 15-lb. rate.

5.3 Local and Intra-BMC/ASF Single-Piece Parcel Post[1 2 3 4]

Weight not over (lbs.)	Zone				
	Local	1 & 2	3	4	5
2	$2.48	$2.70	$2.70	$2.70	$2.70
3	2.65	2.98	2.98	3.02	3.36
4	2.79	3.25	3.25	3.46	4.36
5	2.94	3.45	3.50	3.78	4.87
6	3.08	3.58	3.73	4.07	5.35
7	3.20	3.69	3.95	4.35	5.79
8	3.33	3.82	4.15	4.59	6.21
9	3.44	3.91	4.36	4.84	6.60
10	3.55	4.03	4.54	5.06	6.97
11	3.64	4.12	4.71	5.27	7.31
12	3.71	4.23	4.88	5.47	7.64
13	3.78	4.32	5.04	5.66	7.94
14	3.84	4.41	5.18	5.84	8.23
15	3.90	4.49	5.33	6.02	8.50
16	3.97	4.56	5.47	6.18	8.77
17	4.02	4.65	5.61	6.34	9.01
18	4.07	4.72	5.74	6.49	9.26
19	4.12	4.81	5.86	6.63	9.48
20	4.19	4.88	5.98	6.76	9.69
21	4.23	4.94	6.10	6.89	9.91
22	4.28	5.02	6.20	7.02	10.11
23	4.33	5.08	6.32	7.15	10.30
24	4.38	5.14	6.42	7.26	10.48
25	4.43	5.20	6.53	7.38	10.66
26	4.47	5.27	6.62	7.49	10.83
27	4.52	5.33	6.73	7.59	10.99
28	4.56	5.38	6.82	7.70	11.15
29	4.62	5.45	6.91	7.80	11.31
30	4.67	5.50	7.01	7.89	11.46
31	4.71	5.56	7.10	7.99	11.60
32	4.75	5.62	7.18	8.08	11.74
33	4.80	5.67	7.27	8.17	11.88
34	4.84	5.72	7.35	8.25	12.00
35	4.88	5.77	7.42	8.34	12.13
36	4.91	5.82	7.51	8.43	12.26
37	4.95	5.88	7.58	8.50	12.38
38	4.99	5.93	7.65	8.59	12.49
39	5.04	5.98	7.73	8.66	12.60
40	5.08	6.02	7.80	8.73	12.72
41	5.12	6.08	7.87	8.80	12.82
42	5.16	6.12	7.95	8.87	12.92
43	5.20	6.16	8.01	8.95	13.03
44	5.25	6.21	8.08	9.01	13.12
45	5.28	6.25	8.14	9.08	13.22
46	5.32	6.31	8.21	9.14	13.31
47	5.36	6.36	8.27	9.20	13.40
48	5.40	6.40	8.33	9.27	13.50
49	5.43	6.44	8.39	9.33	13.58
50	5.47	6.47	8.46	9.38	13.67
51	5.51	6.53	8.52	9.45	13.75
52	5.54	6.57	8.57	9.50	13.83
53	5.58	6.60	8.63	9.55	13.91
54	5.62	6.64	8.69	9.61	13.99
55	5.66	6.68	8.75	9.67	14.06
56	5.69	6.73	8.80	9.72	14.13
57	5.72	6.77	8.85	9.77	14.21
58	5.76	6.81	8.91	9.82	14.28
59	5.80	6.85	8.96	9.87	14.35
60	5.82	6.89	9.01	9.93	14.42
61	5.88	6.94	9.06	9.97	14.49
62	5.90	6.98	9.11	10.02	14.55
63	5.94	7.01	9.17	10.07	14.61
64	5.97	7.05	9.22	10.12	14.68
65	6.01	7.09	9.27	10.16	14.74
66	6.03	7.14	9.31	10.20	14.81
67	6.08	7.18	9.36	10.25	14.86
68	6.11	7.20	9.41	10.30	14.92
69	6.15	7.24	9.46	10.34	14.98
70	6.18	7.28	9.50	10.39	15.03

[1] Add $0.50 per piece for hazardous medical material and $1.00 for other hazardous material.

[2] For barcoded discount, deduct $0.04 per piece (machinable parcels only).
[3] Pieces between 108″ and 130″ in combined length and girth pay the applicable 70-lb. rate.
[4] Pieces with combined length and girth over 84 inches (but not exceeding 108″), and weighing less than 15 lbs. pay the applicable 15-lb. rate.

5.4 Destination Entry Parcel Post (DDU/DSCF/DBMC) [1, 2, 3, 4]

Destination facility ZIP Codes only, discount included:

Weight not over (pounds)	DBMC zone					
	DDU	DSCF	1 & 2	3	4	5
2	1.37	1.60	2.01	2.26	2.70	2.70
3	1.44	1.72	2.18	2.67	3.02	3.36
4	1.48	1.84	2.34	2.99	3.46	4.36
5	1.54	1.94	2.49	3.28	3.78	4.87
6	1.59	2.04	2.63	3.56	4.07	5.35
7	1.63	2.12	2.75	3.82	4.35	5.79
8	1.69	2.22	2.88	4.06	4.59	6.21
9	1.73	2.31	3.00	4.30	4.84	6.50
10	1.77	2.38	3.11	4.52	5.06	6.97
11	1.80	2.46	3.21	4.67	5.27	7.31
12	1.81	2.54	3.32	4.81	5.47	7.64
13	1.83	2.60	3.41	4.93	5.66	7.94
14	1.83	2.67	3.50	5.08	5.84	8.23
15	1.84	2.74	3.60	5.20	6.02	8.50
16	1.87	2.80	3.68	5.32	6.18	8.77
17	1.87	2.86	3.76	5.43	6.34	9.01
18	1.88	2.93	3.85	5.54	6.49	9.26
19	1.89	2.98	3.92	5.64	6.63	9.48
20	1.92	3.04	4.00	5.75	6.76	9.69
21	1.92	3.11	4.08	5.85	6.89	9.91
22	1.93	3.16	4.15	5.94	7.02	10.11
23	1.95	3.21	4.22	6.05	7.15	10.30
24	1.96	3.28	4.30	6.14	7.26	10.48
25	1.98	3.32	4.37	6.21	7.38	10.66
26	1.99	3.37	4.42	6.31	7.49	10.83
27	2.01	3.42	4.48	6.38	7.59	10.99
28	2.02	3.47	4.55	6.47	7.70	11.15
29	2.05	3.52	4.61	6.57	7.80	11.31
30	2.08	3.56	4.66	6.63	7.89	11.46
31	2.09	3.61	4.72	6.70	7.99	11.60
32	2.11	3.66	4.78	6.79	8.08	11.74
33	2.13	3.70	4.84	6.85	8.17	11.88
34	2.15	3.74	4.89	6.92	8.25	12.00
35	2.16	3.78	4.94	6.99	8.34	12.13
36	2.17	3.83	5.00	7.05	8.43	12.26
37	2.19	3.87	5.05	7.11	8.50	12.38
38	2.21	3.91	5.10	7.19	8.59	12.49
39	2.24	3.95	5.14	7.24	8.66	12.60
40	2.26	3.99	5.19	7.31	8.73	12.72
41	2.28	4.04	5.25	7.38	8.80	12.82
42	2.30	4.07	5.29	7.44	8.87	12.92
43	2.32	4.11	5.34	7.49	8.95	13.03
44	2.36	4.14	5.38	7.54	9.01	13.12
45	2.37	4.18	5.42	7.61	9.08	13.22
46	2.39	4.22	5.47	7.67	9.14	13.31
47	2.42	4.26	5.52	7.72	9.20	13.40
48	2.44	4.30	5.56	7.77	9.27	13.50
49	2.46	4.33	5.60	7.83	9.33	13.58
50	2.48	4.36	5.64	7.88	9.38	13.67
51	2.51	4.40	5.68	7.93	9.45	13.75
52	2.52	4.44	5.73	8.00	9.50	13.83
53	2.55	4.47	5.77	8.05	9.55	13.91
54	2.58	4.51	5.81	8.09	9.61	13.99
55	2.60	4.54	5.85	8.13	9.67	14.06
56	2.62	4.58	5.89	8.19	9.72	14.13
57	2.64	4.61	5.93	8.24	9.77	14.21
58	2.67	4.65	5.97	8.28	9.82	14.28
59	2.69	4.68	6.01	8.33	9.87	14.35
60	2.70	4.72	6.05	8.39	9.93	14.42
61	2.75	4.74	6.08	8.42	9.97	14.49
62	2.76	4.78	6.12	8.46	10.02	14.55
63	2.79	4.80	6.15	8.52	10.07	14.61
64	2.81	4.84	6.19	8.55	10.12	14.68
65	2.84	4.87	6.23	8.61	10.16	14.74
66	2.85	4.91	6.27	8.66	10.20	14.81

Weight not over (pounds)	DBMC zone					
	DDU	DSCF	1 & 2	3	4	5
67	2.89	4.94	6.30	8.70	10.25	14.86
68	2.91	4.97	6.34	8.74	10.30	14.92
69	2.94	5.00	6.37	8.76	10.34	14.98
70	2.96	5.03	6.41	8.33	10.39	15.03

[1] For barcoded discount, deduct $0.04 per piece (machinable parcels only). Barcode discount is not available for DDU, DSCF rates and DBMC mail entered at an ASF.
[2] Add $0.50 per piece for hazardous medical material and $1.00 for other hazardous material.
[3] Pieces between 108″ and 130″ in combined length and girth pay the applicable 70-lb. rate.
[4] Pieces with combined length and girth over 84 inches (but not exceeding 108"), and weighing less than 15 lbs. pay the applicable 15-lb. rate.

6.0 BOUND PRINTED MATTER STANDARD MAIL (B)

6.1 Single Piece

A. BASE BOUND PRINTED MATTER SINGLE PIECE [1]

Rate	Zone							
	Local	1 & 2	3	4	5	6	7	8
Per piece	$1.050	$1.390	$1.390	$1.390	$1.390	$1.390	$1.390	$1.390
Per pound	0.023	0.076	0.102	0.146	0.214	0.285	0.370	0.4431

[1] For barcoded discount, deduct $0.04 per piece (machinable parcels only).

B. COMPUTED BOUND PRINTED MATTER SINGLE PIECE [1]

Weight not over (pounds)	Zone							
	Local	1 & 2	3	4	5	6	7	8
1.5	$1.08	$1.50	$1.54	$1.61	$1.71	$1.82	$1.95	$2.05
2.0	1.10	1.54	1.59	1.68	1.82	1.96	2.13	2.28
2.5	1.11	1.58	1.65	1.76	1.93	2.10	2.32	2.50
3.0	1.12	1.62	1.70	1.83	2.03	2.25	2.50	2.72
3.5	1.13	1.66	1.75	1.90	2.14	2.39	2.69	2.94
4.0	1.14	1.69	1.80	1.97	2.25	2.53	2.87	3.16
4.5	1.15	1.73	1.85	2.05	2.35	2.67	3.06	3.38
5.0	1.17	1.77	1.90	2.12	2.46	2.82	3.24	3.61
6.0	1.19	1.85	2.00	2.27	2.67	3.10	3.61	4.05
7.0	1.21	1.92	2.10	2.41	2.89	3.39	3.98	4.49
8.0	1.23	2.00	2.21	2.56	3.10	3.67	4.35	4.93
9.0	1.26	2.07	2.31	2.70	3.32	3.96	4.72	5.38
10.0	1.28	2.15	2.41	2.85	3.53	4.24	5.09	5.82
11.0	1.30	2.23	2.51	3.00	3.74	4.53	5.46	6.26
12.0	1.33	2.30	2.61	3.14	3.96	4.81	5.83	6.71
13.0	1.35	2.38	2.72	3.29	4.17	5.10	6.20	7.15
14.0	1.37	2.45	2.82	3.43	4.39	5.38	6.57	7.59
15.0	1.40	2.53	2.92	3.58	4.60	5.67	6.94	8.04

[1] For barcoded discount, deduct $0.04 per piece (machinable parcels only).

6.2 Presorted Rate

a. Base Bound Printed Matter Presorted Rate:

Rate	Zone							
	Local	1 & 2	3	4	5	6	7	8
Per Piece								
Basic[1]	$0.523	$0.697	$0.697	$0.697	$0.697	$0.697	$0.697	$0.697
Carrier	0.456	0.630	0.630	0.630	0.630	0.630	0.630	0.630
Route Per Pound	0.012	0.061	0.087	0.131	0.198	0.269	0.355	0.428

[1] For barcoded discount, deduct $0.04 per piece (machinable parcels only). Barcoded discount not available for parcels mailed at the carrier route bound printed matter rates.

B. COMPUTED BASIC PRESORTED BOUND PRINTED MATTER:[1]

Weight not over (pounds)	Zone							
	Local	1 & 2	3	4	5	6	7	8
1.5	$0.541	$0.789	$0.828	$0.894	$0.994	$1.101	$1.230	$1.339
2.0	0.547	0.819	0.871	0.959	1.093	1.235	1.407	1.553
2.5	0.553	0.850	0.915	1.025	1.192	1.370	1.585	1.767
3.0	0.559	0.880	0.958	1.090	1.291	1.504	1.762	1.981
3.5	0.565	0.911	1.002	1.156	1.390	1.639	1.940	2.195
4.0	0.571	0.941	1.045	1.221	1.489	1.773	2.117	2.409
4.5	0.577	0.972	1.089	1.287	1.588	1.908	2.295	2.623
5.0	0.583	1.002	1.132	1.352	1.687	2.042	2.472	2.837
6.0	0.595	1.063	1.219	1.483	1.885	2.311	2.827	3.265
7.0	0.607	1.124	1.306	1.614	2.083	2.580	3.182	3.693
8.0	0.619	1.185	1.393	1.745	2.281	2.849	3.537	4.121
9.0	0.631	1.246	1.480	1.876	2.479	3.118	3.892	4.549
10.0	0.643	1.307	1.567	2.007	2.677	3.387	4.247	4.977
11.0	0.655	1.368	1.654	2.138	2.875	3.656	4.602	5.405
12.0	0.667	1.429	1.741	2.269	3.073	3.925	4.957	5.833
13.0	0.679	1.490	1.828	2.400	3.271	4.194	5.312	6.261
14.0	0.691	1.551	1.915	2.531	3.469	4.463	5.667	6.689
15.0	0.703	1.612	2.002	2.662	3.667	4.732	6.022	7.117

[1] For barcoded discount, deduct $0.04 per piece (machinable parcels only).

c. Carrier Route Bound Printed Matter:

Weight not over (pounds)	Zone							
	Local	1 & 2	3	4	5	6	7	8
1.5	$0.474	$0.722	$0.761	$0.827	$0.927	$1.034	$1.163	$1.272
2.0	0.480	0.752	0.804	0.892	1.026	1.168	1.340	1.486
2.5	0.486	0.783	0.848	0.958	1.125	1.303	1.518	1.700
3.0	0.492	0.813	0.891	1.023	1.224	1.437	1.695	1.914
3.5	0.498	0.844	0.935	1.089	1.323	1.572	1.873	2.128
4.0	0.504	0.874	0.978	1.154	1.422	1.706	2.050	2.342
4.5	0.510	0.905	1.022	1.220	1.521	1.841	2.228	2.556
5.0	0.516	0.935	1.065	1.285	1.620	1.975	2.405	2.770
6.0	0.528	0.996	1.152	1.416	1.818	2.244	2.760	3.198
7.0	0.540	1.057	1.239	1.547	2.016	2.513	3.115	3.626
8.0	0.552	1.118	1.326	1.678	2.214	2.782	3.470	4.054
9.0	0.564	1.179	1.413	1.809	2.412	3.051	3.825	4.482
10.0	0.576	1.240	1.500	1.940	2.610	3.320	4.180	4.910
11.0	0.588	1.301	1.587	2.071	2.808	3.589	4.535	5.338
12.0	0.600	1.362	1.674	2.202	3.006	3.858	4.890	5.766
13.0	0.612	1.423	1.761	2.333	3.204	4.127	5.245	6.194
14.0	0.624	1.484	1.848	2.464	3.402	4.396	5.600	6.622
15.0	0.636	1.545	1.935	2.595	3.600	4.665	5.955	7.050

These amounts are correct for the corresponding weights. Compute postage exactly for items of intermediate weights as provided in P013.

7.0 SPECIAL STANDARD MAIL—STANDARD MAIL (B)[1]

Weight not over (pounds)	Single-piece	5-digit	BMC
1	$1.24	$0.90	$1.12
2	1.75	1.41	1.63
3	2.26	1.92	2.14
4	2.77	2.43	2.65
5	3.28	2.94	3.16
6	3.79	3.45	3.67
7	4.30	3.96	4.18
8	4.51	4.17	4.39
9	4.72	4.38	4.60
10	4.93	4.59	4.81
11	5.14	4.80	5.02
12	5.35	5.01	5.23
13	5.56	5.22	5.44
14	5.77	5.43	5.65
15	5.98	5.64	5.86
16	6.19	5.85	6.07

Weight not over (pounds)	Single-piece	5-digit	BMC
17	6.40	6.06	6.28
18	6.61	6.27	6.49
19	6.82	6.48	6.70
20	7.03	6.69	6.91
21	7.24	6.90	7.12
22	7.45	7.11	7.33
23	7.66	7.32	7.54
24	7.87	7.53	7.75
25	8.08	7.74	7.96
26	8.29	7.95	8.17
27	8.50	8.16	8.38
28	8.71	8.37	8.59
29	8.92	8.58	8.80
30	9.13	8.79	9.01
31	9.34	9.00	9.22
32	9.55	9.21	9.43
33	9.76	9.42	9.64
34	9.97	9.63	9.85
35	10.18	9.84	10.06
36	10.39	10.05	10.27
37	10.60	10.26	10.48
38	10.81	10.47	10.69
39	11.02	10.68	10.90
40	11.23	10.89	11.11
41	11.44	11.10	11.32
42	11.65	11.31	11.53
43	11.86	11.52	11.74
44	12.07	11.73	11.95
45	12.28	11.94	12.16
46	12.49	12.15	12.37
47	12.70	12.36	12.58
48	12.91	12.57	12.79
49	13.12	12.78	13.00
50	13.33	12.99	13.21
51	13.54	13.20	13.42
52	13.75	13.41	13.63
53	13.96	13.62	13.84
54	14.17	13.83	14.05
55	14.38	14.04	14.26
56	14.59	14.25	14.47
57	14.80	14.46	14.68
58	15.01	14.67	14.89
59	15.22	14.88	15.10
60	15.43	15.09	15.31
61	15.64	15.30	15.52
62	15.85	15.51	15.73
63	16.06	15.72	15.94
64	16.27	15.93	16.15
65	16.48	16.14	16.36
66	16.69	16.35	16.57
67	16.90	16.56	16.78
68	17.11	16.77	16.99
69	17.32	16.98	17.20
70	17.53	17.19	17.41

[1] For barcoded discount, deduct $0.04 per piece (machinable parcels only). Barcoded discount not available for parcels mailed at the 5-digit rate.

8.0 LIBRARY MAIL [1,2]

Weight not over (pounds)	Single Piece
1	$1.44
2	1.91
3	2.38
4	2.85
5	3.32
6	3.79
7	4.26
8	4.50
9	4.74
10	4.98
11	5.22
12	5.46
13	5.70
14	5.94
15	6.18
16	6.42
17	6.66
18	6.90
19	7.14
20	7.38
21	7.62
22	7.86
23	8.10
24	8.34
25	8.58
26	8.82
27	9.06
28	9.30

Weight not over (pounds)	Single Piece
29	9.54
30	9.78
31	10.02
32	10.26
33	10.50
34	10.74
35	10.98
36	11.22
37	11.46
38	11.70
39	11.94
40	12.18
41	12.42
42	12.66
43	12.90
44	13.14
45	13.38
46	13.62
47	13.86
48	14.10
49	14.34
50	14.58
51	14.82
52	15.06
53	15.30
54	15.54
55	15.78
56	16.02
57	16.26
58	16.50
59	16.74
60	16.98
61	17.22
62	17.46
63	17.70
64	17.94
65	18.18
66	18.42
67	18.66
68	18.90
69	19.14
70	1938

[1] Add $0.50 per piece for hazardous medical material and $1.00 per piece for other hazardous material.

[2] For barcoded discount, deduct $0.04 per piece (machinable parcels only).

9.0 FEES

9.1 Mailing

Fee, as appropriate, per 12-month period:

a. Standard Mail (A) (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route): $100.00.

b. Bulk Parcel Return Service Permit: $100.00.

c. Parcel Post destination BMC: $100.00.

d. Presorted Special Standard Mail: $100.00.

9.2 Address Correction Service

Charge per notice issued:

a. Manual: $0.50.

b. Automated: $0.20.

9.3 Pickup

Parcel Post only, per occurrence: $8.25.

9.4 Bulk Parcel Return Service Fee—Standard Mail (A)

Machinable pieces only: fee per piece returned: $1.75.

10.0 SURCHARGES

10.1 Residual Shape Surcharge—Standard Mail (A)

Items that are prepared as a parcel or are neither letter-size or flat-size: per piece: $0.10.

10.2 Hazardous Material Surcharges

a. Hazardous Medical Material: $0.50 per piece.

b. Other Hazardous Material: $1.00 per piece.

R900 Services

1.0 ADDRESS SEQUENCING SERVICE

1.1 Basic Service and Blanks for Missing Addresses Service

Per card included by the mailer that was removed by the USPS for an incorrect or undeliverable address: $0.20.

1.2 Missing or New Addresses Service

Per card included by the mailer that was removed by the USPS for an incorrect or undeliverable address, and for each address (possible delivery) that is added to the customer's list: $0.20.

2.0 BUSINESS REPLY MAIL (BRM)

2.1 Annual Fees

Per 12-month period:

a. BRM permit fee: $100.00.

b. BRM accounting fee: $300.00.

2.2 Charges

Each piece is charged the applicable postage plus the appropriate fee upon return to the permit holder.

Type	Postage (per piece)	Fee with advance deposit account (in addition to postage)	Fee without advance deposit account (in addition to postage)
Regular BRM	Letters: $0.33 first ounce or fraction, $0.23 each additional ounce or fraction. Cards: Single: $0.21 Double: $0.42 ($0.21 each part)	$0.08	$0.30
Qualified BRM	Letters: $0.30 first ounce or fraction, $0.23 each additional ounce or fraction. Cards: Single: $0.18 Double: $0.36 ($0.18 each part)	0.06	N/A

3.0 CALLER SERVICE

Fees are charged as follows:

a. For service provided, per semiannual period:

Fee Group	Fee
A	$275.00
B	275.00
C	275.00
D	275.00

b. For each reserved call number, per calendar year (all post offices): $40.00.

4.0 CERTIFICATE OF MAILING

4.1 Individual Pieces

For service provided (in addition to postage):

a. For individual article listing (Form 3817 or facsimile), per article: $0.60.

b. For additional copies of Form 3817 or mailing bill, per page: $0.60.

c. For firm mailing books (Form 3877 or facsimile), per article listed: $0.25.

4.2 Bulk Quantities

Service (form 3606)	Fee (in addition to postage)
Up to 1,000 pieces (one certificate (Form 3606) for total number) ..	$3.00
Each additional 1,000 pieces or fraction thereof	0.40
Duplicate copy	0.60

5.0 CERTIFIED MAIL

Fee, in addition to postage and other fees, per mailpiece: $1.55.

6.0 COLLECT ON DELIVERY (COD)

Amount to be collected or insurance coverage desired [1]	Fee
$0.01 to 50.00	$4.00
50.01 to 100.00	5.00
100.01 to 200.00	6.00
200.01 to 300.00	7.00
300.01 to 400.00	8.00
400.01 to 500.00	9.00
500.01 to 600.00	10.00
Restricted delivery [2]	$2.75
Notice of nondelivery	3.00
Alteration of COD charges or designation of new addressee	3.00
Registered COD [3]	4.00

[1] For Express Mail COD shipments, the fee charged is based on the amount to be collected. Express Mail insurance automatically covers up to $500 merchandise insurance. If the amount to be collected for an Express Mail COD shipment is between $500 and $600, the maximum COD fee ($10.00) must be paid.

[2] Not available with Express Mail COD.

[3] Fee for registered COD is as shown, regardless of insurance value.

7.0 DELIVERY CONFIRMATION

Fee, in addition to postage and other fees:

Service	Fee
Used in conjunction with Priority Mail:	
Electronic	$0.00
Manual	0.35
Used in conjunction with Parcel Post, Bound Printed Matter, Library, and Special Standard Mail:	
Electronic	0.25
Manual	0.60

8.0 EXPRESS MAIL INSURANCE

Fee, in addition to postage and other fees, for additional Express Mail insurance:

Insurance coverage desired	Fee
$0.01 to $500.00	None
500.01 to 5,000.00	$1.00 for each $100 or fraction thereof over $500 in desired coverage.
Express Mail merchandise maximum liability: $5,000.00	

b. Document reconstruction maximum liability: $500.00.

9.0 INSURED MAIL

Fee, in addition to postage and other fees, for merchandise insurance liability:

Insurance coverage desired	Fee [1]
$0.01 to $50.00	$0.95
50.01 to 100.00	1.90
100.01 to 200.00	2.90
200.01 to 300.00	3.90
300.01 to 400.00	4.90
400.01 to 500.00	5.90
500.01 to 600.00	6.90
600.01 to 700.00	7.90
700.01 to 800.00	8.90
800.01 to 900.00	9.90
900.01 to 1,000.00	10.90
1,000.01 to 5,000.00	10.90 plus $1.00 for each $100 or fraction thereof over $1,000 in desired coverage.
Insured mail maximum liability: $5,000.00	

[1] For bulk insurance deduct $0.40 per piece.

10.0 MAILING LIST SERVICE

10.1 List Correction

For correction of name and address lists and occupant lists:

a. Per name on list: $0.20.

b. Minimum per list: $7.00.

10.2 5-Digit ZIP Code Sortation

For sortation of mailing lists on cards into groups labeled by 5-digit ZIP Code (available only for multi-ZIP Code post offices), per 1,000 addresses or fraction: $70.00.

10.3 Election Boards

For address changes provided to election boards and voter registration commissions, for each Form 3575 or Form 3575–WWW: $0.20.

11.0 MERCHANDISE RETURN SERVICE

For services provided:

a. Fee, per 12-month period: $100.00.

b. Charge (in addition to postage), per mailpiece returned: $0.30.

12.0 METER SERVICE

12.1 On-Site

Fees for on-site meter setting or examination:

Basis	First meter	Each additional meter	Surcharge for each meter checked in or out of service
Scheduled	$27.50	$4.00	$8.50
Unscheduled	31.00	4.00	8.50

12.2 Applicability

The fees apply to meters set or examined at a customer's place of business or at a meter manufacturer's offices. The surcharge must be paid in addition to the on-site fee.

13.0 MONEY ORDER

Per money order issued or service provided:

a. Postal military money order fee (issued by military facilities authorized by the Department of Defense): $0.30.

b. Domestic money order fee (issued at other post offices, including those with branches or stations on military installations): $0.85.

c. Inquiry fee (includes the issuance of a copy of a paid money order): $2.75.

14.0 PARCEL AIRLIFT (PAL)

Fee, in addition to the regular surface rate of postage and other fees:

Weight	Fee
Not more than 2 pounds	$0.45
Over 2 but not more than 3 pounds	0.85
Over 3 but not more than 4 pounds	1.30
Over 4 pounds	1.75

15.0 PERMIT IMPRINT

Application fee: $100.00.

16.0 POST OFFICE BOX SERVICE

For service provided as described in D910:

a. Deposit per key issued: $1.00.

b. Box fee per semiannual (6-month) period:

Fee group	Box size and fee				
	1	2	3	4	5
A	$35.00	$52.50	$92.50	$162.50	$275.00
B	30.00	45.00	75.00	145.00	217.50
C	22.50	32.50	57.50	97.50	162.50
D	9.00	15.00	27.50	40.00	62.50
E	0.00	0.00	0.00	0.00	0.00

17.0 PREPAID REPLY MAIL

17.1 Annual Fee

Per 12-month period: $100.00.

17.2 Monthly Audit Fee

Per month: $1,000.00.

17.3 Postage

Postage must be prepaid based on estimated number of returns and confirmed by audit procedures.

Letters: $0.30 first ounce or fraction thereof, $0.23 each additional ounce or fraction thereof.

Cards: Single: $0.18.

Double: $0.36 ($0.18 each part).

18.0 REGISTERED MAIL

Insurance status	Declared value (in dollars)	Fee (in addition to postage)	Handling charge (in addition to postage and fee)
Without Insurance	$0.00	$7.30	None.
With Insurance (for declared value)	0.01 to 100.00	7.45	None.
	100.01 to 500.00	8.15	None.
	500.01 to 1,000.00	8.85	None.
	1,000.01 to 2,000.00	9.55	None.
	2,000.01 to 3,000.00	10.25	None.
	3,000.01 to 4,000.00	10.95	None.
	4,000.01 to 5,000.00	11.65	None.
	5,000.01 to 6,000.00	12.35	None.
	6,000.01 to 7,000.00	13.05	None.
	7,000.01 to 8,000.00	13.75	None.
	8,000.01 to 9,000.00	14.45	None.

Insurance status	Declared value (in dollars)	Fee (in addition to postage)	Handling charge (in addition to postage and fee)
	9,000.01 to 10,000.00	15.15	None.
	10,000.01 to 11,000.00	15.85	None.
	11,000.01 to 12,000.00	16.55	None.
	12,000.01 to 13,000.00	17.25	None.
	13,000.01 to 14,000.00	17.95	None.
	14,000.01 to 15,000.00	18.65	None.
	15,000.01 to 16,000.00	19.35	None.
	16,000.01 to 17,000.00	20.05	None.
	17,000.01 to 18,000.00	20.75	None.
	18,000.01 to 19,000.00	21.45	None.
	19,000.01 to 20,000.00	22.15	None.
	120,000.01 to 21,000.00	22.85	None.
	21,000.01 to 22,000.00	23.55	None.
	22,000.01 to 23,000.00	24.25	None.
	23,000.01 to 24,000.00	24.95	None.
	24,000.01 to 25,000.00	25.65	None.
With Insurance (maximum insurance liability: $25,000.00).	25,000.00 to 1,000,000.00	$25.65	$0.70 per $1,000 or fraction over first $25,000.
	1,000,000.01 to 15,000,000.00	$708.15	$0.70 per $1,000 or fraction over first $1,000,000.
	Over 15,000,000.00	$10,508.15	Amount determined by Postal Service based on weight, space, and value.

19.0 RESTRICTED DELIVERY

Fee, in addition to postage and other fees, per mailpiece: $2.75.

20.0 RETURN RECEIPT

Fee, in addition to postage and other fees, per mailpiece:

Type	Fee
Requested at time of mailing showing to whom, signature, date, and addressee's address (if different)	$1.45
Requested after mailing showing only to whom and date delivered	7.00

21.0 RETURN RECEIPT FOR MERCHANDISE

Fee, in addition to postage and other fees, per mailpiece:

Type	Fee
Showing to whom, signature, date, and addressee's address (if different)	$1.70
Delivery record	7.00

22.0 SPECIAL HANDLING

Fee, in addition to postage and other fees, per mailpiece:

Weight	Fee
Not more than 10 pounds	$17.25
More than 10 pounds	24.00

S Special Services

S000 Miscellaneous Services

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

2.1 Who May File

[Insert new 2.1d to read as follows:]

A claim may be filed by:

* * * * *

d. Only the sender, for bulk insured mail.

2.2 When to File

[Amend the chart to add the following:]

Mail type or service	When to file (from mailing date)	
	No sooner than	No later than
Bulk Insured	30 days	6 months
* * * * *		

* * * * *

2.11 Payable Claim

[Amend 2.11a and add new 2.11n to read as follows:]

Insurance for loss or damage to insured, registered, or COD mail within the amount covered by the fee paid or within the indemnity limits for Express Mail as explained in 2.12 is payable for the following:

a. Actual value of lost articles at the time and place of mailing (see 2.11n for bulk insured articles).

* * * * *

n. For bulk insured articles, indemnity is provided for the lesser of (1) the actual value of the article at the time of mailing, or (2) the wholesale cost of the contents to the sender.

* * * * *

2.13 Payment

[Amend 2.13 to read as follows:]

The USPS does not make payment for more than the actual value of the article (or, for bulk insurance, the wholesale cost of the contents to the sender if a lesser amount), nor make payment for more than the maximum amount covered by the fee paid.

* * * * *

4.0 ADJUDICATION

4.1 Initial

[Amend 4.1 to read as follows:]

The St. Louis Accounting Service Center (ASC) adjudicates and pays or disallows all domestic claims except the initial adjudication of domestic unnumbered insured claims that are not bulk insured, and those appealed under 4.3. Domestic unnumbered insured claims, except for bulk insured, are adjudicated and paid locally at the post office accepting the claims.

* * * * *

[Insert new 6.0 to read as follows:]

6.0 BULK INSURED CLAIMS

Mailers authorized to mail at bulk insured rates under S913 will receive instructions for filing claims from the manager of Claims and Processing at the St. Louis ASC. The Bulk Insurance Technical Guide provided to the mailer with the authorization to mail at the bulk insured rates includes the format instructions for the soft copy of Form 3877, Firm Mailing Book, and instructions for electronic filing of indemnity claims, which will become mandatory in early 1999.

* * * * *

S070 Mixed Classes

1.0 BASIC INFORMATION:

[Amend 1.1 and 1.2 to read as follows:]

1.1 Priority Mail Drop Shipment

For a Priority Mail drop shipment, enclosed First-Class Mail may be sent certified or special handling; enclosed Standard Mail (B) may be sent special handling. Enclosed mail, regardless of class, may not be sent registered, insured, or collect on delivery (COD). No special services may be given to the Priority Mail segment of the drop shipment.

1.2 Special Handling

A combination mailpiece sent as a Standard Mail (B) parcel may be sent using special handling; only one special handling fee applies to the parcel.

* * * * *

S900 Special Postal Services

S910 Security and Accountability

S911 Registered Mail

1.0 BASIC INFORMATION

* * * * *

1.5 Additional Services

[Insert new 1.5e to read as follows:]

The following services may be combined with registered mail if the applicable standards for the services are met and the additional service fees are paid:

* * * * *

e. Delivery confirmation service.

2.0 FEES AND LIABILITY

* * * * *

[Amend 2.3 to read as follows:]

2.3 Postal Insurance

Postal insurance is provided for articles with a value of at least $0.01 up to a maximum insured value of $25,000. Insurance is included in the fee. For articles with no value ($0.00) postal insurance is not available.

* * * * *

S913 Insured Mail

1.0 BASIC INFORMATION:

[Amend 1.1 to read as follows:]

1.1 Description

Retail insured mail provides up to $5,000 indemnity coverage for a lost, rifled, or damaged article, subject to the standards for the service and payment of the applicable fee. A bulk insurance discount is available for insured articles entered by authorized mailers who meet the criteria in 3.0. No record of insured mail is kept at the office of mailing. Insured mail service provides the sender with a mailing receipt. For mail insured for more than $50, a delivery record is kept at the post office of address. Insured mail is dispatched and handled in transit as ordinary mail.

1.2 Eligible Matter

[Amend 1.2 to read as follows:]

The following types of mail matter may be insured:

a. Standard Mail (B).

b. First-Class Mail (including Priority Mail), only if it contains matter that would be eligible for mailing at a Standard Mail rate (i.e., is not matter described in E110 as required to be mailed as First-Class Mail). Sealed matter must be endorsed ''Standard Mail Enclosed,'' in addition to the First-Class Mail or Priority Mail endorsement.

c. Official government mail endorsed ''Postage and Fees Paid.''

[Insert new 1.3f and g, to read as follows:]

1.3 Ineligible Matter

The following items may not be insured:

* * * * *

f. Matter mailed at Standard Mail (A) rates.

g. Matter mailed at First-Class Mail rates (including Priority Mail) that consists of items described in E110 as required to be mailed at the First-Class rates.

* * * * *

1.5 Additional Services

[Amend 1.5 to add delivery confirmation service as follows:]

Subject to applicable standards and fees, special handling, parcel airlift, merchandise return, and delivery confirmation services also may be used with insured mail. Restricted delivery and return receipt service (Form 3811) may be obtained for parcels insured for more than $50.

* * * * *

[Renumber current 3.0 as 4.0 and insert new 3.0 to read as follows:]

3.0 ADDITIONAL REQUIREMENTS—BULK INSURANCE

3.1 Eligibility

To mail at the bulk insured rates, mailers must obtain an authorization under 3.2 and must meet the following criteria:

a. Enter mailings of insured articles under an approved manifest mailing system agreement.

b. Mail a minimum of 10,000 insured articles annually. To meet the minimum volume requirement, mailers may total all insured articles mailed at multiple locations.

c. Provide a hard copy of Form 3877.

d. Effective early 1999, also provide a soft (electronic) copy of Form 3877, Firm Mailing Book for Accountable Mail, in approved format.

3.2 Authorization

Mailers must request authorization from the manager of Claims and Processing at the St. Louis ASC to mail at the bulk insured rates and to file claims under the alternative procedures for bulk insured mail under S010 (see G043 for address). The request must include documentation to show that the mailer meets the requirements in 3.1.

The manager approves or denies the request. A claimant may appeal the manager's determination under S010.4.2 and 4.3. If approved, the manager of Claims and Processing provides the mailer with a copy of the Bulk Insurance Technical Guide with the authorization to mail at the bulk insured rates. The Technical Guide includes the format instructions for the soft copy of Form 3877, Firm Mailing Book for Accountable Mail, and instructions for electronic filing of indemnity claims, which will become mandatory in early 1999.

* * * * *

S915 Return Receipt

1.0 BASIC INFORMATION

1.1 Description

[Clarify 1.1 to read as follows:]

Return receipt service provides a mailer with evidence of delivery (to whom the mail was delivered and date of delivery). A return receipt also supplies the recipient's actual delivery address if it is different from the address used by the sender. A return receipt may be requested before or after mailing.

1.2 Availability

Amend 1.2 to provide for use with delivery confirmation as follows:]

The service is available only for Express Mail and mail sent certified, collect on delivery (COD), insured for more than $50, or registered. Return receipt service may be used with delivery confirmation only if purchased in connection with insurance for more than $50, COD, or registry service. After delivery, the return receipt is mailed to the sender.

* * * * *

2.0 OBTAINING SERVICE

2.1 At Time of Mailing

[Correct the first sentence by changing ''Form 3811 or marking the mail'' to ''Form 3811 and marking the mail'' as follows:]

The mailer may request the service at the time of mailing by using Form 3811 and marking the mail with the appropriate endorsement in 1.3. * * *

* * * * *

S916 Restricted Delivery

1.0 BASIC INFORMATION

* * * * *

1.2 Availability

[Amend 1.2 to provide for availability with delivery confirmation:]

Restricted delivery may be obtained only for COD mail, mail insured for more than $50, registered mail, or certified mail. Restricted delivery may be used in connection with delivery confirmation service only if purchased along with insurance for more than $50, COD, or registry service.

* * * * *

S917 Return Receipt for Merchandise

1.0 BASIC INFORMATION

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1.2 Availability

[Amend 1.2 to delete ''Single-Piece Standard Mail'' as follows:]

The service is available only for merchandise sent at the Priority Mail, Parcel Post, Bound Printed Matter, Special Standard Mail, or Library Mail rates. This service may not be used on international mail.

1.3 Additional Services

[Amend 1.3 to delete ''Single-Piece Standard Mail'' and add ''Priority Mail'' as follows:]

Special handling is available for Priority Mail, Parcel Post, Bound Printed Matter, Special Standard Mail, or Library Mail, subject to payment of the applicable fee.

* * * * *

[Add new S918 as follows:]

S918 Delivery Confirmation

1.0 BASIC INFORMATION

1.1 Description

Delivery confirmation service provides a mailer with the date that an article was delivered or that a delivery attempt was made. (Signature confirmation (electronic return receipt service) will become available in 1999.) There are two types of delivery confirmation: retail delivery confirmation and electronic (non-retail) delivery confirmation. No record of delivery confirmation is kept at the office of mailing for either type of delivery confirmation. Delivery confirmation does not include insurance, but insurance may be purchased as an additional service (see 1.5).

1.2 Availability

The service is available only for Priority Mail and Standard Mail (B).

1.3 Service Options

The two delivery confirmation service options are as follows:

a. The retail option is available at post offices at the time of mailing. It provides a mailing receipt and access to information that is collected by the USPS and indicates the date of delivery, or attempted delivery, of a mailed item. Customers are able to access this information by calling 1–800–222–1811 toll-free or by accessing the USPS Web site at www.usps.gov and entering the article number.

b. The electronic (non-retail) option provides the sender with access to information indicating the date of delivery or attempted delivery of a mailed item. Delivery information may be obtained either by downloading the entire file or making individual inquiries via the Internet. No mailing receipt is provided. A USPS-approved electronic manifest is required for this option which involves computer links between the mailer and the USPS both to identify delivery confirmation mail to the USPS and to determine delivery status. Mailers must follow the procedures contained in Publication 91, Delivery Confirmation Technical Guide, apply a delivery confirmation barcoded label to each mailpiece, and transmit an electronic file of all items in a mailing prior to or at the time of mailing. If an electronic file passes USPS edit checks, acceptance data is entered into the USPS database. If there are edit errors, the USPS will generate an Error Report file that can be downloaded by the mailer so that a manifest can be corrected and retransmitted. Mailers can obtain delivery information either by downloading the entire file or making individual inquiries via the Internet.

1.4 Fee and Postage

The applicable delivery confirmation fee, if any (R900), must be paid in addition to the correct postage. Fees apply to all pieces except those mailed at Priority Mail rates using electronic (non-retail) delivery confirmation. The fee and postage may be paid with ordinary postage stamps, meter stamps, or permit imprints. The fee and postage on official mail of federal government agencies and departments are collected under applicable reimbursement procedures.

1.5 Additional Services

Delivery confirmation may be combined with insured mail, registered mail, COD, or special handling. Return receipt service under S915 may be used with delivery confirmation only if purchased in connection with insurance (over $50), COD, or registry service. Restricted delivery may be used in connection with delivery confirmation service only if purchased along with insurance (over $50), COD, or registry service. See Publication 91, Delivery Confirmation Technical Guide, for further details.

1.6 Where To Mail

Mailers may mail a retail delivery confirmation item at a post office, branch, or station or give it to a rural carrier. Delivery confirmation mail may not be deposited in a post office drop slot or lobby collection box, street collection box, non-personnel unit, or any similar receptacle for the deposit of mail.

2.0 LABELS

2.1 Types of Labels

Mailers may use one of three delivery confirmation label options:

a. USPS printed Forms 152 obtained from the post office at no charge.

b. When authorized by the USPS, privately printed Forms 152 (labels) that are identical, or nearly identical, in design to Form 152 (see Exhibit 3.1).

c. Privately printed barcoded labels that meet the requirements of sections 2.0 and 3.0.

d. Additional information may be found in Publication 91, Delivery Confirmation Technical Guide.

2.2 Barcoded Label Location

The barcoded label section of Form 152 (see Exhibit 3.1) must be placed either above the delivery address and to the right of the return address, or to the left of the delivery address. The label must be placed on the address side of an item for mailing.

2.3 Use of Peelable Labels

a. Mailers who privately print Forms 152 (2.1b) or their own labels (2.1c) must use a piggy-backed label with a permanent adhesive silicon liner and a die-cut paper surface. The barcode must be printed on the die-cut portion of the label. Human-readable characters printed to represent the barcode ID must appear directly under the barcode and again below the peel-off barcode. The peel-off barcode must have a pick-out corner and be easily removable while also able to withstand handling by USPS.

b. Until data collection device/scanner deployment is completed in 1999, USPS will periodically make available a listing of 3-digit ZIP Codes where peelable labels do not have to be used. This information will be furnished electronically and published in the Postal Bulletin.

3.0 BARCODES

3.1 Symbology

a. Mailers using the retail service option (1.3a) must print their barcodes using Automatic Identification Manufacturers (AIM) Uniform Specifications for USS-Interleave 2 of 5.

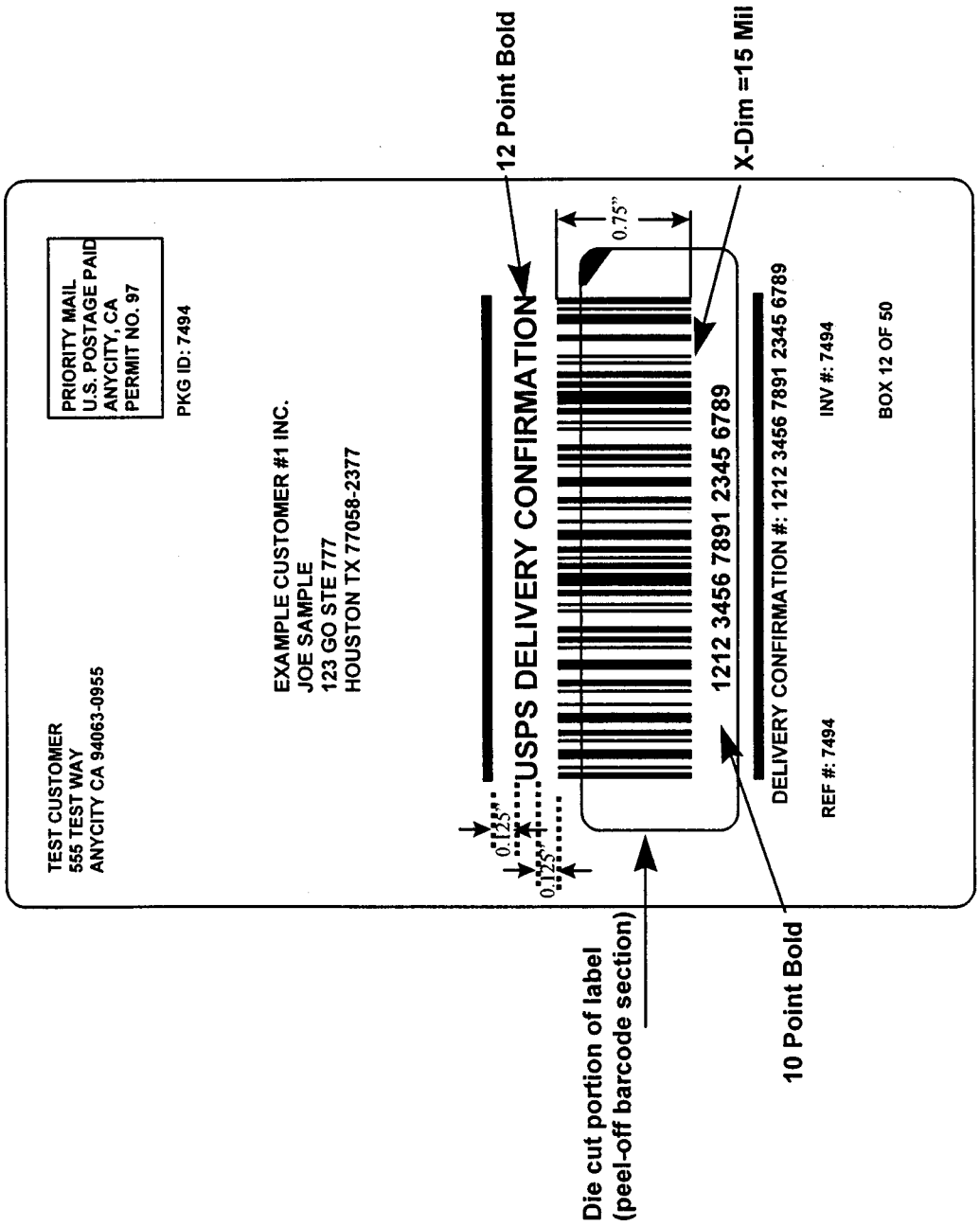
b. Mailers using the electronic (non-retail) service option (1.3b) must use one of the following barcode symbologies: USS Code Interleaved 2 of 5, USS Code 3 of 9, USS Code 128, or UCC/EAN 128. Each barcode must contain a unique Package Identification Code as specified in 3.2. Mailers should follow the procedures contained in Publication 91, Delivery Confirmation Technical Guide, for barcode specifications.

Exhibit 3.1 Retail Delivery Confirmation Label 152

[Retail label will be available in late March 1998]

BILLING CODE 7710–12–P

Exhibit 3.2, Customer Printed Electronic (Non-Retail) Label



BILLING CODE 7710–12–C

3.2 Package Identification Code

a. Each barcode must contain a unique PIC and be made up of four fields totaling twenty (20) characters in all. The four required data fields are:

(1) Service Type Code (STC)—two characters long and identifies the type of product or service used for each item.

(2) Customer ID-nine character long D–U–N–S® number that uniquely identifies the originating customer. Customers may obtain a D–U–N–S® number by calling 1–800–323–0505 or via the Internet at www.dnb.com.

(3) Package Sequence Number (PSN)—a fixed sequential number eight characters long.

(4) Check Digit—one character long.

(5) Additional information may be found in Publication 91, Delivery Confirmation Technical Guide.

b. For barcode specifications mailers should consult Publication 91, Delivery Confirmation Technical Guide.

203.3 Printing

Labels printed by mailers must meet the following specifications:

a. Each barcoded label must bear a unique delivery confirmation Package Identification Code (PIC) barcode as specified in 3.2 and have ''USPS DELIVERY CONFIRMATION'' printed between ⅛-inch and ½-inch above the barcode in bold letters having a minimal size of 12 point non-serif type. Human-readable characters that represent the barcode ID must be printed between ⅛-inch and ½-inch under the barcode in bold non-serif type of no less than 10 point. These characters must be parsed in accordance with Publication 91. There must be a minimum of ⅛-inch clearance between the barcode and any printing. The barcode range of widths of narrow bars and spaces is 0.015 inch to 0.017 inch. The width of the narrow bars or spaces shall be no less than 0.013 inch, nor greater than 0.021 inch. All bars shall be at least 0.75 inch high. Bold (1/16th inch minimum) lines must appear between ⅛-inch and ½-inch above and below the human-readable endorsements to segregate the delivery confirmation barcode from other areas of the shipping label. The line length must be equal to the length of the barcode. See Exhibit 3.2 for an example of a customer printed non-retail delivery confirmation label. Additional information may be found in USPS Publication 91.

b. Each barcode must meet the requirements in 3.1 for the type of service.

c. Each printer used to print barcoded labels must be certified by USPS before a mailer may print. For certification, a mailer must forward 20 barcoded labels/forms generated by each printer to the National Customer Support Center (NCSC) (see G043) for evaluation and approval. The samples must be mailed to the attention of ''Barcode Certification.'' All barcodes must be in accordance with 2.0 and 3.0. In the event that barcode print quality falls out of tolerance after approval has been granted, mailers will be contacted by USPS and an effort will be made to jointly resolve the problem. Should circumstances warrant, the printing and use of customer printed labels/forms may be discontinued until a mailer's printer(s) can be re-certified.

d. Endorsements used with additional services that are combined with delivery confirmation service must be prepared in accordance with sample formats contained in Publication 91, Delivery Confirmation Technical Guide.

4.0 ELECTRONIC FILE TRANSMISSION

4.1 Electronic File Transmission

Publication 91, Delivery Confirmation Technical Guide, contains electronic file transmission specifications. Mailers may contact the National Customer Support Center (NCSC) (see G043) or call 1–800–331–5746 for a copy of this publication. To use electronic file procedures, a test file must be uploaded and approved before mailings begin. Should electronic file quality fall below a standard of 95 percent over a 30-day period, USPS may withdraw authorization and require re-authorization. Any delivery confirmation item submitted while re-authorization is pending will be subject to the retail rate.

* * * * *

S920 Convenience

S921 Collect on Delivery (COD) Mail

1.0 BASIC INFORMATION

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1.2 Eligible Matter

[Amend 1.2 by removing ''Single-Piece Standard Mail'' to read as follows:]

COD service may be used for Express Mail, First-Class Mail, Priority Mail, and Standard Mail (B) (Parcel Post, Bound Printed Matter, Special Standard Mail, and Library Mail) if:

* * * * *

1.4 Other Services

[Amend 1.4 to read as follows:]

Subject to applicable standards and fees, return receipt, restricted delivery, and delivery confirmation services are available for COD. Restricted delivery is not available with Express Mail COD.

* * * * *

S922 Business Reply Mail (BRM)

1.0 BASIC INFORMATION

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[Revise heading of 1.5 to read as follows:]

1.5 Qualified Business Reply Mail (Formerly Business Reply Mail Accounting System)

[Revise 1.5 to read as follows:]

Any mailer may obtain a reduced fee and reduced postage for the return of BRM cards and letters under Qualified Business Reply Mail (QBRM). QBRM provides an automated means of processing and rating BRM. To participate in QBRM:

* * * * *

e. The correctly prepared barcode corresponding to the unique ZIP+4 code in the address must appear on each QBRM piece distributed.

f. Each BRM card or letter under QBRM must have a facing identification mark (FIM) C and meet the size and paper stock standards in C810.

* * * * *

2.0 PERMITS

* * * * *

[Amend the heading and text of 2.2 to read as follows:]

2.2 QBRM Participation

To participate in QBRM, the mailer must make a written request to open an account for QBRM. The request must be submitted to the postmaster or business mail entry manager at the post office to which the pieces are to be returned. If the mailer's request is approved, the USPS issues the mailer an authorization letter. The mailer also receives instructions on how to prepare BRM, including the ZIP+4 codes to be used. The mailer must have a valid BRM permit and pay the annual accounting fee to participate in QBRM. Preproduction samples, if provided with the request, are reviewed by the USPS for compliance with the relevant standards.

* * * * *

3.0 POSTAGE AND FEES

3.1 Permit Fee

[Amend 3.1 to read as follows:]

An annual BRM permit fee is charged each 12-month period.

* * * * *

[Replace current 3.4 and 3.5 with new 3.4 to read as follows:]

3.4 Charges

a. Postage. The applicable First-Class Mail or Priority Mail postage on each returned piece is collected from the addressee on delivery. A lower rate of First-Class Mail postage applies to QBRM (R900).

b. Fee Per Piece. The applicable BRM fee must be collected for each returned piece of BRM in addition to the applicable single-piece First-Class Mail or Priority Mail postage. Lower piece fees apply to mail paid through a BRM advance deposit account and to QBRM pieces (R900).

c. Improperly Prepared QBRM. The appropriate non-QBRM First-Class Mail postage plus the non-QBRM per piece fee is charged for:

(1) Business reply cards and letters returned under QBRM that were rejected by USPS barcode sorters and found not to meet the standards for QBRM.

(2) QBRM pieces with the incorrect barcode (e.g., a barcode representing the card rate on a letter-size piece).

[Renumber current 3.6 through 3.11 as 3.5 through 3.10, respectively. Amend renumbered 3.6 to read as follows:]

3.6 Cash or Postage Due

Payment may be paid in cash or by a regular postage-due account. The applicable BRM fee is collected, but no business reply accounting fee is charged when a regular postage-due account is used (P011). A postage-due account does not qualify the BRM for the lower per piece charge given permit holders with a business reply account.

3.7 Account Use

[Amend renumbered 3.7c and d to read as follows:]

A BRM advance deposit account must be used only for payment of postage and fees on BRM, subject to these conditions:

* * * * *

c. When a permit holder with a business reply account desires a separation of charges, payment of a business reply accounting fee is required for each billing prepared for each separation. If a business reply accounting fee is not paid for each separation, the permit holder pays the appropriate non-QBRM First-Class Mail postage, plus for each separation the per-piece charge applicable to any mailer without a business reply account.

d. A sufficient balance must be maintained in the permit holder's advance deposit account for BRM. The permit holder is notified if funds are insufficient. After 3 days, if no funds are deposited, BRM on hand is charged at the fee for postage due or cash transactions.

* * * * *

3.8 Single Item

[Amend renumbered 3.8 to read as follows:]

Except for QBRM, two or more BRM pieces may be mailed as a single piece, if the BRM pieces are identically addressed and prepared in accordance with C100. BRM postage-due calculations are based on the total weight of the piece and the appropriate First-Class Mail or Priority Mail postage, plus the BRM charge for one piece. If the combined pieces become separated, BRM postage and fee charges are calculated for each piece.

* * * * *

4.0 FORMAT

* * * * *

4.3 Print Reflectance

[Amend 4.3 to read as follows:]

All ink colors are acceptable, if the piece meets the appropriate reflectance standards in C830 and C840.

* * * * *

4.8 Delivery Address

[Amend 4.8 to read as follows:]

Unless printed on an address label or on an insert for a window envelope under 6.0, the complete address (including the permit holder's name, street address and/or post office box number, city, state, and ZIP Code) must be printed directly on the piece, subject to these conditions:

a. For pieces distributed under QBRM, the address must include a unique ZIP+4 code that is preassigned for the BRM piece and that identifies the type of BRM, the applicable rate, and the individual permit holder.

b. Preprinted labels with only delivery address information (including a ZIP+4 barcode under 5.0) are permitted for addressing BRM but the permit holder's name must still be printed directly on the BRM. Permit holders are liable for the postage and fees on BRM returned with improper addressing.

c. The bottom line of the address must not be lower than ⅝ inch or higher than 2¼ inches from the bottom edge of the piece. A clear margin void of any extraneous matter (except for the horizontal bars specified in 4.9) of at least 1 inch is required between the left and right edges of the piece and the address.

* * * * *

f. A company logo is permitted if placed no lower than ⅝ inch from the bottom edge of the piece on prebarcoded BRM or the top of the street address or the post office box line on nonbarcoded BRM. The logo must not interfere with any required business reply endorsements.

* * * * *

5.0 PREBARCODED BRM

[Delete current 5.1 through 5.7, and insert new 5.1 through 5.3 to read as follows:]

5.1 General Format Standards

Prebarcoding of BRM is optional except for letter-size BRM enclosed in automation rate mailings and for BRM processed under QBRM. Prebarcoded BRM must meet all general format standards in 4.0, the applicable barcoding standards in C840, the mailpiece design requirements in C810, and these standards:

a. FIM C must be used (see C100).

b. The ZIP+4 codes and barcodes assigned to the BRM permit holder by the USPS must be used. Delivery point barcodes are not permitted on BRM.

c. Except as provided in d, the ZIP+4 barcode must be placed on the address side of the piece and positioned in one of the appropriate locations in C840.

d. Until July 1, 1999, mailers may continue to use existing stocks of BRM envelopes and cards with the barcode placed in the lower right corner within these boundaries:

(1) Left: 4½ inches from the right edge of the piece.

(2) Right: right edge of the piece.

(3) Top: ⅝ inch from the bottom edge of the piece.

(4) Bottom: bottom edge of the piece.

5.2 Samples

Mailers are encouraged to submit preproduction samples of BRM to the USPS for approval.

5.3 Error Notification

If the USPS discovers a BRM format error, the responsible permit holder or authorized permit user receives written notification of the error and applicable specification. The permit holder must correct the error and make sure that all future BRM pieces distributed by any means meet appropriate specifications. The repeated distribution of BRM with a format error, as determined by the USPS, is grounds for revoking a business reply permit. To obtain a new permit after a BRM permit is revoked for not following BRM format specifications, a former permit holder must complete a new application on Form 3615, pay the required BRM permit fee, pay a new business reply accounting fee if applicable, and submit

two samples of each BRM format to the appropriate post office for approval for the next 2-year period.

[Replace 6.0 with the following:]

6.0 MAILPIECE CHARACTERISTICS

6.1 Paper Weight

Paper envelopes used for BRM must meet the basis weight requirements in C810.

6.2 Nonpaper Envelopes

USPS Engineering must approve nonpaper envelopes for mailability.

6.3 Reflectance

BRM pieces must meet the reflectance requirements in C830.

6.4 Sealing and Edges

Any BRM piece is nonmailable if sealed with wax, clasps, string, staples, or buttons; if all edges are not straight; or if the piece is not rectangular.

6.5 Window Envelope

The following standards apply to BRM prepared in a window or open-panel envelope:

a. The pieces must meet the standards in C830 for envelopes with an address windows and inserts.

b. The endorsement ''NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES,'' horizontal bars, FIM, and the legend ''BUSINESS REPLY MAIL'' must be printed directly on the address side of the envelope. Other required elements, including ''FIRST-CLASS MAIL PERMIT NO.,'' city, state, ''POSTAGE WILL BE PAID BY ADDRESSEE,'' and the permit holder's name and complete delivery address, may appear either on the enclosure in the window or be printed directly on the envelope.

c. The address showing through the window must be that of the permit holder or an authorized agent/dealer.

6.6 BRM Self-Mailer

Self-mailers must meet the standards in C810 and must contain instructions to the user for folding and sealing.

6.7 BRM Card

A BRM card must be rectangular, not less than 3½ by 5 inches or more than 4¼ by 6 inches, and of uniform thickness not less than 0.007 inch or more than 0.016 inch to qualify for the card postage rate. Any card larger than those dimensions is mailable but is charged at the First-Class Mail rate for matter other than cards. Additional standards in C810 apply to barcoded BRM, including QBRM.

6.8 BRM Label

The following standards apply to BRM labels:

a. For other than letter-size pieces, the minimum size of a label with the legend ''Business Reply Label'' is 2 inches high and 3 inches long. It is not necessary to print FIMs or barcodes on these labels, but all other BRM format standards must be met.

b. For letter-size envelopes, the minimum size of a label with the legend ''Business Reply Label'' is 2⅝ inches high and 4¼ inches long. A FIM must be printed on the label. The label must be coated with a permanent adhesive strong enough to firmly attach the label to an envelope. The labels must meet the standards in 4.8 and 4.9, except that the series of horizontal bars on labels must be at least ¾ inch high.

c. For letter-size envelopes, the permit holder must supply the user with instructions describing how the label should be applied to an envelope and the precautions that must be observed when applying the label (see Exhibit 6.8). A pictorial diagram showing proper placement of the label must be included with the instructions. At a minimum, the instructions must include:

(1) Place the label squarely on the upper right corner of the envelope.

(2) Do not write on the envelope.

(3) Do not use a window envelope, an envelope that is less than 1 inch taller than the label, or an envelope with any printing other than the return address.

(4) Do not use the label on an envelope more than 4½ inches high.

(5) Do not use tape to affix the label.

d. The address must be printed in the address block, and the envelope with label affixed must meet applicable OCR readability standards in C830.

e. Business reply labels may not be distributed under QBRM.

[Renumber former Exhibit 6.10 as Exhibit 6.8.]

[Revise title and contents of 7.0 to read as follows:]

7.0 ADDITIONAL QBRM MAILPIECE CHARACTERISTICS

7.1 Letter-Size Mail

Each letter-size QBRM piece (envelopes, cards, and self-mailers) must meet the applicable standards in 5.0, C810, and C840.

7.2 Large Card

Any QBRM card larger than the maximum dimensions in C100 for the card rate is subject to postage at the QBRM single-piece First-Class Mail rate for matter other than cards and must meet the standards in 7.1.

S923 Merchandise Return Service

1.0 BASIC INFORMATION

1.1 Description

[Delete the words ''Single-Piece Standard Mail in 1.1.'']

* * * * *

1.3 Payment Guarantee

[Amend 1.3 for clarification and to eliminate return of articles at the single-piece Standard Mail (A) rate to read as follows:]

a. The permit holder guarantees payment of the proper postage and fees on all returned merchandise return service articles distributed under the permit holder's permit number. Charges are collected for each article as postage due at the time of delivery or from a centralized advance deposit account using Form 3582–C, Postage Due Invoice.

b. Articles are charged the required fees and the proper single-piece rate as follows:

(1) The Priority Mail, First-Class Mail, Bound Printed Matter, Special Standard, or Library Mail rate as marked on the label.

(2) If no rate marking appears on the label, pieces weighing less than 16 ounces are charged the applicable First-Class Mail or Priority Mail rates based on weight, and pieces weighing 16 ounces or more are charged the Parcel Post rate.

(3) See 1.12 for postage on articles received without a return address or a postmark.

* * * * *

1.11 Mailer Markings and Endorsements

[Revise 1.11 to read as follows:]

If the permit holder desires matter weighing over 16 ounces to be returned at a rate other than Parcel Post, the permit holder must preprint the appropriate rate marking on the label. Matter weighing more than 11 ounces and less than 16 ounces may be returned only at Priority Mail rates, or, if meeting the applicable standards, at the Special Standard or Library Mail rates. The permit holder must preprint the applicable rate marking on matter weighing more than 11 ounces and less than 16 ounces. Matter weighing 11 ounces or less may be returned only at First-Class Mail or Priority Mail rates, or, if meeting the applicable standards, at the Special Standard or Library Mail rates. The permit holder must preprint the applicable rate marking on matter weighing 11 ounces or less returned at the Priority, Special Standard, or Library Mail rates. It is recommended

but not required that such matter be mailed at the First-Class Mail rates bear the preprinted marking ''First-Class'' or ''First-Class Mail.''

1.12 No Return Address or Postmark

Articles received without a return address or postmark are charged the required fees and the proper single-piece rate as follows:

a. The Priority Mail, First-Class Mail, Bound Printed Matter, Special Standard, or Library Mail rate as marked on the label.

b. If no rate marking appears on the label pieces weighing 11 ounces or less are charged the First-Class Mail rates, pieces weighing over 11 ounces and less than 16 ounces are charged the Priority Mail rates, and pieces weighing 16 ounces or more are charged the Parcel Post rate.

c. Zoned rates are calculated at zone 4.

* * * * *

3.0 POSTAGE AND FEES

* * * * *

3.2 Transaction Fee

[Change ''Standard Mail'' to ''Standard Mail (B)'' as follows:]

The applicable transaction fee is assessed for each item returned, in addition to single-piece Priority Mail, First-Class Mail, or Standard Mail (B) rate postage and the fees for pickup or special services, as applicable.

* * * * *

4.0 ADDITIONAL FEATURES

4.1 Insured Mail

[Amend 4.1 to read as follows:]

The permit holder may obtain insured mail service with direct merchandise return service but not with Priority Mail reshipment. The customer using a merchandise return label to return an article that does not have the appropriate postage due computation markings in 5.0 or the endorsement specified in 4.2 may not obtain insured mail service. Only Standard Mail matter (i.e., matter not required to be mailed at First-Class Mail rates under E110) returned at the Standard Mail (B) rates or First-Class Mail or Priority Mail rates may be insured. If the matter is to be returned as First-Class Mail or Priority Mail, the endorsement ''Standard Mail Enclosed'' must appear below the class of mail endorsement on the merchandise return label.

* * * * *

4.7 Special Handling

[Revise the last sentence to read: ''Special handling service is available only for articles returned at First-Class Mail, Priority Mail, or Standard Mail (B) rates.'']

* * * * *

4.10 Combining Special Services

[Amend 4.10 to read as follows:]

Standard Mail articles (i.e., matter not required to be mailed at First-Class Mail rates under E110) may be both insured and receive special handing if the permit holder meets the applicable standards. Registered merchandise return pieces cannot receive any other special service.

* * * * *

5.0 FORMAT

* * * * *

5.6 Format Elements

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[Revise 5.6c to read as follows:]

Format standards required for the merchandise return label are shown in Exhibit 5.6c, Exhibit 5.6b, and Exhibit 5.6a and described as follows:

* * * * *

c. Rate Marking. If the matter to be returned requires a rate marking under 1.11, the rate marking must be placed in the space to the right and above the ''Merchandise Return Label'' rectangle. The marking must be at least ¼ inch high and printed or rubber-stamped. Only the permit holder may apply this marking.

* * * * *

[Revise 5.6e(3) to read as follows:]

e. Registry Service. * * *

* * * * *

(3) The appropriate insurance endorsement, below the ''TOTAL POSTAGE AND FEES DUE'' entry: if matter returned has value ($0.01 or greater), ''REGISTERED MAIL SERVICE WITH POSTAL INSURANCE DESIRED BY PERMIT HOLDER''; if matter returned has no value ($0.00), ''REGISTERED MAIL SERVICE WITHOUT POSTAL INSURANCE DESIRED BY PERMIT HOLDER.''

* * * * *

S924 Bulk Parcel Return Service

* * * * *

2.0 PERMITS

2.1 Application Process and Participation

[Revise 2.1a and 2.1b to read as follows:]

To participate in BPRS, the mailer must make a written request to the postmaster at each post office where parcels are to be returned. The request must:

a. At a given delivery point, demonstrate receipt of 10,000 returned machinable parcels (originally mailed at Standard Mail (A) rates) during the previous 12 months, or

b. At a given delivery point, demonstrate a high likelihood of receiving a minimum of 10,000 returned machinable parcels (originally mailed at Standard Mail (A) rates) in the coming 12 months. * * *

* * * * *

2.2 Permit Renewal

[In the last two sentences change ''single-piece Standard Mail (A) rate'' to ''single-piece First-Class Mail or Priority Mail rate as appropriate for the weight of the piece.'']

* * * * *

[Add new section S925 to read as follows:]

S925 Prepaid Reply Mail (PRM)

1.0 BASIC INFORMATION

1.1 Description

Prepaid reply mail (PRM) service allows participating mailers to provide their customers with USPS approved postage-paid reply envelopes or postcards that allow bill payments and other matter to be returned via First-Class Mail without a stamp. PRM may only be used in the United States and its territories and possessions and must not be sent to foreign countries. Participating mailers prepay postage based on estimated number of returns. The actual postage owed is reconciled by the mailer and the USPS through a periodic audit.

1.2 Services

Special services (e.g., certified, COD, insurance, registration, return receipt, delivery confirmation) are not permitted with PRM.

1.3 Address

The address and barcode on PRM may not be altered to an address other than that of the permit holder. PRM may not be converted for any purpose other than return to the permit holder, even when postage is affixed.

1.4 Official Mail

Authorized users of official (penalty) mail may distribute PRM in mailings subject to the standards in E060.

2.0 PERMITS

2.1 Application Process

The applicant must make a written request to the postmaster at each post office where the mailpieces that contain the PRM are initially distributed. The request must contain:

a. Historical data from the past 24 months documenting outgoing mail volumes.

b. Historical data from the past 24 months documenting the number and percentage of returns (e.g., BRM, CRM) received through the mail.

c. Description of billing (outgoing) and remittance (incoming) processes, including samples of records used to document outgoing and incoming mail volumes at each postage increment.

d. Preproduction samples of PRM pieces that meet the standards listed in 4.0 and Exhibit 4.4.

e. A copy of the quality control procedures to be used that document the distribution and receipt of PRM pieces by postage increment.

2.2 Permit Renewal

An annual renewal notice is provided to each PRM permit holder. The notice must be returned with payment to the post office that issued the permit by the expiration date. If, after notice, the permit holder does not renew a PRM permit:

a. PRM is returned to the sender.

b. PRM without the sender's return address is endorsed ''Prepaid Reply Permit Canceled'' and forwarded to the nearest mail recovery center for handling.

c. PRM qualifying for the card rate and of no obvious value is treated as waste.

2.3 Required Elements

The permit holder's name, city, state, and permit number must be printed on the distributed PRM.

2.4 Fees

A separate permit fee must be paid at each post office where PRM is distributed. A monthly accounting/administrative fee must also be paid at each post office.

2.5 Misuse

In any case where PRM is used improperly (such as a label), the post office treats the item as waste.

3.0 POSTAGE AND FEES

3.1 Permit Fee

An annual PRM permit fee is charged each 12-month period.

3.2 Monthly Accounting/ Administrative Fee

A monthly accounting/administrative fee is also required and payable at each post office where mail is returned. This fee must be deductible from a Centralized Automated Payment System (CAPS) account or at the option of the permit holder, other approved electronic funds transfer (EFT).

3.3 Schedule

The annual permit fee must be paid once each 12-month period, based on the anniversary date of the permit's issuance or previous fee payment, whichever is later. The fee may be paid in advance only for the next year and only during the last 30 days of the current service period. The fee charged is that which is in effect on the date of payment.

3.4 Postage Payment

Postage is prepaid based on the mailer's estimated returns when the PRM pieces are distributed in an outgoing mailing. Payment may be made only through a PRM advance deposit account, CAPS account, or other approved EFT. The actual postage owed by the mailer for PRM pieces is reconciled by the mailer and the USPS through a periodic audit. If a permit holder desires a separation of pieces, the pieces must be addressed in accordance with 4.8 to valid post office box or caller service numbers and appropriate post office box/caller service fees paid (D190).

3.5 With Stamps Affixed

PRM with postage affixed by the customer is handled like other PRM. No effort is made to identify or separate PRM pieces with postage affixed. Neither the permit holder nor the customer may apply for a refund of any value of United States or foreign postage stamps affixed.

4.0 FORMAT

4.1 General

All forms of printing are permissible if legible to the satisfaction of the USPS. Handwriting, typewriting, or hand-stamping may not be used.

4.2 Printed Borders

Printed borders are not permitted on letter-size PRM.

4.3 Print Reflectance

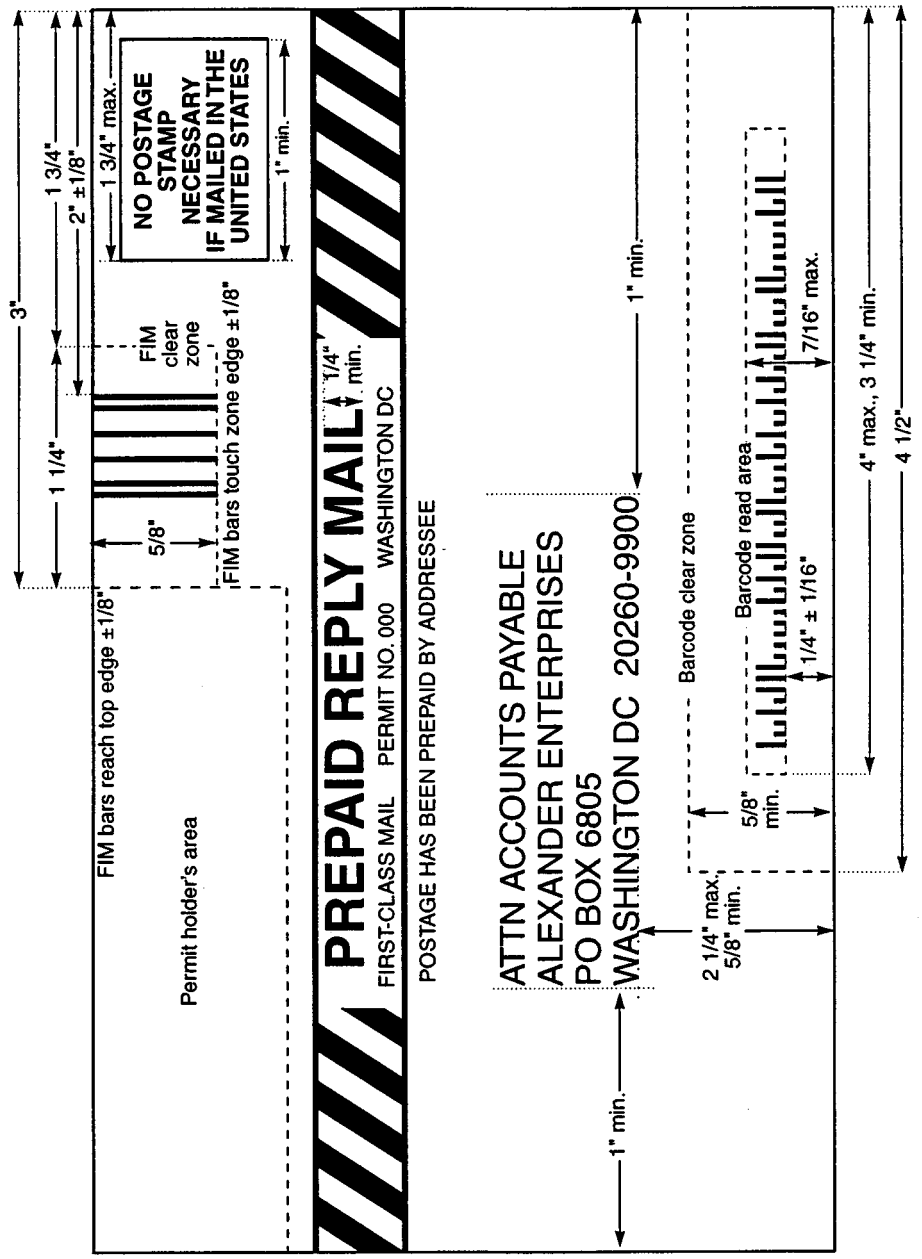
All ink colors are acceptable, provided the piece meets the applicable standards in C100 for FIM C and C840 for barcoding.

4.4 Elements

All the format elements described in 4.5 through 4.10 must appear correctly on each PRM piece (see Exhibit 4.4).

BILLING CODE 7710–12–P

Exhibit S925.4.4
PRM Specifications



BILLING CODE 7710–12–P

4.5 No Postage Stamp Necessary Endorsement

The endorsement ''NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES'' must be printed in the upper right corner of the face of the piece. The endorsement must not extend more than 1¾ inches from the right edge of the piece.

4.6 Prepaid Reply Mail Legend

The legend ''PREPAID REPLY MAIL'' must appear on all PRM envelopes and cards above the address in capital letters at least ¼ inch high.

4.7 Permit Number and Postage Endorsement

Directly below the prepaid reply legend, the words ''FIRST-CLASS MAIL PERMIT NO.'' followed by the permit number and name of the issuing post office (city and state) must be shown in capital letters. Immediately below the class and permit number information, the endorsement ''POSTAGE HAS BEEN PREPAID BY ADDRESSEE'' must appear.

4.8 Delivery Address

Unless printed on an insert for a window envelope under 5.2, the complete address (including the permit holder's name, street address or post office box number, city, state, and ZIP Code) must be printed directly on the mailpiece, subject to these conditions:

a. The address must include the ZIP+4 code that was preassigned for the PRM piece.

b. The bottom line of the address must not be lower than ⅝ inch or higher than 2¼ inches from the bottom edge of the piece.

c. A clear margin void of any extraneous matter of at least 1 inch is required between the left and right edges of the mailpiece and the address.

d. Firm unique 5-digit ZIP Codes, unless assigned exclusively for PRM, must not be used. A 4-digit add-on to denote PRM may only be used with a firm unique 5-digit ZIP Code specifically assigned to PRM.

e. A company logo is permitted, but must be placed no lower than ⅝ inch from the bottom edge of the mailpiece. The logo must not interfere with any required PRM endorsements or barcode.

f. The upper left corner of the address side of the piece is available for permit holder use.

4.9 Facing Identification Mark (FIM)

A facing identification mark (FIM) C must be printed on all PRM pieces. The FIM C must meet the physical standards in C100.

4.10 Automation Compatibility Standards

Prebarcoding of PRM is required. PRM must meet all general format standards in 4.0, the applicable barcoding standards in C840, and these standards:

a. The ZIP+4 code(s) and corresponding barcode(s) assigned to the PRM permit holder by the USPS must be used.

b. The barcode, as appropriate, must be placed on the address side of the piece and positioned in one of these locations:

(1) As part of the delivery address block under C840 if printed on an insert placed in a window envelope or,

(2) Within the barcode clear zone in the lower right corner of the piece.

5.0 ERROR NOTIFICATION

If the USPS discovers a PRM format error, the permit holder will receive written notification of the error and applicable specifications. The permit holder must correct the error and make sure that all future PRM pieces meet appropriate specifications. The repeated mailing of PRM with a format error, as determined by the USPS, is grounds for revoking a prepaid reply mail permit. To obtain a new permit after a PRM permit is revoked for not following PRM format specifications, a former permit holder must wait 90 days, then complete a new application/authorization process, and pay the required PRM permit fee upon approval.

6.0 MAILPIECE CHARACTERISTICS

6.1 Paper Weight

All letter-size envelopes and cards used for PRM must meet the applicable standards in C810 and C840.

6.2 Piece Weight

PRM service may be used on all cards and envelopes weighing 2 ounces or less.

6.3 Window Envelopes

Additional standards that apply specifically to PRM prepared in a window or open-panel envelope are:

a. The endorsement ''NO POSTAGE STAMP NECESSARY IF MAILED IN THE UNITED STATES,'' FIM C, and the legend ''PREPAID REPLY MAIL'' must be printed on the address side of the envelope. Other required elements include ''FIRST-CLASS MAIL PERMIT NO.,'' city, state, and ''POSTAGE HAS BEEN PREPAID BY ADDRESSEE.'' The permit holder's name and complete delivery address may appear on the enclosure in the window or be printed directly on the envelope.

b. There must be at least a 1/8 inch clearance and no extraneous (non-address) printing around the edges of the address shown in the window, even when the address insert is moved to its full limits inside the window envelope.

c. The window must not be lower than 5/8 inch from the bottom edge of the envelope. This area is reserved for addressing and barcodes (unless there is 4–3/4 inches of horizontal clear space for printing barcodes). The address showing through the window must be that of the permit holder and must be at least 1 inch from the left or right edge of the mailpiece.

d. Materials covering windows must allow the address to be readable.

6.4 Large Cards

Any PRM card larger than the maximum dimensions in C100 for the card rate is subject to postage at the First-Class Mail PRM rate for matter other than cards and must meet the applicable standards in 6.1.

6.5 PRM Self-Mailers

Self-mailers are not permitted in PRM.

S930 Handling

1.0 SPECIAL HANDLING

1.1 Description

[In 1.1 change ''E620'' to ''E630.'']

[Amend 1.2 and 1.3 to read as follows:]

1.2 Availability

Special handling service is available only for First-Class Mail, Priority Mail, and Standard Mail (B) (Parcel Post, Bound Printed Matter, Special Standard Mail, and Library Mail).

1.3 Additional Services

Special handling can be combined with COD, insured, return receipt for merchandise, and delivery confirmation, if the applicable standards for the services are met and the additional service fees paid.

1.4 Bees and Poultry

Unless sent at the First-Class or Priority Mail rates, special handling is required for parcels containing honeybees or baby poultry.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–6553 Filed 3–13–98; 8:45 am]

BILLING CODE 7710–12–P

federal register

Monday
March 16, 1998

Part III

Department of Housing and Urban Development

24 CFR Part 206

Home Equity Conversion Mortgages; Consumer Protection measures Against Excessive Fees; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 206

[Docket No. FR–4306–P–01]

RIN 2502–AH10

Home Equity Conversion Mortgages; Consumer Protection Measures Against Excessive Fees

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations for the FHA Home Equity Conversion Mortgage (HECM) program under part 206. The HECM program offers FHA-insured first mortgages providing payments to elderly homeowners based on the accumulated equity in their homes. These FHA-insured ''HECMs'' are commonly referred to as ''reverse mortgages.'' The rule is designed to protect homeowners in the HECM program from becoming liable for payment of excessive fees for third-party provided services of little or no value.

COMMENT DUE DATE: May 15, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Sandy Allison, Office of the Deputy Assistant Secretary for Single Family Housing, Room 9282, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–2733. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1997, HUD issued Mortgagee Letter 97–07, which prohibited FHA-approved lenders from being involved in transactions for HECMs referred by estate planning entities charging what HUD deemed to be exorbitant fees. Two estate planners engaged in the business of making referrals for reverse mortgages sued, seeking a temporary restraining order (TRO) and preliminary injunction to require HUD to withdraw the Mortgagee Letter on the ground that notice and comment rulemaking procedures should have been followed. A TRO was issued on March 26, 1997, and a preliminary injunction followed on April 11, 1997. Mortgagee Letter 97–07 was then withdrawn.

Due to the Secretary's concern about the need to protect senior citizens from practices which may subvert the HECM process, the Secretary has determined that it is in the public interest that a rule be proposed at this time. The preliminary injunction does not preclude the proposed rule set forth below.

With respect to the FHA insurance program for HECMs, current FHA requirements strictly limit the fees that a mortgagee can collect. The FHA regulations currently do not have any express provisions that protect mortgagors from fees collected by third parties. This proposed rule will fill that gap.

Content of Rule

The specific proposals that follow were developed to address actual practices that HUD has identified. HUD is aware that specific responses to such known practices may not be fully effective in addressing other potential future abusive practices that may develop. In addition to seeking comments on whether the specific proposals that follow are necessary or will be effective, therefore, HUD seeks information from the public on other known or potential areas of abuse directed at elderly homeowners who may be interested in the HECM program, and suggestions regarding additional regulatory provisions that HUD should consider to provide protection. Depending on the nature and extent of the additional identified problems and solutions and the need for additional public comment on additional or modified provisions not in this proposed rule, HUD may include such provisions either in a final rule, in an interim rule with opportunity for further public comment, or in a separate proposed rule.

The proposed rule consists of three new sections and amendments to two existing sections of 24 part 206.

1. Definition of Estate Planning Service Firm

A key term—*estate planning service firm*—is defined in an amendment to § 206.3. The term identifies such firms as individuals or entities that are not HUD-approved mortgagees or housing counseling agencies and that charge any of three types of fees or charges characteristic of firms charging excessive fees for services to HECM mortgagors: (a) fees other than those charged by the lender that are contingent on the homeowner obtaining a HECM, and often based on a percentage of the mortgage amount, (b) fees for information that housing counseling agencies are otherwise required to make available to mortgagors at little or no cost, or (c) fees for services that are purported to improve the homeowner's access to the HECM program. Exceptions are provided for payment of fees for *bona fide* tax or legal or financial advice, and other services specifically authorized by HUD, including loan origination. This is intended to be an encompassing definition that cannot be exploited through a minor change in practices. Any legitimate service provider that is concerned about overbreadth of coverage can seek specific authorization from HUD to exempt it from the new provisions. HUD recognizes that there is likely to be a need for additional guidance and, if so, such guidance will be issued. It is expected that the public comments on this proposed rule will identify any areas of needed guidance.

2. Initial Disbursement to Mortgagor

The proposed rule adds a new § 206.29 to ensure that funds disbursed at closing go to the mortgagor, a relative or legal representative of the mortgagor, or a trustee of a trust for the benefit of the mortgagor, and not to an interested third party such as an estate planning service firm. Exceptions are provided for the initial mortgage insurance premium paid to HUD, closing costs authorized under 24 CFR 206.31, and amounts required to discharge any existing liens on the mortgagor's home.

3. No Payment to Estate Planning Service Firm; No Outstanding Obligations After Closing

The proposed rule adds a new § 206.32 to prevent the mortgagor from using the initial draw of loan proceeds to pay an estate planning service firm. The mortgagee must also ensure that no commitments that the mortgagor incurred in connection with the mortgage transaction, such as a commitment to pay an estate planning service firm, will remain outstanding after the initial draw at closing, except for allowable repairs and mortgage service charges. The proposed rule thus addresses a situation where an estate

planning service firm seeks to ''lend'' to a homeowner the amount of its fees and to demand reimbursement after closing. The proposed rule does not purport to interfere with any legally enforceable obligations that a homeowner might have incurred before closing, but it eliminates the HECM program as a possible source of funding for unapproved fees. The proposed rule would permit a homeowner to contract in connection with the mortgage transaction in advance of closing for post-closing repairs only if the repairs are required as a condition of the loan to meet FHA property standards for existing housing.

4. Additional Counseling Item

The proposed rule amends § 206.41 to add a new requirement to the mandatory pre-loan counseling of HECM mortgagors. A counselor is required to discuss with the mortgagor whether the mortgagor has an agreement with an estate planning service firm to pay a fee on or after closing. If there is such an agreement, a counselor is required to discuss the extent to which services under the contract may not be needed or may be available at little or no cost from other sources, including a mortgagee. A counselor is not expected to provide any advice regarding whether the mortgagor is legally bound to honor the contract. The counselor should, however, make sure that a mortgagor understands that § 206.32, as discussed above, will prevent a mortgage from being eligible under the HECM program if a fee is to be paid at or after closing to an estate planning service firm.

5. Disclosure of Costs

The Act requires full disclosure to the mortgagor of all costs of obtaining the HECM. This proposed rule adds a new § 206.43(a)[1] to clarify that the mortgagee is responsible for ensuring that the disclosure occurs. The mortgagee is required to ask the mortgagor about any loan-related costs or obligations that the mortgagor may have incurred to obtain the HECM (such as the obligation to pay a fee to an estate planning service firm if the mortgage closes) and that the mortgagee is not required to disclose in its Good Faith Estimate. The mortgagee has a limited duty; it may rely on information received from the mortgagor (unless the mortgagee has reason to believe that the information is faulty) and it need not ask about the fees of professionals providing bona fide tax, legal, financial advice or estate planning services who do not meet the definition of estate planning service firm.

6. Lump Sum Disbursement

The proposed rule also adds a new § 206.43(b) to require the mortgagee to make special inquiries of any mortgagor requesting that at least 25% of the available funds (i.e., the principal limit amount after excluding closing costs and certain principal limit set asides, sometimes called ''net principal limit'') be disbursed at closing to the mortgagor (or as otherwise permitted by § 206.29, as discussed above). The mortgagee must ascertain whether the mortgagor plans to use the funds to pay an estate planning service firm, and if so, must advise the mortgagor that this use of funds disbursed at closing is prohibited by § 206.32, as discussed above.

This proposed rule would not prevent a mortgagor from obtaining and making appropriate payment for services with actual value. Any provider of services to HECM mortgagors may seek HUD authorization for the fees it imposes and the resultant exclusion from the definition of ''estate planning service firm''. HUD seeks to ensure that individuals or companies who provide services do not unfairly benefit from the substantial amount of cash that is made available to elderly homeowners through the HECM program. This would defeat the public purpose of the program.

Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements proposed at §§ 206.32, 206.41 and 206.43 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection request displays a valid control number.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

Information collection	Number of respondents	Responses per respondent	Total annnual responses	Hours per response	Total hours	Regulatory reference
Evidence of no payment to estate planning service firm and no outstanding unpaid obligations	8000	1	8000	.10	800	206.32
Information to be provided by counselor	16,000	1	16,000	.25	4000	206.41
Information to mortgagor	8000	1	8000	.25	2000	206.43
Total annual burden	32,000	1	32,000		6800	

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4306) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and

[1] The former § 206.43 was deleted by a final rule published at 61 FR 49033 (September 17, 1996).

Budget, New Executive Office Building, Washington, DC 20503.

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of HUD's Rules Docket Clerk, Room 10276, 451 7th Street, S.W., Washington, D.C.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely proposes to codify the Department's position which is consistent with the National Housing Act and part 206 regarding consumer protection. The rule has no adverse or disproportionate economic impact on small businesses. Small businesses are specifically invited, however, to comment on whether this rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **COMMENTS** sections in the preamble of this proposed rule.

Environmental Impact

This proposed rule is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1) which pertains to ''the approval of policy documents that do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out to provide for standards for construction or construction materials, manufactured housing, or occupancy.'' This proposed rule simply amends an existing regulation by increasing the information available to mortgagors and by limiting the manner in which funds are disbursed.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes would result from this rule that affect the relationship between the Federal Government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog. The Catalog of Federal Domestic Assistance number for the HECM program is 14.183.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend part 206 of title 24 of the Code of Federal Regulations as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

2. Section 206.3 is amended by adding a new definition of ''estate planning service firm'' to read as follows:

§ 206.3 Definitions.

* * * * *

Estate planning service firm means an individual or entity that is not a mortgagee approved under part 202 of this title or a housing counseling agency approved under § 206.41 and that charges a fee that is:

(a) Contingent on the homeowner obtaining a mortgage loan under this part, except the origination fee authorized by § 206.31 or a fee specifically authorized by the Secretary; or

(b) For information that homeowners must receive under § 206.41, except a fee by:

(1) A housing counseling agency approved under § 206.41; or

(2) An individual or company, such as an attorney or accountant, in the *bona fide* business of generally providing tax or other legal or financial advice; or

(c) For other services that the provider of the services represents are, in whole or in part, for the purpose of improving an elderly homeowner's access to mortgages covered by this part 206, except where the fee is for services specifically authorized by the Secretary.

* * * * *

3. A new section 206.29 is added to read as follows:

§ 206.29 Initial disbursement of mortgage proceeds.

Mortgage proceeds may not be disbursed at closing except:

(a) Disbursements to the mortgagor, a relative or legal representative of the mortgagor, or a trustee for benefit of the mortgagor;

(b) Disbursements for the initial MIP under § 206.105(a);

(c) Fees that the mortgagee is authorized to collect under § 206.31; and

(d) Amounts required to discharge any existing liens on the property.

4. A new section 206.32 is added to read as follows:

§ 206.32 No outstanding unpaid obligations.

In order for a mortgage to be eligible under this part, a mortgagor must establish to the satisfaction of the mortgagee that:

(a) After the initial payment of loan proceeds under § 206.25(a), there will be no outstanding or unpaid obligations incurred by the mortgagor in connection with the mortgage transaction, except for repairs to the property required under § 206.47 and mortgage service charges permitted under § 206.207(b); and

(b) The initial payment will not be used for any payment to or on behalf of an estate planning service firm.

5. Section 206.41 is amended by revising paragraph (b) to read as follows:

§ 206.41 Counseling.

(a) * * *

(b) *Information to be provided.* A counselor must discuss with the mortgagor:

(1) The information required by section 255(f) of the NHA; and

(2) Whether the mortgagor has signed a contract or agreement with an estate planning service firm that requires, or

purports to require, the mortgagor to pay a fee on or after closing that may exceed amounts permitted by the Secretary or this part.

(3) If such a contract has been signed under § 206.41(b)(2), the extent to which services under the contract may not be needed or may be available at nominal or no cost from other sources, including the mortgagee.

* * * * *

6. A new § 206.43 is added to read as follows:

§ 206.43 Information to mortgagor.

(a) *Disclosure of costs of obtaining mortgage.* The mortgagee must ensure that the mortgagor has received full disclosure of all costs of obtaining the mortgage. The mortgagee must ask the mortgagor about any costs or other obligations that the mortgagor has incurred to obtain the mortgage, as defined by the Secretary, in addition to providing the Good Faith Estimate required by § 3500.7 of this title.

(b) *Lump sum disbursement.* If the mortgagor requests that at least 25% of the principal limit amount (after deducting amounts excluded in the following sentence) be disbursed at closing to the mortgagor (or as otherwise permitted by § 203.29), the mortgagee must make sufficient inquiry at closing to confirm that the mortgagor will not use any part of the amount disbursed for payments to or on behalf of an estate planning service firm, with an explanation of § 206.32 as necessary or appropriate. This paragraph does not apply to the following:

(1) Initial MIP under § 206.105(a) or fees and charges allowed under § 206.31(a) paid by the mortgagee from mortgage proceeds instead of by the mortgagor in cash; and

(2) Amounts set aside under § 206.47 for repairs, under § 206.205(f) for property charges, or § 206.207(b).

Dated: February 3, 1998.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–6587 Filed 3–13–98; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Monday
March 16, 1998

Part IV

The President

Presidential Determination No. 98–15 of February 26, 1998—Certification for Major Illicit Drug Producing and Drug Transit Countries

Federal Register
Vol. 63, No. 50
Monday, March 16, 1998

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–15 of February 26, 1998

Certification for Major Illicit Drug Producing and Drug Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended, (''the Act''), I hereby determine and certify that the following major illicit drug producing and/or major illicit drug transit countries/dependent territories have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

Aruba, The Bahamas, Belize, Bolivia, Brazil, China, Dominican Republic, Ecuador, Guatemala, Haiti, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Panama, Peru, Taiwan, Thailand, Venezuela, and Vietnam.

By virtue of the authority vested in me by section 490(b)(1)(B) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following major illicit drug producing and/or major illicit drug transit countries:

Cambodia, Colombia, Pakistan, and Paraguay.

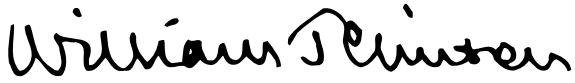
Analysis of the relevant U.S. vital national interests, as required under section 490(b)(3) of the Act, is attached.

I have determined that the following major illicit drug producing and/or major illicit drug transit countries do not meet the standards set forth in section 490(b) for certification:

Afghanistan, Burma, Iran, and Nigeria.

In making these determinations, I have considered the factors set forth in section 490 of the Act, based on the information contained in the International Narcotics Control Strategy Report of 1998. Given that the performance of each of these countries/dependent territories has differed, I have attached an explanatory statement for each of the countries/dependent territories subject to this determination.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, February 26, 1998.

STATEMENTS OF EXPLANATION

Aruba

Aruba is a major trafficking and staging point for international narcotics trafficking organizations which transship cocaine and heroin from Colombia, Venezuela and Suriname to the United States and Europe. Its key position near the Venezuelan coast with air and sea links to South America, Europe, Puerto Rico and other Caribbean locations makes it a prime transshipment point. Drug shipments are made primarily via containerized cargo, but commercial airlines and cruise ships are also used.

Money laundering organizations use legitimate companies as fronts to invest in land development and other construction projects. The Government of Aruba's (GOA) Free Trade Zone (FTZ), casinos and resort complexes are reported to be attractive venues for money laundering and smuggling. Legislation recommended by four joint Aruba-Dutch commissions to enhance monitoring of the FTZ, casinos, import and export of money, and legal entities is pending.

Although Aruba is a part of the Kingdom of the Netherlands (GON), it has autonomy over its internal affairs and has independent decision-making ability in many drug policy areas. In 1997, the GOA passed and implemented a new criminal procedural code which allows for expanded investigative powers for local law enforcement as well as for extradition of nationals subject to service of sentences in Aruba. The change in criminal procedure removed one of the last remaining barriers to the GOA's full compliance with the 1988 UN Drug Convention standards. The GOA has yet to ask the Kingdom of the Netherlands (GON), a party to the 1988 UN Drug Convention, to extend it to Aruba.

The GOA, as part of a joint Netherlands-Netherlands Antilles-Aruba Coast Guard, received two small fast patrol boats to patrol the coastal waters and interdict drug shipments. The GOA established money transaction monitoring entities to review unusual transactions in the banking sector. Aruban law enforcement officials participated in USG-sponsored training courses for drug enforcement during 1997.

Indications of corruption still hinder the effectiveness of GOA efforts against international narcotics traffickers and money launderers. The withdrawal of the OLA party from the Eman coalition government and the government's subsequent fall in late 1997 was linked in the press to the efforts of elements within Aruban society and political circles who are seeking to halt or reverse recent government actions, including progress in trans-national crime, counternarcotics and money laundering issues. Elections in December returned no one party with a parliamentary majority and efforts to form a new coalition government have moved slowly. Progress in implementing anti-drug measures approved in 1997 may be delayed as a result of the political impasse.

Despite these problems, Aruba generally cooperated in 1997 with the USG to meet the goals and objectives of the 1988 UN Drug Convention.

The Bahamas

The USG and the Government of the Commonwealth of The Bahamas (GCOB) have enjoyed an excellent, cooperative working relationship on counternarcotics over the past decade. The GCOB places a high priority on combating drug transshipments through its archipelago, as demonstrated by the extensive resources it devotes to this initiative. Nevertheless, significant quantities of illicit drugs continue to transit The Bahamas en route to the U.S., and The Bahamas remains a major drug transit country. The GCOB cooperates very closely with the USG on Operation Bahamas and Turks and Caicos (OPBAT). U.S. and Bahamian law enforcement agencies

worked diligently together throughout the year to respond to increases in air and maritime transshipment incidents.

The first country to ratify the 1988 UN Drug Convention, The Bahamas continues to take steps to implement it. Following passage of anti-money laundering legislation (March 1996) and implementing regulations (December 1996), in November 1997 The Bahamas submitted its strong anti-money laundering regime to mutual evaluation by the Caribbean Financial Action Task Force (CFATF).

During the year, the GCOB continued to strengthen its judicial system, with assistance from the USG. However, procedural delays continue to plague the court system, leading to delays in drug cases. The Bahamas needs to improve the effectiveness of its court system in disposing of drug cases more expeditiously.

The GCOB should also put greater emphasis on forfeiture of the proceeds of crime and trafficker assets, including early disposal of commodities used in trafficking before they lose value. The Bahamas has not yet designated the U.S. under the Bahamian law concerning execution of foreign forfeiture orders in The Bahamas, despite repeated U.S. requests since 1993. In past years, The Bahamas has prosecuted and convicted some middle- and low-level officials on charges of narcotics corruption.

Belize

The Government of Belize (GOB) recognizes the problem of drug transit through its territory and the effect drug trafficking has on domestic crime. Anti-narcotics activities are centralized in a committee consisting of various components of the Belize Police Force (BPF) and the Belize Defense Force (BDF), with a dedicated group of investigative police and a rapid response force called the Dragon Unit. They are active in the fight against drugs and work closely with the USG. The GOB is party to the 1988 UN Drug Convention.

With USG help, the GOB continued to work to upgrade the professionalism and equipment of the BPF to combat violent crime and narcotics trafficking. A new two-officer money-laundering unit has recently completed training with USG support. The GOB has continued its support of cooperative efforts to reduce drug trafficking through its borders and to combat the crime associated with such trafficking. The GOB has also maintained its support of regional and unilateral counternarcotics efforts.

1997 was a record year for cocaine interdiction with more than two metric tons seized. Indications are that marijuana cultivation remained stable. The efforts of the Belizean security forces to control narco-traffic have been hampered by the lack of manpower, training and equipment, corruption within the ranks, and the relatively large expanse of uninhabited territory of the country.

This improved performance, however, was tempered by the mixed record of convictions and sentencing, including the dismissal of an important case involving Colombian, Mexican, and Belizean defendants. The Belizean judicial system remains weak, understaffed, and underfunded. Although the GOB and the USG reached tentative agreement on a new extradition treaty and a MLAT in late 1996, the GOB subsequently raised new concerns about certain aspects of these treaties and negotiations were stalled during 1997. While the new extradition treaty has not been completed, Belize continues to extradite alleged criminals to the United States under the 1972 US–UK extradition treaty.

The GOB needs to continue to fully cooperate with the USG and take action to meet the goals and objectives of the 1988 UN Drug Convention and other UN drug conventions. Of particular importance, the GOB should improve its prosecution of major drug cases, provide more support for the judicial branch, and conclude negotiations on mutual legal assistance and

extradition treaties with the US. A renewed commitment to confronting corruption is essential.

Bolivia

Bolivia is the world's second leading producer of cocaine hydrochloride, and has an illegal coca-cocaine industry, including sophisticated operations to smuggle essential chemicals, that is increasingly under the control of Bolivians. The participation of foreigners is more and more relegated to the refining of base into cocaine hydrochloride and to transporting cocaine out of Bolivia, however, this will diminish as Bolivian traffickers improve their refining capabilities.

The former GOB never implemented an eradication program in the Yungas, and quickly discontinued its policy of arresting and prosecuting persons who plant new coca. The new Banzer government has promised prompt action on both issues. Additionally, although eradication slowed in April and did not effectively resume until early October, Bolivia exceeded its gross eradication goal for 1997 of 7,000 hectares and produced a net reduction in coca cultivation of 2 percent. This is an improvement over the one percent net reduction in 1996 and was largely conducted after the inauguration of the new Banzer government.

Bolivia's new government is building a consensus, via a series of national dialogues, for the country's first national counternarcotics strategy. Their five-year plan includes the goal of totally eliminating illicit coca cultivation by the year 2002.

Total narcotics-related arrests increased substantially in 1997, as did seizures of cocaine products and essential chemicals. The Special Investigative Units—vetted and trained in the U.S.—have returned to Bolivia and are actively engaged in their own operations and in supporting the on-going investigations of other Bolivian counternarcotics units. The Bolivian Navy's Blue Devil Task Force has been granted law enforcement authority, a change which will almost certainly result in greatly improved interdiction results on the country's waterways.

The legislature is considering critical judicial reforms, including revisions to Law 1008, Bolivia's basic counternarcotics law, which will, when enacted, greatly improve the country's court system and result in a fairer and more transparent judicial system.

Alternative development initiatives have been highly successful in providing farmers viable, licit alternatives and have helped solidify public opinion against coca cultivation.

In 1998, the Bolivian government must act to prevent new coca plantings and conduct eradication efforts in a sustained and intensified manner. A net reduction of 20 percent (or 7,000 hectares) of coca plantings must be achieved in 1998 if the Bolivians are to garner success for their 5-year plan to eliminate illicit coca. They must eliminate individually compensated eradication for controlling the cultivation of new coca fields and prosecute those who plant them. The Blue Devil Task Force must implement their new law enforcement authority to effect seizures of narcotics and chemicals, and arrests of narco-traffickers on Bolivia's waterways. Enforcement of recently enacted legislation criminalizing money laundering was delayed, in 1997, pending clarification of lines of authority and identification of funding sources. Bolivia must move forward to vigorously implement these laws.

Brazil

Brazil is a major transit country for cocaine shipped by air, river, and maritime routes from Bolivia, Peru, and Colombia to the U.S. and Europe. Because of increased interdiction of trafficker aircraft in Peru (along the Peru/Colombia air corridor), traffickers have shifted illicit narcotics flights into Brazilian air space. Brazil's vast and sparsely populated Amazon region provides ample opportunity for traffickers to transship drugs and chemicals by air and riverine routes. A southern ''drug route'' also exists along Brazil's borders with Paraguay and Bolivia.

While not a significant cultivation country, Brazil is a major producer of essential/precursor chemicals and synthetic drugs. There is also a growing domestic drug consumption and addiction problem, primarily among young people. Several key pieces of counter-narcotics legislation, including an anti-money laundering law, are under review in the congress. Brazil's bank secrecy laws and its highly developed financial networks make it fertile ground for money laundering of drug profits.

Although police drug seizures in 1997 were only slightly above those in 1996, anti-narcotics law enforcement units stepped up interdiction activities in the Amazon region and along the southern ''drug route.'' The government implemented a new national defense policy (since 1996) to allow the military to assist police anti-drug operations in the Amazon. During two major operations in that region, the police put a majority of all clandestine airfields out of operation. In cooperation with neighboring countries, Brazilian police carried out investigations which disrupted several major drug smuggling organizations. Brazil also continues to cooperate in extradition cases of non-Brazilian citizens.

To signal its continued resolve to deal with narcotics trafficking problems, Brazil signed a new Letter of Agreement (LOU) for bilateral cooperation in narcotics control with the U.S. in 1997. Brazil has bilateral narcotics control agreements with all its South American neighbors as well as Germany and Italy. During a visit by President Clinton in October, Brazil signed a mutual legal assistance treaty (MLAT) with the U.S. In another positive step, the government incorporated anti-money laundering provisions in a packet of emergency measures sent to Congress in conjunction with a growing economic/fiscal crisis. This packet has cleared the lower house of the legislature and is still being considered by the Brazilian senate with passage possible in early 1998. Senior government officials made clear to U.S. interlocutors during 1997 that Brazil was fully committed to working with the U.S. and other nations in reducing the traffic in illicit drugs in South America.

China

China both remains a major transit route for Southeast Asian heroin destined for the U.S. and other Western markets and has had increasingly to deal with the phenomenon of itself becoming such a market. China continues to take a strong stand to battle this trend. In 1997, it further intensified its nation-wide efforts to combat drugs by focusing special attention on anti-drug education. Narcotics seizures also increased, as did the monitoring of precursor chemicals: there was a four-fold increase over 1996 in the seizures of such chemicals. China also moved to strengthen anti-drug legislation and for the first time identified money laundering as a crime. In 1997, China signed a Mutual Legal Assistance Agreement with India which placed special emphasis on narcotics trafficking. China is also a party to all of the UN narcotics conventions.

USG–PRC cooperation on counternarcotics issues improved in 1997. In October, as part of the Joint Statement issued during the Summit between Presidents Jiang and Clinton, China agreed to the opening of reciprocal drug enforcement offices in Beijing and Washington and to the establishment

of a Joint Liaison Group on Law Enforcement which specifically included narcotics trafficking as one of the issues to be addressed. China hosted two Drug Enforcement Administration seminars on chemical control, sent officials to the United States to take part in airport interdiction training and continued working-level exchanges of information on international drug trafficking cases with USG law enforcement officials. A direct e-mail link with DEA to facilitate information exchange on drug cases has been established. In April, China transferred to the U.S. for prosecution on drug trafficking charges a Burmese national in its custody.

China continues to struggle with the corruption and greed which have accompanied economic success and prosperity. The Government has passed specific laws to deal with officials guilty of the use, manufacture, or delivery of narcotics. Penalties for such transgressions include execution. There is no evidence of high-level official involvement in the drug trade. The juxtaposition, however, of low-paid law enforcement and other officials with the lucrative drug business creates the potential for corruption.

Chinese officials have noted that 90 percent of the heroin flowing into China comes from Burma. China's close trade and political relationship with Burma has facilitated misuse of their shared 2,000-kilometer border by drug traffickers. China has pledged cooperation in helping the Burmese fight narcotics production and has supported international programs to wean Burmese farmers away from drug production. China's success—or its failure—with regard to addressing the problem of Burmese drug production has serious implications for China, for the rest of Asia and for the West.

Dominican Republic

The Dominican Republic is an active transshipment point for drugs destined for the United States and Europe. Traffickers smuggle narcotics through Dominican territory by air, sea, and along the country's porous border with Haiti. A weak Dominican judicial system continues to hamper efforts to combat the narcotics trade, but a promising reform process began in 1997.

The Government of the Dominican Republic (GODR) continued to cooperate with the United States Government (USG) on counternarcotics objectives and goals. The GODR is party to the 1988 United Nations Drug Convention. It has enacted a money laundering and asset forfeiture law that complies with the Organization of American States (OAS)/Inter-American Drug Abuse Control Commission (CICAD) model. The GODR and the USG have a bilateral maritime agreement that allows for consensual boarding of sea vessels by host country authorities. Dominican authorities cooperate closely on drug investigation matters with the USG. The GODR had a mixed record of drug-related seizures and arrests. There was a decrease in marijuana seizures and arrests for drug-related offenses (1,481 arrests) in 1997, but an increase in heroin seizures (8.3 kgs). Cocaine seizures rose slightly from 1996 to 1,354 kgs. in 1997.

This cooperation has been marred by the disappointing record of judicial and legislative reforms. Dominican law prohibits the extradition of Dominican nationals, creating a refuge in the Dominican Republic for Dominican nationals who are believed to have committed serious crimes in the U.S. Pursuant to an extraordinary and rarely used Executive Order, the GODR did extradite two Dominican nationals to the United States in August 1997 to stand trial on charges of narcotics trafficking and homicide. Dominican judicial authorities have yet to act on more than two dozen additional U.S. extradition requests. An absence of effective government supervision of exchange houses or remittance operations and the presence of large cash flows, which could hide money laundering activity, continue to make the Dominican Republic vulnerable to further money laundering. Money laundering is not likely to diminish until the GODR aggressively implements the money laundering legislation.

Neither the GODR itself nor senior government officials encourage, facilitate, or engage in drug trafficking or money laundering as a matter of government policy. No evidence exists that senior government officials are involved in drug distribution or money laundering. No senior government official has been indicted for drug-related corruption in 1997.

Ecuador

Ecuador continues to be a major transit country for the shipment of cocaine from Colombia to the United States and Europe. Ecuador is also used by traffickers for money laundering of drug profits and to transit essential/precursor chemicals destined for Colombian drug labs. Cocaine is shipped primarily by road from the Colombian border to major Ecuadorian ports where it is concealed in bulk cargo transported in large ocean-going commercial vessels.

In 1997, Ecuador increased the number of interdiction checkpoints along inland transit routes leading to ports. With U.S. aid, Ecuador is establishing a Joint Information Coordination Center (JICC) in the major port city of Guayaquil. Ecuador also hosted a U.S. Customs/U.S. Coast Guard team which assessed port operations for top government officials. The Ecuadorian Congress passed legislation authorizing the forfeiture of drug assets and the use of forfeiture funds in support of prevention, rehabilitation, and police counter-narcotics activities. Police assigned personnel for U.S.-sponsored training to form a ''controlled chemical'' investigative unit. The government submitted new legislation to help police carry out money laundering investigations.

There is a long tradition of cooperation between Ecuadorian National Police and U.S. law enforcement in the area of narcotics control. Still, the police lack many of the resources needed to deal effectively with a narcotics trade directed by powerful criminal organizations in its neighbor to the north, Colombia, and, to a lesser extent, in Peru to the south. Cooperation between the Ecuadorian and Peruvian governments is complicated by an on-going, serious, and occasionally violent border dispute.

Ecuador cooperated with the U.S. to eradicate most of its coca crop in the 1980's and thus avoided the production problems that currently plague its neighbors Colombia and Peru. In 1997, Ecuador continued to demonstrate its willingness to work closely with the U.S. in dealing with other narcotics issues including major vulnerabilities such as cocaine transshipments, chemical diversions, money laundering, and judicial corruption/inefficiency. The police's canine unit, for instance, was created with U.S. assistance and had a number of outstanding successes in interdicting cocaine shipments in 1997. Ecuador has also signalled a willingness to discuss and work out ways in the near future to cooperate with the U.S. in maritime interdiction.

Guatemala

With peace a reality after thirty six-years of internal conflict, President Arzu has made public security a top priority and has shown special interest in ensuring maximum cooperation with the United States in combatting counternarcotics trafficking through Guatemala and in the region.

Guatemala is located half way between the U.S. and Colombia and continues to be a transshipment and storage point for cocaine destined for the US via Mexico. There has been a marked increase in the use of truck and shipping containers. Guatemala has made major improvements to a self-financed port security program which expanded operations.

A major initiative resulted in the transition from the old national and treasury police forces to the new National Civilian Police (PNC) and the consolidation of various paramilitary law enforcement agencies. The Depart

ment of Anti-Narcotics Operations (DOAN), a specially equipped civilian police command, was transferred to the PNC after re-training and a major pay increase. With USG assistance, the DOAN seized almost 6 metric tons of cocaine in 1997. There was also steady progress in the successful prosecution of narcotics-related crimes with over 90 per cent of those accused being convicted.

Guatemala works closely with USG organizations to stem the flow of drugs through Guatemala, but has not yet enacted necessary legislation to implement all the provisions of the 1988 UN Convention on narco-trafficking. The Government of Guatemala (GOG) does not encourage or facilitate illicit production or distribution of narcotic or psychotropic drugs or controlled substances.

Guatemalan studies show that drug use is on the rise in most age groups with cocaine use increasing rapidly. However, Guatemala has recently completed a comprehensive national drug plan which is scheduled to be implemented starting in January 1998 and which includes an ambitious demand reduction program.

Haiti

Already confronted by a wide array of issues that compete for the attention of its limited professional and managerial talent, the Government of Haiti (GOH) and its criminal justice institutions are severely strained by increased international narcotics trafficking activities. Haiti's fledgling national police force is hampered by a lack of manpower, training, equipment, and experience. The poorest nation in the Western Hemisphere, Haiti is particularly vulnerable to the corrosive effects of narcotics-related corruption. Haiti's weak and ineffective judicial system has a poor track record of narcotics prosecutions. Haiti is a party to the 1988 UN Drug Convention.

Because of a significant increase in the detected activities of Colombian drug trafficking organizations in Haiti in 1994, Haiti was added to the list of major drug producing and transit countries in 1995. Due in measure to effective USG interdiction efforts around Puerto Rico and the Virgin Islands in 1997, traffickers have increasingly targeted Haiti's long, undefended coastline for narcotics deliveries intended for transshipment (often throughthe Dominican Republic) to the US. In response to this growing threat, the GOH, within its existing capacity, cooperated fully with the United States Government (USG) in counternarcotics efforts in 1997. The GOH must build upon the positive steps it has already taken to more aggressively seize narcotics shipments, pursue and prosecute narcotics traffickers, and investigate all allegations of governmental corruption with a view to effective prosecution.

The GOH is slowly but incrementally putting into place the legal mechanisms and governmental policies to counter organized trafficking elements. This effort has been hampered overall by the ongoing political impasse over a parliamentary quorum. In 1997, the GOH and the USG signed a Maritime Counterdrug Agreement. In 1997, the Haitian Coast Guard (HCG) and the U.S. Coast Guard (USCG) cooperated in four separate maritime interdictions that yielded over 2 metric tons of cocaine and five tons of marijuana. With USG support, the Counternarcotics Unit of the Haitian National Police (CNU) was staffed, trained and partially deployed in 1997. A fully-deployed CNU is scheduled to move to a permanent headquarters facility at the Port au Prince airport in 1998.

In response to allegations of drug-related corruption within the Haitian government, the Haitian National Police arrested 21 police and judicial officials for suspected complicity in narcotics trafficking in 1997. A Ministry of Justice (MOJ) Special Advisor on Narcotics Matters drafted a national narcotics strategic plan, completed draft legislation on money laundering, and updated archaic Haitian narcotics laws. That said, corruption remains

an important USG concern, as does the need for successful prosecutions of narcotics trafficking cases.

In 1997, the GOH continued to give USG officials high-level assurances of its commitment to drug control, and those assurances have been supported by progress in establishing Haitian counter-drug institutions. However, Haiti still has a number of major goals to achieve before it will be able to take significant, independent action in counternarcotics.

Once a new Prime Minister and a new government are installed, the Maritime Counterdrug Agreement and the MOJ's legislation can be submitted for Parliamentary approval and a National Narcotics Plan approved at the cabinet level. The USG will continue to work with the GOH to achieve Parliamentary passage of pending and planned legislation and its vigorous implementation, continued training the CNU, and the institution of anti-corruption steps within the ranks in further compliance with the goals and objectives of the 1988 UN Drug Convention and the terms of our bilateral agreements and treaties.

The USG will remain engaged in increasing the capacity of the HCG and CNU to meet the threat posed by traffickers. The USG will also help improve the overall security of the Port-au-Prince Airport to inhibit the flow of drugs via air links to the U.S. Additional counternarcotics objectives for Haiti include targeting at least one major international narcotics organization for significant interdiction efforts and enacting civil and administrative asset forfeiture provisions to facilitate targeting of trafficker assets and companion legislation requiring use of the forfeited funds solely for counternarcotics interdiction and enforcement operations.

Hong Kong Special Administrative Region

The Hong Kong Special Administrative Region remains a target point for money launderers and drug traffickers. USG officials believe that Hong Kong traffickers control large portions of Southeast Asian narcotics destined for the West, including the United States. In 1997, however, there were no seizures of heroin destined for the U.S. which could be tied to Hong Kong itself. Hong Kong has strengthened money laundering guidelines applicable to its financial institutions, securities firms and the insurance sector. It also enacted the 1997 Drug Trafficking Order, which allows for the enforcement of confiscation orders issued by countries that are signatories to the 1988 UN Drug Convention, thus enhancing Hong Kong's ability to recover the proceeds of drug trafficking. With Hong Kong's reversion to Chinese sovereignty in July 1997, the 1988 UN Drug Convention has for the first time been made applicable to Hong Kong. The U.S.-Hong Kong Extradition Agreement was ratified by the U.S. in November 1997 and came into force in January of this year. The new U.S.-Hong Kong Mutual Legal Assistance Agreement awaits Senate action.

Close cooperation between Hong Kong law enforcement agencies and the Public Security Bureau of Guangdong Province resulted in increased seizures on the mainland of heroin which would otherwise have entered Hong Kong. In conformity with the 1988 UN Drug Convention, Hong Kong amended Schedules 1 and 2 of its Control of Chemicals Ordinance to place the salts of 17 chemicals under licensing control. Hong Kong also issues pre-export notifications to destination countries of precursor chemical shipments so as to prevent diversions. As noted by the International Narcotics Control Board, Hong Kong stopped three suspicious chemical shipments in 1997. Hong Kong will face the second review of its system by the Financial Action Task Force in 1998 and has carefully reviewed its existing body of narcotics-related legislation and practices in preparation for that review.

There is no reported narcotics-related corruption among senior government or law enforcement officials in Hong Kong. Cooperation between the U.S. and Hong Kong on counternarcotics matters remains both wide-ranging and excellent. Hong Kong and USG personnel conducted several joint narcotics

investigations in 1997, resulting in a number of arrests and drug seizures, as well as in financial seizures. In August, U.S., Hong Kong and Mexican officials also successfully coordinated a controlled delivery to Mexico of 150 kilograms of pseudoephedrine originating in China. Hong Kong Customs and Excise authorities provided two instructors to assist DEA's diversion training team in conducting two one-week seminars in China. Locally posted DEA officers continue to provide monthly briefings at the Hong Kong Police Command School.

India

India, an important producer both of licit and illicit narcotics, is a crossroads for international narcotics trafficking. It is the world's largest producer of licit opiates for pharmaceutical use and the only producer of licit gum opium. Some opium is diverted from the country's legal production, although it is difficult to ascertain the exact amount. The Government of India estimates diversion at about 10 percent, although it may be as high as 30 per cent. Illicit poppy cultivation declined significantly in the past year, form 47 metric tons (mts) to 30 mts, according to USG estimates. India's location between the two main sources of illicitly grown opium, Burma and Afghanistan, as well as its well-developed transportation infrastructure, makes it an ideal transit point but heroin transshipment is not as significant as in neighboring Pakistan, Thailand and China and there is no evidence that opiates transshipped through India reach the U.S. in significant amounts.

As a licit producer of opium, India must meet an additional certification requirement. In accordance with Section 490(c) of the Foreign Assistance Act, it must maintain licit production and stockpiles at levels no higher than those consistent with licit market demand and take adequate steps to prevent significant diversion of its licit cultivation and production into illicit markets and to prevent illicit cultivation and production.

Indian opium gum, the principal source of thebaine, and alkaloid essential to certain pharmaceuticals, is purchased by U.S. pharmaceutical firms. Between 1994 and 1996, India had difficulty meeting its production goals and satisfying the world demand for this narcotic raw material. Reduction in acreage, a severe drought which limited crops and inaccurate physical inventories over the last 20 years led to a depleted stockpile and large discrepancies in inventory which were discovered in 1994.

Starting in 1995, India took a number of steps to increase licit opium productivity and the licit opium stockpile. To increase future inventory accuracy, the traditional method of storing liquid opium in large, open vats, resulting in undetermined losses due to evaporation, was changed to a system of sealed cans. To ensure a more secure stockpile, the GOI increased the opium crop by increasing each year the minimum qualifying yield per hectare with which each farmer must comply. Opium output grew each year, from 833 mts in 1995 to 849 mts in 1996 to 1,341 mts in 1997. The GOI also sharply increased its seizures of diverted licit opium. Greater GOI attention to increasing licit opium yields both increased the amount of narcotic raw material available to purchasers and ensured a more stable stockpile. Following years of an inadequate supply, this year's increased production finally gives India a licit stockpile consistent with market demand.

In 1997, India took five important steps to increase licit opium production to meet market demand while curtailing the diversion of licit opium. These steps include: A) raising the minimum qualifying yield (MQY) for relicensing to cultivate opium poppy from 48 to 52 kilograms per hectare; B) increasing GOI vigilance of poppy farmers with direct farm visitation by enforcement personnel to ensure all harvested opium is turned in to government warehouses; C) seizing 11 mts of raw opium harvested by licit cultivators, but not declared to the government in 1997 as opposed to the 2 mts of diverted licit opium seized in 1996; D) quickly averting the harmful effects of a

cultivator strike by licensing new farmers to replace the striking cultivators; and E) making offenses relating to cultivation and embezzlement of opium by licensing cultivators on par with other trafficking offenses, resulting in long prison terms and heavy fines upon conviction.

While these are adequate steps to curb diversion, the USG believes even more could be done and will work with the GOI to increase diversion controls. USG offers to help the Government of India (GOI) with a survey of the licit opium fields have not yet been acted upon. A well-designed crop study would provide accurate data on crop yields and would be an important step in establishing practicable levels of minimum qualifying yield. The data could also be used to extrapolate the level of diversion. The USG hopes to work with the GOI on a future joint opium crop yield survey. Scientists from the U.S. Department of Agriculture and the GOI have collaborated on the design of a poppy survey.

India also has illicit cultivation, primarily in Jammu and Kashmir, where GOI control is challenged by insurgent groups and in the remote hills of Uttar Pradesh. USG surveys between 1994 and 1997 indicated illicit cultivation of opium poppy decreased steadily, with the estimated yield declining from 82 mts of opium to 30 mts. The GOI locates and destroys illicit cultivation with vigor, but in some areas, such as Jammu and Kashmir, GOI control is challenged by insurgencies. The USG supplies satellite data along with coordinates of suspected areas of illicit poppy cultivation and the GOI has carried out extensive field surveys and some random aerial surveys, some with DEA assistance.

The GOI has made significant progress in controlling the production and export of precursor chemicals. Trafficking in illegally produced methaqualone (mandrax), a popular drug in Africa, is still a major problem. The GOI has a cooperative relationship with the DEA, which is appreciative of Indian efforts to control trafficking in precursor chemicals. However, authorities have had limited success in prosecuting major narcotics offenders because of the lack of enforcement funding and weaknesses in the intelligence infrastructure.

India met formally several times in 1997 with Pakistan to discuss narcotics matters and is committed to continuing consultations in 1998. Although these meetings have produced limited results, they are an important step toward much-needed regional narcotics cooperation. India has also met with Burmese officials along the border.

India is party to the 1988 UN Drug Convention, but has not yet enacted supporting legislation on asset seizures or money laundering. The substantive steps India has taken in controlling illicit narcotics growth and in increasing the harvest of licit opium while at the same time tightening controls on the licit crop to prevent diversion qualify India for certification.

Jamaica

Jamaica is a producer of marijuana and an increasingly significant cocaine transshipment country. The Government of Jamaica (GOJ) made some progress during 1997 toward meeting the goals and objectives of the 1988 UN Drug Convention, to which it became a party in December 1995, and of our bilateral cooperation agreements and treaties. Counterdrug cooperation between DEA and the Jamaica Constabulary Force (JCF) remained at high levels, and cannabis eradication increased from 473 hectares in 1996 to 683 hectares in 1997, despite severe resource constraints. In October, parliament passed a master national drug abuse prevention and control plan which complies with the OAS/CICAD model. Many important actions, however, still remain to be taken by the GOJ to fully meet the counterdrug goals and objectives.

During 1997, the GOJ extradited to the U.S. three Jamaican national fugitives from U.S. justice, compared to 1996, when the GOJ returned one

Jamaican national under a waiver of extradition, one U.S.-Jamaican dual national who returned voluntarily and six U.S. national fugitives who returned voluntarily or were deported to the U.S. One U.S. national died in Jamaica in 1996 while extradition proceedings were pending. The U.S. seeks early resolution of the 26 active extradition cases currently pending with Jamaica. Although both countries have begun to utilize the bilateral Mutual Legal Assistance Treaty (MLAT), Jamaica needs to speed up its execution of U.S. mutual legal assistance requests.

By year's end, the GOJ had not yet tabled in parliament any precursor and essential chemical control legislation. In September 1997, however, the GOJ signed with the USG a letter of agreement (LOA) which details USG counternarcotics assistance to be provided and GOJ actions to be taken. This agreement includes a GOJ commitment to introduce into parliament a precursor chemical control law by April 1998.

In November 1997, the GOJ amended its 1996 anti-money laundering law to mandate reporting of all cash transactions of U.S. $10,000 equivalent or more. Previously, the law incorporated a threshold reporting requirement for all transaction types. Further amendments are required to bring Jamaica into full compliance with the recommendations of the Caribbean Financial Action Task Force (CFATF). Although there are four cases pending, to date there has been no adjudication of money laundering cases. In February 1998, a Jamaican court granted the first forfeiture order, under the 1994 law, of assets of a convicted drug dealer; however, Jamaica has not provided for earmarking of forfeited assets for counterdrug purposes.

In the area of drug enforcement, GOJ drug arrests and cocaine and hashish oil seizures increased in 1997 from 1996 levels, but marijuana seizures were down substantially. A maritime law enforcement cooperation agreement was signed by the GOJ and USG in May 1997; on February 24, 1998, the GOJ notified the USG that it had completed its constitutional requirements for the entry into force of the agreement. A return notification from the USG brings the agreement into force. The United States hopes that, with the agreement in force, maritime cooperation with Jamaica will improve. The GOJ needs to reinvigorate the previously successful joint Jamaica Constabulary Force (JCF)-DEA Operation Prop Lock, which seized only one trafficker plane during 1997, and that had to be returned to its owner for lack of probable cause.

Drugs in export shipments continued to threaten Jamaica's legitimate commerce during 1997. At GOJ invitation, U.S. agencies conducted an export security assessment and recommended remedial actions to improve security at air- and seaports. The GOJ needs to carry out these recommendations. During 1997, there were reports in the Jamaican media about drug-related corruption of police and a resident magistrate, the latter of whom was arrested on corruption charges. The GOJ also needs to take strong steps to control drug-related public corruption. A wide-ranging bill dealing with corruption of public officials was tabled in parliament, with passage expected in early 1998.

Parliamentary passage of introduced and planned legislation and its vigorous implementation will be necessary for Jamaica to meet fully the goals and objectives of the 1988 UN Drug Convention and the terms of our bilateral agreements and treaties.

Laos

Laos remains the world's third largest producer of illicit opium. Despite concerted efforts by the government, Laos' estimated potential production as a result of the 1997 growing season was 210 metric tons, up 5 percent from 1996. Cultivation increased by 12 percent, with most of the increase in the more isolated northwest of the country. Opium production remained low, however, within the USG-funded Houaphanh alternative development project area. Laos' proximity to important ports and trade routes also places

it on the trafficking routes for drugs destined for the West, including the U.S. Recognizing the phenomenon of ''economic opportunism'' suggested by UNDCP experts as contributing to increased opium production, Lao authorities agreed in 1997 to a USG proposal to begin, for the first time, an eradication program in areas where alternative development projects are in place. Lao law enforcement officials made their largest heroin seizure ever (62.3 kilograms) in Luang Prabhang Province in May, highlighting the increased effectiveness of Laos' counternarcotics enforcement efforts. Laos also ratified the 1971 UN Convention on Psychotropic Substances and has indicated it may ratify the 1988 UN Drug Convention in 1998, after passage of required legislation.

In keeping with its plan to address all aspects of the drug problem in Laos, the Government of Laos has emerged as an increasingly active player in regional and international counternarcotics efforts. In July, it hosted a trilateral ministerial meeting with Burma and Thailand to address problems of illicit drug production and trafficking. Laos also signed bilateral counternarcotics cooperation agreements with Burma and the Philippines. It was selected to serve a four-year term on the UN Commission on Narcotic Drugs, which began this January.

USG–Lao counternarcotics cooperation remains a center point of the overall relationship and continues to be excellent. USG counternarcotics assistance to Laos has increased as the Lao have moved toward a counternarcotics policy which seeks to balance alternative development, law enforcement, eradication and demand reduction regimes. In order for Laos to avoid the stigma attached to narco-societies, it must control opium cultivation, production and trafficking before modernization exacerbates those problems. It will also have to deal with the problems posed by corruption, including possible narcotics-related corruption, among military and government officials. The USG's commitment to Laos has been made both in response to the determination thus far shown by the Government of Laos and in recognition of Laos' need for assistance in accomplishing its stated counternarcotics goals.

Malaysia

For geographic and historical reasons Malaysia remains, and likely will remain for some time, a significant transit country for U.S. and European-bound heroin. Top Malaysian leaders, including the Prime Minister, are deeply concerned by Malaysia's drug problem and have made combating illicit drugs one of Malaysia's top national priorities. Police, armed with stiff anti-trafficking laws that provide for detention without trial and, in some cases, mandatory death sentences, prosecute drug crimes vigorously. The Anti-Narcotics Division of the police now enjoys department status. Unlike some of its neighbors, Malaysia is prepared to move against corruption. Several police officers were arrested and prosecuted for drugs-related corruption. Police also arrested several mid-level police officers and other government officials including a Malaysian diplomat, who was later acquitted of drug smuggling charges. A newly amended anti-corruption act gave the police additional powers to prosecute corruption in 1997.

The government has also devoted new resources to drug rehabilitation. In 1997 Malaysian authorities launched new initiatives aimed at combatting drug use among the young, improving drug rehabilitation techniques, and combatting the spread of psychotropic pills. Cooperation with the USG on combatting drug trafficking has been excellent. The U.S.-Malaysian Extradition Treaty came into force in 1997. Positive discussions on a Mutual Legal Assistance Treaty continued. Malaysia is working on legislation governing asset forfeiture and management of seized assets to complement the MLAT. Malaysia is a party to the 1961 UN Single Convention and its 1972 Protocol, the 1971 UN Convention on Psychotropic Substances and the 1988 UN Drug Convention.

Mexico

The issue of illicit narcotics trafficking, and related crimes, remains at the top of the bilateral agenda between the U.S. and Mexico. These issues figured prominently in meetings in which Presidents Clinton and Zedillo approved documents which form the basis of counternarcotics cooperation between the United States and Mexico. In May, the two Presidents issued the ''Declaration of the U.S.-Mexico Alliance Against Drugs'' and released the *Bi-National Drug Threat Assessment*. In November, the two Presidents approved a summary of a binational drug strategy. Both leaders have committed to strengthen their governments' respective anti-drug efforts and to continue to work toward closer and more effective bilateral anti-drug cooperation.

The U.S./Mexico High-Level Contact Group on Narcotics Control (HLCG) and the Senior Law Enforcement Plenary continued to serve as the principal senior-level fora for expanding and enhancing bilateral counter-drug cooperation. The HLCG met three times in 1997, the Plenary twice, and their technical working groups, which cover issues ranging from chemical control to demand reduction, met throughout the year. The HLCG supervised the preparation of the bilateral threat analysis and the *United States/Mexico Binational Drug Strategy*, which was released on February 6, 1998.

During 1997, the Government of Mexico (GOM) took steps to begin implementing the important legislative reforms of 1996 to advance its national efforts against drug trafficking and organized crime. It developed a number of specialized investigative units, such as the Organized Crime and Financial Intelligence Units, to implement those laws. The Bilateral Border Task Forces, created in 1996, had to be reconstituted in 1997, however; Mexican personnel are assigned and working in these units, but are cooperating with U.S. law enforcement counterparts on a limited basis. Agents assigned to the new Special Prosecutor's Office and to the elite investigative units underwent more rigorous screening and background checks than their predecessors and the process is being expanded to all parts of the Office of the Attorney General (PGR). The GOM improved training for the new agents, and plans to improve salaries and benefits as well. The U.S. provided training, technical and material support.

The GOM published regulations needed to implement anti-money laundering legislation passed in 1996 and began to work with financial institutions to improve the effectiveness of its national reporting system for suspicious and large currency transactions. The Mexican Congress began its review of new asset forfeiture legislation. In December, the Mexican Congress passed a comprehensive chemical control bill enabling the GOM to regulate all aspects of commerce in precursor and essential chemicals to prevent their diversion to illicit drug production. The Chemical Experts Working Group promotes bilateral cooperation and information sharing.

The GOM wrestled with very serious corruption issues in 1997, including an internal investigation which implicated General Jesus Gutierrez Rebollo, the head of its federal drug law enforcement agency. He and a number of co-conspirators are being prosecuted, and the agency he headed was replaced by a new institution. Mexico is seeking both to uncover ongoing cases of corruption as well as to strengthen justice sector institutions to withstand corrupting influences and pressures. President Zedillo has made this a national priority, but acknowledged that lasting reform will take time.

Drug seizures in 1997 generally increased over 1996 levels. Mexican authorities seized 34.9 MT of cocaine, 115 kgs of heroin, 343 kgs of opium gum, 1,038 MT of marijuana, 39 kgs of methamphetamine, and destroyed 8 clandestine laboratories. The GOM's massive drug crop eradication effort reduced net production of opium gum from an estimated 54 MT in 1996 to 46 MT in 1997, and of marijuana from 3,400 MT in 1996 to 2,500 MT in 1997. Authorities arrested 10,742 suspects on drug-related charges. At least eight individuals considered by U.S. law enforcement authorities

to be major traffickers were tried and sentenced to prison terms of 9 to 40 years, including Joaquin Guzman Loera (21 years), Hector Luis Palma Salazar (22 years), Miguel Angel Felix Gallardo (12 years), Raul Valladares del Angel (29 years). Unfortunately, Humberto Garcia Abrego was released and Rafael Caro Quintero succeeded in obtaining a reduction in his sentence.

In 1997, the U.S. and Mexico made further progress in the return of fugitives. A new Protocol to the Extradition Treaty, signed at the time of President Zedillo's visit to Washington in November, will aid the two governments in their efforts to combat transnational crime by permitting ''temporary'' extradition of fugitives sentenced in one country to face criminal charges in the other. The GOM approved the extradition of 27 fugitives from U.S. justice (12 for drug charges) although nine (all Mexican nationals, five facing drug charges) are appealing the GOM's extradition order, or face charges in Mexico. Thirteen fugitives (seven on drug charges) were formally extradited; ten other fugitives (eight U.S. citizens and two third-country nationals) were expelled by the GOM to the U.S. in lieu of extradition.

Mexico made progress in its anti-drug effort in 1997 and cooperated well with the United States. Nevertheless, the problems that Mexico faces in countering powerful criminal organizations, and the persistent corrupting influence that they exert within the justice sector, cannot be minimized. There are also areas of bilateral cooperation which must be improved for the two governments to achieve greater success in attacking and dismantling the trans-border drug trafficking organizations. The U.S. is convinced, however, of the Zedillo Administration's firm intention to persist in its campaign against the drug cartels and its broad-sweeping reform effort. Through daily interaction between agencies of the two governments, formal discussions in the HLCG and other bilateral groups, as well as collaboration in multilateral fora, the two governments are finding increasingly productive ways to work together against the common threats our nations face.

Panama

Panama is major transit point for Colombian cocaine and heroin on its way to the United States. Cocaine passes through Panamanian territorial waters concealed in fishing boats or ''go-fast'' boats. Some of it is off-loaded on the Panamanian coast and then transported by truck up the Pan-American Highway into Costa Rica where it is then bound for the US. It is also carried by ''mules'' traveling by air to the US and Europe. There is no evidence that any senior official of the Government of Panama is involved in any drug scenarios nor does government policy encourage or facilitate drug-related criminal activity. However, the amount of drugs seized by Costa Rican border officials from tractor trailers entering from Panama is suggestive of either inadequate inspections or corruption on the part of Panamanian border officials. Corruption in the Judiciary remains a concern, particularly because judges are vulnerable to political influence and are susceptible to threats.

Panama continued to cooperate with U.S. in counternarcotics efforts in 1997. In 1997, they took steps to implement its counternarcotics masterplan, which was developed by the National Commission for the Study and Prevention of Drug Related Crimes, a part of their public ministry. The plan deals with prevention, treatment, rehabilitation, and re-entry into the workforce; control of supply; and illicit trafficking. It encompasses state and non-governmental organizations. Panama also hosted the ''First Hemispheric Congress on the Prevention of Money Laundering'' and became the first Latin American country to be admitted to the Egmont Group, an alliance of 30 nations with centralized financial analysis units to combat money laundering. Panama is also an active participant in the Commission Against Addiction and Illicit Trafficking of Drugs (CICAD), the Caribbean Financial Action Task Force (CFATF) and the Basel Committee's Offshore Group of Bank Supervisors.

In 1997, Panamanian officials seized 21.62 metric tons (MT) of illegal drugs, including 7 MT of cocaine. Although Panama gives law enforcement a high priority, this is not reflected by the scant resources and low wages it provides some of its law enforcement agencies which lack equipment, training and base facilities.

Panama needs to sign the maritime interdiction treaty with the U.S. that was negotiated and approved by the General Directorate of Consular and Maritime Affairs earlier this year. They need to undertake a fundamental and wide-ranging reform of the judicial system to ensure it is protected from political influence and corruption. Panama needs to sign the agreement with the U.S. to establish a Multinational Counternarcotics Center (MCC) at Howard Air Force Base. Negotiations were essentially completed on this agreement in late 1997, when the GOP raised new concerns. The GOP also needs to enact bank reforms it announced in 1997 and enact legislation to extend the existing law against drug money laundering to include the proceeds from all serious crimes.

Peru

Following the 1996 reduction in coca cultivation, Peruvian coca cultivation declined dramatically in 1997, from 115,300 hectares (with the potential to produce 460 metric tons of cocaine) in 1995 to less than 69,000 hectares (with the potential to produce 325 metric tons of cocaine) in 1997. The 1997 percentage decrease in the total area under coca cultivation was 27 percent, following the 18 percent decline in 1996. A strong commitment by the Government of Peru (GOP) to forcibly eradicate illicit mature coca in national parks and other areas by manual labor means resulted in over 3,462 hectares destroyed in 1997, a 175 percent increase over 1996.

This success was the offspring of a combined Peruvian Air Force (FAP) and Peruvian National Police Drug Directorate (DINANDRO) ''airbridge denial'' interdiction program and increasingly effective narcotics law enforcement. These two USG-supported programs continued to deter traffickers from using their preferred method of exporting large quantities of cocaine base by air for further refining into cocaine hydrochloride (HCl) in Colombia and elsewhere. ''Airbridge denial'' success maintained a cocaine base glut in the coca cultivation zones and below-production-cost farmgate coca prices. The collapse of coca leaf prices spurred greater numbers of farmers to accept the economic alternatives to coca offered by the USG–Peru alternative development project, which expanded in 1997.

The joint U.S.-GOP alternative development program was successful in strengthening local governments, providing access to basic health services and promoting licit economic activities, thereby establishing the social and economic basis for the permanent elimination of coca. A total of 239 communities have signed coca reduction agreements to reduce coca by approximately 16,300 hectares over the next five years.

Responding to traffickers developing new smuggling methods on Peru's rivers, across land borders and via maritime routes, Peruvian counternarcotics agencies, in particular DINANDRO and the Peruvian Coast Guard, established several riverine counternarcotics bases and increased resources for riverine anti-drug operations. Cooperating with USG law enforcement partners and advisors, DINANDRO worked extensively with drug police from Colombia and Brazil to share counternarcotics intelligence and to participate in joint law enforcement operations in the Amazonian tri-border area.

In 1997, the Government of Peru (GOP) cooperated fully with the USG in fulfilling the objectives of the USG–Peruvian counternarcotics framework agreement and of the 1988 UN Drug Convention, to which Peru is a party. Counternarcotics activities remained a GOP national priority, and Peru's 1997 ''National Plan for Alternative Development, Drug Prevention and Rehabilitation'' set goals of reducing illicit coca production by approximately 50 percent within five years.

Taiwan

Given trafficking patterns in the region and Taiwan's role as a shipping center, the U.S. believes Taiwan remains a transit point for drugs significantly affecting the U.S. While Taiwan authorities dispute this assessment, there is no disagreement with regard to the fact that individuals from Taiwan continue to be involved in international narcotics trafficking. Some 67 percent of all drugs smuggled into Taiwan are believed to come from China. Whatever their belief about Taiwan's transit role, Taiwan authorities continue to mount an aggressive counternarcotics campaign that involves both social rehabilitation programs and harsh sentences for narco-trafficking. Although Taiwan is not a UN member and cannot be a signatory to the 1988 UN Drug Convention, it tries to meet Convention goals regarding precursor chemicals via an active program to control the products of its large chemical industry. In addition, Taiwan authorities have come to recognize that money laundering is a growing problem. In 1997, a Money Laundering Prevention Center was established under the auspices of the Ministry of Justice Investigation Bureau.

Cooperation between USG law enforcement agencies (under the auspices of the American Institute in Taiwan) and Taiwan law enforcement institutions continued to expand in 1997. Drug Enforcement Administration (DEA) and Financial Crimes Enforcement Network officials have led training seminars for Taiwan counterparts and have broadened their range of contacts within Taiwan's law enforcement community. Taiwan authorities have generally responded positively and constructively to U.S. requests on counternarcotics issues. With the opening of the Money Laundering Prevention Center, authorities have started sharing with USG law enforcement officials Taiwan-originated information related to money laundering cases where the flow of money leads to the U.S. In addition, Taiwan Ministry of Justice investigation officers assisted DEA agents with a case involving a shipment of drugs to Guam.

Taiwan's counternarcotics enforcement activities led to a 19.1 percent increase in drug convictions in the first ten months of 1997 over all of 1996. Drug seizures also increased. The Money Laundering Prevention Center pursued investigations in all 360 cases of reported suspicious transactions. Taiwan also continues to prosecute cases of public corruption. There are, however, no known cases of official involvement in narcotics trafficking.

Thailand

Throughout 1997 Thailand continued its long tradition of cooperation with the United States and the international community in anti-drug programs. The U.S.-Thai Mutual Legal Assistance Treaty has been in effect since the middle of 1993, and USG requests for assistance under the Treaty have been consistently honored by the RTG. Cooperation between the USG and Thailand in a number of areas, not specifically covered by formal agreements, is long standing, close and productive. DEA works closely with Thai drug authorities in investigating major heroin trafficking organizations, providing training and developing Thai drug enforcement capabilities. The U.S. Customs Service and Department of Defense have cooperated with various agencies on anti-smuggling projects. DOD is also supporting training initiatives with selected Border Patrol and Narcotics Police units, and has assisted development of the regional Drug Task Forces.

In another example of responsive drug enforcement cooperation, after the illegal release on bail of a major drug fugitive awaiting extradition to the United States, Thai authorities moved quickly to secure his return from Burma, expedited his extradition and ultimately removed the judge responsible for granting the bail. Thailand's continuing cooperation on extraditions involved sending 17 individuals to the U.S., all but one of whom

were defendants in drug cases, and some of whom were Thai nationals or claimed Thai citizenship.

USG experts estimated that Thai opium production in the 1996–97 growing season declined seventeen percent from the previous year's production, to 25 metric tons. Control programs have resulted in a reduction of the amount of poppy grown from an estimate of up to 200 metric tons in the 1970's, to an estimated 25 metric tons in 1997.

Although Thailand has yet to become a party to the 1988 UN Drug Convention due to its lack of anti-money laundering laws, progress was achieved with money laundering legislation, previously approved in Cabinet, introduced in Parliament and passed through the first of three readings. Thai officials have committed to the passage of the laws during upcoming parliamentary sessions. Thailand is generally in compliance with the 1988 UN Drug Convention except for enacting anti-money laundering statutes. It enforces laws against the cultivation, production, distribution, sale, transport, and financing of illicit drugs. Last year penalties for possession of methamphetamines were increased. As of October 1997, 282 cases opened under the asset seizure and consipracy statutes amounted to over 17 million dollars seized or frozen. Thai authorities do, however, need to strengthen the conspiracy law and create additional legal tools to make prosecutions of higher level offenders possible. Thailand's level of international and bilateral cooperation on drug control is expected to remain high, with the Kingdom setting an example regionally for effective drug control programs, despite current economic difficulties.

Venezuela

Venezuela continues to be a major transit country for cocaine shipped from South America to the United States and Europe. Law enforcement agencies estimate that over 100 metric tons (mt) of cocaine transit yearly. Venezuela is also a transit country for chemicals used in the production of drugs in source countries. Venezuela is not a significant producer of illegal drugs, but small-scale opium poppy cultivation occurs near the country's border with Colombia. In recent years, Venezuela's relatively vulnerable financial institutions have become targets for money laundering of illegal drug profits.

In 1997, Venezuela took significant steps to improve its counter-narcotics activity. A new drug czar (appointed at the end of 1996) received ministerial rank and a mandate to step up implementation of Venezuela's comprehensive 1993 anti-drug law. Seizure statistics increased more that 150 percent over those in 1996. Venezuela's congress passed legislation to control gambling casinos (a prime money laundering target) and the government adopted new banking regulations with strict reporting requirements. The National Anti-Drug Commission (CNA, formerly CONACUID) released a national anti-narcotics strategy containing a comprehensive set of goals for the next four years. These goals include judicial reform and a new organized crime bill with conspiracy, asset forfeiture, and additional anti-money laundering provisions.

Bilateral cooperation between Venezuela and the U.S. received a boost during the October 1997 visit of President Clinton to Caracas. The two countries signed a joint declaration of ''Strategic Alliance Against Drugs.'' The declaration addressed most of the areas of the 1988 UN Convention (ratified by Venezuela in 1991) and specific areas of bilateral concern raised in the course of bilateral discussions during the year. During this visit, the two countries also signed a mutual legal assistance treaty (MLAT). 1997 also saw increased cooperation between Venezuela and the U.S. in maritime interdiction of illegal drug shipments.

Some problem areas remain. Narcotics-related corruption in law enforcement, the judiciary, financial institutions, and the prison system are continuing concerns. The Government of Venezuela does not as a matter of policy

or practice encourage or facilitate drug trafficking or money laundering, nor do its senior officials engage in, encourage, or facilitate such activities. Port control needs to be improved. The new anti-money laundering legislation needs to be implemented with an effective control regime and organized-crime/asset forfeiture legislation should be given a high priority. Venezuela continues to lack an effective air interdiction strategy.

Nevertheless, Venezuela demonstrated a high-level political commitment to combat narcotics trafficking and related crime during 1997. The U.S. will support Venezuela's stepped-up counternarcotics effort and will work closely with Venezuela in areas of common concern as money laundering and diversion of precursor/essential chemicals. The U.S. will also seek ways to support judicial reform and to enhance cooperation in maritime interdiction efforts.

Vietnam

Drug trafficking through Vietnam and domestic drug abuse continue to increase, particularly among young people with rising incomes. At the same time, intense media coverage of narcotics arrests and trials, especially stiff sentences, including several executions, highlighted a ''get tough'' approach with traffickers and corrupt mid-and-lower level government officials. Law enforcement authorities also increased drug seizures, investigations, and prosecutions, generally. The number of drug arrests increased by 25 percent in the first six months of 1997, compared with the same period last year. This followed an even larger increase (66 per cent) in 1996. Some 70 percent of the cases involved heroin. A spot raid in Ho Chi Minh City netted 96 youngsters (mostly age 15–16) who were dealing in heroin. In another incident, a judge in Ky Son District (the area of heaviest drug production and transit) was arrested in March for trafficking in opium, but he later escaped. A Haiphong Court also imposed stiff sentences on several drug pushers said to have lured teenagers into heroin use. Traffickers seem to have modified their transit routes somewhat in response to these stepped-up enforcement efforts.

The Socialist Republic of Vietnam (SRV) took two major initiatives during 1997: it established an Anti-Narcotics Division (AND) of the People's Police and reorganized and elevated responsibility for drug policy coordination, which is now under a Deputy Prime Minister. It also ratified the 1988 UN Drug Convention in November. After considerable success reducing opium poppy cultivation in the past few years, cultivation may once again be increasing. Vietnam claims to have reduced poppy cultivation from over 20,000 hectares in the late 1980's and early 1990's to 2,885 hectares in 1995/96. USG experts, however, estimated an increase from 3,150 hectares in 1996 to 6,150 hectares in 1997. The United States and Vietnam are negotiating a narcotics cooperation letter of agreement. During 1997, the Vietnamese welcomed a visit by the Drug Enforcement Administration's (DEA) Chief of International Operations. There were also regular visits by DEA officers based in Embassy Bangkok.

VITAL NATIONAL INTERESTS JUSTIFICATIONS

Cambodia

A transit point for Southeast Asian heroin as well as a source country for marijuana, Cambodia experienced violent internal conflict in early July 1997. This conflict, and the high-level political infighting leading up to it, disrupted USG counternarcotics efforts aimed at helping to build a credible counternarcotics and law enforcement infrastructure. Indeed, all direct USG assistance to the government has been suspended, although some humanitarian and democracy-building programs continue.

In recent months, Cambodia appears to have begun to try to refocus its counternarcotics efforts. Counternarcotics agencies appear to be targeting

trafficking organizations more aggressively, but their staffs remain poorly trained and equipped. Military and police personnel have been arrested for their involvement in narcotics-related activities, suggesting an effort at rooting out at least some drug corruption. DEA, U.S. Customs and other USG agencies continue to have access to Cambodian counterparts and generally characterize cooperation as good, in that interlocutors are willing to share information and to respond, to the extent possible, to requests for assistance.

However, the continuing instability has politicized the counternarcotics effort. Various Cambodian factions have charged political opponents with engaging in illegal narcotics activities, often with the objective of drawing US personnel into appearing to support one or another party or individual. Politicization of the counternarcotics effort has undermined some of the value of USG assistance and harmed cooperation. Moreover, little has been done by the Royal Government of Cambodia (RGC) to assuage international concerns about allegations of high-level government corruption, leaving Cambodia's commitment to counternarcotics efforts in doubt at this time.

The US, jointly with ASEAN and the UN, is now engaged in a diplomatic effort to urge the RGC to restore the Paris Peace Accords' framework by permitting free and fair elections this year. Should this effort to promote accountable democratic governance in Cambodia succeed, it will be vital to maintain our ability to provide all types of counternarcotics, as well as other assistance, if appropriate, to strengthen independent judicial systems and foster accountable institutions of civil society in Cambodia. Assistance to support democratic development and long-term economic stability in Cambodia is a key element of our overall long-term commitment to stability and openness in the Asia-Pacific region. Cambodia figures in our own strategic interest in ASEAN's long-term political and economic stability, especially since Cambodia continues to have an interest in becoming a member of ASEAN. Accordingly, while it is not appropriate at this time to certify Cambodia as either fully cooperating with the United States or taking adequate steps on its own to combat drug production and trafficking, the risks posed by inadequate counternarcotics performance are outweighed by the risks posed to US vital national interest if assistance is not available.

Colombia

As in previous years, Colombia remained the world's leading producer and distributor of cocaine and an important supplier of heroin and marijuana. Notwithstanding significant eradication in the Guaviare region, coca cultivation in southern Colombia grew markedly, leading to an increase in coca cultivation overall.

In November 1997, the Colombian Congress passed a constitutional amendment reversing the 1991 Constitutional ban on the extradition of Colombian citizens. This represents significant progress, and is due in large part to effective lobbying of the Government of Colombia (GOC) and the Colombian Congress and Senate by the Colombian private sector. Unfortunately, the final bill falls short because it contains a ban on retroactive application. The Government and members of the Colombian Congress have filed challenges to this ban. However, if the ban is upheld by Colombia's Constitutional Court, then the Cali kingpins would be placed beyond the reach of U.S. justice for crimes committed before December 1997. Moreover, the constitutional bill may also require implementing legislation, which the GOC has promised to seek before President Samper leaves office in August 1998. This legislation could give opponents of extradition another opportunity to weaken extradition.

In early 1997, Colombia passed excellent legislation which stiffened sentences for narcotics traffickers, strengthened regulations affecting money-laundering and permitted forfeiture of the assets of narcotics traffickers.

Implementation of these strong laws by the GOC has been disappointingly slow and the GOC has yet to apply them aggressively.

The GOC also took measures to improve prison security in Colombia, giving the Colombian National Police (CNP) responsibility for security in the maximum security pavilions housing the major narcotics traffickers, a great improvement. However, continued attention has not been given to the problem. The U.S. Embassy has heard fewer reports of traffickers carrying out their illicit business activities with impunity from their cells, but there are still indications that the drug kingpins maintain some ability to operate their criminal enterprises and exert influence from prison.

The Colombian Government made only limited progress in 1997 against narcotics-related corruption. Several former congressmen and the mayor of Cali were sentenced on corruption charges stemming from the ''Caso 8000'' investigation. The GOC has demonstrated little inclination to root out official corruption and to strengthen democratic institutions from the corrupting influence of narcotraffickers.

The Colombian National Police and selected units of the military involved in counternarcotics activities produced impressive results in 1997. Figures for both eradication and seizures were up, despite significant challenges from heavily-armed narcotics traffickers and several elements of the guerrilla movements which support them. The maritime agreement signed in early 1997 has been successfully implemented and resulted in interdiction of several cocaine shipments.

Although the GOC has made important progress in some areas this year, the USG cannot certify Colombia as fully cooperating with the United States on drug control, or as having taken adequate steps on its own to meet the goals and objectives of the 1988 UN Drug Convention. Poor government performance in the extradition debate, lack of a concentrated effort to combat official narcotics-related corruption and still lagging enforcement of strong counternarcotics laws all argue against certification.

However, the vital national interests of the United States requires that U.S. assistance to Colombia be provided. The continuing dominance of Colombian cartels in the cocaine industry, their growing role in the heroin trade and the growing role of the guerrillas in shielding and protecting illicit drug production make the challenges in Colombia greater than ever before. To meet these challenges, we need to work even more closely with the GOC to expand joint eradication efforts in new coca growing areas in southern Colombia and in opium cultivation zones, to enhance interdiction, and to strengthen law enforcement. The GOC would not likely approve such an expanded program if denied certification for a third straight time. We have a unique opportunity with significant US-supplied assets deployed and the commitment of the CNP and elements of the armed forces to strong efforts in these areas. However, they will need increased resources and training to perform these tasks adequately. Strong leadership must come from the Colombian government to reform and defend essential democratic institutions, such as the country's judiciary. The coming elections may provide opportunities for further cooperation.

Moreover, key elements of US assistance which could help in this effort, such as potential foreign military financing (FMF) and international military education and training (IMET), could not be provided to our allies for counternarcotics operations if Colombia were denied certification again. Indeed, this year the President deemed necessary the provision of FY97 IMET and previous year FMF by means of a waiver under Section 614(b) of the FAA.

U.S. economic engagement is also a critical element in counterbalancing the influence of drug money in the Colombian economy. After two years of denial of certification, U.S. companies, without access to OPIC and EXIM Bank financing, have lost significant business to competitors. With a vital

national interest certification, U.S. companies will be able to compete on a level playing field for up to $10 billion in upcoming major contracts.

In making the decision to provide a vital national interests certification to Colombia this year, we were mindful of the deteriorating security and human rights environment in Colombia, the threat to that country's democracy, and the threat posed to Colombia's neighbors and to regional stability. The cumulative effects of Colombia's forty-year old insurgency, narco-corruption, the rise of paramilitaries, the growing number of internally displaced Colombians, growing incidents of human rights abuses, and the potential threat that Colombia's violence and instability pose to the region all require a vital national interests certification. Such a certification is necessary so that the USG can provide assistance in order to broaden and deepen its engagement with this and the next Colombian government in an effort to effectively confront and eliminate narcotrafficking. The threats to U.S. vital national interests posed by a bar on assistance outweigh the risks posed by Colombia's inadequate counternarcotics performance.

Pakistan

Pakistan is a major producer and an important transit country for opiates and cannabis destined for international markets. In 1997, Pakistan produced approximately 85 metric tons (mts) of opium, an estimated increase of 13.3% from 1996. Heroin and opium seizures increased, but the overall record of law enforcement action continued to be poor. Seizures of precursor chemicals improved substantially. The Nawaz Sharif government, which took office in February 1997, voiced greater concern about Pakistan's narcotics problems, although this has not yet manifested itself in essential counternarcotics actions.

The 1997 counternarcotics efforts of the Government of Pakistan (GOP) were seriously deficient. The two major accomplishments were passage of the comprehensive drug control legislation and destruction of heroin processing laboratories in Pakistan's Northwest Frontier Province. One major arrest requested by the USG took place, but there were no known trials of previously arrested drug kingpins and no extraditions of the 23 individuals requested by the USG for narcotics-related offenses. Opium and heroin seizures increased and acetic anhydride seizures sharply increased, but the GOP did not interdict any large opiate smuggling caravans on the well-traveled Baluchistan route from Afghanistan into Iran.

The GOP made no progress in crop eradication. Poppy cultivation increased 21% and opium production increased 13%, despite USG programs and USG-assisted UNDCP programs which had made steady progress in decreasing production and poppy cultivation in the past five years. The increase was primarily due to the GOP's failure to enforce the poppy ban in Dir District, the site of highest opium poppy growth, despite warnings from both UNDCP and the USG that the GOP must continue to press tribal groups living in that district to eradicate illicit opium poppy. The GOP also made no progress in demand reduction. There were no new programs designed to control Pakistan's addict population, estimated to be between 3 and 5 million. The GOP estimates the addict population growth at 7% a year.

USG/GOP law enforcement cooperation was severely strained by the arrest, torture, courtmartial and conviction of a DEA employee involved in an operation which identified Pakistani Air Force Officers involved in drug smuggling to the U.S. These steps were taken by elements of the GOP with the full involvement of the country's Anti Narcotics Force (ANF). Recently, the GOP reduced the DEA employee's prison sentence on appeal. The Administration remains engaged with the GOP in seeking the release of this employee from prison.

Pakistan is a party to the 1988 UN Drug Convention, which it ratified in October 1991, but implementing legislation on money laundering has

not yet been drafted. While Pakistan's Control of Narcotics Substances Act, passed in 1997, deals with drug-related money laundering, Pakistan must still criminalize money laundering from non-drug related offenses.

The USG/GOP bilateral agreement provides funding for law enforcement, roads and crop substitution in the NWFP, and demand reduction activities. The GOP made very little progress in meeting the goals of the bilateral agreement and 1988 UN Drug Convention in 1997. The continued detention of the DEA employee, despite repeated urgings at the highest levels for his release, seriously complicates the counternarcotics relationship. Because of this and because of the GOP's poor counternarcotics law enforcement record and the substantial upsurge in illicit poppy growth, Pakistan cannot be judged to have cooperated fully with the USG or taken adequate steps on its own to meet the requirements of the 1988 U.N. Drug Convention.

However, vital U.S. national interests would be damaged if Pakistan were to be denied certification. Implementing sanctions would vitiate the broader U.S. policy of high-level engagement, including strong support for Prime Minister Sharif's commitment to hold a dialogue with India as well as to strengthen democracy and reform the economy.

Helping the GOP to strengthen its economy and to move towards a more liberal, broader-based market economy is one of the USG's major goals. Yet, a number of new or potential initiatives would be halted or thrown into question by denial of certification. This could include such fundamental programs such as those funded by OPIC and EX–IM, PL 480 projects involving commodities other than food, and possibly the funding of NGOs. Certification denial would also require the U.S. to vote against Pakistan in multilateral development banks (''MDBs'') at a time when Pakistan is vulnerable to a financial crisis. The combination of such negative votes and removal of possible assistance could weaken Pakistan's investment climate, increase its prospects for sliding into financial insolvency and sharply inhibit our ability to help the GOP modernize its economy.

In addition to this statutory basis for a vital national interests certification, it should also be recognized that denial of certification could jeopardize broader interests between the U.S. and Pakistan, including the ability to achieve meaningful progress with the GOP on such important goals as non-proliferation and Afghanistan.

Accordingly, while it is not appropriate at this time to certify Pakistan as either fully cooperating with the United States or taking adequate steps on its own to combat drug production and trafficking, the risks posed by inadequate counternarcotics performance are outweighed by the risks posed to US vital national interests if U.S. assistance was no longer available and the U.S. was required to vote against loans to Pakistan in MDBs, thus justifying a vital national interests certification.

Paraguay

A determination to decertify Paraguay would be justified in view of its substantial lack of achievement in meeting its counternarcotics goals in 1997. However, the vital national interests of the United States require certification, so that the assistance, withheld pursuant to provisions of the Foreign Assistance Act of 1961, can be provided.

Paraguay is a transit country for cocaine, primarily Bolivian, en route to Argentina, Brazil, the United States, Europe and Africa, as well as a source country for high-quality marijuana. Paraguay was fully certified for 1996, after the Government of Paraguay (GOP) adopted a national drug control strategy, promulgated an anti-money laundering law, and increased its counternarcotics cooperation with the United States and regional countries. Paraguay's counternarcotics goals for 1997 included investigating major cocaine traffickers, making significant seizures and arrests, preventing the escape of arrested drug traffickers, implementing the money laundering law

and provisions of the anti-drug law (Law 1340/88) aimed at punishing and preventing official corruption, enacting legislation authorizing controlled deliveries and undercover operations, as well as criminalizing drug-related conspiracy.

Unfortunately, Paraguay did not come close to meeting any of these objectives. Responsibility for the failure to do so is shared by all branches of the Paraguayan government. There were no successful investigations of significant traffickers. Although cocaine seizures showed a minimal increase over 1996, all involved minor traffickers. The largest seizure was accompanied by the arrest of four suspects caught in possession of over 21 kilos of cocaine. However, a criminal court judge freed all four on what appear to be spurious grounds; this judge received a minor disciplinary sanction and continues to serve in office. Judicial corruption was also suspected in connection with Paraguay's refusal to extradite a suspected narcotics trafficker to France. In that case, a lawyer was recorded accepting an alleged bribe to pass on to an appellate judge; the judge subsequently was removed from office for his actions in yet another case.

Paraguay is a major money laundering center, but it is unclear what portion is drug-related. The promulgation of the 1996 money laundering law, and the creation of an anti-money laundering secretariat (SEPRELAV), in January 1997, now provides the GOP with the legal tools necessary to move against this criminal activity, but little has been done so far to apply the law. SEPRELAV also has not been provided with a budget to enable it to operate as an independent organization.

The Paraguayan Congress, controlled by the opposition parties, made no progress on a major revision of the anti-drug law, which was submitted by the GOP in 1995. The GOP did not submit new legislation to authorize controlled deliveries, undercover operations or criminalize drug-related conspiracy. It also failed to complete a precursor chemical monitoring survey that was promised in 1996.

In part, these failures were due to the GOP's allowing itself to become distracted by election-year politics, particularly by its opposition to the presidential candidacy of former Army Commander, and unsuccessful 1996 coup plotter, Lino Oviedo. The GOP and opposition parties also demonstrated reduced political will to confront the politically influential and economically powerful frontier commercial and contraband interests during an election year.

The GOP, realizing its shortfalls on counternarcotics cooperation and cognizant of the USG decision on certification, recently has reaffirmed its political will to prioritize counternarcotics efforts, including taking law enforcement action against significant narco-traffickers, agreeing to negotiate a new bilateral extradition treaty with the USG, and preparing a draft law to explicitly authorize controlled deliveries. While positive steps, these measures have yet to bear fruit; their possible fulfillment will have a bearing on next year's certification decision, not this year's.

Denial of certification would, however, cut off assistance programs designed to meet the priority US goal of strengthening Paraguay's democratic institutions, at precisely the moment when those institutions are being severely tested by the stress of hotly-contested presidential, congressional and gubernatorial election campaigns. Denial of certification at this time could have an unintended negative impact on the ongoing election campaign. Denial of certification would also jeopardize ongoing cooperation and assistance programs with the GOP against other international crimes (smuggling, intellectual property piracy, terrorism). Moreover, vital national interests certification would help to promote the political will and positive action against narcotics trafficking that we will seek from the next GOP.

The risks posed to all of these US interests (promoting democracy, cooperation against other crimes and continued counter-terrorism cooperation) by a cutoff of bilateral assistance outweigh the risks posed by Paraguay's failure

to cooperate fully with the USG, or to take adequate steps to combat narcotics on its own.

STATEMENTS OF EXPLANATION

Afghanistan

Afghanistan continued as the world's second largest producer of opium poppy, according to USG estimates. Land under poppy cultivation and opium production rose 3 percent in 1997 according to US satellite surveys. Continued warfare, destruction of the economic infrastructure and the absence of a recognized central government with control over the entire country remain obstacles to effective drug control.

The inaction and lack of political will of the Taliban faction, which controls 96 per cent of Afghanistan's opium-growing areas, as well as substantial drug trade involvement on the part of some local Taliban authorities impede meaningful counternarcotics progress as well. The Taliban, formed by religious students, began its military campaign in Afghanistan in 1994 and assumed effective control over two thirds of the country in fall 1996. There is no evidence that the Taliban or any other faction controlling Afghan territory took substantive law enforcement or crop eradication action in 1997.

Although the Taliban condemned illicit drug cultivation, production, trafficking and use in 1997, there is no evidence that Taliban authorities took action to decrease poppy cultivation, arrest and prosecute major narcotics traffickers, interdict large shipments of illicit drugs or precursor chemicals or to eliminate opiate processing laboratories anywhere in Afghanistan in 1997. Narcotics remain Afghanistan's largest source of income, and some Taliban authorities reportedly benefit financially from the trade and provide protection to heroin laboratories. There are numerous reports of drug traffickers operating in Taliban territory with the consent or involvement of some Taliban officials. Taliban authorities called for international alternative development assistance as a precondition to eradicating opium poppy cultivation. Afghanistan is a party to the 1988 UN Drug Convention.

In November 1997, the Taliban responded to a UNDCP initiative by agreeing to eliminate poppy cultivation in districts where alternative development was provided, to control poppy cultivation in areas where poppy was not previously grown and to eliminate morphine and heroin laboratories when these sites were brought to their attention. To date, these commitments have not been tested.

The USG strongly supports the UN Secretary General's Special Envoy for Afghanistan, Ambassador Lakhdar Brahimi, and the UN Special Mission to Afghanistan in their efforts to promote a cease-fire, followed by negotiations leading to a broad-based government that can address the problems of narcotics, terrorism and humanitarian concerns. We assist the peoples of Afghanistan, subject to resource availability, primarily through UN programs aimed at humanitarian relief, reconstruction and counternarcotics. In 1997, USG transferred $1.6 million in FY–95 and FY–96 funds earmarked for UNDCP to help finance UNDCP's capacity building project and poppy reduction projects in Afghanistan. The USG also provided an initial $269,202 of a $772,905 poppy reduction/alternative development project being implemented by an American non-governmental organization (NGO), Mercy Corps International (MCI) in Helmand Province.

Since U.S. legislation makes special allowance for continuation of such assistance generally, notwithstanding any other provision of law, denying certification of Afghanistan would have minimal effect in terms of implementation of this policy.

Continuation of large-scale opium cultivation and trafficking in Afghanistan, plus the failure of the authorities to initiative law enforcement actions, preclude a determination that Afghanistan has taken adequate steps on its

own or that it has sufficiently cooperated with USG counternarcotics efforts to meet the goals and objectives of the UN 1988 Drug Convention, to which Afghanistan is a party. Accordingly, denial of certification is appropriate.

Burma

Burma continues to be the world's largest source of illicit opium and heroin. In 1997, production declined slightly from the previous year's levels; estimates indicated there were 155,150 hectares under cultivation, which could yield a maximum of 2,365 metric tons of opium.

On the law enforcement front, the Government of Burma (GOB) seized more opium and heroin, and raided more laboratories than in the past. These were welcome developments, but, given the extent of the problem, they were insufficient to make noticeable inroads against drug trafficking and production. Seizures of amphetamines and the precursor chemical acetic anhydride declined. There were no arrests of major traffickers. Drug lord Chang Qifu (Khun Sa), who ''surrendered'' to Burmese authorities in 1996, was not brought to justice, and the GOB continued to refuse to render him to the United States. The GOB did return a U.S. fugitive to Thailand, which extradited him to the United States.

Several ethnic groups declared that they would establish opium free zones in their territories by the year 2000, and the GOB undertook some eradication efforts as well. Establishment of opium free zones would require considerable time and investment of resources. The Government of Burma approved a United Nations Drug Control Program, a five-year alternative development project in the ethnic Wa region; as the year closed, UNDCP was making arrangements to initiate work.

Money laundering and the return of narcotics profits laundered elsewhere appear to be a significant factor in the overall Burmese economy. An underdeveloped banking system and lack of enforcement against money laundering have created a business and investment environment conducive to the use of drug-related proceeds in legitimate commerce. The GOB has encouraged leading narcotics traffickers systematically to invest in infrastructure and other domestic projects.

USG counternarcotics cooperation with the Burmese regime is restricted to basic law enforcement operations and involves no bilateral material or training assistance. The USG remains concerned over Burma's commitment to effective counternarcotics measures, human rights, and political reform. The USG is prepared to consider resuming appropriate assistance contingent upon the GOB's unambiguous demonstration of a strong commitment to counternarcotics, the rule of law, punishment of traffickers and major trafficking organizations (including asset forfeiture and seizure), anti-corruption, eradication of opium cultivation, destruction of drug processing laboratories, and enforcement of money laundering legislation.

Iran

Iran has strengthened its counternarcotics performance during the past year—particularly in the area of interdiction—but direct information is limited because the United States has no diplomatic presence in the country.

Iran's interdiction efforts are apparently vigorous, if partially effective. Costly physical barriers and aggressive patrolling of its eastern borders have led to Iranian claims of record narcotics seizures of nearly 200 tons last year—and significant Iranian casualties as well. But with an estimated 1,000 tons of opiates crossing the country each year, Iran remains the major transit route for opiates from Afghanistan and Pakistan to the West, although we do not have recent data on the amount that may reach the United States. Punishment of traffickers is harsh but drug trafficking continues on a large scale.

Cultivation of opium poppies continues in Iran, but the extent of cultivation is difficult to ascertain conclusively. The 1993 United States Government survey of opium cultivation in Iran estimated that 3,500 hectares were under cultivation. U.S. crop estimates were a major factor in placing Iran on the majors' list of drug producing and transit countries. Iran claims complete eradication of the opium poppy crop. Recent statements by the Dublin Group that opium cultivation has markedly decreased give at least partial credence to the Iranian claims, but a new crop survey would help—and will be undertaken—to confirm such eradication.

Iran has taken some steps to confront corruption among customs, police and military personnel. Observers have noted several convictions of corrupt officials but the corruption of low-level officials continues; multi-ton shipments of opiates could not traverse Iran without assistance from complicit law enforcement or military personnel. There have been no recent, credible reports concerning high-level complicity in narcotics trafficking and high-ranking officials of the GOI have clearly stated Iran's official aversion to narcotics trafficking.

Iran has ratified the 1988 UN Drug Convention, but the United States Government and other observers remain unaware of implementing legislation to bring Iran into full compliance with the Convention. A 1997 proposal approved by the Expediency Council appears to allow for stronger drug laws and demand reduction programs, but the extent to which the proposal helps Iran to comply with the Convention cannot be predicted before the proposal is enacted as unforceable laws or regulations. No bilateral narcotics agreement exists between Iran and the United States.

Iran has recently stated, at the highest level, a desire to cooperate in international counternarcotics programs. With the exception of the Iran/Pakistan/UNDCP border interdiction program and a UNDCP demand reduction survey, however, Iran does not yet participate in important cooperative counternarcotics efforts. Such programs of international cooperation would add significantly to external understanding of Iran's narcotics problems and counter-narcotics efforts.

Nigeria

Nigeria is the hub of African narcotics trafficking and the headquarters for global poly-crime organizations. Nigerian narcotics traffickers operate worldwide networks that transport heroin from Asia to Africa, the NIS and the United States, and cocaine from South America to Europe, Africa and East Asia. Nigerian traffickers are responsible for a significant portion of the heroin that is abused in the United States. Marijuana is the only narcotic cultivated in Nigeria; large quantities are exported to other African nations and to Europe, but have little impact upon the United States.

The need to repatriate their criminal gains has motivated Nigerian traffickers to develop a sophisticated and flexible money laundering system capable of handling not only narcotics profits, but the ill-gotten gains of Nigerian sponsored financial fraud as well. The dislocations of Nigeria's economy have helped to engender a vast informal commercial sector, immune to most regulation and well suited to illegal activities.

The record of Nigerian law enforcement against the narcotics trade is, at best, mixed. The one force capable of making headway against narcotics, the Nigerian Drug Law Enforcement Agency (NDLEA), has been handicapped by deficiencies in political and financial support. The NDLEA arrests many couriers, but few organization leaders. NDLEA efforts at Nigeria's international airports have led to increased seizures of narcotics, and may be a factor contributing to traffickers's expansion into bulk shipments and across borders into Nigeria's neighbors.

The Government of Nigeria has failed to react responsibly to the ease with which criminals function in Nigeria. Appropriate criminal narcotics

and money-laundering legislation has been enacted, but remains unenforced, with no evidence that prosecutions, convictions or asset seizures have been made against any major criminal figures. Nigeria failed to provide consistent policy advice to its law enforcement organs, lacked the political will to attack pervasive corruption, and again neglected to provide sufficient material support for even the most basic operations of its law enforcement agencies.

Nigeria again failed to meet its obligations to the United States and other nations with regard to extraditions and other forms of counter-narcotics cooperation. Even direct promises of action have remained unredeemed. A December, 1996, United States mission to Nigeria received the Government of Nigeria's assurance that extraditions of criminals to the United States could resume immediately. No action has been taken on extraditions over one year later.

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Part V

General Services Administration

48 CFR Parts 532 and 552 and Chapter V General Services Administration Acquisition Regulation; 10 Day Payment Clause for Certain Federal Supply Service Contracts and Small Entity Compliance Guide; Final Rules

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[APD 2800.12A, CHGE 77]

RIN 3090–AG30

General Services Administration Acquisition Regulation; 10 Day Payment Clause for Certain Federal Supply Service Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to authorize payment of invoices in 10 days after receipt for Federal Supply Service (FSS) Stock, Special Order, and Schedules contracts when the contractor agrees to full cycle electronic commerce.

DATES: Effective Date March 16, 1998. Comments should be submitted in writing to the address shown below on or before May 15, 1998.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4012, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION:

A. Background

Electronic commerce (EC) helps to reduce the cost and improve the efficiency of administrative processes by using electronic data interchange (EDI) and electronic funds transfer (EFT) to conduct business transactions. GSA FSS seeks to encourage contractors to implement full cycle EC so that both parties realize these benefits. Full cycle EC includes placing orders, receiving orders, issuing invoices, and paying invoices electronically. Payment by electronic funds transfer is already mandatory for most Federal contracts under the Debt Collection Improvement Act of 1996 (31 U.S.C. 3332). GSA FSS has the capability to issue orders and receive invoices electronically. To encourage contractor participation, GSA will pay invoices in 10 days for contractors who agree to process orders and invoices electronically using implementation conventions provided by GSA.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule provides that the Government will make payment in 10 days from receipt of a proper invoice when the contractor agrees to full cycle EC. Because not all contractors are EDI capable, full cycle EC is not mandatory. Contractors who do not agree to the terms will be paid under standard Prompt Payment Act (31 U.S.C. 3903) procedures and suffer no adverse consequences. Contractors who agree to full cycle EC will benefit from receiving payment more quickly and being able to streamline administrative procedures and costs associated with processing contract orders.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Determination to Issue an Interim Rule

Urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. GSA believes this rule will provide significant benefits to both the Federal government and GSA contractors. Contractors who participate in full cycle EC will receive payment more quickly than the standard 30 days under the Prompt Payment Act. Electronic processing will reduce costs and improve efficiency for both contractors and the government. However, pursuant to Pub. L. 98–577 and FAR 1.501, GSA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Accordingly, 48 CFR 532 and 552 are amended as follows:

1. The authority citation for 48 CFR Parts 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c)

PART 532—CONTRACT FINANCING

Section 532.902 is added to read as follows:

532.902 Definitions.

Full cycle electronic commerce means the use of electronic data interchange (EDI) and electronic funds transfer (EFT):

(a) By the Government, to place purchase or delivery orders, receive invoices, and pay invoices.

(b) By the Contractor, to accept and fill orders, submit invoices, and receive payment.

3. Section 532.905 is amended by adding a new paragraph (c) as follows:

532.905 Invoice payments.

* * * * *

(c)(1) To increase efficiency and reduce costs to the Government, Federal Supply Service contracts under the Stock, Special Order, and Schedules Programs may authorize payment within 10 days of receipt of a proper invoice. The contract must meet the following conditions:

(i) The contractor agrees to full cycle electronic commerce.

(ii) The contract includes FAR 52.232–33, Mandatory Information for Electronic Funds Transfer Payment.

(2) The 10 day payment terms apply to each order that meet all the following conditions:

(i) FSS places the order using EDI and the contractor submits EDI invoices in accordance with the Trading Partner Agreement.

(ii) A GSA Finance Center pays the invoices using EFT.

(3) The 10 day payment terms do not apply to any order:

(i) Placed by a GSA contracting activity other than FSS.

(ii) Placed by or paid by another agency.

4. Section 532.908 is amended by revising paragraph (a) to read as follows:

532.908 Contract clause.

(a) For FSS Stock, Special Order, and Schedules solicitations and contracts that provide payment in 10 days under 532.905(c), the contracting officer must:

(1) If the contract will include FAR 52.212–4, insert the clause at 552.232–70. GSA received a class deviation to allow use of 552.232–70 for commercial items.

(2) If the contract will not include FAR 52.212–4, insert 552.232–25, Prompt Payment, instead of FAR 52.232–25.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 552.212–71 is revised by changing the provision date and revising the clause ''Invoice Payments'' in numerical order as follows:

552.212–71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items

As prescribed in 512.301(a)(2), insert the following provision:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (MAR 1998)

* * * * *

_____552.232–70 Invoice Payments

* * * * *

6. A new section 552.232–25 is added to read as follows:

552.232–25 Prompt payment.

As prescribed in 532.908(a)(2), insert the following clause:

PROMPT PAYMENT (MAY 1997) (DEVIATION MAR 1998)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments.*

(1) The due date for making invoice payments by the designated payment office is:

(i) For orders placed electronically by the General Services Administration (GSA) Federal Supply Service (FSS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(A) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(ii) For all other orders, the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(B) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor.

(iii) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(2) The General Services Administration will issue payment on the due date in (a)(1)(i) above if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(i) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(ii) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810).

(iii) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(iv) The EDI transaction sets in (i) through (iii) above must adhere to implementation conventions provided by GSA.

(3) If any of the conditions in (a)(2) above do not occur, the 10 day payment due dates in (a)(1) become 30 day payment due dates.

(4) Certain food products and other payments.

(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are —

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Pub. L. 98–181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(5) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(5)(i) through (a)(5)(viii) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, edible fats or oils, and food products prepared from edible fats or oils), with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(5) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) Any other information or documentation required by the contract (such as evidence of shipment).

(ix) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(6) *Interest penalty.* An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(6)(i) through (a)(6)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(7) *Computing penalty amount.* The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the ''Renegotiation Board Interest Rate,'' and it is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(5) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233–1, Disputes, or for more than 1 year. Interest penalties of less than $1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233–1, Disputes.

(8) *Prompt payment discounts.* An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in subparagraph (a)(7) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(9) *Additional interest penalty.*

(i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(9)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty of $1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(9)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall —

(*1*) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(*2*) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(*3*) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(*1*) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(*2*) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(*1*) The additional penalty shall not exceed $5,000;

(*2*) The additional penalty shall never be less than $25; and

(*3*) No additional penalty is owed if the amount of the underlying interest penalty is less than $1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments.*

(1) *Due dates for recurring financing payments.* If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) *Due dates for other contract financing.* For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) *Interest penalty not applicable.* Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) *Fast payment procedure due dates.* If this contract contains the clause at 52.213–1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

7. Section 552.232–70 is revised as follows:

552.232–70 Invoice payments.

As prescribed in 532.908(a)(1), insert the following clause:

INVOICE PAYMENTS (MAR 1998)

(a) The due date for making invoice payments by the designated payment office is:

(1) For orders placed electronically by the General Services Administration (GSA) Federal Supply Service (FSS), and to be paid by GSA through electronic funds transfer (EFT), the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

(2) For all other orders, the later of the following two events:

(i) The 30th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 30th day after Government acceptance of supplies delivered or services performed by the Contractor.

(3) On a final invoice, if the payment amount is subject to contract settlement actions, acceptance occurs on the effective date of the contract settlement.

(b) The General Services Administration will issue payment on the due date in (a)(1) above if the Contractor complies with full cycle electronic commerce. Full cycle electronic commerce includes all the following elements:

(1) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(2) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810).

(3) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(4) The EDI transaction sets in (b)(1) through (b)(3) above must adhere to implementation conventions provided by GSA.

(c) If any of the conditions in (b) above do not occur, the 10 day payment due dates in (a)(1) become 30 day payment due dates.

(d) All other provisions of the Prompt Payment Act (31 U.S.C. 3901 *et seq.*) and Office of Management and Budget (OMB) Circular A–125, Prompt Payment, apply.

(End of clause)

Dated: February 27, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–6664 Filed 3–13–98; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

General Services Administration Acquisition Regulation; Small Entity Compliance Guide

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Small Entity Compliance Guide.

SUMMARY: This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It summarizes Change 77 which amended the General Services Administration Acquisition Regulation (GSAR) to authorize payment of invoices in 10 days for Federal Supply Schedule (FSS) Stock, Special Order, and Schedules contracts when the contractor agrees to full cycle electronic commerce. Further information regarding this change may be obtained by referring to Change 77 which precedes this notice.

DATES: The interim rule is effective March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION: The interim rule provides the opportunity for public comments. Interested parties may submit comments on or before May 15, 1998. Submit comments in writing to: General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4012, Washington, DC 20405.

The interim rule affects both GSA contracting personnel and commercial entities submitting offers under the FSS Stock, Special Order, and Schedule programs. The following is a summary of the most significant provisions of the interim rule as it applies to these programs:

- To encourage contractor participation in electronic commerce, GSA will pay invoices in 10 days for contractors who agree to process orders and invoices electronically using implementation conventions provided by GSA.
- Because not all contractors are EDI capable, full cycle EC is not mandatory. Contractors who do not agree to the terms will be paid under standard Prompt Payment Act (31 U.S.C. 3903) procedures and suffer no adverse consequences.
- ''Full cycle electronic commerce'' means the use of electronic data interchange (EDI) and electronic funds transfer (EFT):

(a) By the Government, to place purchase or delivery orders, receive invoices, and pay invoices.

(b) By the Contractor, to accept and fill orders, submit invoices, and receive payment.

- Full cycle electronic commerce includes all the following elements:

(a) The Contractor must receive and fulfill electronic data interchange (EDI) purchase orders (transaction set 850).

(b) The Contractor must generate and submit to the Government valid EDI invoices (transaction set 810).

(c) The Contractor's financial institution must receive and process, on behalf of the Contractor, EFT payments through the Automated Clearing House (ACH) system.

(d) The EDI transaction sets in (i) through (iii) above must adhere to implementation conventions provided by GSA.

Dated: February 27, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–5903 Filed 3–13–98; 8:45 am]

BILLING CODE 6820–61–P

Federal Register

Monday
March 16, 1998

Part VI

The President

Proclamation 7073—National Poison Prevention Week, 1998

Proclamation 7074—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1998

Federal Register
Vol. 63, No. 50
Monday, March 16, 1998

Presidential Documents

Title 3—

The President

Proclamation 7073 of March 12, 1998

National Poison Prevention Week, 1998

By the President of the United States of America

A Proclamation

Protecting the well-being of our children must always be our highest priority as a people and as a Nation. Innocent and vulnerable, children are eager to explore the world around them, and in our society today, where every home is filled with potentially dangerous chemicals, this can put our children at grave risk. According to the American Association of Poison Control Centers, over one million children are exposed each year to potentially deadly medicines and household chemicals—a danger we must not, and need not, tolerate.

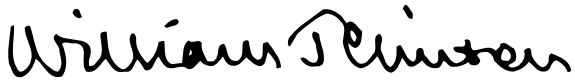
Since the first observance of National Poison Prevention Week 36 years ago, the number of children who have died each year from accidental poisonings has dropped dramatically, from 450 in 1962 to 29 in 1995. This remarkable progress is due in part to the dedicated efforts of the U.S. Consumer Product Safety Commission, the Poison Prevention Week Council, and our Nation's poison control centers. Nevertheless we still have much work to do if we are to prevent even a single child from suffering or dying due to poisoning. Because poisonings are almost always preventable, there are simple, practical steps we can take to protect our children: use child-resistant packaging correctly; keep toxic materials locked up and out of the reach of children; and, if a poisoning does occur, call a poison control center immediately.

This year, the focus of National Poison Prevention Week is the danger posed by pesticides, which are involved in the poisonings of thousands of young children each year. While the Environmental Protection Agency requires that most pesticides be in child-resistant packaging, it is up to parents and caregivers to make sure that these materials and other household chemicals and medicines are kept locked up and out of the reach of children. By taking a few moments to read labels and store pesticides properly, we can avoid a lifetime of regret.

To encourage the American people to learn more about the dangers of accidental poisonings and to take responsible preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as ''National Poison Prevention Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 15 through March 21, 1998, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to protect our children from poisons.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of March, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 98–6968
Filed 3–13–98; 11:18 am]
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Presidential Documents

Proclamation 7074 of March 12, 1998

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 1998

By the President of the United States of America

A Proclamation

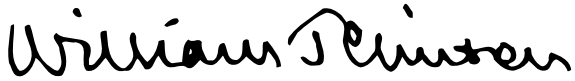
This year, as we mark the 177th anniversary of the advent of Greece's struggle for independence, we celebrate with the Hellenic Republic and recognize the close ties that have long existed between Greece and the United States. Through two centuries, our nations have enjoyed a strong and enduring friendship. For more than half a century, we have stood together in NATO, modern history's most successful alliance.

Our bonds are deeper still, however, for we are joined by blood, culture, and a profound commitment to shared values. Greek ideals of democracy and freedom inspired our Nation's founders and breathed life into America's experiment with democratic self-government. Generations of Greek Americans have enriched every aspect of our national life—in the arts, sciences, business, politics, and sports. Through hard work, love of family and community, steadfast commitment to principle, and a deep love of liberty, they have contributed greatly to the prosperity and peace we enjoy today.

The bonds between America and Greece, in fact, have never been stronger than they are today. We are partners in the effort to find a lasting, peaceful solution in the Balkans and to build an enlarged NATO that will enhance our common security. As our two nations prepare for the challenges and possibilities of the new millennium, we look forward to building on that partnership so that the seeds of democracy we have nurtured together for so long will bear fruit in a bright future not only for ourselves, but for our global community.

NOW, THEREFORE, I, WILLIAM J. CLINTON, 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 March 25, 1998, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of March, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



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LIST OF PUBLIC LAWS

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S. 916/P.L. 105–161

To designate the United States Post Office building located at 750 Highway 28 East in Taylorsville, Mississippi, as the ''Blaine H. Eaton Post Office Building''. (Mar. 9, 1998; 112 Stat. 28)

S. 985/P.L. 105–162

To designate the post office located at 194 Ward Street in Paterson, New Jersey, as the ''Larry Doby Post Office''. (Mar. 9, 1998; 112 Stat. 29)

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1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.